

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 24 2015 10:10 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

BARRON HAMM,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

Case No: C256384

Docket No: 68661

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
BARRON HAMM # 1052277,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 240
2	241 - 480
3	481 - 535

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	08/18/2010	"EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING"	225 - 229
1	09/08/2009	"MOTION TO DISMISS COUNSEL"	132 - 134
1	03/12/2010	AMENDED INDICTMENT	173 - 174
1	08/09/2010	CASE APPEAL STATEMENT	217 - 218
2	02/26/2013	CASE APPEAL STATEMENT	368 - 369
3	08/20/2015	CASE APPEAL STATEMENT	482 - 483
3	11/24/2015	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
2	07/11/2012	CRIMINAL ORDER TO STATISTICALLY CLOSE CASE	276 - 276
2	02/12/2013	CRIMINAL ORDER TO STATISTICALLY CLOSE CASE	357 - 357
1	09/28/2010	DECISION AND ORDER	234 - 236
2	12/19/2012	DEFENDANT'S RESPONSE AND OBJECTION TO STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION FOR TRANSPORTATION OF INMATE FOR COURT.	334 - 337
2	11/30/2012	DEFENDANT'S RESPONSE WHY PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND MOTION TO APPOINT COUNSEL SHOULD ISSUE.	314 - 319
3	11/24/2015	DISTRICT COURT MINUTES	509 - 535
3	11/24/2015	DOCUMENTARY EXHIBITS (UNFILED)	484 - 508
2	01/29/2013	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	344 - 349
1	03/12/2010	GUILTY PLEA AGREEMENT	175 - 182
1	07/22/2009	INDICTMENT	1 - 7
1	07/22/2009	INDICTMENT WARRANT	8 - 8
1	07/23/2009	INDICTMENT WARRANT RETURN	9 - 10
1	05/20/2010	JUDGMENT OF CONVICTION (PLEA OF GUILTY)	192 - 193
1	07/27/2009	MEDIA REQUEST AND ORDER FOR CAMERA ACCESS TO	11 - 11

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		COURT PROCEEDINGS	
1	03/23/2010	MEDIA REQUEST AND ORDER FOR CAMERA ACCESS TO COURT PROCEEDINGS	183 - 183
2	11/30/2012	MOTION AND ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE	320 - 325
2	07/21/2015	MOTION AND ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE (UNFILED)	464 - 473
2	10/03/2014	MOTION FOR AND ORDER GRANTING REQUEST FOR SENTING TRANSCRIPTS	406 - 408
2	10/31/2012	MOTION FOR APPOINTMENT OF COUNSEL (HABEAS CORPUS)	291 - 293
2	11/16/2012	MOTION FOR CLARIFICATION	302 - 304
1	07/29/2011	MOTION FOR ORDER GRANTING REQUEST FOR SENTENCING TRANSCRIPTS (CONTINUED)	240 - 240
2	07/29/2011	MOTION FOR ORDER GRANTING REQUEST FOR SENTENCING TRANSCRIPTS (CONTINUATION)	241 - 242
2	02/25/2013	MOTION FOR RECONSIDERATION; AND FOR APPOINTMENT OF COUNSEL FOR "DIRECT APPEAL"	361 - 367
2	03/06/2015	MOTION REQUESTING OF THE SENTENCING COURT TO ISSUE ITS ORDER GRANTING THE PETITIONER A COPY OF HIS PLEA CANVASSING AND SENTENCING TRANSCRIPTS PURSUANT TO NRS 7.40 ET SEQ. AND 7.055	415 - 420
1	12/11/2009	MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATIVE COUNSEL	146 - 151
2	06/23/2015	MOTION TO VACATE SENTENCE	424 - 440
1	07/26/2010	MOTION TO WITHDRAW COUNSEL	203 - 211
2	04/10/2014	MOTION TO WITHDRAW PLEA	382 - 397
1	07/21/2010	MOTION TO WITHDRAWAL AS ATTORNEY OF RECORD	194 - 202

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	02/13/2012	MOTION TO WITHDRAWAL PLEA	248 - 268
2	10/22/2013	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - AFFIRMED	377 - 381
1	10/14/2010	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - DISMISSED	237 - 239
1	08/05/2010	NOTICE OF APPEAL	212 - 216
2	02/22/2013	NOTICE OF APPEAL	358 - 360
2	08/19/2015	NOTICE OF APPEAL (CONTINUED)	477 - 480
3	08/19/2015	NOTICE OF APPEAL (CONTINUATION)	481 - 481
2	02/04/2013	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	350 - 356
1	11/03/2009	NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	137 - 145
1	02/09/2010	NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	152 - 167
2	04/10/2014	NOTICE OF MOTION	398 - 398
1	03/08/2010	NOTICE OF WITNESSES [NRS 174.234(1)(A)]	168 - 170
1	07/27/2009	NOTIFICATION OF MEDIA REQUEST	12 - 12
1	03/23/2010	NOTIFICATION OF MEDIA REQUEST	184 - 184
1	08/31/2009	ORDER	109 - 110
2	11/10/2011	ORDER	246 - 247
2	05/07/2012	ORDER	274 - 275
1	09/14/2009	ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS	135 - 136
2	11/04/2014	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR AND ORDER GRANTING REQUEST FOR SENTENCING TRANSCRIPTS	412 - 414
2	04/19/2013	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR RECONSIDERATION; AND FOR APPOINTMENT OF COUNSEL	374 - 376

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		FOR "DIRECT APPEAL"	
2	01/29/2013	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE, OR IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE; ORDER DENYING DEFENDANT'S PRO PER MOTION FOR CLARIFICATION	341 - 343
2	07/24/2015	ORDER DENYING DEFENDANT'S PRO PER MOTION TO VACATE SENTENCE	474 - 476
2	05/16/2014	ORDER DENYING DEFENDANT'S PRO PER MOTION TO WITHDRAW PLEA	403 - 405
2	01/17/2013	ORDER DENYING DEFENDANT'S PRO PER REQUEST FOR MOTION TO BE IMMEDIATELY HEARD BY COURT	338 - 340
2	11/02/2012	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	294 - 294
2	07/13/2015	ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE (UNSIGNED)	462 - 463
2	04/15/2015	ORDER GRANTING DEFENDANT'S PRO PER MOTION REQUESTING OF THE SENTENCING COURT TO ISSUE ITS ORDER GRANTING THE PETITIONER A COPY OF HIS PLEA CANVASSING AND SENTENCING TRANSCRIPTS PURSUANT TO NRS 7.40 ET SEQ AND 7.055	421 - 423
1	08/24/2009	PETITION FOR WRIT OF HABEAS CORPUS	101 - 108
2	10/31/2012	PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)	277 - 290
1	05/07/2010	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	185 - 191
1	08/06/2009	RECEIPT FOR GRAND JURY TRANSCRIPT(S)	100 - 100
2	11/26/2012	REQUEST FOR MOTION TO BE IMMEDIATELY HEARD BY COURT	305 - 309
1	08/12/2010	REQUEST OF STATUS OF MOTIONS	219 - 224
1	08/31/2009	RETURN TO WRIT OF HABEAS CORPUS	111 - 129

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	08/27/2010	STATE'S OPPOSITION TO DEFENDANT'S EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING	230 - 233
2	08/15/2011	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR AN ORDER GRANTING REQUEST FOR SENTENCING TRANSCRIPTS	243 - 245
2	02/22/2012	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA	269 - 273
2	10/08/2014	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION FOR AND (SIC) ORDER GRANTING REQUEST FOR SENTING (SIC) TRANSCRIPTS	409 - 411
2	03/15/2013	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION FOR RECONSIDERATION & APPOINTMENT OF COUNSEL	370 - 373
2	12/11/2012	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE, OR IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE	330 - 333
2	07/10/2015	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION TO VACATE SENTENCE	458 - 461
2	05/01/2014	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION TO WITHDRAW PLEA	399 - 402
2	11/14/2012	STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND MOTION TO APPOINT COUNSEL	295 - 301
2	11/27/2012	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR CLARIFICATION	310 - 313
2	11/30/2012	STATE'S RESPONSE TO DEFENDANT'S PRO PER REQUEST FOR MOTION TO BE IMMEDIATELY HEARD BY COURT	326 - 329
1	03/10/2010	SUPPLEMENTAL NOTICE OF WITNESSES [NRS 174.234(1)(A)]	171 - 172
1	08/03/2009	TRANSCRIPT OF HEARING HELD ON JULY 14, 2009	13 - 65
1	08/03/2009	TRANSCRIPT OF HEARING HELD ON JULY 21, 2009	66 - 99

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	07/10/2015	TRANSCRIPT OF HEARING HELD ON MAY 14, 2010	441 - 457
1	09/01/2009	WRIT OF HABEAS CORPUS	130 - 131

ELG N.Y. 89301

[illegible]

540 of the

ELY STATE PRISON

JUL 20 2011

7/21/11


CLERK OF THE COURT

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
FRANK M. PONTICELLO
Chief Deputy District Attorney
Nevada Bar #000370
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: C256384-1

DEPT NO: VII

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR AN ORDER GRANTING
REQUEST FOR SENTENCING TRANSCRIPTS

DATE OF HEARING: 09/14/11
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through FRANK M. PONTICELLO, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion for an Order Granting Request for Sentencing Transcripts.

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

///

///

///

///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. DEFENDANT HAS NO RIGHT TO FREE TRANSCRIPTS

3 The State is not required to furnish transcripts at its expense upon the unsupported
4 request of a petitioner claiming inability to pay for them. The petitioner must satisfy the
5 court that the points raised have merit, which will tend to be supported by a review of the
6 record before a defendant may have trial records supplied at State expense. Peterson v.
7 Warden, 87 Nev. 134, 135-36, 483 P.2d 204, 205 (1971).

8 An indigent appellant's right to have access to needed transcripts was established in
9 Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956). The protection of indigents from
10 preclusive monetary requirements has been extended to other post-conviction proceedings.
11 See Douglas v. Green, 363 U.S. 192, 80 S.Ct. 1048 (1960) (docket fees in habeas corpus
12 proceedings). However, the United States Supreme Court reiterated in Eskridge v.
13 Washington State Board of Prison Terms and Paroles, 357 U.S. 214, 216, 78 S.Ct. 1061,
14 1062 (1958), what it had said in Griffin: "We do not hold that a State must furnish a
15 transcript in every case involving an indigent defendant."

16 Furthermore, in George v. State, 122 Nev. 1, 127 P.3d 1055 (2006), the Nevada
17 Supreme Court held that while an indigent defendant is entitled to transcripts of all
18 proceedings for the specific purpose of effecting a direct appeal, it affirmed its holding in
19 Peterson with regard to transcripts in other post-conviction proceedings.

20 Here, Defendant has failed to make the necessary threshold showing of need for state-
21 supplied court documents because Defendant has not stated with any particularity the basis
22 for his request. Per Peterson, Defendant must satisfy the court that the points raised have
23 merit, which will tend to be supported by a review of the record. However, Defendant has
24 not done that here.

25 As such, Defendant has not been deprived of his right of redress or access to the
26 courts, and thus is not entitled to court documents at State expense. Defendant has failed to
27 show that there is any merit to his claims for which the court documents he requests are
28 necessary. See Peterson, supra.

1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests Defendant's Motion for an
3 Order Granting Request for Sentencing Transcripts be denied.

4 DATED this 12th day of August, 2011.

5 Respectfully submitted,

6 DAVID ROGER
7 Clark County District Attorney
8 Nevada Bar #002781

9 BY /s/FRANK M. PONTICELLO
10 FRANK M. PONTICELLO
11 Chief Deputy District Attorney
12 Nevada Bar #000370

13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing, was made this 15th day
15 of August, 2011, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 BARRON HAMM #1052277
17 ESP
18 PO BOX 1989
19 ELY NV 89301

20 /s/P. Manis
21 Secretary for the District Attorney's
22 Office

23
24
25
26
27
28 FMP/pm

ORDR

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
VICTORIA VILLEGAS
Chief Deputy District Attorney
Nevada Bar #002804
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED

Nov 10 9 51 AM '11

Steven L. Lamm
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

Case No. 09-C-256384
Dept No. VII

ORDER

DATE OF HEARING: September 14, 2011
TIME OF HEARING: 8:45 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 14th day of September, 2011, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by DAVID ROGER, District Attorney, through BRIAN KOCHVAR, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

///

///

///

///

09C256384
OADP
Order Admitting Defendant to Probation &
1691563



P:\WPDOCS\ORDR\FORDR\909\90927503.doc

RECEIVED

NOV 10 2011


CLERK OF THE COURT

1 IT IS HEREBY ORDERED that the DEFENDANT'S PRO PER MOTION FOR AN
2 ORDER GRANTING REQUEST FOR SENTENCING TRANSCRIPTS For, shall be, and it
3 is DENIED WITHOUT PREJUDICE. The Court advised she will reconsider if Defendant
4 provides a reason he needs the transcripts

5 DATED this 8 day of ^{November}~~October~~, 2011.

6
7
8 
9
10 DISTRICT JUDGE

11 DAVID ROGER
12 DISTRICT ATTORNEY
13 Nevada Bar #002781

14 
15 VICTORIA VILLEGAS
16 Chief Deputy District Attorney
17 Nevada Bar #002804
18
19
20
21
22
23
24
25
26
27

28 09F09275X/GANG:jh

FILED

FEB 13 2012

CLERK OF COURT

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR THE COUNTY OF CLARK

2/24/12
8:45am

THE STATE OF NEVADA,
Plaintiff

CASE NO. C 256384

DEPT. NO. V II

v.

BARRON HAMM JR.
22707761 Defendant.
1052277

090266384
MWPL
Motion to Withdraw Plea
1768507



MOTION TO WITHDRAWAL PLEA

COMES NOW, Defendant, BARRON HAMM -, proceeding in proper
person, and moves this Honorable Court for an Order granting him permission to withdrawal his Plea
Agreement in the the case number C-256-384, on the date of 14 in the month
of 05 in the year 2010 where defendant was then represented by scott coffee as
counsel. This Motion is based on all papers and pleadings on file with the Clerk of the Court which are
hereby incorporated by this reference, and Points and Authorities herein and attached Affidavit of
Defendant.

Dated this 30 day of January, 2012

Respectfully submitted,

RECEIVED

FEB 09 2012

CLERK OF THE COURT

Barron Hamm
Defendant in Proper Person

1 Barron Hamm
/ In Propria Personam
2 Post Office Box 650 [HDSP]
3 Indian Springs, Nevada 89018
4

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**
7

8 THE STATE OF NEVADA }
9 }
10 vs. }

Case No. c-256-384

Dept No. VII

Docket _____

11
12 Barron Hamm #
13 10522#

14 **NOTICE OF MOTION**

15 YOU WILL PLEASE TAKE NOTICE, that Motion to withdraw
16 Guilty Plea

17 will come on for hearing before the above-entitled Court on the ____ day of _____, 20____,
18 at the hour of ____ o'clock ____ M. In Department ____ of said Court.
19

20 CC FILE
21

22 DATED: this 30 day of January, 2012.
23

24 BY: Barron Hamm 10522#
25 Barron Hamm #10522#
26 /In Propria Personam
27
28

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND ONE: Constitution Amendment No # 6/14
ineffective Assistance of Counsel, due process

23. (a)

Defendant(s) are entitled to the assistance of Counsel to defend
against allegations of wrongdoings, see: United States - Constitution
Amendment No # 6.

Such Counsel must be effective in representing the accused,
see: Strickland - vs - Washington, 446, U.S. 668, 104, S. Ct.
2052 (1984)

In Nevada, the appropriate vehicle for review of whether
Counsel was effective is a Post-conviction relief proceeding
see: McKague - vs - Warden, 112, Nev. 159, 912, P. 2d, 255, 257,
N. 4. (1996)

In order to assert a claim for ineffective assistance of Counsel,
the defendant must prove that he was denied "reasonable effective
Assistance" of Counsel by satisfying the two-prong test of
Strickland - v - Washington, 446, U.S. 668, 686-687, 104, S. Ct 2052,
2063, 2064 (1984) see: State - v - Love, 109, Nev. 1136, 865, P. 2d, 322,
323 (1993)

A Court may evaluate the questions of deficient performance and
prejudice in either order and need not consider both issues if the
defendant fails to make a sufficient showing on one. see: Means -
v - State, 120, Nev. 1001, 1011, 103, P. 3d, (2004)

1 Under this test, the defendant must show first that his counsel's
2 representation fell below an objective standard of reasonableness,
3 and second, that but for counsel's errors, there is a
4 reasonableness probability that the result of the proceedings
5 would have been different. Strickland 466, U.S. at 687-688 and
6 694, "A reasonable probability is a probability sufficient to
7 undermine confidence in the outcome. Wiggins-v-Smith, 539
8 U.S. 510, 533 (2003)

9 Under the guidelines of Strickland, a reviewing court must begin
10 an evaluation of an ineffective assistance of counsel claim with
11 a strong presumption that counsel's conduct was within the
12 range of reasonable professional assistance. Means-v-State,
13 120 Nev. at 1011-1012,

14 A petitioner must prove his "factual allegation underlying his
15 ineffective assistance of counsel claim by a preponderance of the
16 evidence" Means 120 Nev. At 1013. (emphasis added)

17 The benchmark for assessing claims of ineffective assistance of
18 counsel is "whether counsel's conduct so undermined the proper
19 functioning of the adversarial process that the trial or proceedings
20 cannot be relied on as having produced a just result.

21 See: Nunez-v-Mueller 350 F.3d 1045, 1051 (9th Cir. 2003)

22 (Quoting, Strickland-v-Washington 466 U.S. 668, 686- (1984)

23 In reviewing an ineffective assistance of counsel claim, the court
24 should first determine whether counsel made a "sufficient

25 inquiry into the information... pertinent to his client's case,

26 See: Doleman-v-State 112 Nev. 843, 921 P.2d 278, 280 (1996)

27 Citing, Strickland, 466 U.S. at 690-691-

• Once this decision is made, the court should consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case, Doleman 921 P2d at 280

Strategy decisions are "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances", Doleman - 921 P2d at 280. See also, Howard vs State, 106 Nev. 713, 800, P2d. 175, 180, (1990). Strickland 466 U.S. At 691.

As discussed above (supra) the burden of proof for an ineffective assistance of counsel allegation is by a preponderance of the evidence.

"A lawyer shall provide competent representation to a client",

Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonable necessary for the representation.

Middleton v. Warden Nevada State Prison, 98 P3d. 694, N. 10 (Nev 2004)

(Quoting SCR 151)

Attorney's Appointed to represent defendants should be competent. See,

Ex parte v Kramer, 61 Nev. 174, 122 P2d. 862, 877, (1942) Ineffective assistance of counsel denies a defendant of due process, Id.

Counsel has A duty to thoroughly investigate plausible options in order to formulate strategies to effectively represent a Defendant.

See, Dawson v State, 108 Nev. 112, 117, 825 P2d. 593 (1992)

If Counsel has thoroughly investigated plausible option in order to create a strategy to represent the defendant then such strategy decisions are almost unchallengeable. Id.

Hence, under this line of reasoning, if Counsel did not thoroughly investigate plausible option, then Counsel's Strategy Choices are able to be Challenged, and must past Constitutional requirements.

This case involves two constitutional doctrines that have been merging for years: The right to effective assistance of counsel and the voluntariness of guilty plea agreements.

First, the right to counsel is an enumerated right.

The Sixth Amendment to the United States Constitution provides that, [i]n all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense, as talked about above. Here, this defendant does not contend that his plea was "involuntary" or "unintelligent" as a practical matter.

The record plainly shows that when the court canvassed him, the defendant acknowledged committing the acts in the charges against him, but this defendant claims that his plea was "involuntary" as a result of ineffective assistance of Counsel.

This defendant urges this court to restore his constitutional right to voluntarily choose between the courses of action that were and are available to him.

Here, this defendant entered a plea of guilty to the underline offenses of the charged information on the advice of counsel, with no benefit that would be beneficial to this defendant whatsoever, as put in plain language... There is no way that this 17 year old defendant could understand what was going on, and the consequence of his plea of guilty.

The statutory provisions governing the withdrawal of a Guilty Plea are codified in NRS 726.165. That contemplates that a defendant may file a motion to withdraw a plea both before and after imposition of the sentence. To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. See: Hargrove (116 Nev. 562) -v- STATE, 100 Nev. 498, 501-02 686. P2d.

222, 224-25 (1984) the court explicitly recognized the right to appeal from an order denying such a motion when the motion is brought subsequent to entry of the judgment of conviction. Further, in subsequent decisions, the court has consistently considered such appeals. See: Barajas - v - State, 115 Nev. 440, 991 P2d. 474, (1999). Moreover, The court has indicated that a motion to withdraw a plea exists independently from provisions governing post-conviction relief.

Bryant - v - State, 102 Nev. 268, 272, 721 P2d. 364, 368 (1986)

(A) defendant must raise a challenge to the validity of his or her guilty plea in the District Court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding under NRS. 34.360, or NRS. 177.315.

This defendant is therefore seeking to withdraw the guilty plea that was entered in the District Court upon the advice of Counsel, and although this defendant admitted the facts which support all the elements of the offense(s) to which this defendant pleaded guilty to, he did not understand the consequence of his plea, nor by entering a plea of guilty did this defendant benefit by the negotiations.

The record indicates that trial Counsel was aware that he could have filed a motion to suppress this alleged confession that was made in a locked room at the Metro Police Department, as the defendant was talking to his mother, as a tape recorder was left on, and recorded this alleged conversation.

If Counsel had fully conducted his investigation, then without this alleged tap-recorder conversation, without the permission of this defendant or his mother, this information would have been suppressed, and the arresting of this defendant would have never taken place.

Here, Counsel clearly violated his affirmative duty to conduct a thorough pretrial investigation. Strickland, and many subsequent Supreme Court cases have addressed Counsel's duty to investigate a defendant's case, "without any type of investigation it becomes prejudicial to the defendant."

Even if the Court affords trial Counsel a heavy measure of deference, his decision not to investigate the suppression of this Constitutional violation of this defendant's rights, the back bone of the States case, would fall below an objective standard of reasonableness. For instance, the U.S. Supreme Court has recognized that the "ABA Standards for Criminal Justice are guides to determining what is reasonable" in ineffective assistance cases."

Accordingly, ABA Criminal Justice Standard 4-4.1 says, "Counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction."

Furthermore, The ABA, maintains that this duty to investigate exists regardless of the accused's admissions or statements to defense Counsel of facts constituting guilt or the accused's stated desire to plead guilty. Thus, in this case, even though the State may allege that they could amass evidence against the accused, and even though this defendant admitted on record at his guilty plea hearing to committing the alleged acts, trial Counsel's failure to begin his investigation until right before sentencing fell below the ABA's objective standard of reasonableness, - the first prong of the "Strickland" test.

From the outset, this defendant requested an investigation into the blatant use of a violation of his Constitutional rights as to the tape-recorded statements

that was the heart of the States Case, made in a room at the Metro Police Department, between this defendant and his mother, moreover, Counsel in fact did a motion to suppress this conversation, and would not file it, but nevertheless provided a copy to this defendant, so this Court never got a chance to rule on this motion, thereby denying this defendant the Constitutional right to appeal. Further, Counsel at no time was informed by this defendant not to file the motion to suppress this conversation, and by not filing this motion, Counsel's representation fell below an objective standard of reasonableness, Strickland v. Washington, 446 U.S. 668, 104 S. Ct. 2052, (1984)

Because Counsel overstepped the Constitutional boundary that requires a defendant's informed consent before making decisions that materially affect his case.

Certain decision regarding the waiver of basic Constitutional right, cannot be made for this defendant by Counsel alone. This defendant argues that trial Counsel essentially usurped his right to knowingly and intelligently control the direction of his case.

Indeed, the underlying purpose of the Constitution's guarantee of the effective assistance of Counsel is "that partisan advocacy ... will best promote the ultimate objective" of fairness,

CONTINUATION REPORT

ID/Event Number: 090503-0318

Page 17 of 17

was video and audio taped to preserve the conversation. Initially when asked, Hamm stated he went to the party by himself and not with any of his friends. He further stated he was not a member of the ATM gang but eventually said he was a member of a dance click. Eventually Hamm stated he went to the party with friends of his he only knew as Antwon, Little Shorty and Lulu. At some point the party ended and Little Shorty got into a verbal altercation with Jazmin Flemming.

Hamm stated he ran from the party when he heard gunshots but later changed his story. He said he did indeed re-enter the apartment but he had no idea how the shots got fired. Hamm eventually asked for his mother Wanda Clark and Detective Wildemann brought her to the interview room from the lobby. After a brief discussion with Hamm and Ms. Clark, Detective Wildemann excused himself. On the video tape, Ms. Clark asked Hamm if he told the truth, Hamm replied he did tell the truth, he then lowered his voice and told his mother, "I did shoot the boy though, I did do that, I told you I shot him and I got scared." Ms. Clark told her son, "You can't say that, you can never say that. You just hung yourself!"

Following Hamm's interview, detectives felt that probable cause existed and arrested Hamm for Murder with a Deadly Weapon.

Exhibit 1

1 to get him to admit that, I gave him what I like to call
2 an out or an explanation, what I said was possibly an
3 accidental discharge took place in which he's holding
4 the gun and it accidentally fires or goes off.

5 Q. And is that, so that's an interview tactic
6 that you use during the interview; correct?

7 A. Yes.

8 Q. Was allowing Barron Hamm and his mother to
9 be alone in the room another interview tactic that you
10 were using?

11 A. Yes.

12 Q. You told him he would be allowed to let him
13 speak with his mother and you in fact did let him do
14 that?

15 A. Yes.

16 MS. JIMENEZ: Thank you.

17 I have no further questions for this
18 witness. Do any of the grand jurors have any questions?

19 THE WITNESS: Yes, sir.

20 BY A JUROR:

21 Q. Yeah. I take it it's not necessary to tell
22 him the mic is still on when you left the room?

23 A. No, sir.

24 Q. And I take it also that the weapon was
25 never recovered?

1 A. I'm sorry, could you repeat that?

2 Q. The weapon was never recovered?

3 A. We were not able to recover the weapon no,
4 sir.

5 BY A JUROR:

6 Q. Was he read his rights or Miranda?

7 A. He was not in custody, he was not
8 Mirandized, there's no need for me to do that, I'm not
9 obligated to do that.

10 Q. You said after the interview you told him
11 he was under arrest and took him down to the Detention
12 Center.

13 A. Right. At that point he's in custody, he's
14 under arrest, and I didn't interview him anymore.

15 Q. At that time he was given his Miranda
16 rights?

17 A. I don't believe I ever Mirandized him. I
18 didn't give him anymore questioning, no more questioning
19 took place.

20 BY MS. JIMENEZ:

21 Q. Let me just follow-up on that last
22 question.

23 When Barron Hamm initially came down to the
24 station he came of his own free will; correct?

25 A. Correct.

1 Q. If he had said to you I want to end the
2 interview, I want to leave, would you have allowed him
3 to do that?

4 A. Yes.

5 Q. And so he was arrested, that was at the
6 conclusion of the interview; correct?

7 A. Correct.

8 Q. Prior to that during, you know, at some
9 point during the interview if he wanted to leave he
10 would have been allowed to do that?

11 A. Yes.

12 MS. JIMENEZ: Nothing further.

13 BY A JUROR:

14 Q. I have a question. Did your investigation
15 reveal any prior conflicts between Barron and the
16 victim?

17 A. No. No. We knew that they were
18 acquaintances but no, no prior conflict between the two.

19 BY THE FOREPERSON:

20 Q. So there was no, no motive for doing this,
21 just out of the blue?

22 A. Other than the fact that he had made
23 demands in the apartment and that Jared Fleming had
24 run, other than that I can't give you a motive at this
25 point.

1 THE FOREPERSON: By law, these proceedings
2 are secret and you are prohibited from disclosing to
3 anyone anything that has transpired before us, including
4 evidence and statements presented to the Grand Jury, any
5 event occurring or statement made in the presence of the
6 Grand Jury, and information obtained by the Grand Jury.

7 Failure to comply with this admonition is a
8 gross misdemeanor punishable by a year in the Clark
9 County Detention Center and a \$2,000 fine. In addition,
10 you may be held in contempt of court punishable by an
11 additional \$500 fine and 25 days in the Clark County
12 Detention Center.

13 Do you understand this admonition?

14 THE WITNESS: Yes, sir.

15 THE FOREPERSON: Thank you, sir, for your
16 testimony. You are excused.

17 THE WITNESS: Thank you.

18 MS. VILLEGAS: We don't have anymore
19 witnesses. We'd like to submit this case for your
20 deliberation. I understand there is a couple of you
21 that were not here last week. Since we do not have a
22 transcript of the hearing you cannot deliberate. I
23 think there is, what, two? Two jurors I think have to
24 step outside.

25 MS. JIMENEZ: And also just before

Exhibit 7

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 v.

10 BARRON HAMM,
11 #2707761

12 Defendant.

CASE NO. C256384X

DEPT. NO. VII

DATE: March , 2010
TIME: 9:00 a.m.

13 MOTION TO SUPPRESS PURSUANT TO NRS 179.505

14 Comes now the defendant, by and through counsel Deputy Public Defender Scott L.
15 Coffee, with the this motion to suppress any and all oral communications between the defendant,
16 seventeen year old **BARRON HAMM**, and his mother which were unlawfully intercepted and/or
17 surreptitiously recorded without either party's consent in violation of **NRS 179.410** to **NRS**
18 **179.515**, inclusive, and/or in violation of **NRS 200.650** and/or in violation of any right to privacy
19 guaranteed the United States Constitution and/or the Constitution of the State of Nevada . Said
20 motion is based upon the attached points and authorities.
21
22

23 DATED this ____ day of March, 2010.

24
25 PHILIP J. KOHN
26 CLARK COUNTY PUBLIC DEFENDER

27 By: _____
28 SCOTT L. COFFEE, #5607
Deputy Public Defender

Exhibit 3

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

1
2
3 In the instant case, Barron Hamm voluntary went to the police station for an interview in
4 regards to the shooting of Jared Flemming. The interview took place within the confines of an
5 interview room, behind a closed door. After Hamm repeatedly denied being involved in the
6 shooting Detective Wildemann ask Hamm if he would say the same thing if your mom was
7 present. Shortly after Wildemann's this question, Hamm was joined in the interview by his
8 mother. Pleasantries were exchanged and then Hamm was left alone with his mother in the
9 interview room.
10

11 Upon leaving the room, Hamm and his mother, Wanda Clark, believing they were alone,
12 have a discussion about facts of the case. Unbeknownst to either Hamm or his mother, the entirety
13 of what they belicved to be a private conversation was surreptitiously intercepted and recorded by
14 LVPD. The state has indicated an intention to admit the entirety of this intercepted conversation.
15

LAW

16
17 **NRS 179.505** allows for the filing of a motion to suppress the contents of "...any
18 intercepted wire or oral communication, or evidence derived there from, on the grounds that: (a)
19 the communication was unlawfully intercepted."
20

21 An "oral communication" is defined by **NRS 179.440** as "...any verbal message uttered by
22 a person exhibiting an expectation that such communication is not subject to interception, under
23 circumstances justifying such expectation."
24

25 In the instant case we have a conversation, i.e. "verbal messages", between the defendant
26 and his family. The circumstances of the conversation, getting the story straight before relaying it
27 to the police, clearly indicate that the participants of the conversation exhibited an expectation that
28 the communication was "...not subject to interception".

1 Given the forgoing, the only real question as to whether there was an "oral
2 communication" for the purposes of NRS 179.440 is whether the circumstances of the situation
3 justify the expectation that conversation was not subject to interception. While a police interview
4 room might not always justify such expectation, there are several compelling factors in this
5 instance which indicate the expectation of privacy was justified: 1) the defendant was told he was
6 not under arrest; 2) the interview took place away from the public eye in a closed room; 3) there
7 was no indication that the family was informed they were being taped; and 4) the officers told the
8 family they were leaving the room so a conversation could take place.
9

10 Each of the forgoing facts weighs in favor of a justified expectation that the conversation
11 was not subject to interception, but the fourth factor is the most compelling. In short, the agents of
12 the state purposely created a situation in which the family expected they were having a private
13 conversation, hence the state should be precluded from now claiming that such an expectation was
14 unjustified--- any other conclusion invites abuse of the right the statutes were designed to protect.
15 In short, this was an "oral communication" as defined by NRS 179.440.
16

17 Under NRS 179.430 "Intercept" means the aural acquisition of the contents of any wire or
18 oral communication through the use of any electronic, mechanical or other device or of any
19 sending or receiving equipment." For example, a conversation recorded by virtue of a bugging
20 device, such as a suction cup attached to a phone, has been intercepted for purposes of this statute.¹
21

22 In the instant case the conversation in question, including audio---in the words of NRS
23 179.430 "aural acquisition"--- was recorded on video taped. Given the expansive definition of
24 interception set forth by statute, it's clear an interception took place.

25 Having established an intercepted oral communication, we now must turn to whether said
26 interception was lawful. The lawful interception of an "oral communication" normally requires a
27

28
¹ See, for example, Rupley v. State, 93 Nev. 60 (1977)

1 court order prior to the interception.² Further, pursuant to **NRS 179.500**, any "interception" of an
2 "oral communication" is inadmissible unless the party offering the "oral communication" provides
3 proof that said interception was authorized by court order. Absent such proof the contents of such
4 intercepted "oral communication" are generally inadmissible.³ In the instant case the state did not
5 receive a court order prior to intercepting the oral communication between the Cardonas; hence
6 absent some recognized expectation the conversation is inadmissible.
7

8 While exceptions to warrant requires exist, for example phone conversations recorded in
9 the ordinary course of business by police officers or conversation recorded by informants who are
10 "wired" ⁴ and telephone conversations being used by law enforcement officers during the ordinary
11 course of their duties.⁵ This is not a case which involves an informant or a telephone conversation
12 recorded in the ordinary course of an officer's duties. In short, the specific exceptions previously
13 set forth by the court or statute do not apply in this case.
14

15 Here, in addition to the running afoul Nevada's wire tap statutes, the surreptitious
16 recording of Hamm and his mother runs foul of the **NRS 200.650** prohibition against such
17 recording. Under **NRS 200.650** any such recording must be authorized by at least one party to the
18 conversation. This is the reason conversations between knowingly "wired" informant and suspect
19

20 ² See **NRS 179.460-470** which outline the situations in which the granting of such an order
21 would be appropriate and the prerequisites for the issuance of an order.

22 ³ See Rupley, supra.

23 ⁴ See Bonds v. State, 92 Nev. 307 (1977) holding that a person engaging in illegal activity
24 takes his chances that the conversation there person he's dealing with is an informer hence no
25 expectation of privacy and no "oral communication" for purposes of **NRS 179.440**. Note that
26 Bonds rationale only applies so long as at least one party consents to the recording least run afoul
of prohibition against the unauthorized surreptitious use of a listening device set forth in **NRS**
200.650. Here there was no consent by any party to the recording of the conversation.

27 ⁵ See **NRS 179.425** and Reyes v. State, 107 Nev. 191 (1991) for a full description of how
28 "telephone exception" applies to what might otherwise be termed an "interception" for purposes of

1 do not fall within the purview of the "wire tap" statutes, but such an exception ceases to exist in
2 the absence of the informant's consent.⁶ Here there was no consent by any party and the state may
3 not avail itself of the "informant exception".⁷

4 CONCLUSION

5 Based upon the forgoing and pursuant to NRS 179.505, NRS 200.650, the United States
6 Constitution and the Constitution of the State Nevada, the defense respectfully moves this
7 honorable court to suppress any and all surreptitiously recorded conversations between the
8 defendant and his family, said recording having been obtained in violation of the law of the state of
9 Nevada.
10

11 DATED this _____ day of January, 2010.

12
13 PHILIP J. KOHN
14 CLARK COUNTY PUBLIC DEFENDER

15 By: _____
16 SCOTT L. COFFEE, #5607
17 Deputy Public Defender
18
19
20
21

22 NRS 179.430. Here the conversation was video taped and the exceptions set forth in NRS
23 179.425 are inapplicable.

24 ⁶ See Summers v. State, 102 Nev. 195 (1986).

25 ⁷ In Summers at 200, the Supreme court noted "In State v. Bonds, 92 Nev. 307, 550 P.2d
26 409 (1976) we held that the warrantless, electronic recording of a communication from a
27 "transmitter-type listening device" attached to a police informant did not constitute the interception
28 of either a wire communication or an oral communication. Consequently, we held that the
interceptor of such a communication need not first secure an order permitting the interception.
NRS 179.470; NRS 179.475. *Such an interception must, however, satisfy the authorization
requirements set forth in NRS 200.650* (footnotes omitted, emphasis added)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 19th day of January, 2010, at 9:00 a.m.

DATED this ____ day of January, 2010.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
SCOTT L. COFFEE, #5607
Deputy Public Defender

CERTIFICATE OF FACSIMILE

A COPY of the above and foregoing Order was sent via facsimile to the District Attorney's Office (383-8465) on this ____ day of January, 2010.

By _____
An employee of the Clark County Public
Defender's Office

Therefore, pursuant to the facts and the law stated herein, Defendant requests that his guilty plea be withdrawn.

Dated this 30 day of January, 2012

Respectfully Submitted,

Barron Hamm

CERTIFICATE OF SERVICE BY MAILING

I, Barron Hamm, hereby certify, pursuant to NRCP 5(b), that on this 30 day of January, 2012, I mailed a true and correct copy of the foregoing Motion to withdraw Plea, by depositing it in the High Derest State Prison legal mail service provided through the Law Library, with First class Postage prepaid, and addressed to the following:

David ROGER'S OFFICE
OF District Attorney
200 ~~200~~ Lewis AVE
P.O. Box 552212
Las Vegas N.V. 89155-2212

CHARLES J. Short
clerk of the court
200 Lewis Ave 3rd Floor
Las Vegas NV. 89155-1160

CC: File

Dated this 30 day of January, 2012

BY: Barron Hamm #1052277
Barron Hamm #1052277

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to

Withdrawal guilty Plea.
(Title of Document)

filed in District Court Case number C-256-384

☐ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Barron Hamm
Signature

01-30-2012
Date

BARRON HAMM
Print Name

with drawal plea
Title

I Implore that I ~~may~~ receive
Evidentary hearing do to the facts
Listed in the above motion.

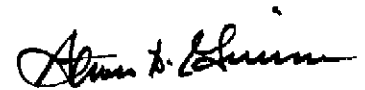
~~Because~~ I Believe I have suffer
Manifest unjustic. Do to the Fact
That I didn't have proper representation
By attorney scott L. coffee He has lied to
me my Family about certain motion
Beeing Filed & if were Filed it would prepare
a better defence in my Behalf.

with that in the above facts
I Implore that I be granted
a chance to withdrawl my guilty plea
on soie grounds that everyone is
Supose. to have Fair trail your Honor.

x Barton Hamm #1052577
RespectFully Submitted

BARRON HAMM #1052277³⁷⁶³
P.O. BOX 650
INDIAN SPRING N.V. 89070

\$1.50
85-180 1495
15



CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BRIAN KOCHIEVAR
Chief Deputy District Attorney
Nevada Bar #005691
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09-C256384

DEPT NO: VII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

DATE OF HEARING: February 24, 2012

TIME OF HEARING: 8:45 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through BRIAN KOCHIEVAR, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Withdraw Guilty Plea.

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

///

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, Defendant Barron Hamm was charged by way of Indictment with
4 Count 1 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); Count 2 –
5 Assault With a Deadly Weapon (Felony – NRS 200.471); Count 3 – Murder With Use of a
6 Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and Count 4 – Carrying
7 Concealed Firearm or Other Deadly Weapon (Felony – NRS 202.350(1)(d)(3)).

8 On March 12, 2010, Defendant pled guilty to Count 1 – Second Degree Murder With
9 Use of a Deadly Weapon and Count 2 – Assault With a Deadly Weapon. An Amended
10 Indictment and Guilty Plea Agreement (“GPA”) were filed in open court the same day.

11 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows: Count
12 1 – to life with a minimum parole eligibility of ten (10) years plus a consecutive term of two
13 hundred forty (240) months with a minimum parole eligibility of ninety-six (96) months for
14 the use of a deadly weapon; and Count 2 – to a maximum of seventy-two (72) months with a
15 minimum parole eligibility of twenty-four (24) months; Count 2 to run consecutive to Count
16 1; with three hundred seventy-five (375) days credit for time served. Judgment of
17 Conviction was filed on May 20, 2010.

18 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
19 Supreme Court dismissed Defendant’s appeal on September 10, 2010. Remittitur issued on
20 October 6, 2010.

21 Defendant filed the instant motion on February 13, 2012. The State’s Opposition
22 follows.

23 **ARGUMENT**

24 **A. DEFENDANT KNOWINGLY, VOLUNTARILY AND**
25 **INTELLIGENTLY ENTERED HIS GUILTY PLEA**

26 “[A] motion to withdraw a plea of guilty...may be made only before sentence is
27 imposed or imposition of sentence is suspended” unless it is necessary “to correct manifest
28 injustice.” NRS 176.165; Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The

determination of whether there was a “manifest injustice” depends on whether the plea was entered voluntarily and knowingly. Baal, 106 Nev. at 72, 787 P.2d at 394. In determining whether a guilty plea was freely, knowingly, and voluntarily entered, the Court reviews the totality of the circumstances surrounding the plea. Bryant v. State, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986) (*superseded by statute*). However, a guilty plea is presumptively valid. Wilson v. State, 99 Nev. 362, 373, 664 P.2d 328, 334 (1983). In addition, when a guilty plea is accepted by the trial court after proper canvassing as to whether the defendant freely, knowingly, and intelligently entered his plea, such plea will be deemed properly accepted. Baal, 106 Nev. at 72, 787 P.2d at 394. However, the failure to conduct a ritualistic oral canvass does not require that the plea be invalidated. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).

In the present case, Defendant argues that his plea was not knowing and voluntary because he was too young to realize that his counsel did not properly investigate and move to suppress tape recorded statements Defendant made to his mother admitting that he murdered the victim. However, Defendant signed the Guilty Plea Agreement (hereinafter “GPA”) which expressly acknowledged that his plea was knowing, voluntary, and intelligent, and in his best interest:

“My decision to plead guilty is based upon the plea agreement in this case which is as follows: The State will retain the full right to argue on the charge of Second Degree Murder. Both parties agree to stipulate to a sentence of eight (8) to twenty (20) years for the deadly weapon enhancement. Both parties also agree to stipulate to a sentence of twenty-four (24) to seventy-two (72) months for the charge of Assault with a Deadly Weapon and agree to run the sentence consecutive to Count 1. Further, this agreement is conditional on the Court agreeing to and following through with the stipulated portion of the sentence.” (GPA at 1).

“I understand that as a consequence of my plea of guilty to Count 1, the Court must sentence me to life with the possibility of parole with eligibility for parole beginning at ten (10) years; OR a definite term of twenty five (25) years with eligibility for parole beginning at ten (10) years. I also understand that due to my use of a deadly weapon in the commission of my crime, the Court, after considering all the factors required by law, must impose a consecutive sentence of one (1) to twenty

1 (20) years which must not be greater than the sentence imposed for the
2 underlying crime.” (GPA at 2).

3 **“I understand that as a consequence of my plea of guilty to Count 2,**
4 **the Court must sentence me to imprisonment in the Nevada Department of**
5 **Corrections for a minimum term of not less than one (1) years and a**
6 **maximum term of not more than six (6) years. The minimum term of**
7 **imprisonment may not exceed forty percent (40%) of the maximum term**
8 **of imprisonment...” (GPA at 2).**

9 “I have discussed the elements of all of the original charge(s) against me
10 with my attorney and I understand the nature of the charge(s) against me.”
11 (GPA at 4).

12 “I understand the State would have to prove each element of the charge(s)
13 against me.” (GPA at 4).

14 “I have discussed with my attorney any possible defense, defense strategies
15 and circumstances which might be in my favor.” (GPA at 4).

16 **“All the foregoing elements, consequences, rights and waiver of rights**
17 **have been thoroughly explained to me by my attorney.” (GPA at 4)**
18 **(Emphasis added).**

19 “I believe that pleading guilty and accepting this plea bargain is in my best
20 interest, and that a trial would be contrary to my best interest.” (GPA at 5).

21 “I am signing this agreement voluntarily, after consultation with my
22 attorney, and I am not acting under duress or coercion or by virtue of any
23 promises of leniency, except for those set forth in this agreement.” (GPA at
24 5).

25 “My attorney has answered all my questions regarding this guilty plea
26 agreement and its consequences to my satisfaction and I am satisfied with
27 the services provided by my attorney.” (GPA at 5).

28 As this court can see, the GPA is replete with evidence that Defendant understood the
terms of his guilty plea and had discussed with his attorney the consequences stemming
therefrom. Consequently, Defendant’s plea was irrefutably entered freely, knowingly, and
voluntarily. Looking at the totality of the circumstances, therefore, Defendant has not
satisfied his burden of proving that “manifest injustice” (as defined in NRS 176.165) exists
to warrant the withdrawal of his plea. Therefore, Defendant is not entitled to relief and his

1 motion should be denied.

2 **B. DEFENDANT'S CLAIMS OF INEFFECTIVE ASSISTANCE OF**
3 **COUNSEL SHOULD HAVE BEEN RAISED IN A POST-**
4 **CONVICTION PETITION FOR WRIT OF HABEAS CORPUS**

5 Defendant makes various claims of ineffective assistance of trial counsel, however
6 those claims should have been raised in a timely Post-Conviction Petition for Writ of Habeas
7 Corpus. See NRS 34.724; see also NRS 34.726; see also NRS 34.810(a). As such, those
8 portions of Defendant's Motion to Withdraw Guilty Plea should be summarily dismissed.

9 **CONCLUSION**

10 For the foregoing reasons, the State respectfully requests that this court deny
11 Defendant's Motion to Withdraw Guilty Plea.

12 DATED this 22nd day of February, 2012.

13 Respectfully submitted,

14 STEVEN B. WOLFSON
15 Clark County District Attorney
Nevada Bar #001565

16
17 BY /s/BRIAN KOCHEVAR
18 BRIAN KOCHEVAR
19 Chief Deputy District Attorney
Nevada Bar #005691

20 **CERTIFICATE OF MAILING**

21 I hereby certify that service of the above and foregoing, was made this 22nd day of
22 February, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 BARRON HAMM, BAC#1052277
24 PO BOX 650 [HDSP]
25 INDIAN SPRINGS, NV 89018

26 /s/A. FLETCHER
27 Secretary for the District Attorney's
28 Office

09F09275X/GANG:abf

ORIGINAL

FILED

MAY 07 2012

Ann L. Johnson
CLERK OF COURT

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 SONIA V. JIMENEZ
6 Chief Deputy District Attorney
7 Nevada Bar #008818
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

09C256384
ORDR
Order
1844839



10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 BARRON HAMM,
14 #2707761

15 Defendant.

Case No. 09C256384
Dept No. VII

16 **ORDER**

17 DATE OF HEARING: February 24, 2012
18 TIME OF HEARING: 8:45 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the
20 24th day of February, 2012, the Defendant not being present, IN PROPER PERSON, the
21 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MARIA
22 LAVELL, Deputy District Attorney, and the Court hearing no arguments of counsel and
23 good cause appearing therefore,

24 //

25 //

26 //

27 //

28 //

RECEIVED

MAY 07 2012

CLERK OF THE COURT

P:\WPDOCS\ORDR\FORDR\909\90927504.doc

1 THE COURT stated it appears the motion would have been more properly brought as
2 a post-conviction petition and, even then, it would be untimely. Under the circumstances of
3 the case, there does not appear to be any basis to grant the motion.

4 IT IS HEREBY ORDERED that the Defendant's Motion to Withdraw Plea, shall be,
5 and it is, DENIED.

6 DATED this 1 day of May, 2012.

7
8 

9 DISTRICT JUDGE

10 

11 STEVEN B. WOLFSON
12 DISTRICT ATTORNEY
13 Nevada Bar #001565

14 

15 SONIA V. JIMENEZ
16 Chief Deputy District Attorney
17 Nevada Bar #008818

18
19
20
21
22
23
24
25
26
27
28 09F09275X/GANG:abf

COSCC

FILED

JUL 11 11 05 AM '12

DISTRICT COURT
CLARK COUNTY, NEVADA

CLERK COURT

THE STATE OF NEVADA VS
BARRON HAMM

CASE NO.: 09C256384
DEPARTMENT 7

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Nolle Prosequi (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☐ Guilty Plea with Sentence (before trial)
- ☐ Transferred (before/during trial)
- ☐ Bench (Non-Jury) Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☐ Conviction
- ☐ Jury Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☒ Guilty Plea with Sentence (during trial)
 - ☐ Conviction
- ☐ Other Manner of Disposition

09C256384
COSCC
Criminal Order to Statistically Close Case
1899331



DATED this 10th day of July, 2012.

LINDA BELL
DISTRICT COURT JUDGE

RECEIVED

JUL 11 2012

CLERK OF THE COURT

CASE NO: C256384

DEPT NO: ~~VI~~ 9

09C256384
PWHC
Petition for Writ of Habeas Corpus
1391472



FILED

OCT 31 2012

John J. Blum
CLERK OF COURT

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

BARRON HAMM,
PETITIONER,

v.

STATE OF NEVADA, DEPT OF CORRECTIONS
WARDEN D.W. NEVIN [HDSP]
HIGH DESERT STATE PRISON
P.O. BOX 650, INDIAN SPRINGS,
RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS
(POSTCONVICTION)

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ~~THE STATE PRISON~~ HOSP
~~WHITE PINE COUNTY~~ HIGH DESERT STATE PRISON / CLARK COUNTY

2. Name and location of court which entered the judgment of conviction under attack: CLARK
~~WHITE PINE COUNTY~~ EIGHT Judicial District Court

3. Date of judgment of conviction: MAY 14, 2010

4. Case number: C-256-384

5. (a) Length of sentence: 20 to LIFE

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

N/A

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

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

7. Nature of offense involved in conviction being challenged: second degree
MURDER & Assault with a deadly weapon

8. What was your plea? (check one):

(a) Not guilty _____ (b) Guilty X (c) Nolo contendere _____

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

N/A

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

(a) Jury _____ (b) Judge without a jury _____

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

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

13. If you did appeal, answer the following:

(a) Name of Court: N/A

(b) Case number or citation: _____

(c) Result: _____

(d) Date of result: N/A

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

14. If you did not appeal, explain briefly why you did not: I was informed by my attorney that he was gonna do it for me when he never filed any thing in my behalf. ATTORNEY WAS INEFFECTIVE AND VIOLATED MY APPEAL RIGHTS.

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

Yes ☒ No ☒

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: 8th Judicial Court

(2) Nature of proceeding: withdrawal of guilty plea
APPOINTMENT OF COUNSEL & EVIDENTIARY HEARING

(3) Grounds raised: ineffective assistance of counsel & constitutional amendment violation

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

Yes ☐ No ☒ N/A

(5) Result:

(6) Date of result:

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

I NEED A LAWYER AND A HEARING
POLICE VIOLATED MY RIGHT TO PRIVACY & SPEECH

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

(1) Name of court: N/A

(2) Nature of proceeding:

(3) Grounds raised:

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

Yes ☐ No ☒ N/A

(5) Result:

(6) Date of result:

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

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

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

(1) First petition, application or motion? Yes ☐ No ☒

Citation or date of decision: N/A

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

Citation or date of decision: N/A

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

Citation or date of decision: N/A

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: NO

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

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

ATTORNEY STATED HE WOULD FILE BUT HE DID NOT!

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

If yes, state what court and case number:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: SCOTT L. COFFEE

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

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

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

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND ONE: Constitution Amendment No # 6:- 14

ineffective Assistance of Counsel;

VIOLATION OF DUE PROCESS;

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

Defendant(s) are entitled to the assistance of Counsel to defend
against allegations of wrongdoings, see: United States - Constitution
Amendment No # 6.

Such Counsel must be effective in representing the accused,
See: Strickland - vs - Washington, 416, U.S. 668, 104, S. Ct.
2052 (1984)

In Nevada, the Appropriate Vehicle for review of whether
Counsel was effective is A Post-conviction relief proceeding
See: McKague - vs - Warden, 112, Nev. 159, 912, P. 2d, 255, 257,
N.Y. (1996)

In order to assert a claim for ineffective assistance of Counsel,
the defendant must prove that he was denied "reasonable effective
Assistance" of Counsel by satisfying the two-prong test of
Strickland - v - Washington, 416, U.S. 668, 686-687, 104, S. Ct. 2052,
2063; 2064 (1984) See: State - v - Love, 109, Nev. 1136, 865, P. 2d, 322,
323 (1993)

A Court may evaluate the questions of deficient performance and
prejudice in either order and need not consider both issues if the
defendant fails to make A Sufficient Showing on one. See: Means -
v - State, 120, Nev. 1001, 1011, 103, P. 3d, (2001)

Under this test, the defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland 466 U.S. at 687-688 and 691. "A reasonable probability is a probability sufficient to undermine confidence in the outcome. Wiggins-v-Smith, 539 U.S. 510, 533 (2003)

Under the guidelines of Strickland, a reviewing court must begin an evaluation of an ineffective assistance of counsel claim with a strong presumption that counsel's conduct was within the range of reasonable professional assistance. Means-v-State, 120 Nev. at 1011-1012,

A petitioner must prove his "factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence" Means 120 Nev. at 1013, (emphasis added)

The benchmark for assessing claims of ineffective assistance of counsel is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial or proceedings cannot be relied on as having produced a just result.

See: *Alumet-v-Mueller*, 350 F.3d 1045, 1051 (9th Cir. 2003)

(quoting, *Strickland-v-Washington* 466 U.S. 668, 686 (1984))

In reviewing an ineffective assistance of counsel claim, the court should first determine whether counsel made a "sufficient inquiry into the information... pertinent to his client's case, See: *Doleman-v-State*, 112 Nev. 843, 921 P.2d 278, 280 (1996) Citing, *Strickland*, 466 U.S. at 690-691-

Once this decision is made, the court should consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case," Doleman 921 P2d at 280

Strategy decisions are "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances," Doleman 921 P2d at 280. See also, Howard vs State, 106 Nev. 713, 800 P2d 175, 180, (1990). Strickland 466 U.S. At 691.

As discussed above (supra) the burden of proof for an ineffective assistance of counsel allegation is by a preponderance of the evidence. "A lawyer shall provide competent representation to a client,"

Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonable necessary for the representation.

Middleton v Warden Nevada State Prison, 98 P3d 694, N. 10 (Nev 2004)

(Quoting SCR 151)

Attorney's Appointed to represent defendants should be competent. See, Ex parte v Kramer, 61 Nev. 174, 122 P2d 862, 877, (1942) Ineffective assistance of counsel denies a defendant of due process, Id.

Counsel has a duty to thoroughly investigate plausible options in order to formulate strategies to effectively represent a Defendant.

See, Dawson v State, 108 Nev. 112, 17, 825 P2d 593 (1992)

If Counsel has thoroughly investigated plausible option in order to create a strategy to represent the defendant then such strategy decisions are almost unchallengeable, Id.

Hence, under this line of reasoning, if Counsel did not thoroughly investigate plausible option, then Counsel's Strategy choices are able to be Challenged, and must past Constitutional requirements.

This case involves two constitutional doctrines that have been merging for years: The right to effective assistance of counsel and the voluntariness of guilty plea agreements.

First, the right to counsel is an enumerated right.

The sixth Amendment to the United States Constitution provides that, [i]n all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense, as talked about above. Here, this defendant does not contend that his plea was "involuntary" or "unintelligent" as a practical matter.

The record plainly shows that when the court canvassed him, the defendant acknowledged committing the acts in the charges against him, but this defendant claims that his plea was "involuntary" as a result of ineffective assistance of Counsel.

This defendant urges this Court to restore his constitutional right to voluntarily choose between the courses of action that were and are available to him.

Here, this defendant entered a plea of guilty to the underline offenses of the charged information on the advice of Counsel, with no benefit that would be beneficial to this defendant whatsoever, as put in plain language... There is no way that this _____ year old defendant could understand what was going on, and the consequence of his plea of guilty.

The statutory provisions governing the withdrawal of a Guilty Plea are codified in NRS 726.165, that contemplates that a defendant may file a motion to withdraw a plea both before and after imposition of the sentence. To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. See: Hargrove (116 Nev. 562) -v- STATE, 100 Nev. 498, 501-02 686, 22d.

222, 224-25 (1984) the court explicitly recognized the right to appeal from an order denying such a motion when the motion is brought subsequent to entry of the judgment of conviction. Further, in subsequent decisions, the court has consistently considered such appeals. See, Barajas - v - State, 115 Nev. 440, 991 P2d 474 (1999). Moreover, the court has indicated that a motion to withdraw a plea exists independently from provisions governing post-conviction relief.

Bryant - v - State, 102 Nev. 268, 272, 721 P2d 364, 368 (1986)

(A) defendant must raise a challenge to the validity of his or her guilty plea in the District Court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding under NRS 34.360, or NRS 177.215.

This defendant is therefore seeking to withdraw the guilty plea that was entered in the District Court upon the advice of counsel, and although this defendant admitted the facts which support all the elements of the offense(s) to which this defendant pleaded guilty to, he did not understand the consequence of his plea, nor by entering a plea of guilty did this defendant benefit by the negotiations.

The record indicates that trial counsel was aware that he could have filed a motion to suppress this alleged confession that was made in a locked room at the Metro Police Department, as the defendant was talking to his mother, as a tape recorder was left on, and recorded this alleged conversation.

If counsel had fully conducted his investigation, then without this alleged tap-recorder conversation, without the premission of this defendant or his mother, this information would have been suppressed, and the arresting of this defendant would have never taken place.

Here, Counsel clearly violated his affirmative duty to conduct a thorough pretrial investigation. Strickland and many subsequent Supreme Court cases have addressed Counsel's duty to investigate a defendant's case, "without any type of investigation it becomes prejudicial to the defendant."

Even if the Court affords trial Counsel a heavy measure of deference, his decision not to investigate the suppression of this Constitutional violation of this defendant's rights, the back bone of the States case, would fall below an objective standard of reasonableness. For instance, the U.S. Supreme Court has recognized that the "ABA Standards for Criminal Justice are guides to determining what is reasonable" in ineffective assistance cases."

Accordingly, ABA Criminal Justice Standard 4-4.1 says, "Counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction,"

Furthermore, The ABA maintains that this duty to investigate exists regardless of the accused's admissions or statements to defense Counsel of facts constituting guilt or the accused's stated desire to plead guilty. Thus, in this case, even though the State may allege that they could amass evidence against the accused, and even though this defendant admitted on record at his guilty plea hearing to committing the alleged acts, trial Counsel's failure to begin his investigation until right before sentencing fell below the ABA's objective standard of reasonableness, - the first prong of the "Strickland" test.

From the outset, this defendant requested an investigation into the blatant use of a violation of his Constitutional rights as to the tape-recorded statements

CERTIFICATE OF SERVICE BY MAIL

I, BARRON HAMM, hereby certify pursuant to N.R.C.P. 5(b), that on this 19 day of the month of OCTOBER, of the year 2002, I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

[Signature]
Respondent prison or jail official
X
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

WILFSON
District Attorney of County of Conviction
200 LEWIS AVE
LAS VEGAS, NV 89155
Address

[Signature]
Signature of Petitioner

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

PETITION FOR WRIT OF HABEAS CORPUS
(Title of Document)

filed in District Court Case No. C 256 384

☒ Does not contain the social security number of any person.

-OR-

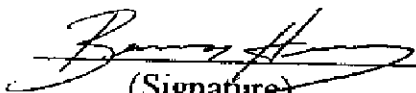
☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or
for an application for a federal or state grant.


(Signature)

10/19/12
(Date)

BARON HAMM[#] 1052277
P.O. Box 650 HDSF
INDIAN SPRINGS, WV
89070

Hasler

FIRST-CLASS MAIL

10/24/2012

US POSTAGE

\$01750



ZIP 89101
011D12602491

09C256384

MAPA

Motion for Appointment of Attorney

1991474



FILED

OCT 31 2012

CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

PLAINTIFF,

VS.

BARRON HAMM,

DEFENDANT.

CASE No: C256384X

DEPT No: ~~III~~ 9

(POSTCONVICTION)

MOTION FOR APPOINTMENT OF COUNSEL (HABEAS CORPUS)

COMES NOW THE DEFENDANT, BARRON HAMM, IN PROPER PERSON AND REQUESTS THIS HONORABLE COURT TO GRANT THE APPOINTMENT OF COUNSEL FOR HABEAS CORPUS POSTCONVICTION RELIEF.

THE DEFENDANT WAS SEVENTEEN AT THE TIME OF THE OFFENSE.

THE CASE IS EXTREMELY DIFFICULT AND THE DEFENDANT LACKS COURT KNOWLEDGE. THE CONVICTION AND SENTENCE ARE SEVERE AND THE FACTS IN THIS CASE ARE LEGALLY BEING CHALLENGED AND COUNSEL IS REQUIRED TO BENEFIT THE LAWS AND PROTECTION OF THE DEFENDANT IN THE INTEREST OF JUSTICE.

SAID MOTION IS BASED UPON THE ATTACHED POINTS AND AUTHORITIES.

DATED THIS 19 DAY OF OCTOBER, 2012

By: Barron Hamm Jr.
DEFENDANT

POINTS AND AUTHORITIES

STATEMENT OF FACTS:

THE INSTANT CASE IS THE SEVENTEEN YEAR OLD DEFENDANT BEING CHARGED WITH MURDER AND THAT THE STATE OBTAINED EVIDENCE ILLEGALLY UNDER NRS 179.440 AND THAT DEFENDANT WAS FORCED TO PLEAD GUILTY DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL AND DUE PROCESS VIOLATIONS.

DEFENDANT WAS CONVICTED OF SECOND DEGREE MURDER AND ASSAULT WITH A DEADLY WEAPON. DEFENDANT WAS SENTENCED TO 20 YEARS TO LIFE IN PRISON.

LEGAL ARGUMENT:

THE CASE IS COMPLEX AND THE CHARGES ARE SERIOUS AND COMPLICATED. THE COURT IN APPOINTING COUNSEL FOR POSTCONVICTION RELIEF MAY CONSIDER THE CIRCUMSTANCES IN THE CASE AND IN THIS CASE A EXHIBITARY IS NEEDED. AND COUNSEL WOULD BE ABLE TO SHOW THE COURT THE LEGAL REMEDIES WHICH WOULD BENEFIT THE DEFENDANT WHO IS UNFAMILAR WITH THE COMPLEXION OF THE COURT SYSTEM.

THE DEFENDANT WAS SEVENTEEN AT THE TIME OF ARREST THEREFORE, WITH HIS CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL AND OTHER VIOLATIONS OF LAW WITHIN THE PETITION FOR HABEAS CORPUS COUNSEL IS REQUIRED AS A DEFENDANT HAS A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL THROUGH THE COURT SYSTEM TO OFFER A SYSTEM OF PROTECTION.

IN THIS CASE, BEING COMPLICATED AND INVESTIGATION NEEDED SURELY WARRANTS APPOINTMENT OF COUNSEL AS PROVIDED BY THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF NEVADA.

CONCLUSION:

BASED UPON THE FOREGOING, THE DEFENDANT PRAYS FOR THE MOTION TO APPOINT COUNSEL BE GRANTED IN THE INTEREST OF JUSTICE. THAT THIS HONORABLE COURT ISSUE AN ORDER FOR COUNSEL TO PREPARE IT'S ARGUMENT FOR THE PETITION OF HABEAS CORPUS.

WHEREFORE, DEFENDANT REQUESTS AN EVIDENTIARY HEARING WHICH WILL SHOW THE VIOLATIONS OF LAW UNDER NRS 200.650 NRS 200.650 NRS 179.460 - 470 AND BOWDS V. STATE, 92 NEV. 307 NRS 179.440.

DATED THIS 19 DAY OF OCTOBER, 2012.

By: Barron Hamm
DEFENDANT / IN PROPER PERSON

VERIFICATION

UNDER PENALTY OF PERJURY, THE UNDERSIGNED DECLARES THAT HE IS THE DEFENDANT / PETITIONER NAMED IN THE FOREGOING MOTION AND KNOWS THE CONTENTS THEREOF, THAT THE PLEADING IS TRUE OF HIS OWN KNOWLEDGE.

BARRON HAMM
DEFENDANT / PETITIONER

ll

FILED

2012 NOV -21 A 9:20

DISTRICT COURT
CLARK COUNTY, NEVADA

Debra M. ...
CLERK OF THE COURT

Barron Hamm #1052277

Petitioner,

Case No: C256384

Dept No: IXI

vs.

State of Nevada, Dept. of Corrections, Warden

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

D.W.Nevin (HDSP) High Desert State Prison

Respondent,

Petitioner filed a petition for writ of habeas corpus on October 31, 2012. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner has been awarded all appropriate good-time credits as provided in Assembly Bill 510 and, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions set out in NRS 209.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 10th day of January, 2013, at the hour of

9 o'clock for further proceedings.

IT IS SO ORDERED this 15th day of November, 2012

RECEIVED

NOV 01 2012

CLERK OF THE COURT

Jennifer P. ...
District Court Judge

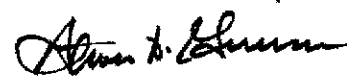
09C256384

OPWH

Order for Petition for Writ of Habeas Corpus

1992638





CLERK OF THE COURT

RSPN

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: VII

**STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PRO PER
PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND
MOTION TO APPOINT COUNSEL**

DATE OF HEARING: JANUARY 10, 2013
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per Petition For Writ Of Habeas Corpus (Post-Conviction).

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

//

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way
4 of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS
5 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471); COUNT 3
6 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
7 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, Defendant pled guilty to COUNT 1 – Second Degree Murder
10 With Use of a Deadly Weapon and COUNT 2 – Assault With a Deadly Weapon. An
11 Amended Indictment and Guilty Plea Agreement ("GPA") were filed in open court the same
12 day.

13 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
14 COUNT 1 – to LIFE with a minimum parole eligibility of TEN (10) YEARS plus a
15 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
16 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
17 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
18 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
19 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
20 was filed on May 20, 2010.

21 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
22 Supreme Court dismissed Defendant's appeal on September 10, 2010. Remittitur issued on
23 October 6, 2010.

24 On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
25 February 22, 2012, the State filed its Opposition to Defendant's Motion to Withdraw Guilty
26 Plea. On February 24, 2012, the District Court denied Defendant's Motion to Withdraw
27 Guilty Plea. In the court minutes from this hearing the court noted that by that time, any
28

1 Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would attempt to file would
2 be untimely.

3 On October 31, 2012, Defendant filed the instant Motion to Appoint Counsel and
4 Petition for Writ of Habeas Corpus (Post-Conviction) to which the State's Response follows.

5 **ARGUMENT**

6 **GROUND I - DEFENDANT'S PETITION IS TIME BARRED UNDER NEVADA**
7 **REVISED STATUTE 34.726.**

8 Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause
9 shown for delay. Pursuant to NRS 34.726:

10 1. Unless there is good cause shown for delay, a petition that
11 challenges the validity of a judgment or sentence must be filed
12 within 1 year of the entry of the judgment of conviction or, if an
13 appeal has been taken from the judgment, within 1 year after the
Supreme Court issues its remittitur. For the purposes of this
subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

14 (a) That the delay is not the fault of the petitioner; and

15 (b) That dismissal of the petition as untimely will
16 unduly prejudice the petitioner.

17 The Defendant's petition does not fall within this statutory time limitation. The
18 Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain
19 meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As per the
20 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
21 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
22 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

23 Since the Defendant did not file a direct appeal, the one-year time bar began to run
24 from the date his Judgment of Conviction was filed – May 20, 2010. The instant Petition
25 was not filed until October 31, 2012. This is in excess of the one-year time frame.

26 Additionally, the one-year time limit for preparing petitions for post-conviction relief
27 under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901
28 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late

1 despite evidence presented by the defendant that he purchased postage through the prison
2 and mailed the Notice within the one-year time limit. The Petition in this case was filed over
3 a year late.

4 Furthermore, the Nevada Supreme Court has held that the district court has *a duty* to
5 consider whether a defendant's post-conviction petition claims are procedurally barred. State
6 v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005). The Court found that
7 "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is
8 mandatory," noting:

9 Habeas corpus petitions that are filed many years after conviction
10 are an unreasonable burden on the criminal justice system. The
11 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

12 121 Nev. at 231, 112 P.3d at 1074. Additionally, the Court noted that procedural bars
13 "cannot be ignored [by the district court] when properly raised by the State." 121 Nev. at
14 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district
15 courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

16 In this case, Defendant filed the instant Petition for Writ of Habeas Corpus outside of
17 the one-year time limit. Defendant's Judgment of Conviction was entered on May 20, 2010.
18 Defendant did not file the instant Petition until October 31, 2012, which is over the one-year
19 time prescribed in NRS 34.726. Absent a showing of good cause for this delay, Defendant's
20 claim must be dismissed because of its tardy filing.

21 **GROUND II - DEFENDANT HAS NOT SHOWN GOOD CAUSE FOR THE**
22 **DELAYED FILING OF THIS PETITION.**

23 In the instant Petition, Defendant has not established good cause for the delay in filing
24 the Petition. "Generally, 'good cause' means a 'substantial reason; one that affords a legal
25 excuse.'" Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) *quoting* Colley v.
26 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). "In order to demonstrate good cause,
27 a petitioner must show that an impediment external to the defense prevented him or her from
28 complying with State procedural default rules." Hathaway, 71 P.3d at 506 *citing* Pellegrini v.

1 State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353,
2 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989).
3 An impediment external to the defense can be demonstrated by a showing “that the factual or
4 legal basis for the claim was not reasonably available to counsel or that some interference by
5 officials made compliance impracticable.” Hathaway, 71 P.3d at 506.

6 In this case, the Defendant has not given any legally relevant excuse for failure to file
7 his Petition in a timely manner. Defendant has not stated any facts that would show good
8 cause for not raising the Constitutional claims in this petition in his prior petition. Defendant
9 does not allege that these Constitutional claims were not available during trial or post
10 conviction. Therefore, since the Defendant cannot show good cause or actual prejudice for
11 failing to comply with the one-year time limit for Petitions, the instant Petition should be
12 dismissed.

13 **GROUND III – DEFENDANT IS NOT ENTITLED TO THE APPOINTMENT OF**
14 **COUNSEL**

15 In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court
16 ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings.
17 In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court
18 similarly observed that “[t]he Nevada Constitution...does not guarantee a right to counsel in
19 post-conviction proceedings, as we interpret the Nevada Constitution’s right to counsel
20 provision as being coextensive with the Sixth Amendment to the United States
21 Constitution.”

22 NRS 34.750 provides, in pertinent part:

23 [a] petition may allege that the Defendant is unable to pay the
24 costs of the proceedings or employ counsel. If the court is
25 satisfied that the allegation of indigency is true and the petition is
26 not dismissed summarily, the court may appoint counsel at the
time the court orders the filing of an answer and a return. In
making its determination, the court may consider whether:

- 27 (a) The issues are difficult;
28 (b) The Defendant is unable to comprehend the
proceedings; or
(c) Counsel is necessary to proceed with discovery.

1 (Emphasis added).

2 Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint
3 counsel if the petition is not summarily dismissed. McKague specifically held that, with the
4 exception of cases in which appointment of counsel is mandated by statute, one does not
5 have “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings.
6 Id. at 164.

7 The Nevada Supreme Court has observed that a petitioner “must show that the
8 requested review is not frivolous before he may have an attorney appointed.” Peterson v.
9 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
10 177.345(2)).

11 In this case, Defendant has failed to demonstrate that any requested review would not
12 be frivolous or that any petition he might file would not be dismissed summarily as untimely
13 per NRS 34.726. Because Defendant has failed to make the requisite showing for
14 appointment of counsel, his request should be denied.

15 **CONCLUSION**

16 For the foregoing reasons, the Defendant’s late Petition for Writ of Habeas Corpus
17 Post Conviction and Motion to Appoint Counsel should be DISMISSED.

18 DATED this 13th day of November, 2012.

19 Respectfully submitted,

20 STEVEN B. WOLFSON
21 Clark County District Attorney
22 Nevada Bar #001565

23 BY /s/ Robert J. Daskas for
24 DANIELLE PIEPER
25 Chief Deputy District Attorney
26 Nevada Bar #008610
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 13th day of November, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ R. Johnson
R. JOHNSON
Secretary for the District Attorney's Office

KC/DP/rj/M-1

Alan S. Lamm

CLERK OF THE COURT

9

118
DA
BARRON HAMM
DEFENDANT/IN PROPER PERSON
POST OFFICE BOX 650 HDSP
INDIAN SPRINGS, NV 89070

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
PLAINTIFF,

CASE No: C756384

DEPT No: IXI

VS.

BARRON HAMM,
DEFENDANT.

12/10/12

9:00AM

MOTION FOR CLARIFICATION

COMES NOW BARRON HAMM, DEFENDANT, IN PROPER PERSON AND REQUESTS FOR THIS HONORABLE COURT TO CLARIFY THE COURT'S ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS AND WHY THIS COURT HAS THE NEVADA DEPT OF CORRECTIONS EXPIRING AB 510 GOOD TIME CREDITS. DEFENDANT'S PETITION IS FOR A NEW TRIAL OR FREEDOM.

THEREFORE, DEFENDANT'S REQUEST IS FOR AN ENTIRE FULL EXPIRATION OF THIS COURT'S PREVIOUS ORDER.

DEFENDANT WOULD LIKE A UNDERSTANDING TO WHAT'S GOING ON. ALSO THE DEFENDANT WOULD BENEFIT WITH APPOINTED COUNSEL.

THE MOTION FOR CLARIFICATION IS SUBMITTED IN THE INTEREST OF JUSTICE AND UNDER PENALTY OF PERJURY THE FACTS ARE TRUE AND CORRECT.
EXECUTED ON NOVEMBER 7, 2012 BY: Barron Lamm

10522277

CERTIFICATE OF SERVICE BY MAIL

I Barton Hamm, here ~~by~~ certify Pursuant to N.R.C.P. 5(b) that on this 07 day of the month of October, of the year 2012 I mailed true & correct copy of the foregoing motion for clarification & addressed to

n/a
Respondent Prison or Jail official

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89720-4727

WOLFSON
District Attorney of county of
conviction

200 LEWIS AVE
Las Vegas, Nevada 89155
Address

x Barton Hamm
Signature of Petitioner

CONFIDENTIAL

LEGAL MAIL

00101490005

[illegible]

Clerk of the Court
200 Lewis Ave. 3rd Floor
Las Vegas N.V. 89155

LAS VEGAS NV 89101-4518
 11/13/2012
 13 NOV 2012 PM 3:11
 US POSTAGE



ZIP 59101
01121-602491

~~\$00-450~~
92

PP
DIA

BARRON HAMM
P.O. BOX 650 HOSP
INDIAN SPRINGS, NV 89070

Ann L. Blum
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
PLAINTIFF,
VS.
BARRON HAMM,
DEFENDANT.

CASE No: C256384

DEPT No: 9

12/19/12

9:00AM

REQUEST FOR MOTION TO BE IMMEDIATELY HEARD
BY COURT

BARRON HAMM, DEFENDANT, IN PROPER PERSON,
RESPECTFULLY REQUESTS FOR THIS HONORABLE COURT TO REVIEW THE
PETITION FOR WRIT OF HABEAS CORPUS THAT'S ON FILE.

THIS MOTION IS MADE BASED ON THE PAPERS, AND PLEADINGS ON FILE,
THE POINTS AND AUTHORITIES ATTACHED HERETO.

DATED THIS 15TH DAY OF NOV 2012.

BARRON HAMM JR
DEFENDANT / PROPER PERSON 105227

POINTS AND AUTHORITIES

I, BARRON HAMM, DEFENDANT, IN PROPER PERSON SUBMITS
THIS AFFIDAVIT IN SUPPORT OF THE FOREGOING MOTION.

1. THE PETITION FOR WRIT OF HABEAS CORPUS HAS ALREADY BEEN FILED.
2. THE DEFENDANT HAS LISTED NUMEROUS GROUNDS FOR COURT'S REVIEW.
3. THE PETITION SHOWS MANY VIOLATIONS OF LAW.
4. THE DEFENDANT IS INCARCERATED AND SEEKS RELIEF.
5. THE PETITION FOR WRIT OF HABEAS CORPUS SHOULD BE REVIEWED IMMEDIATELY AND RULED UPON AS THE PETITION WILL SHOW THE DEFENDANT IS UNLAWFULLY BEING DETAINED.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT. NRS 53.045

EXECUTED THIS 15TH DAY OF NOV 2012.

Barron Hamm J.C.
DEFENDANT 1052277

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL BRING THE
FOREGOING REQUEST FOR MOTION TO BE IMMEDIATELY HEARD BY COURT
ON FOR HEARING ON THE 29 DAY OF NOVEMBER, 2012, AT THE
HOUR OF 8⁰⁰ AM IN THE EIGHTH JUDICIAL DISTRICT COURT.

12/19/12

9:00AM

DATED THIS 15th DAY OF NOV 2012.

BARRON HAMM SR. 1052277

DEFENDANT / PROPER PERSON

P.O. BOX 650 HOSP

INDIAN SPRINGS, NV 89070

CERTIFICATE
OF
SERVICE BY MAIL

I BARRON HAMM JR, hereby certify Pursuant to N.R.C.P. 5(b),
That on this 15 day of the month of November, of the
year 2012, I mailed a true and correct copy of the
Foregoing IMMEDIATELY Heard addressed to;

N/A

Respondent prison or Jail Official

X

Addressed

Attorney General

Heroes' Memorial Building

100 North Carson Street

Carson City, Nevada 89710-4717

WOLFSON

District Attorney of count of
conviction

200 Lewis Ave.

Las Vegas Nevada, 89155

Addressed

Barron Hamm Jr 1052277

Signature of Petitioner

N HAMM #105227Z

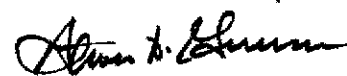
059

N SPRING'S NEW ~~89070~~

BARBON HAMM #105227Z
PO BOX 650
INDIAN SPRING'S NEW ~~89070~~

Hasler
11/20/2012
FIRST-CLASS MAIL
US POSTAGE \$01.10
ZIP 59101
01101 2602-9





CLERK OF THE COURT

RSPN

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE K. PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,
Plaintiff,

-vs-

BARON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: VII

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR CLARIFICATION

DATE OF HEARING: DECEMBER 10, 2012

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE K. PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion for Clarification.

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

///

///

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, Defendant Barron Hamm was charged by way of Indictment with
4 Count 1 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); Count 2 –
5 Assault With a Deadly Weapon (Felony – NRS 200.471); Count 3 – Murder With Use of a
6 Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and Count 4 – Carrying
7 Concealed Firearm or Other Deadly Weapon (Felony – NRS 202.350(1) (d) (3)).

8 On March 12, 2010, Defendant pled guilty to Count 1 – Second Degree Murder with
9 Use of a Deadly Weapon and Count 2 – Assault with a Deadly Weapon. An Amended
10 Indictment and Guilty Plea Agreement (“GPA”) were filed in open court the same day.

11 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows: Count
12 1 – to life with a minimum parole eligibility of ten (10) years plus a consecutive term of two
13 hundred forty (240) months with a minimum parole eligibility of ninety-six (96) months for
14 the use of a deadly weapon; and Count 2 – to a maximum of seventy-two (72) months with a
15 minimum parole eligibility of twenty-four (24) months; Count 2 to run consecutive to Count
16 1; with three hundred seventy-five (375) days credit for time served. Judgment of
17 Conviction was filed on May 20, 2010.

18 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
19 Supreme Court dismissed Defendant’s appeal on September 10, 2010. Remittitur issued on
20 October 6, 2010.

21 On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
22 February 22, 2012, the State filed its Opposition to Defendant’s Motion to Withdraw Guilty
23 Plea. On February 24, 2012, the district court denied Defendant’s Motion to Withdraw
24 Guilty Plea. In the court minutes from this hearing the court noted that by that time, any
25 Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would attempt to file would
26 be untimely.

27 On October 31, 2012, Defendant filed a Motion to Appoint Counsel and Petition for
28 Writ of Habeas Corpus (Post-Conviction). On November 14, 2012, the State filed its

1 Response and Motion to Dismiss. The matter is set for hearing on January 10, 2013, at 9:00
2 AM.

3 On November 16, 2012, Defendant filed the instant Motion for Clarification to which
4 the State's Response follows.

5 **ARGUMENT**

6 **I.**

7 **DEFENDANT'S MOTION IS NON-MERITORIOUS**

8 Defendant filed an untimely Petition for Writ of Habeas Corpus (Post-Conviction) on
9 October 31, 2012, to which the State filed a Response and Motion to Dismiss on November
10 14, 2012. This matter is set for hearing on January 10, 2013, so the Defendant has more than
11 the fifteen (15) days he is entitled to per NRS 34.750(4) to respond to the State's Motion to
12 Dismiss his untimely Petition.

13 Neither Defendant's Petition nor the State's Response and Motion to Dismiss made
14 any mention of "good time" credits or AB 510, so Defendant's reference to "good time"
15 credits and AB 510 in his instant motion makes no sense.

16 Since Defendant's Petition is subject to summary dismissal per NRS 34.726, he is not
17 entitled to appointment of counsel per NRS 34.750 which states in pertinent part:

18 "[a] petition may allege that the Defendant is unable to pay the
19 costs of the proceedings or employ counsel. If the court is
20 satisfied that the allegation of indigency is true and the petition *is*
not dismissed summarily, the court may appoint counsel at the
time the court orders the filing of an answer and a return. In
making its determination, the court may consider whether:

- 21 (a) The issues are difficult;
22 (b) The Defendant is unable to comprehend the
proceedings; or
23 (c) Counsel is necessary to proceed with
discovery." (emphasis added).

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Based on the foregoing arguments, Defendant's Motion for Clarification should be DENIED.

DATED this 27th day of November, 2012.

Respectfully submitted,

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

BY /s/ Robert J. Daskas for
DANIELLE K. PIEPER
Chief Deputy District Attorney
Nevada Bar #008610

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 27th day of November, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ R. Johnson
Secretary for the District Attorney's Office

KC/DP/sam/M-1

RSPN
BARRON HAMM
P.O. BOX 650 HDSP
INDIAN SPRINGS, NV
89070

7
FILED

NOV 30 2012

CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
PLAINTIFF,

VS.

BARRON HAMM
DEFENDANT.

CASE No: 09C256384

DEPT No: ~~VII~~ IX

09C256384
RSPN
Response
2039776



DEFENDANT'S RESPONSE WHY PETITION FOR WRIT OF HABEAS
CORPUS (POST CONVICTION) AND MOTION TO APPOINT COUNSEL SHOULD
ISSUE.

DATE OF HEARING: JANUARY 10, 2013

TIME OF HEARING: 9:00 A.M.

COMES NOW, BARRON HAMM, IN PROPER PERSON, AND HEREBY
SUBMITS THE ATTACHED POINTS AND AUTHORITIES FOR WHY PETITION
FOR HABEAS CORPUS AND MOTION TO APPOINT COUNSEL MUST ISSUE.

THIS RESPONSE IS MADE AND BASED UPON ALL THE PAPERS AND
PLEADINGS ON FILE HEREIN, THE ATTACHED POINTS AND AUTHORITIES IN
SUPPORT HEREOF, AND ORAL ARGUMENT AT THE TIME OF HEARING, IF
DEEMED NECESSARY BY THIS HONORABLE COURT.

POINTS AND AUTHORIZED
STATEMENT OF THE CASE

ON JULY 22, 2009, BARRON HAMM (HEREIN AFTER "DEFENDANT") WAS CHARGED BY WAY OF INDICTMENT WITH NUMEROUS STACKING SERIOUS FELONIES.

- THE DEFENDANT WAS A JUVENILE (MINOR) AT TIME OF ARREST -

ON MARCH 12, 2010, DEFENDANT PLED GUILTY TO - SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON AND - ASSAULT WITH A DEADLY WEAPON.

ARGUMENT AND LAW

THE DEFENDANT WAS A JUVENILE AT THE TIME OF ARREST AND WAS UNFAMILIAR WITH THE RULES OF CRIMINAL PROCEDURE.

COUNSEL IN PETITIONER'S CASE ACTED UNREASONABLY UNDER STICKLAND V. WASHINGTON, 466 U.S. 688, 104 S. CT 2052 (1984) BY NOT ADVISING PETITIONER HE HAD A CONSTITUTIONAL RIGHT TO APPEAL HIS JUDGMENT OF CONVICTION BY HIS PLEA OF GUILTY; IN ADDITION THE DISTRICT COURT EXACERBATED COUNSEL'S ERRORS BY INFORMING PETITIONER THAT HE AUTOMATICALLY WAIVED HIS RIGHT TO HIS FIRST DIRECT APPEAL BY ENTERING A PLEA OF GUILTY.

THERE IS GOOD CAUSE SHOWN FOR DELAY, AS DEFENDANT REQUESTED COUNSEL TO FILE THE DIRECT APPEAL AFTER SENTENCING. HOWEVER, COUNSEL FAILED TO DO SO. THEREFORE RESULTING IN THE DELAY. THAT DELAY IS NOT THE FAULT OF THE PETITIONER AND THAT DISMISSAL OF THE PETITION AS UNTIMELY WILL UNDOUBTLY PREJUDICE THE PETITIONER.

OBVIOUSLY, A DEFENDANT CANNOT CONSENT TO FOREGO AN APPEAL, UNLESS HE KNOWS OF THE RIGHT TO APPEAL, AND KNOWINGLY AND INTELLIGENTLY WAIVES SUCH RIGHTS.

ARGUMENT AND LAW

SINCE 1967, NEVADA HAS PROVIDED FOR THE RIGHT TO A DIRECT APPEAL FROM A JUDGMENT OF CONVICTION, BASED UPON A GUILTY PLEA.

SEE NRS 177.015 (3) AND NRS 178.397.

IN 1994 IN PARTICULAR, THE NEVADA SUPREME COURT WAS CALLED UPON SEVERAL TIMES TO REITERATE THIS SINCE THE STATE HAS ARGUED AND BELIEVED IN THE FOLLOWING CASES, THAT THOSE WHO ENTER A GUILTY PLEA DO NOT HAVE A RIGHT TO A FIRST DIRECT APPEAL.

IN THE INSTANT CASE THIS COURT MUST CONSIDER THE DEFENDANT'S AGE AND MENTAL CAPACITY DURING THE CRIMINAL COURT PROCESS. HERE WE HAVE DOUBLE FAILURE AS COUNSEL WAS INEFFECTIVE.

NRS 34.750 PROVIDES, IN PERTINENT PART:

THE COURT MAY APPOINT COUNSEL AND IN THIS CASE ISSUES ARE EXTREMELY DIFFICULT AND THE SEVERE CHARGES AND SENTENCE CLEARLY SHOW THAT COUNSEL IS NECESSARY TO PROCEED WITH DISCOVERY.

- THE DEFENDANT WAS A JUVENILE DURING THE OFFENSE. -

IN THIS CASE, DEFENDANT CLEARLY DEMONSTRATES WHY THIS COURT SHOULD GRANT COUNSEL. HIS REQUEST SHOULD BE GRANTED.

BEING THAT THE DEFENDANT WAS A JUVENILE AT TIME OF ARREST AND THE PETITION WILL SHOW THAT THE ARREST WAS ILLEGAL AND IT IS APPARENT, THE VIOLATIONS IN THIS CASE ARE MORE EXTENSIVE THAN ONE MIGHT IMAGINE. ON THE ISSUE OF AVAILABLE REMEDIES, PETITIONER IS ENTITLED TO RELIEF BY WAY OF A CONDITIONAL WRIT. THE WRIT SHOULD ORDER HANN'S RELEASE FROM STATE CUSTODY.

(3)

CONCLUSION

FOR THE FOREGOING REASONS, THE DEFENDANT'S LATE PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION AND MOTION TO APPOINT COUNSEL SHOULD BE GRANTED.

DATED THIS 17 DAY OF NOVEMBER, 2012

RESPECTFULLY SUBMITTED,

By: Brian Hamer PETITIONER
DEFENDANT / PRO SE

UNDER PENALTY OF PERJURY THE UNDERSIGNED DECLARED THAT THE FOREGOING RESPONSE IS TRUE AND CORRECT.

EXECUTED THIS 17 DAY OF NOVEMBER, 2012.

Brian Hamer
DEFENDANT

P.O. BOX 650 HOSP
INDIAN SPRINGS, NV
89070

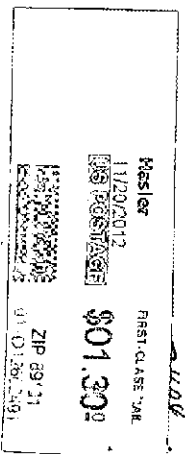
CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT SERVICE OF THE ABOVE AND FOREGOING WAS MADE THIS 17 DAY OF NOVEMBER, 2012, BY DEPOSITING A COPY IN THE U.S. MAIL, POSTAGE PRE-PAID, ADDRESSED TO:

WOLFSON
200 LEWIS AVE
RSC
LAS VEGAS, NV 89155

By: Bryan Hammon
DEFENDANT / PROPER PERSON

BA. RREN HAMM 1052277
PO BOX 650 H.D.S.P.
INDIAN SPRING NY 149070



BARRONHAMM

NDOC No. 1052277

Barron Hamm

Ann D. Blum

CLERK OF THE COURT

In proper person

IN THE EIGHT JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE
COUNTY OF CLARK

BARRONHAMM
1052277

Petitioner,

v.

HD: December 24, 2012

Time: 9:00 am

Case No. C 256-334

The STATE of Nevada

Dept. No. 1X

Respondent.)

MOTION AND ORDER FOR TRANSPORTATION
OF INMATE FOR COURT APPEARANCE
OR, IN THE ALTERNATIVE,
FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

Petitioner, BARRONHAMM, proceeding pro se, requests
that this Honorable Court order transportation for his personal appearance or, in the
alternative, that he be made available to appear by telephone or by video conference
at the hearing in the instant case that is scheduled for JANUARY 10, 2013
at 9:00 P.M.

1 In support of this Motion, I allege the following:

2 1. I am an inmate incarcerated at H.D.S.P. HIGH DESERT STATE PRISON.
3 My mandatory release date is LIFE SENTENCE.

4
5 2. The Department of Corrections is required to transport offenders to and
6
7 from Court if an inmate is required or requests to appear before a Court in this state.

8
9 NRS 209.274 Transportation of Offender to Appear Before Court states:

10 "1. Except as otherwise provided in this section, when an offender is
11 required or requested to appear before a Court in this state, the
12 Department shall transport the offender to and from Court on the day
13 scheduled for his appearance.

14 2. If notice is not provided within the time set forth in NRS 50.215, the
15 Department shall transport the offender to Court on the date scheduled
16 for his appearance if it is possible to transport the offender in the usual
17 manner for the transportation of offenders by the Department. If it is
18 not possible for the Department to transport the offender in the usual
19 manner:

20 (a) The Department shall make the offender available on the date scheduled
21 for his appearance to provide testimony by telephone or by video conference,
22 if so requested by the Court.

23 (b) The Department shall provide for special transportation of the offender to
24 and from the Court, if the Court so orders. If the Court orders special
25 transportation, it shall order the county in which the Court is located to
26 reimburse the Department for any cost incurred for the special transportation.

27 (c) The Court may order the county sheriff to transport the offender to and
28 from the Court at the expense of the county."

29 3. My presence is required at the hearing because:

1 ☒ I AM NEEDED AS A WITNESS.

2 My petition raises substantial issues of fact concerning events in which I
3 participated and about which only I can testify. *See U.S. v. Hayman*, 342 U.S.
4 205 (1952) (District Court erred when it made findings of fact concerning
5 Hayman's knowledge and consent to his counsel's representation of a witness
6 against Hayman without notice to Hayman or Hayman's presence at the
7 evidentiary hearing).

8 ☒ THE HEARING WILL BE AN EVIDENTIARY HEARING.

9 My petition raises material issues of fact that can be determined only in my
10 presence. *See Walker v. Johnston*, 312 U.S. 275 (1941) (government's contention
11 that allegations are improbable and unbelievable cannot serve to deny the
12 petitioner an opportunity to support them by evidence). The Nevada
13 Supreme Court has held that the presence of the petitioner for habeas corpus
14 relief is required at any evidentiary hearing conducted on the merits of the
15 claim asserted in the petition. *See Gebers v. Nevada*, 118 Nev. 500 (2002).

16 4. The prohibition against ex parte communication requires that I be present
17 at any hearing at which the state is present and at which issues concerning the claims
18 raised in my petition are addressed. U.S. Const. amends. V, VI.

19 5. If a person incarcerated in a state prison is required or is requested to
20 appear as a witness in any action, the Department of Corrections must be notified in
21 writing not less than 7 business days before the date scheduled for his appearance in
22 Court if the inmate is incarcerated in a prison located not more than 40 miles from
23 Las Vegas. NRS 50.215(4). If a person is incarcerated in a prison located 41 miles or
24 more from Las Vegas, the Department of Corrections must be notified in writing not
25 less than 14 business days before the date scheduled for the person's appearance in
26 Court.

27 6. HIGH DESERT STATE PRISON is located approximately
28 60 miles from Las Vegas, Nevada.

1 7. If there is insufficient time to provide the required notice to the Department
2 of Corrections for me to be transported to the hearing, I respectfully request that this
3 Honorable Court order the Warden to make me available on the date of the
4 scheduled appearance, by telephone, or video conference, pursuant to NRS
5 209.274(2)(a), so that I may provide relevant testimony and/or be present for the
6 evidentiary hearing.

7 8. The rules of the institution prohibit me from placing telephone calls from
8 the institution, except for collect calls, unless special arrangements are made with
9 prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my
10 telephone appearance can be made by contacting the following staff member at my
11 institution: RE-ENTRY OFFICER MILDEN, HOSP,
12 whose telephone number is ON COURT FILE

13
14 Dated this 17 day of NOVEMBER, 2012.

15
16 x Bawlon Hamill

17
18
19 DEFENDANT / PROPER PERSON.
20
21
22
23
24
25
26
27
28
29

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, certify pursuant to NRCP 5(b), that on this 17 day of
NOVEMBER, 2012, I served the foregoing Motion and Order for
Transportation of Inmate for Court Appearance or, in the Alternative, Motion for
Appearance by Telephone or Video Conference, by mailing a true and correct copy
thereof in a sealed envelope, upon which first class postage was fully prepaid,
addressed to:

DISTRICT ATTORNEY
200 LEWIS AVE
RJC
LAS VEGAS, NV 89155

and that there is regular communication by mail between the place of mailing and the
recipient address.

x BARRON ALON
DEFENDANT / PRO SE

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding RESPONSE WAY

PELITON FOR WHAT OF HABERS PERKS AND MOTION TO PROCEED DENIED
(Title of Document)

filed in District Court Case number C-256.384

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

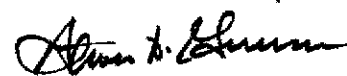
B. For the administration of a public program or for an application
for a federal or state grant.

Barron Hamm
Signature

11/17/12
Date

BARRON HAMM
Print Name

DETENTION / PRO SE
Title



CLERK OF THE COURT

RSPN

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: IX

**STATE'S RESPONSE TO DEFENDANT'S PRO PER REQUEST
FOR MOTION TO BE IMMEDIATELY HEARD BY COURT**

DATE OF HEARING: DECEMBER 19, 2012

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Request For Motion To Be Immediately Heard By Court.

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

//

//

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way
4 of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS
5 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471); COUNT 3
6 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
7 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, Defendant pled guilty to COUNT 1 – Second Degree Murder
10 With Use of a Deadly Weapon and COUNT 2 – Assault With a Deadly Weapon. An
11 Amended Indictment and Guilty Plea Agreement ("GPA") were filed in open court the same
12 day.

13 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
14 COUNT 1 – to Life with a minimum parole eligibility of TEN (10) YEARS plus a
15 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
16 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
17 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
18 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
19 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
20 was filed on May 20, 2010.

21 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
22 Supreme Court dismissed Defendant's appeal on September 10, 2010. Remittitur issued on
23 October 6, 2010.

24 On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
25 February 22, 2012, the State filed its Opposition to Defendant's Motion to Withdraw Guilty
26 Plea. On February 24, 2012, the District Court denied Defendant's Motion to Withdraw
27 Guilty Plea. In the court minutes from this hearing the court also noted that from February
28

1 13, 2012, any Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would
2 attempt to file would be untimely.

3 On October 31, 2012, Defendant filed a Motion to Appoint Counsel and Petition for
4 Writ of Habeas Corpus (Post-Conviction). On November 14, 2012, the State filed its
5 Response and Motion to Dismiss Defendant's Petition and Response to Defendant's Motion
6 for Appointment of Counsel. The matter is set to be heard on January 10, 2013, at 9:00 AM.

7 On November 16, 2012, Defendant filed a Motion for Clarification. The State filed its
8 Response on November 27, 2012. The matter is set for hearing on December 10, 2012.

9 On November 26, 2012, Defendant filed the instant Request for Motion to be
10 Immediately Heard by Court to which the State's Response follows.

11 **ARGUMENT**

12 Defendant asks that his Petition for Writ of Habeas Corpus (Post-Conviction) filed on
13 October 31, 2012, and presently set for hearing on January 10, 2013, be heard immediately.
14 Since the State filed its Response and Motion to Dismiss Defendant's Untimely Petition on
15 November 14, 2012, it has no objection to this matter being heard immediately.

16 **CONCLUSION**

17 The State has no objection to this matter being heard immediately.

18 DATED this 30th day of November, 2012.

19 Respectfully submitted,

20 STEVEN B. WOLFSON
21 Clark County District Attorney
22 Nevada Bar #001565

23 BY /s/ Danielle Pieper

24 DANIELLE PIEPER
25 Chief Deputy District Attorney
26 Nevada Bar #008610
27
28

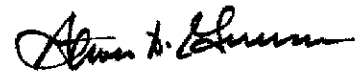
CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 30th day of November, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ R. Johnson
R. JOHNSON
Secretary for the District Attorney's Office

KC/DP/rj/M-1



CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: IX

**STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION FOR
TRANSPORTATION OF INMATE FOR COURT APPEARANCE, OR IN THE
ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE**

DATE OF HEARING: DECEMBER 19, 2012

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per Motion For Transportation Of Inmate For Court Appearance, Or In The Alternative, For Appearance By Telephone Or Video Conference.

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

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way
4 of Indictment with COUNT 1 - Burglary While in Possession of a Firearm (Felony - NRS
5 205.060); COUNT 2 - Assault With a Deadly Weapon (Felony - NRS 200.471); COUNT 3 -
6 Murder With Use of a Deadly Weapon (Felony - NRS 200.010, 200.030, 193.165); and
7 COUNT 4 - Carrying Concealed Firearm or Other Deadly Weapon (Felony - NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, Defendant pled guilty to COUNT 1 - Second Degree Murder
10 With Use of a Deadly Weapon and COUNT 2 - Assault With a Deadly Weapon. An
11 Amended Indictment and Guilty Plea Agreement ("GPA") were filed in open court the same
12 day.

13 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
14 COUNT 1 - to Life with a minimum parole eligibility of TEN (10) YEARS plus a
15 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
16 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 -
17 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
18 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
19 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
20 was filed on May 20, 2010.

21 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
22 Supreme Court dismissed Defendant's appeal on September 10, 2010. Remittitur issued on
23 October 6, 2010.

24 On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
25 February 22, 2012, the State filed its Opposition to Defendant's Motion to Withdraw Guilty
26 Plea. On February 24, 2012, the District Court denied Defendant's Motion to Withdraw
27 Guilty Plea. In the court minutes from this hearing the court also noted that from February
28

1 13, 2012, any Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would
2 attempt to file would be untimely.

3 On October 31, 2012, Defendant filed a Motion to Appoint Counsel and Petition for
4 Writ of Habeas Corpus (Post-Conviction). On November 14, 2012, the State filed its
5 Response and Motion to Dismiss Defendant's Petition and Response to Defendant's Motion
6 for Appointment of Counsel. The matter is set to be heard on January 10, 2013, at 9:00 AM.
7 On November 16, 2012, Defendant filed a Motion for Clarification. The State filed its
8 Response on November 27, 2012. The matter is set for hearing on December 10, 2012.

9 On November 26, 2012, Defendant filed the instant Request for Motion to be
10 Immediately Heard by Court. The matter is set for hearing on December 24, 2012.

11 On November 30, 2012, Defendant filed the instant Motion For Transportation Of
12 Inmate For Court Appearance, Or In The Alternative, For Appearance By Telephone Or
13 Video Conference to which the State's Response follows.

14 ARGUMENT

15 In his Motion, Defendant requests that this Court issue an Order to transport him to
16 the January 10, 2012, hearing regarding his time-barred Petition for Writ of Habeas Corpus
17 (Post-Conviction). A defendant must be present only at those hearings in which the Court
18 deems it necessary to expand the record. See Gebbers v. State, 118 Nev. 500, 50 P.3d 1092
19 (2002). In the instant matter, Defendant has not shown, nor is there is any need, for the court
20 to receive evidence or take testimony from any party before ruling on his Motion for
21 Clarification. Furthermore, Defendant erroneously asserts in his Motion that this hearing is
22 an Evidentiary Hearing, which it is not. Further, the District Court does not provide for
23 telephone or video appearances by prison inmates. Defendant has not shown why his
24 presence would be required, therefore, Defendant need not be present and his Motion for
25 Transportation of Inmate or, in the Alternative, for Appearance by Telephone or Video
26 Conference should be denied.

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Motion For Transportation Of Inmate For Court Appearance, Or In The Alternative, For Appearance By Telephone Or Video Conference be DENIED.

DATED this 11th day of December, 2012.

Respectfully submitted,

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

BY /s/ Danielle Pieper
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 11th day of December, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ R. Johnson
R. JOHNSON
Secretary for the District Attorney's Office

KC/DP/rj/M-1

FILED

DEC 19 2012

CLERK OF COURT

BARRON HAMM
DEPT/ PROPER PERSON
P.O. BOX 650 HDS'P
INDIAN SPRINGS, NV
89070

DISTRICT COURT
CLARK COUNTY, NEVADA

09C256384
RSPN
Response
2087124



THE STATE OF NEVADA,
PLAINTIFF,
VS.
BARRON HAMM,
DEFENDANT. -

CASE No: 09C256384

DEPT No: IX

DEFENDANT'S RESPONSE AND OBJECTION TO STATE'S OPPOSITION TO
DEFENDANT'S PRO PER MOTION FOR TRANSPORTATION OF INMATE FOR COURT.

DATE OF HEARING: DECEMBER 19, 2012
TIME OF HEARING: 9:00 AM

COMES NOW, DEFENDANT, BARRON HAMM, IN PROPER PERSON, AND HEREBY
SUBMITS THE ATTACHED POINTS AND AUTHORITIES IN SUPPORT FOR AN ORDER
FOR TRANSPORTATION OF INMATE FOR COURT.

THIS RESPONSE IS MADE AND BASED UPON ALL THE PAPERS AND PLEADINGS
ON FILE HEREIN, THE ATTACHED POINTS AND AUTHORITIES IN SUPPORT HERE OF.
EXECUTED THIS 12 DAY OF DECEMBER, 2012

By: Barron Hamm

RECEIVED
DEC 18 2012
CLERK OF THE COURT

POINTS AND AUTHORITIES
LEGAL ARGUMENT

THE DEFENDANT MUST BE PRESENT IN THIS CASE AS THE HEARING FOR PETITION FOR WRIT OF HABEAS CORPUS IS A FORM OF APPEAL AND IN THE INSTANT CASE MR HAMM SUFFERED NUMEROUS VIOLATIONS OF THE UNITED STATES AND NEVADA CONSTITUTION. HENCE, DEFENDANT'S RIGHT TO APPEAL WAS VIOLATED AS DEFENSE COUNSEL FAILED TO FILE THE NOTICE OF APPEAL. THEREFORE, IT IS NECESSARY TO EXPAND THE RECORD. SEE GEBERS V. STATE 118 NEV. 500, 50 P. 3d 1092

THE STATE HAS SUBMITTED ITS OPPOSITION, HOWEVER, THE STATE CLAIMS THE TRANSPORTATION ORDER SHOULD BE DENIED BECAUSE IT'S FOR THE MOTION FOR CLARIFICATION WHICH IS SET FOR DECEMBER 10, 2012.

IN THIS RESPONSE THE DEFENDANT IS REQUESTING TO BE TRANSPORTED TO COURT ON JANUARY 10, 2013 FOR THE HEARING AND WOULD REQUEST FOR THIS COURT TO REMAND DEFENDANT TO THE CLARK COUNTY DETENTION CENTER FOR ALL FUTURE HEARINGS.

CONCLUSION

BASED ON THE FOREGOING, THE DEFENDANT RESPECTFULLY REQUESTS THAT DEFENDANT'S MOTION FOR TRANSPORTATION OF INMATE FOR COURT BE GRANTED.

DATED THIS 12 DAY OF DECEMBER, 2012

By Brian Hamm G.M.
DEFENDANT/PRO SE.

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT SERVICE OF THE ABOVE AND FOREGOING WAS
MADE THIS 12TH DAY OF DECEMBER, 2012, BY DEPOSITING A COPY IN
THE U.S. MAIL, POSTAGE PRE-PAID, ADDRESSED TO:

CLERK OF COURT
700 LEWIS AVE 3RD FLOOR
INDIAN SPRINGS, NV
89155

By: Brown Hand J.M.
DEFENDANT / PRO SE

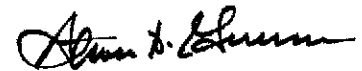
BARON HAMM #1052277
P.O. BOX 650 H.D.S.P.
INDIAN SPRINGS NEVADA, 89070

Master LE G
12/14/2012
US POSTAGE
\$99.42
\$3762
ZIP 89101
011D12602493

STEVEN D. GRISON
CLERK OF THE COURT
200 LEWIS AVENUE 8th FLOOR
~~CLERK OF THE COURT~~
LAS VEGAS NEVADA 89155



90 JRDEN11 89101



CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
FRANK PONTICELLO
Chief Deputy District Attorney
Nevada Bar #00370
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: C256384

DEPT NO: IV

ORDER DENYING DEFENDANT'S PRO PER REQUEST FOR MOTION TO BE
IMMEDIATELY HEARD BY COURT

DATE OF HEARING: DECEMBER 19, 2012

TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
19th day of December, 2012, the Defendant not being present, IN PROPER PERSON, the
Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through FRANK
PONTICELLO, Chief Deputy District Attorney, and good cause appearing therefor,

///

///

///

///

///

///


///

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Request For Motion To Be
2 Immediately Heard By Court, shall be, and it is DENIED, hearing set for January 10, 2013
3 STANDS.

4 DATED this 14th day of January, 2013.

5
6
7
8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #001565

10
11 FRANK PONTICELLO
12 Chief Deputy District Attorney
Nevada Bar #00370

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT JUDGE
For David Barker
For Tegeatti

CERTIFICATE OF SERVICE

I certify that on the 16th day of January, 2013, I mailed a copy of the foregoing Order

to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY:

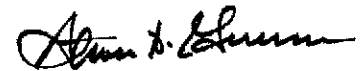

R. JOHNSON

Secretary for the District Attorney's Office

rj/M-1

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: C256384

DEPT NO: XI

ORDER DENYING DEFENDANT'S PRO PER MOTION FOR TRANSPORTATION OF
INMATE FOR COURT APPEARANCE, OR IN THE ALTERNATIVE, FOR
APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

ORDER DENYING DEFENDANT'S PRO PER MOTION FOR CLARIFICATION

DATE OF HEARING: JANUARY 10, 2013


TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
10th day of January, 2013, the Defendant not being present, IN PROPER PERSON,
Defendant's presence being WAIVED, the Plaintiff being represented by STEVEN B.
WOLFSON, District Attorney, through JONATHAN COOPER, Deputy District Attorney,
and good cause appearing therefor,

IT IS HEREBY ORDERED that the Defendant's Pro Per Motion For Transportation
Of Inmate For Court Appearance, Or In The Alternative, For Appearance By Telephone Or
Video Conference, shall be, and it is DENIED, as it does not entertain oral argument in these
matters.

1 COURT FURTHER ORDERED, Defendant's Pro Per Motion For Clarification, shall
2 be, and it is DENIED.

3 DATED this 28th day of January, 2013.

4
5 
6 DISTRICT JUDGE

7 STEVEN B. WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10 
11 JONATHAN COOPER
12 Deputy District Attorney
13 Nevada Bar #012195
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on the 29th day of January, 2013, I mailed a copy of the foregoing Order

to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY:

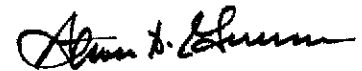

R. JOHNSON

Secretary for the District Attorney's Office

rj/M-1

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: IX

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: JANUARY 10, 2013
TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the Honorable JUDGE JENNIFER TOGLIATTI, District Judge, on the 10th day of January, 2013, the Petitioner not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JONATHAN COOPER, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471);

1 COUNT 3 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030,
2 193.165); and COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony –
3 NRS 202.350(1)(d)(3)).

4 2. On March 12, 2010, Defendant pled guilty to COUNT 1 – Second Degree
5 Murder With Use of a Deadly Weapon and COUNT 2 – Assault With a Deadly Weapon. An
6 Amended Indictment and Guilty Plea Agreement (“GPA”) were filed in open court the same
7 day.

8 3. On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
9 COUNT 1 – to LIFE with a minimum parole eligibility of TEN (10) YEARS plus a
10 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
11 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
12 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
13 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
14 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
15 was filed on May 20, 2010.

16 4. Defendant filed an untimely Notice of Appeal on August 5, 2010, and the
17 Nevada Supreme Court dismissed Defendant’s appeal on September 10, 2010. Remittitur
18 issued on October 6, 2010.

19 5. On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
20 February 22, 2012, the State filed its Opposition to Defendant’s Motion to Withdraw Guilty
21 Plea. On February 24, 2012, the District Court denied Defendant’s Motion to Withdraw
22 Guilty Plea. In the court minutes from this hearing the court noted that by that time, any
23 Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would attempt to file would
24 be untimely.

25 6. On October 31, 2012, Defendant filed a Motion to Appoint Counsel and
26 Petition for Writ of Habeas Corpus (Post-Conviction) to which the State filed its Response
27 and Motion to Dismiss on November 14, 2012. The Court entertained Defendant’s Petition
28 on January 10, 2013.

7. Defendant Petition was time barred pursuant to NRS 34.726.

8. Defendant did not show good cause for the late filing of his Petition.

9. Defendant was not entitled to the appointment of counsel as he failed to demonstrate that any petition he might file would not be dismissed summarily as untimely per NRS 34.726 or that any requested review would not be frivolous.

CONCLUSIONS OF LAW

1. Pursuant to NRS 34.726:

1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

(a) That the delay is not the fault of the petitioner; and
(b) That dismissal of the petition as untimely will prejudice the petitioner.

2. The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

3. The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit. The Petition in this case was filed over a year late.

4. The Nevada Supreme Court has held that the district court has *a duty* to consider whether a defendant's post-conviction petition claims are procedurally barred. *State v. Eighth Judicial District Court*, 121 Nev. 225, 112 P.3d 1070 (2005). The Court

1 found that “[a]pplication of the statutory procedural default rules to post-conviction habeas
2 petitions is mandatory,” noting:

3 Habeas corpus petitions that are filed many years after conviction
4 are an unreasonable burden on the criminal justice system. The
5 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

6 121 Nev. at 231, 112 P.3d at 1074. Additionally, the Court noted that procedural bars
7 “cannot be ignored [by the district court] when properly raised by the State.” 121 Nev. at
8 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district
9 courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

10 5. Generally, ‘good cause’ means a ‘substantial reason; one that affords a legal
11 excuse.’” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) *quoting* Colley v.
12 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). “In order to demonstrate good cause,
13 a petitioner must show that an impediment external to the defense prevented him or her from
14 complying with State procedural default rules.” Hathaway, 71 P.3d at 506 *citing* Pellegrini v.
15 State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353,
16 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989).
17 An impediment external to the defense can be demonstrated by a showing “that the factual or
18 legal basis for the claim was not reasonably available to counsel or that some interference by
19 officials made compliance impracticable.” Hathaway, 71 P.3d at 506.

20 6. In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme
21 Court ruled that the Sixth Amendment provides no right to counsel in post-conviction
22 proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada
23 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a
24 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s
25 right to counsel provision as being coextensive with the Sixth Amendment to the United
26 States Constitution.”

27 //

28 //

1 7. NRS 34.750 provides, in pertinent part:

2 [a] petition may allege that the Defendant is unable to pay the
3 costs of the proceedings or employ counsel. If the court is
4 satisfied that the allegation of indigency is true and the petition is
5 not dismissed summarily, the court may appoint counsel at the
6 time the court orders the filing of an answer and a return. In
7 making its determination, the court may consider whether:

- 8 (a) The issues are difficult;
9 (b) The Defendant is unable to comprehend the
10 proceedings; or
11 (c) Counsel is necessary to proceed with discovery.
12

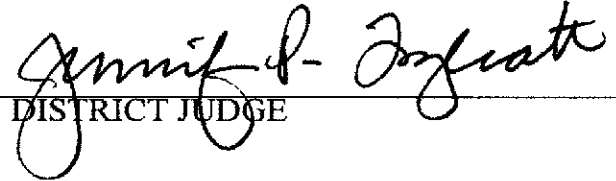
13 8. Under NRS 34.750, it is clear that the court has discretion in determining
14 whether to appoint counsel if the petition is not summarily dismissed. McKague specifically
15 held that, with the exception of cases in which appointment of counsel is mandated by
16 statute, one does not have "[a]ny constitutional or statutory right to counsel at all" in post-
17 conviction proceedings. *Id.* at 164.

18 9. The Nevada Supreme Court has observed that a petitioner "must show that the
19 requested review is not frivolous before he may have an attorney appointed." *Peterson v.*
20 *Warden, Nevada State Prison*, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
21 177.345(2)).

22 **ORDER**

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

25 DATED this 28th day of January, 2013.

26 
DISTRICT JUDGE

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

28 BY 
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195

CERTIFICATE OF SERVICE

I certify that on the 17th day of January, 2013, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

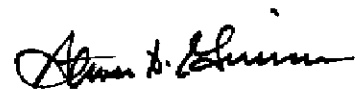
BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY:


R. JOHNSON

Secretary for the District Attorney's Office

KC/JC/jr/M-1



CLERK OF THE COURT

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BARRON HAMM,

Petitioner,

Case No: 09C256384

Dept No: IX

vs.

THE STATE OF NEVADA,

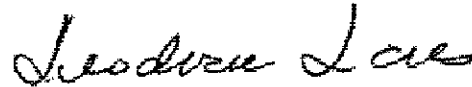
Respondent,

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
ORDER**

PLEASE TAKE NOTICE that on January 29, 2013, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on February 4, 2013.

STEVEN D. GRIERSON, CLERK OF THE COURT



Teodora Jones, Deputy Clerk

CERTIFICATE OF MAILING

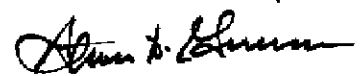
I hereby certify that on this 4 day of February 2013, I placed a copy of this Notice of Entry in:

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

- ☒ The United States mail addressed as follows:
Barron Hamm # 1052277
P.O. Box 650
Indian Springs, NV 89018



Teodora Jones, Deputy Clerk



CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: IX

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: JANUARY 10, 2013
TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the Honorable JUDGE JENNIFER TOGLIATTI, District Judge, on the 10th day of January, 2013, the Petitioner not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JONATHAN COOPER, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471);

1 COUNT 3 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030,
2 193.165); and COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony –
3 NRS 202.350(1)(d)(3)).

4 2. On March 12, 2010, Defendant pled guilty to COUNT 1 – Second Degree
5 Murder With Use of a Deadly Weapon and COUNT 2 – Assault With a Deadly Weapon. An
6 Amended Indictment and Guilty Plea Agreement (“GPA”) were filed in open court the same
7 day.

8 3. On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
9 COUNT 1 – to LIFE with a minimum parole eligibility of TEN (10) YEARS plus a
10 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
11 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
12 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
13 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
14 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
15 was filed on May 20, 2010.

16 4. Defendant filed an untimely Notice of Appeal on August 5, 2010, and the
17 Nevada Supreme Court dismissed Defendant’s appeal on September 10, 2010. Remittitur
18 issued on October 6, 2010.

19 5. On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
20 February 22, 2012, the State filed its Opposition to Defendant’s Motion to Withdraw Guilty
21 Plea. On February 24, 2012, the District Court denied Defendant’s Motion to Withdraw
22 Guilty Plea. In the court minutes from this hearing the court noted that by that time, any
23 Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would attempt to file would
24 be untimely.

25 6. On October 31, 2012, Defendant filed a Motion to Appoint Counsel and
26 Petition for Writ of Habeas Corpus (Post-Conviction) to which the State filed its Response
27 and Motion to Dismiss on November 14, 2012. The Court entertained Defendant’s Petition
28 on January 10, 2013.

1 7. Defendant Petition was time barred pursuant to NRS 34.726.

2 8. Defendant did not show good cause for the late filing of his Petition.

3 9. Defendant was not entitled to the appointment of counsel as he failed to
4 demonstrate that any petition he might file would not be dismissed summarily as untimely
5 per NRS 34.726 or that any requested review would not be frivolous.

6 **CONCLUSIONS OF LAW**

7 1. Pursuant to NRS 34.726:

8 1. Unless there is good cause shown for delay, a petition that
9 challenges the validity of a judgment or sentence must be filed
10 within 1 year of the entry of the judgment of conviction or, if an
11 appeal has been taken from the judgment, within 1 year after the
12 Supreme Court issues its remittitur. For the purposes of this
13 subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 12 (a) That the delay is not the fault of the petitioner; and
13 (b) That dismissal of the petition as untimely will
unduly prejudice the petitioner.

14 2. The Supreme Court of Nevada has held that NRS 34.726 should be construed
15 by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As
16 per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to
17 run from the date the judgment of conviction is filed or a remittitur from a timely direct
18 appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

19 3. The one-year time limit for preparing petitions for post-conviction relief under
20 NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the
21 Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
22 evidence presented by the defendant that he purchased postage through the prison and
23 mailed the Notice within the one-year time limit. The Petition in this case was filed over a
24 year late.

25 4. The Nevada Supreme Court has held that the district court has *a duty* to
26 consider whether a defendant's post-conviction petition claims are procedurally barred.
27 State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005). The Court
28

1 found that “[a]pplication of the statutory procedural default rules to post-conviction habeas
2 petitions is mandatory,” noting:

3 Habeas corpus petitions that are filed many years after conviction
4 are an unreasonable burden on the criminal justice system. The
5 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

6 121 Nev. at 231, 112 P.3d at 1074. Additionally, the Court noted that procedural bars
7 “cannot be ignored [by the district court] when properly raised by the State.” 121 Nev. at
8 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district
9 courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

10 5. Generally, ‘good cause’ means a ‘substantial reason; one that affords a legal
11 excuse.’” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) *quoting Colley v.*
12 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). “In order to demonstrate good cause,
13 a petitioner must show that an impediment external to the defense prevented him or her from
14 complying with State procedural default rules.” Hathaway, 71 P.3d at 506 *citing Pellegrini v.*
15 State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353,
16 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989).
17 An impediment external to the defense can be demonstrated by a showing “that the factual or
18 legal basis for the claim was not reasonably available to counsel or that some interference by
19 officials made compliance impracticable.” Hathaway, 71 P.3d at 506.

20 6. In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme
21 Court ruled that the Sixth Amendment provides no right to counsel in post-conviction
22 proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada
23 Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a
24 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s
25 right to counsel provision as being coextensive with the Sixth Amendment to the United
26 States Constitution.”

27 //

28 //

1 7. NRS 34.750 provides, in pertinent part:

2 [a] petition may allege that the Defendant is unable to pay the
3 costs of the proceedings or employ counsel. If the court is
4 satisfied that the allegation of indigency is true and the petition is
5 not dismissed summarily, the court may appoint counsel at the
6 time the court orders the filing of an answer and a return. In
7 making its determination, the court may consider whether:

- 8 (a) The issues are difficult;
9 (b) The Defendant is unable to comprehend the
10 proceedings; or
11 (c) Counsel is necessary to proceed with discovery.

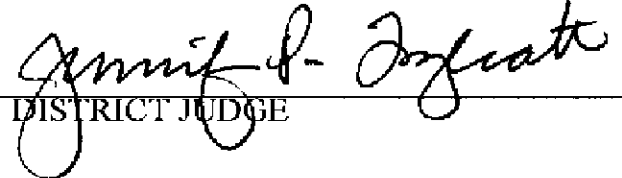
12 8. Under NRS 34.750, it is clear that the court has discretion in determining
13 whether to appoint counsel if the petition is not summarily dismissed. McKague specifically
14 held that, with the exception of cases in which appointment of counsel is mandated by
15 statute, one does not have "[a]ny constitutional or statutory right to counsel at all" in post-
16 conviction proceedings. *Id.* at 164.

17 9. The Nevada Supreme Court has observed that a petitioner "must show that the
18 requested review is not frivolous before he may have an attorney appointed." *Peterson v.*
19 *Warden, Nevada State Prison*, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
20 177.345(2)).

21 **ORDER**

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

24 DATED this 28th day of January, 2013.

25 
DISTRICT JUDGE

26 STEVEN B. WOLFSON
27 Clark County District Attorney
28 Nevada Bar #001565

BY 
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195

CERTIFICATE OF SERVICE

I certify that on the 17th day of January, 2013, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

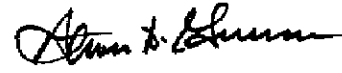
BY:


R. JOHNSON

Secretary for the District Attorney's Office

KC/JC/jr/M-1

COSCC


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA VS
BARRON HAMM

CASE NO.: 09C256384
DEPARTMENT 11

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,

IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Nolle Prosequi (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☐ Guilty Plea with Sentence (before trial)
- ☐ Transferred (before/during trial)
- ☐ Bench (Non-Jury) Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☐ Conviction
- ☐ Jury Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☐ Conviction

X Other Manner of Disposition

DATED this 4th day of February, 2013.


ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

RECEIVED

14 FEB 12 2013

CLERK OF THE COURT

FILED

FEB 22 2013

De la...
CLERK OF COURT

1 BARRON HAMM JR. #1052277
2 In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89018

5 DISTRICT COURT

6 COUNTY NEVADA

09C256384
NOASC
Notice of Appeal (original)
2247430



8 STATE OF Nevada,

9 Plaintiff,

10 -v-

11 BARRON HAMM JR. #1052277,

12 Defendant,

Case No. C-256-384

Dept. No. 4 XI

Docket _____

14 NOTICE OF APPEAL

15 Notice is hereby given that the Defendant BARRON
16 HAMM, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court Denial of Petition for a writ of HABEAS corpus
19 Postconviction relief & Appointment of counsel

21 Dated this date, 26 of February, 2013.

23 Respectfully Submitted,

26 Barron Hamm Jr.
27 #1052277
28 In Proper Person

RECEIVED
FEB 22 2013

CLERK OF THE COURT

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of Appeal Denial of petition of writ of Habeas corpus
(Title of Document)

filed in District Court Case number 0256-384

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Barton Hann J.
Signature

02-25-2013
Date

BARTON HANN J.
Print Name

Defendant Pro Se
Title

CERTIFICATE OF SERVICE BY MAILING

I, BARRON HAMM J.C., hereby certify, pursuant to NRCP 5(b), that on this 06
day of February, 2013, I mailed a true and correct copy of the foregoing, "Notice of
appeal on the district court's denial petition for writ of Habeas corpus"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk as clerk of justice
200 LEWIS AVE.
Las Vegas, NV. 89155

DATED: this 06 day of February, 2013.

Barron Hamm J.C.
BARRON HAMM J.C. #1052377
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018

DA/PP

48

IN THE DISTRICT COURT OF
CLARK COUNTY, NEVADA

EX PARTE

BARROW HAMM

CASE NO: 09C ~~26~~ 384

Dept. IX

Electronically Filed
02/25/2013 11:45:01 AM

MOTION FOR RECONSIDERATION
AND FOR APPOINTMENT
OF COUNSEL FOR
"DIRECT APPEAL"

Anthony J. Blum
CLERK OF THE COURT

HD: March 18, 2013

Time: 9:00am

As this CASE has NOT been properly
Appealed - "Directly;" MOVANT now seeks
redress pursuant to the Sixth, Eighth,
AND Fourteenth, Amendments to the
UNITED STATES Constitution; AND NEVADA
R.C.P. 3.20.

This good-Court has Jurisdiction to Act
pursuant to NRS 34.726; AND STATE V.
Eighth Judicial District Court, 121 NEV. 225,
112 P.3d 1070 (2005), where the District Court
has a Constitutional duty to Consider whether
A defendant's claims are IN-FACT Time Barred,
As a result of conscious AND informed decisions.

MOVANT CAN show good-cause For
ANY untimeliness, AND deficient Filings;
that he has IN-FACT been severely harmed
AND prejudiced by ineffective Counsel.

Pg 1

FACTS IN SUPPORT
OF
MOTION TO RECONSIDER

HAMM WAS ONLY A MINOR AT THE TIME OF ARREST, ON MAY 04, 2009; He has persistently asserted that his Constitutional Rights were being violated from the investigating officers, AND THAT ALL OF HIS DEFENSE LAWYERS HAVE BEEN INEFFECTIVE AT PRESERVING AND PROTECTING HIS RIGHT TO DUE PROCESS, AS A MINOR.

MOVANT hereby shows that the delay in filing for a direct appeal, AND (A) subsequent filings, were NOT the FAULT OF THE MOVANT but, were A RESULT OF DEFENSE COUNSEL'S FAILURE to inquire into MR. HAMM'S CONCERNS, AND desire for appeal. This is reversible error. AND

THAT (b), the denial of appointment of Appellee Counsel will only perpetuate the prejudice to the MOVANT, N.R.S. 34.726; Because he is unable to understand the complex research and preparation necessary, to, "properly" have-presented A MEANINGFUL defense, on Direct Appeal, Counsel should have been appointed then.

pg 2

IN STRICTLAND V. WASHINGTON,
466 U.S. 668, 80 L.Ed 2d 674, 104 S.Ct.
At 2052, the United States Supreme Ct.
in its watershed-Precedent, has held
that a defendant only needs to show
that his representation has forced him
to represent himself pro-se in a
losing attempt to establish prima facie
evidence of ineffective assistance of
counsel. The life sentence of a young(17)-
year old, may be considered highly prejudicial.

And where MR Hamm's defense counsel
failed to even enter a "Notice of Appeal,"
he/she has acted in a manner that is
considered to be "professionally unreasonable."
see: ROE V. FLORES - ORTEGA, 528 U.S. 470, At
987, 145 L.Ed 2d 985, 120 S.Ct 1029 (2000)

IN the case at hand, Hamm was transferred
quickly to Ely C.C. (see inclosed letters) he had
repeatedly tried to communicate to his appointed
counsel, and yet, the CLARK County Public Defender's
Office refuses his requests.

The public defenders office cannot consider
its decision to "Not-File" the Direct Appeal, or
its "Notice of Intent to Appeal," as a strategic
one, and MOUNTS transfers hindered his ability
to act pro-se.

pg 3

MOVANT Further shows that the similarity between his untimely Filings AND the FLORES-ORTEGA CASE, Are profound, (id. At 145 LEd 2d 985)

There the CALIFORNIA Court sentenced the defendants ON second-degree-murder; the Notice OF Direct Appeal WAS Never Filed, AS sub Judice.

The UNITED STATES District Court For the Eastern District OF OF CALIFORNIA denied relief. Then the U.S. Court OF Appeals- For the Honorable Ninth Circuit-Reversed; saying that the Accused WAS entitled to relief because the petitioner, like MR HAMM, only Needs to show[evidence] that counsel's Failure to File A Notice OF APPEAL WAS IN-FACT prejudicial to the petitioner, when done "without the petitioner's Consent," (160 F.3d 534, 1998 U.S. App. Lexis 27933). And it WAS.

ON certiorari, the UNITED STATES Supreme Court in AN opinion by SANDRA DAY O'CONNOR, granted Further-Declaratory-relief, in A rare-UNANIMOUS-decision it held:

"THAT. STRICKLAND V WASHINGTON (1994) 466 U.S. 668, 80 LEd. 2d 674, 104 S.Ct. 2052; provides the proper Framework For evaluating such claims?" id. (At 986)

PS 4

- Wherefore; MR. HAMM ONLY seeks
to have AN Appellate LAW Firm Appointed
to review: ① the sentencing ENHANCEMENTS;
② The possible procedural Due Process
Errors, in the pretrial preparations; AND
③ The Mitigating Age-FACTORS; AND the
④ possible Coercion which led up to
the entering of the plea-DEAL;
⑤ The FACT that MOVANT WAS NEVER HARMONIZED.

STANDING Alone these issues MAY NOT
state cause for review, BUT, this MOVANT
CAN show possible Due-Process violations
have occurred in each OF the Afore mentioned
AREAS OF pretrial litigation.

Therefore; Counsel's Failures creates reverse-
able error, AND in conclusion MOVANT seeks
this motion to Reconsider the FACTS herein, AND
order AN Attorney be Appointed to represent
the MOVANT ON ANY meritorious issue raised.

OR, Accept this Formal Notice OF
Appeal from Mr. Hamm.

AND it is so Prayed.

Dated: Feb. 15, 2013

Sincerely Barton HAMM JR.

Barton HAMM JR.
#105227

CERTIFICATE
OF
SERVICE BY MAIL

I Barron Hamm, hereby certify Pursuant to N.R.C.P. 5(b),
That on this 11 day of the month of February, of the
Year 2013, I mailed true & correct copy of the
Foregoing Motion For Reconsideration; & For
Appointment of counsel for direct "Appeal" addressed to
N/A

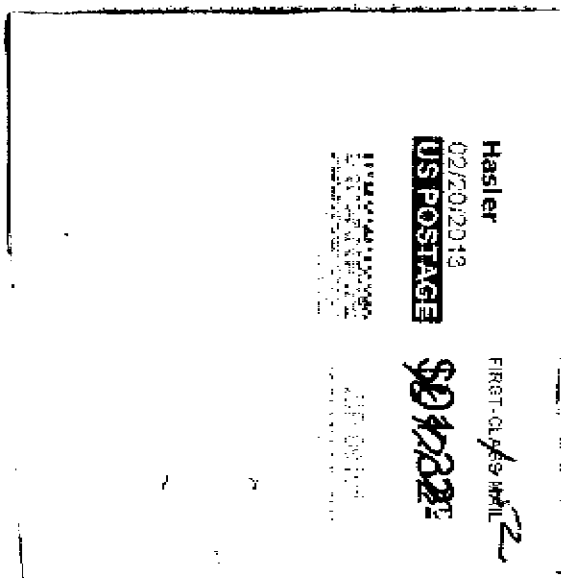
Respondant, prison or jail official

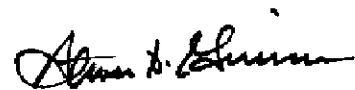
county of clerk
Eight Judicial District
court.

CLERK OF the court's
200 Lewis Ave. 3rd Floor
Las Vegas NV 89155

Barron Hamm ^{II} 1052277
Barron Hamm

BARRO HAMM[#]1052272
P.O. Box 650 [H.D.S.P.]
INDIAN SPRINGS N.V. 89040





CLERK OF THE COURT

ASTA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

Case No: 09C256384

Dept No: XI

vs.

BARRON HAMM,

Defendant(s).

CASE APPEAL STATEMENT

1. Appellant(s): Barron Hamm
2. Judge: Jennifer Togliatti
3. Appellant(s): Barron Hamm

Counsel:

Barron Hamm #105227
P.O. Box 650
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:


Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

5. Respondent's Attorney Licensed in Nevada: Yes
6. Appellant Represented by Appointed Counsel In District Court: Yes

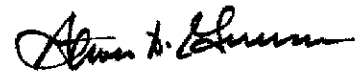
- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
3 9. Date Commenced in District Court: July 22, 2009
4 10. Brief Description of the Nature of the Action: Criminal
5 Type of Judgment or Order Being Appealed: Post-Conviction Relief
6 11. Previous Appeal: Yes
7 Supreme Court Docket Number(s): 56559
8 12. Child Custody or Visitation: N/A
9

10 Dated This 26 day of February 2013.

11 Steven D. Grierson, Clerk of the Court

12 
13

14 Heather Ungermann, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
19
20
21
22
23
24
25
26
27
28



CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: XI

STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION
FOR RECONSIDERATION & APPOINTMENT OF COUNSEL

DATE OF HEARING: MARCH 18, 2013

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per Motion for Reconsideration and Appointment of Counsel.

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

//

//

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way
4 of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS
5 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471); COUNT 3
6 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
7 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, pursuant to negotiations, Defendant pleaded guilty to COUNT 1
10 – Second Degree Murder With Use of a Deadly Weapon and COUNT 2 – Assault With a
11 Deadly Weapon. An Amended Indictment and Guilty Plea Agreement ("GPA") were filed
12 in open court the same day.

13 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
14 COUNT 1 – to Life with a minimum parole eligibility of TEN (10) YEARS plus a
15 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
16 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
17 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
18 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
19 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. The Judgment of
20 Conviction was filed on May 20, 2010.

21 Defendant filed an untimely Notice of Appeal on August 5, 2010, which the Nevada
22 Supreme Court dismissed on September 10, 2010. Remittitur issued on October 6, 2010.

23 Defendant filed a Motion to Withdraw his guilty plea on February 13, 2012. The
24 State opposed Defendant's motion on February 22, 2012, and the Court denied Defendant's
25 motion on February 24, 2012.

26 Defendant filed a Petition for Writ of Habeas Corpus (Post-Conviction) and Motion
27 for Appointment of Counsel on October 31, 2012. The State filed its Response and Motion
28 to Dismiss Defendant's petition and Motion for Counsel on November 14, 2012. On January

1 10, 2013 the Court denied Defendant's post-conviction petition as time barred with no good
2 cause showing and denied Defendant's Motion to Appoint Counsel. Findings of Fact,
3 Conclusions of Law, and Order issued on January 29, 2013 and the Notice of Entry was filed
4 on February 4, 2013. On February 22, 2013, Defendant filed a Notice of Appeal to the
5 Nevada Supreme Court.

6 Defendant filed the instant Motion for Reconsideration and Appointment of Counsel
7 on February 25, 2013. The State responds as follows:

8 **ARGUMENT**

9 **I. THE DISTRICT COURT DOES NOT HAVE JURISDICTION TO CONSIDER**
10 **DEFENDANT'S MOTION.**

11 Jurisdiction in an appeal is vested solely in the Nevada Supreme Court until the
12 remittitur issues to the District Court. Under the relevant statutes, the Nevada Supreme
13 Court has control and supervision of an appealed matter from the filing of the notice of
14 appeal until the issuance of the certificate of judgment. NRS 177.155; 177.305; Buffington
15 v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994).

16 On February 22, 2013, Defendant filed a Notice of Appeal of the district court's
17 denial of his Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Appoint
18 Counsel. As a result, the district court no longer has jurisdiction to entertain the instant
19 Motion for Reconsideration and Appointment of Counsel until Remittitur in his Nevada
20 Supreme Court case issues. Defendant's request for appointment of counsel in the instant
21 matter must be directed to the Nevada Supreme Court. See NRS 177.155.

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests that Defendant's Motion for
3 Reconsideration and for Appointment of Counsel be dismissed.

4 DATED this 15th day of March, 2013.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
Nevada Bar #001565

8
9 BY /s/ Pamela Weckerly for
10 DANIELLE PIEPER
11 Chief Deputy District Attorney
Nevada Bar #008610

12
13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing was made this 15th day of
15 March, 2013, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 BARRON HAMM #1052277
17 HIGH DESERT STATE PRISON
18 P.O. BOX 650
INDIAN SPRINGS, NV 89018

19 BY: /s/ R. Johnson
20 R. JOHNSON
21 Secretary for the District Attorney's Office

22
23
24
25
26
27
28 GS/DP/rj/M-1

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TREVOR HAYES
6 Deputy District Attorney
7 Nevada Bar #009581
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

Electronically Filed
04/19/2013 12:07:09 PM


CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 BARRON HAMM,
13 #2707761

14 Defendant.

CASE NO: C256384

DEPT NO: XI

15 ORDER DENYING DEFENDANT'S PRO PER MOTION FOR RECONSIDERATION;
16 AND FOR APPOINTMENT OF COUNSEL FOR "DIRECT APPEAL"

17 DATE OF HEARING: MARCH 18, 2013

18 TIME OF HEARING: 9:00 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the
20 18th day of March, 2013, the Defendant not being present, IN PROPER PERSON, the
21 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through
22 TREVOR HAYES, Deputy District Attorney, without argument, based on the pleadings and
23 good cause appearing therefor,

24 ///

25 ///

26 ///

27 ///

28 ///

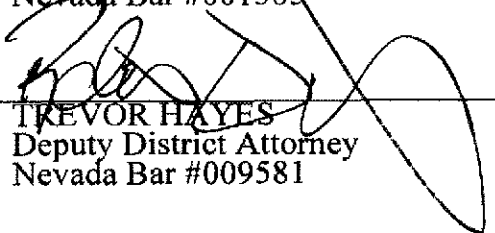
PAW-03-15PC-110 RCVD

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion For
2 Reconsideration; And For Appointment Of Counsel For "Direct Appeal", shall be, and it is
3 DENIED as the Court currently has no jurisdiction to entertain the Motion as the appeal has
4 already been filed of the Order which is being sought for reconsideration.

5 DATED this 17th day of ~~March~~^{April}, 2013.

6
7 
8 DISTRICT JUDGE

9 STEVEN B. WOLFSON
10 Clark County District Attorney
11 Nevada Bar #001565

12 
13 TREVOR HAYES
14 Deputy District Attorney
15 Nevada Bar #009581
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on the 19th day of April, 2013, I mailed a copy of the foregoing Order
to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY:


R. JOHNSON

Secretary for the District Attorney's Office

rj/M-1

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRON HAMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 62688
District Court Case No. C256384

FILED

OCT 22 2013

Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 19th day of September, 2013.

09C256384
CCJA
NV Supreme Court Clerks Certificate/Judgm
3078992



IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
October 17, 2013.

Tracie Lindeman, Supreme Court Clerk

By: Amanda Ingersoll
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRON HAMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62688

FILED

SEP 19 2013

TRAVIS K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Appellant filed his petition on October 31, 2012, more than two years after entry of the judgment of conviction on May 20, 2010. Thus, appellant's petition was untimely filed. *See* NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*


Appellant claimed that he had cause for the delay because his trial counsel failed to file a direct appeal despite being asked to do so. Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition as procedurally barred.²

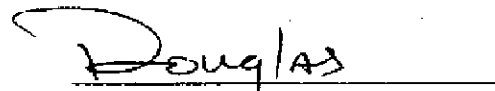
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²We conclude that the district court did not abuse its discretion in denying the motion for the appointment of counsel. *See* NRS 34.750(1).

Appellant did not demonstrate cause for the delay because he failed to demonstrate that he reasonably believed an appeal was pending and that he filed his petition within a reasonable time of learning no appeal had been taken.³ *Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003). Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


Gibbons, J.


Douglas, J.


Saitta, J.

cc: Hon. Jennifer P. Togliatti, District Judge
Barron Hamm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We note that appellant first litigated a motion to withdraw the guilty plea during the two-year period of his delay.

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

Supreme Court State of Nevada
CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: Oct 11 2013
Supreme Court Clerk, State of Nevada
By A. Anderson Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRON HAMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 62688
District Court Case No. C256384

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: October 17, 2013

Tracie Lindeman, Clerk of Court

By: Amanda Ingersoll
Deputy Clerk

cc (without enclosures):

Hon. Jennifer P. Togliatti, District Judge
Barron Hamm
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on OCT 22 2013

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED

OCT 22 2013

CLERK OF THE COURT

1

13-31222

MC
PP
DA

Alvin D. Shuman

CLERK OF THE COURT

IN THE Eight JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR THE COUNTY OF Clark

THE STATE OF NEVADA,
Plaintiff

CASE NO. C256384

DEPT. NO. 9

v.

BARRON HAMM
1052277 Defendant.

5-5-14
9:00am

MOTION TO WITHDRAW PLEA

COMES NOW, Defendant, BARRON HAMM -, proceeding in proper person, and moves this Honorable Court for an Order granting him permission to withdrawal his Plea Agreement in the the case number C256384, on the date of 12th in the month of 03 in the year 2010 where defendant was then represented by SCOTT L. COFFEE as counsel. This Motion is based on all papers and pleadings on file with the Clerk of the Court which are hereby incorporated by this reference, and Points and Authorities herein and attached Affidavit of Defendant.

Dated this 07 day of April, 2014

Respectfully submitted,

Barron Hamm 1052277
Defendant in Proper Person

RECEIVED
14
APR 13 2014

CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

NRS. 176.165 PROVIDES:

A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed, or imposition of sentence is suspended. To correct manifest injustice, the court, after sentencing, may set aside the judgment of conviction and permit the defendant to withdraw his or plea.

Failure to adequately inform a defendant of the full consequences of his/her plea creates manifest injustice which could be corrected by setting aside the conviction and allowing him/her to withdraw the guilty plea. Meyer v. State, 603 P.2d 1066 (Nev. 1979), and Little v. Warden, 34 P.3d 540 (Nev.2001).

Defendant herein alleges that his/her plea is in error and must withdraw the plea pursuant to the following facts: Movant, Barron Hamm was denied Fourteenth amendment Right to Due process of Law in violation of the united states constitution; and in violation of Article 1 section 8, of the Nevada constitution, where as "Hamm's" guilty plea was not a knowing, intelligent and voluntary waiver of Rights; and constitutes a 'Manifest Injustice; where Movant was not informed that he would be subjected to "slavery or involuntary servitude" under the 13th Amendment; By Pleading guilty. Movant, Barron Hamm contends that Because His lawyer, nor the prosecutor informed Him That upon Pleading guilty he would be a "Slave," or subjected to "involuntary servitude," His guilty Plea was not a knowing intelligent, or voluntary waiver of rights and constitutes a 'Manifest Injustice' Pursuant to NRS 176.165

1 THE 13th Amendment HOLDS:

2 section 1: Neither slavery NOR involuntary servitude,
3 except AS A punishment for crime where of the party shall
4 have been duly convicted, shall exist within the
5 united states, or any place subject to their jurisdiction
6 section 2: congress shall have power to enforce
7 this Article by APPROPRIATE legislation

8 In The instant case, MOVANT plead guilty to second
9 degree murder; ASSAULT with A deadly weapon; with an
10 enhanced sentence for the weapon charge;

11 Absent informing MOVANT that he would be subjected
12 to slavery, and/or involuntary servitude' once within
13 the Nevada Department of corrections.

14 MOVANT Alleges he would have never plead guilty if the
15 prosecutor, or his lawyer would have informed him that he
16 would be subjected to slavery or involuntary servitude.

17 The word "Duly" requires Due process; short of the
18 same being explained constitutes A 'Manifest Injustice.'
19 ~~is~~ violative of the "Due process clause"
20 and the "Equal protection clause" of the state
21 and unite states constitution.

22 First Impression attached here as to the state and
23 Federal constitution as a question of law

Therefore, pursuant to the facts and the law stated herein, Defendant requests that his guilty plea be withdrawn.

Dated this 07 day of April, 2014.

Respectfully Submitted,

Barron Hamm

CERTIFICATE OF SERVICE BY MAILING

I, Barron Hamm, hereby certify, pursuant to NRCP 5(b), that on this 07 day of April, 2014, I mailed a true and correct copy of the foregoing Motion to withdraw Plea, by depositing it in the High Desert State Prison legal mail service provided through the Law Library, with First class Postage prepaid, and addressed to the following:

Charles J. Short
clerk of the court's
200 Lewis Ave. 3rd Floor
Las Vegas Nevada 89155-1160

Steven B. Wolfson
District attorney office
200 Lewis Ave.
PO Box 552212 Las Vegas
Nevada 89155-2212

Public defendant office
200 Lewis Ave. 3rd Floor
Las Vegas Nevada 89155

clerk of the courts
Las Vegas NV 89155

CC: File

Dated this 07 day of April, 2014

BY: Barron Hamm 1082277
Barron Hamm 1082277

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

motion to withdraw guilty plea
(Title of Document)

filed in District Court Case number CZ510384

☐ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Barron Hamm
Signature

04-07-2014
Date

Barron Hamm
Print Name

Defendant/Prose
Title

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 Attorney for Defendant

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 BARRON HAMM,
13 #2707761

14 Defendant.

CASE NO. C256384X

DEPT. NO. VII

DATE: March , 2010
TIME: 9:00 a.m.

15 MOTION TO SUPPRESS PURSUANT TO NRS 179.505

16 Comes now the defendant, by and through counsel Deputy Public Defender Scott L.
17 Coffee, with the this motion to suppress any and all oral communications between the defendant,
18 seventeen year old **BARRON HAMM**, and his mother which were unlawfully intercepted and/or
19 surreptitiously recorded without either party's consent in violation of **NRS 179.410 to NRS**
20 **179.515**, inclusive, and/or in violation of **NRS 200.650** and/or in violation of any right to privacy
21 guaranteed the United States Constitution and/or the Constitution of the State of Nevada . Said
22 motion is based upon the attached points and authorities.

23 DATED this ____ day of March, 2010.

24
25 PHILIP J. KOHN
26 CLARK COUNTY PUBLIC DEFENDER

27 By: _____
28 SCOTT L. COFFEE, #5607
Deputy Public Defender

EXHIBIT "A"

1
2
3 MEMORANDUM OF POINTS AND AUTHORITIES

4 STATEMENT OF FACTS

5 In the instant case, Barron Hamm voluntary went to the police station for an interview in
6 regards to the shooting of Jared Flemming. The interview took place within the confines of an
7 interview room, behind a closed door. After Hamm repeatedly denied being involved in the
8 shooting Detective Wildemann ask Hamm if he would say the same thing if your mom was
9 present. Shortly after Wildemann's this question, Hamm was joined in the interview by his
10 mother. Pleasantries were exchanged and then Hamm was left alone with his mother in the
11 interview room.

12 Upon leaving the room, Hamm and his mother, Wanda Clark, believing they were alone,
13 have a discussion about facts of the case. Unbeknownst to either Hamm or his mother, the entirety
14 of what they believed to be a private conversation was surreptitiously intercepted and recorded by
15 LVPD. The state has indicated an intention to admit the entirety of this intercepted conversation.

16 LAW

17 NRS 179.505 allows for the filing of a motion to suppress the contents of "...any
18 intercepted wire or oral communication, or evidence derived there from, on the grounds that: (a)
19 the communication was unlawfully intercepted."

20 An "oral communication" is defined by NRS 179.440 as "...any verbal message uttered by
21 a person exhibiting an expectation that such communication is not subject to interception, under
22 circumstances justifying such expectation."

23 In the instant case we have a conversation, i.e. "verbal messages", between the defendant
24 and his family. The circumstances of the conversation, getting the story straight before relaying it
25 to the police, clearly indicate that the participants of the conversation exhibited an expectation that
26 the communication was "...not subject to interception".
27
28

1 Given the forgoing, the only real question as to whether there was an "oral
2 communication" for the purposes of NRS 179.440 is whether the circumstances of the situation
3 justify the expectation that conversation was not subject to interception. While a police interview
4 room might not always justify such expectation, there are several compelling factors in this
5 instance which indicate the expectation of privacy was justified: 1) the defendant was told he was
6 not under arrest; 2) the interview took place away from the public eye in a closed room; 3) there
7 was no indication that the family was informed they were being taped; and 4) the officers told the
8 family they were leaving the room so a conversation could take place.

9
10 Each of the forgoing facts weighs in favor of a justified expectation that the conversation
11 was not subject to interception, but the fourth factor is the most compelling. In short, the agents of
12 the state purposely created a situation in which the family expected they were having a private
13 conversation, hence the state should be precluded from now claiming that such an expectation was
14 unjustified--- any other conclusion invites abuse of the right the statutes were designed to protect.
15 In short, this was an "oral communication" as defined by NRS 179.440.

16
17 Under NRS 179.430 "Intercept" means the aural acquisition of the contents of any wire or
18 oral communication through the use of any electronic, mechanical or other device or of any
19 sending or receiving equipment." For example, a conversation recorded by virtue of a bugging
20 device, such as a suction cup attached to a phone, has been intercepted for purposes of this statute.¹

21
22 In the instant case the conversation in question, including audio---in the words of NRS
23 179.430 "aural acquisition"--- was recorded on video taped. Given the expansive definition of
24 interception set forth by statute, it's clear an interception took place.

25 Having established an intercepted oral communication, we now must turn to whether said
26 interception was lawful. The lawful interception of an "oral communication" normally requires a
27

28
¹ See, for example, Rupley v. State, 93 Nev. 60 (1977)

1 court order prior to the interception.² Further, pursuant to **NRS 179.500**, any "interception" of an
2 "oral communication" is inadmissible unless the party offering the "oral communication" provides
3 proof that said interception was authorized by court order. Absent such proof the contents of such
4 intercepted "oral communication" are generally inadmissible.³ In the instant case the state did not
5 receive a court order prior to intercepting the oral communication between the Cardonas; hence
6 absent some recognized expectation the conversation is inadmissible.

7
8 While exceptions to warrant requires exist, for example phone conversations recorded in
9 the ordinary course of business by police officers or conversation recorded by informants who are
10 "wired"⁴ and telephone conversations being used by law enforcement officers during the ordinary
11 course of their duties.⁵ This is not a case which involves an informant or a telephone conversation
12 recorded in the ordinary course of an officer's duties. In short, the specific exceptions previously
13 set forth by the court or statute do not apply in this case.

14
15 Here, in addition to the running afoul Nevada's wire tap statutes, the surreptitious
16 recording of Hamm and his mother runs foul of the **NRS 200.650** prohibition against such
17 recording. Under **NRS 200.650** any such recording must be authorized by at least one party to the
18 conversation. This is the reason conversations between knowingly "wired" informant and suspect
19

20 ² See **NRS 179.460-470** which outline the situations in which the granting of such an order
21 would be appropriate and the prerequisites for the issuance of an order.

22 ³ See Rupley, supra.

23 ⁴ See Bonds v. State, 92 Nev. 307 (1977) holding that a person engaging in illegal activity
24 takes his chances that the conversation there person he's dealing with is an informer hence no
25 expectation of privacy and no "oral communication" for purposes of **NRS 179.440**. Note that
26 Bonds rationale only applies so long as at least one party consents to the recording least run afoul
of prohibition against the unauthorized surreptitious use of a listening device set forth in **NRS**
200.650. Here there was no consent by any party to the recording of the conversation.

27 ⁵ See **NRS 179.425** and Reyes v. State, 107 Nev. 191 (1991) for a full description of how
28 "telephone exception" applies to what might otherwise be termed an "interception" for purposes of

1 do not fall within the purview of the "wire tap" statutes, but such an exception ceases to exist in
2 the absence of the informant's consent.⁶ Here there was no consent by any party and the state may
3 not avail itself of the "informant exception".⁷

4 CONCLUSION

5 Based upon the forgoing and pursuant to NRS 179.505, NRS 200.650, the United States
6 Constitution and the Constitution of the State Nevada, the defense respectfully moves this
7 honorable court to suppress any and all surreptitiously recorded conversations between the
8 defendant and his family, said recording having been obtained in violation of the law of the state of
9 Nevada.
10

11 DATED this _____ day of January, 2010.

12
13 PHILIP J. KOHN
14 CLARK COUNTY PUBLIC DEFENDER

15 By: _____
16 SCOTT L. COFFEE, #5607
17 Deputy Public Defender
18
19
20
21

22 NRS 179.430. Here the conversation was video taped and the exceptions set forth in NRS
23 179.425 are inapplicable.

24 ⁶ See Summers v. State, 102 Nev. 195 (1986).

25 ⁷ In Summers at 200, the Supreme court noted "In State v. Bonds, 92 Nev. 307, 550 P.2d
26 409 (1976) we held that the warrantless, electronic recording of a communication from a
27 "transmitter-type listening device" attached to a police informant did not constitute the interception
28 of either a wire communication or an oral communication. Consequently, we held that the
interceptor of such a communication need not first secure an order permitting the interception.
NRS 179.470; NRS 179.475. Such an interception must, however, satisfy the authorization
requirements set forth in NRS 200.650" (footnotes omitted, emphasis added)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 19th day of January, 2010, at 9:00 a.m.

DATED this ____ day of January, 2010.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
SCOTT L. COFFEE, #5607
Deputy Public Defender

CERTIFICATE OF FACSIMILE

A COPY of the above and foregoing Order was sent via facsimile to the District Attorney's Office (383-8465) on this ____ day of January, 2010.

By _____
An employee of the Clark County Public
Defender's Office

AFFIDAVIT OF BARRON HAMM

STATE OF NEVADA }
COUNTY OF CLARK } ss.

I, Barron Hamm, Affiant hereinafter,
do hereby depose and say under penalty of
perjury:

- 1.) That I am over the age of eighteen and am
fully competent to attest to the matters
herein;
- 2.) That Affiant hereby affirms, pursuant to
NRS 239B.030, that this document does not
contain the Social Security number of any person;
- 3.) As a pre-trial detainee, Affiant met with
his Court appointed Counsel Scott L. Coffee
#5607 concerning entering a plea of guilt.
- 4.) Attorney Coffee showed Affiant the
Motion to Suppress that is attached hereto
as "Exhibit A".
- 5.) Attorney Coffee told Affiant that the
Motion to Suppress had been filed and
denied by the Court.

6.) Attorney Coffee assured Affiant that while the recorded conversation was the only evidence giving "probable cause" to arrest and charge Affiant, because the Court denied the Motion to Suppress, Affiant would definitely be convicted of the crime.

7.) Attorney Coffee counseled Affiant should accept a plea negotiation wherein he asserted Affiant would receive two sentences: 8 to 20 years and a consecutive 2 to 6 year sentence.

8.) Affiant entered the plea agreement and received a 10 years to Life, a 8 to 20 years and a 2 to 6 years sentence, all sentences to run consecutively.

9.) Affiant discovered on February 20, 2014, that Attorney Coffee did not actually file the Motion to Suppress (EXH. "A") and the Court therefore never heard and denied the motion.

10.) Had Affiant known the truth, that the motion to Suppress had not been filed, heard and/or denied, Affiant would not have agreed to enter into the guilty plea;

11.) At no time did Attorney Coffee inform Affiant that he would essentially be agreeing to enter into lawful Slavery upon entering into the plea agreement;

12.) Affiant was not "duly Convicted" of the crime(s) as being frightened into agreeing to become a slave after false assertions of Counsel was not the process Affiant was due;

13.) Counsel's failure to file the motion to Suppress and then his lying ~~ed~~ and saying the Court heard and denied the motion was not the process Affiant was due.

14.) Affiant had no knowledge of the truth at the time he entered into the involuntary and unintelligent guilty plea.

Further Affiant Sayeth Naught.

DATED: This 7th day of April, 2014

Barron Hamm
Barron Hamm

I, Barron Hamm, do hereby swear, under the penalty of perjury, the content of this affidavit is true and correct to the best of my knowledge, recollection and belief.

DATED: This 7th day of April, 2014

Barron Hamm
Barron Hamm

Barton HAMM 1052277-
[Po Box 650 H.O.S.]
Indian Springs Nevada 89070

161
Hasler
04/05/2014
FIRST-CLASS MAIL
US POSTAGE
\$01.61
ZIP 89101
011012002491

LEGAL MAIL

CLERK OF THE COURTS
200 LEWIS AVE 3rd Floor
Las Vegas NV 89155

CONFIDENTIAL

MC
PP
DA

Barron Hamm
/ In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

Allen D. Lamm
CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

The STATE OF Nevada

vs.

Case No. C286384

Dept No. 9

Docket _____

Barron Hamm

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that motion to withdrawal guilty plea

will come on for hearing before the above-entitled Court on the 5 day of May, 2014,
at the hour of 9:00 am o'clock XI M. In Department , of said Court.

CC:FILE

DATED: this 07 day of April, 2014.

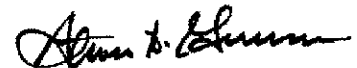
BY: Barron Hamm
Barron Hamm 1052277#
/In Propria Personam

RECEIVED
14
APR 10 2014

CLERK OF THE COURT

1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 H. LEON SIMON
6 Chief Deputy District Attorney
7 Nevada Bar #000411
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff



CLERK OF THE COURT

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

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-VS-**

CASE NO: 09C256384

12 **BARRON HAMM,**
13 **#2707761**

DEPT NO: XI

14 **Defendant.**

15 **STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION**
16 **TO WITHDRAW PLEA**

17 **DATE OF HEARING: MAY 5, 2014**
18 **TIME OF HEARING: 9:00 A.M.**

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby
21 submits the attached points and authorities in opposition to Defendant's Pro Per Motion To
22 Withdraw Plea.

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

26 //

27 //

28 //

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, the State charged BARRON HAMM (hereinafter "Defendant") by
4 way of indictment with: COUNT 1 – Burglary While in Possession of a Firearm (Felony –
5 NRS 205.060); COUNT 2 – Assault with a Deadly Weapon (Felony – NRS 200.471); COUNT
6 3 – Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
7 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony -- NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, after negotiations, the State charged Defendant by way of
10 Amended Indictment with: COUNT 1 – Second Degree Murder with Use of a Deadly Weapon
11 (Category A Felony – NRS 200.010, 200.030, 193.165) and COUNT 2 – Assault with a Deadly
12 Weapon (Category B Felony – NRS 200.471). That day, Defendant entered into a Guilty Plea
13 Agreement (GPA) with the State wherein he pleaded guilty to both counts as charged in the
14 Amended Indictment. The State retained the right to argue on the charge of Second Degree
15 Murder. Both parties stipulated to a sentence of eight (8) to twenty (20) years for the deadly
16 weapon enhancement, and to a sentence of twenty-four (24) to seventy-two (72) months for
17 the charge of Assault with Use of a Deadly Weapon, and agreed to run that sentence
18 consecutive to COUNT 1. The plea agreement was conditional on the district court agreeing
19 to and following through with the stipulated portion of the sentence.

20 On May 14, 2010, Defendant appeared in court with counsel, was adjudged guilty, and
21 was sentenced on COUNT 1 to a MAXIMUM term of LIFE with a MINIMUM parole
22 eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus a
23 CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with
24 a MINIMUM parole eligibility of NINETY-SIX (96) MONTHS for use of a deadly weapon,
25 and on COUNT 2 to a MAXIMUM term of SEVENTY-TWO (72) MONTHS with a
26 MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS in the NDC,
27 CONSECUTIVE to COUNT 1. THREE HUNDRED SEVENTY-FIVE (375) DAYS credit
28 for time served. Defendant was also ordered to PAY \$36,796.27 RESTITUTION to the family

1 of the victim and \$6,000.00 RESTITUTION to Victims of Violent Crimes. Judgment Of
2 Conviction was filed on May 20, 2010.

3 On August 5, 2010, Defendant filed an untimely Notice Of Appeal from his Judgment
4 Of Conviction. On September 10, 2010, the Supreme Court of Nevada dismissed Defendant's
5 appeal for want of jurisdiction. Remittitur issued on October 6, 2010.

6 On February 13, 2012, Defendant filed a Motion To Withdraw Guilty Plea, which the
7 State opposed on February 22, 2012. The district court denied Defendant's motion on
8 February 24, 2012, and the order of denial was filed on May 7, 2012.

9 On October 31, 2012, Defendant filed a Petition For Writ Of Habeas Corpus (Post-
10 Conviction). The State filed its response and motion to dismiss Defendant's petition as time-
11 barred with no good cause shown for the delay on November 14, 2012. On January 10, 2013,
12 the district court denied Defendant's petition, entering its Findings Of Fact, Conclusions Of
13 Law, And Order on January 29, 2013, and its notice of entry on February 4, 2013. Defendant
14 filed a notice of appeal on February 22, 2013. On September 19, 2013, the Supreme Court
15 affirmed the district court's denial of Defendant's petition, with remittitur issuing on October
16 17, 2013.

17 On April 10, 2014, Defendant filed the instant motion to withdraw plea. The State
18 opposes as follows:

19 ARGUMENT

20 **I. DEFENDANT'S MOTION IS NOT PROPERLY BEFORE THE COURT**

21 The Eighth Judicial District Court Rules provide: "No motions once heard and disposed
22 of may be renewed in the same cause, nor may the same matters therein embraced be reheard,
23 unless by leave of the court granted upon motion therefor, after notice of such motion to the
24 adverse parties." EJDRC 2.24(a). Defendant's previous motion to withdraw guilty plea was
25 denied on February 24, 2012, and the order of denial was filed on May 7, 2012. As Defendant
26 has not obtained leave of the Court to file his instant motion to withdraw plea, this motion is
27 not properly before the Court and must be dismissed.

28 //

Additionally, EJDRC 2.24(b) states: "A party seeking reconsideration of a ruling of the court . . . must file a motion for such relief within ten (10) days after service of written notice of the order or judgment unless the time is shortened or enlarged by order." The order of denial of Defendant's motion to withdraw plea was filed on May 7, 2012, and Defendant did not file his instant motion to withdraw plea until April 10, 2014. Accordingly, Defendant's motion is untimely and must be dismissed for this reason as well.

CONCLUSION

Based on the foregoing arguments as set forth above, the State respectfully requests this Honorable Court DENY Defendant's motion to withdraw plea.

DATED this 1st day of May, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #

BY


Bill Christensen for
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411

CERTIFICATE OF MAILING

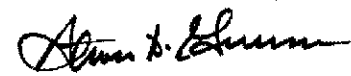
I hereby certify that service of the above and foregoing was made this 1st day of May, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY


R. JOHNSON
Secretary for the District Attorney's Office

MW/HLS/rj/M-1



CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TIMOTHY J. FATTIG
Chief Deputy District Attorney
Nevada Bar #006639
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

-vs- Plaintiff,

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: XI

ORDER DENYING DEFENDANT'S PRO PER MOTION TO WITHDRAW PLEA

DATE OF HEARING: MAY 5, 2014
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 5th day of May, 2014, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through TIMOTHY J. FATTIG, Chief Deputy District Attorney, without argument and good cause appearing therefor,

///

///

///

///

///

W:\2009F\092\75\09F09275-ORDR-(HAMM_BARRONN)-001.DOCX

05-12-14A11:45 RCVD

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Withdraw Plea,
2 shall be, and it is DENIED.

3 DATED this 12th day of May, 2014.

4 
5 _____
6 DISTRICT JUDGE

7 STEVEN B. WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10 BY


11 TIMOTHY J. FATTIG
12 Chief Deputy District Attorney
13 Nevada Bar #006639
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on the 16th day of May, 2014, I mailed a copy of the foregoing Order
to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

BY


J. Robertson

Secretary for the District Attorney's Office

09F09275X/jr for rj/M-1

MC
DA
PP

CASE NO: C256384 09C256384
DEPT NO: XI

Electronically Filed
10/03/2014 09:36:22 AM

25

Ann L. Quinn
CLERK OF THE COURT

IN THE EIGHTH Judicial District Court of the
STATE OF Nevada in and for the county of Clark

BARRON HAMM
Petitioner
vs.
STATE OF NEVADA
Respondent

10/27/14
Motion For and order granting
Request for Sentencing Transcripts 9:00

Come now, The petitioner Barron Hamm, Proceeding Proper, within
the above entitled cause of action and respectfully request that
this court grant's relief for the petitioner in regards to this
action.

This motion is made base upon the matter's set forth here.

The petitioner requests that he be granted a copy of the
sentencing transcripts in case no: C256384 that took place
on May 14, 2010 in District court Dept. 7.

The document are needed to help Defendant prepare
a ~~defense~~ defense in appellate writ of Habeas corpus.

Thank you for your time and consideration in this matter.

Sincerely,
Barron Hamm
Barron Hamm
1052277 (9-25-2014)

CLERK OF THE COURT

OCT 02 2014

RECEIVED

RECEIVED

OCT 03 2014

CLERK OF THE COURT

Barron Hamm #105227Z
HOSP. BOX 650
Indian Spring Nevada 89070

LAS VEGAS NV 89101

09/30/2014

30 SEP 2014 PM 4

ZIP 89101
011012607980

STEVEN D. GRIERSON,
CLERK OF THE COURT
200 LEWIS AVENUE 3rd Floor
Las Vegas Nevada 89155-1160

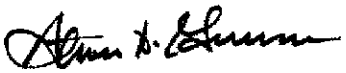
(Legal)

89101630000

UNIT 4 C/D

SEP 20 2014

UNIT 4 C/D



CLERK OF THE COURT

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 DANIELLE K. PIEPER
6 Chief Deputy District Attorney
7 Nevada Bar #008610
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: 09C256384

12 BARRON HAMM,
13 #2707761

DEPT NO: XI

14 Defendant.

15 STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION
16 FOR AND (SIC) ORDER GRANTING REQUEST FOR SENTING (SIC) TRANSCRIPTS

17 DATE OF HEARING: OCTOBER 27, 2014
18 TIME OF HEARING: 9:00 A.M.

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby
21 submits the attached points and authorities in opposition to Defendant's Pro Per Motion For
22 And (SIC) Order Granting Request For Senting (SIC) Transcripts.

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

26 //

27 //

28 //

ARGUMENT

The State is not required to furnish transcripts at its expense upon the unsupported request of a Defendant claiming inability to pay for them. Defendant must satisfy the court that the points raised have merit, which will tend to be supported by a review of the record before he may have records supplied at state expense. Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971). In order to be entitled to transcripts at the State's expense, a defendant must set forth the grounds upon which the petition is based. Id. at 135. In addition, the Defendant must show that the requested review is not frivolous. Specifically, the Defendant must demonstrate that: 1) the points raised have merit; and 2) such merit will tend to be supported by a review of the record. Id. Transcripts will not be furnished at the State's expense based upon "the mere unsupported request of a Defendant who is unable to pay for them." Peterson, 87 Nev. at 135, 483 P.2d at 205. In Peterson, the Court stated:

NRS 177.325, 177.335, and 177.345 do not contemplate that records will be furnished at state expense upon the mere unsupported request of a petitioner who is unable to pay for them. Just as the petitioner must show that the requested review is not frivolous before he may have an attorney appointed (NRS 177.345(2)), so must he satisfy the court that the points raised have merit and such merit will tend to be supported by a review of the record before he may have trial records supplied at state expense. He must specifically set forth grounds upon which the petition is based.

Id.

Further, the Nevada Supreme Court's decision in George v. State, 122 Nev. ___, 127 P.3d 1055 (2006), which holds that an indigent defendant is entitled to transcripts of all proceedings for the specific purpose of effecting a direct appeal, affirmed its holding in Peterson with regard to transcripts in other post-conviction proceedings.

In the present case, Defendant simply requests the transcripts with no supporting facts to show that his claims on appeal (whatever they may be as he has not listed or explained them in his motion) have merit, that such merit will tend to be supported by the contents of the transcripts, and why Defendant is unable to pay for a copy himself. He simply alleges that he needs them since the court granted his request to proceed in Forma Pauperis. Such a blanket statement fails to show how his argument (whatever it may be) has any merit to warrant

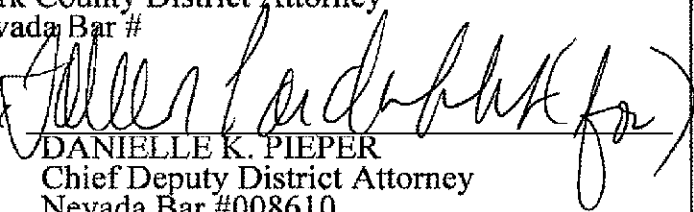
1 transcripts at State's expense. Defendant's request for free transcripts is unsupported. As
2 such, Defendant has not met the threshold requirement and should be denied court records at
3 state expense.

4 DATED this 8th day of October, 2014.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #

9 BY


10 DANIELLE K. PIEPER
11 Chief Deputy District Attorney
12 Nevada Bar #008610

13 CERTIFICATE OF MAILING

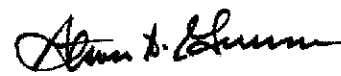
14 I hereby certify that service of the above and foregoing was made this 8th day of
15 October, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16 BARRON HAMM #1052277
17 HIGH DESERT STATE PRISON
18 P.O. BOX 650
19 INDIAN SPRINGS, NV 89018

20 BY


21 R. JOHNSON
22 Secretary for the District Attorney's Office
23
24
25
26
27

28 MW/HLS/rj/M-1



CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BRETT O. KEELER
Chief Deputy District Attorney
Nevada Bar #009600
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: XI

ORDER DENYING DEFENDANT'S PRO PER MOTION FOR AND ORDER
GRANTING REQUEST FOR SENTENCING TRANSCRIPTS

DATE OF HEARING: OCTOBER 27, 2014

TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 27th day of October, 2014, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through BRETT O. KEELER, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

///

///

///

///

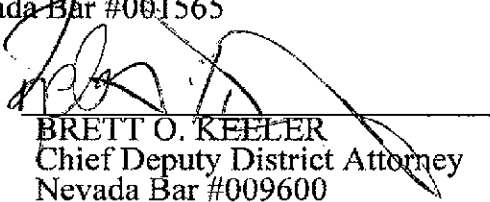
///

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for and Order
2 Granting Request for Sentencing Transcripts, shall be, and it is DENIED WITHOUT
3 PREJUDICE. Court noted Defendant will be permitted to file a new motion detailing the
4 issues and/or claims.

5 DATED this 13th day of ~~October~~ ^{November}, 2014.

6
7
8 
DISTRICT JUDGE

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001565

11 BY 
12 BRETT O. KEELER
13 Chief Deputy District Attorney
Nevada Bar #009600
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on the 4th day of November, 2014, I mailed a copy of the foregoing Order

to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY



R. JOHNSON

Secretary for the District Attorney's Office

ryj/M-1

Ann L. Quinn
CLERK OF THE COURT

Barrow Haman,
P.O. Box 650
Indian Springs, Nevada
89070

Petitioner - In Pro Se

DISTRICT COURT
CLARK COUNTY, NEVADA

MC
DA
PP

STATE OF NEVADA,

Plaintiff,

vs.

Barrow Haman,

Defendant.

Case No. 09-056384

Dept. No. 1K

Time: 9:00 am

DATE: 3-30-15

MOTION REQUESTING OF THE SENTENCING
~~THE PETITIONER~~
COURT TO ISSUE ITS ORDER GRANTING
THE PETITIONER A COPY OF HIS PLEA
~~CONVASSING~~ AND SENTENCING TRANSCRIPTS
PURSUANT TO NRS 7.40 et seq and 7.055:

COMES NOW, Barrow Haman, the Petitioner,
Pro Se moves the court to entertain and grant the
above mentioned petition.

This motion is made and based upon the petitioner
being ~~incompetent~~ incompetent and not understanding his
plea of guilt and counsel ineffectiveness for not conducting
a Psychological Evaluation prior to the canvassing of the
petitioner.
Respectfully Submitted,
Barrow Haman 105227

DATED: 03-02-15

RECEIVED

MAR 06 2015

CLERK OF THE COURT

NOTICE OF MOTION

STATE OF NEVADA, Plaintiff
DISTRICT ATTORNEY, Steve Wolfson

30

PLEASE TAKE NOTICE, that, ON the ~~24~~ day of March,
2015, the above mentioned MOTION will be heard, in Dept ^{XI}
at 9:00 am on or about,

By :

BORRAN HAMM
BORRAN HAMM # 1052277
P.O. Box 650
Indian Springs, NV 89070

MEMORANDUM OF POINTS & AUTHORITIES

I.

STATEMENT OF THE FACTS

That On the ~~24~~³⁰ day of November, 2014, the court issued its Order, denying the petitioners Pro Per Motion for ~~an~~ an Order Granting Request for Sentencing Transcripts, however, the court the filing of a new motion detailing the issues and/or claims.

That because the petitioner does not understand the procedures in detailing the reasons why the canvassing and sentencing transcripts are needed, the petitioner provided several of his dinner trays to a prisoner to aid him in outlining the reasons and requirement of showing the court a defective plea canvassing and the ineffectiveness of counsel during the pre-trial stages of the litigation.

II.

LEGAL ARGUMENT

Here, the petitioner believes he is entitled to a copy of the canvassing and sentencing transcripts, in order, that the petitioner can establish with the court, the petitioners

plea was "actually" not understood by the petitioner, due to the petitioner's educational level, which was pointed out by the petitioner's appointed attorney during the ~~sentencing~~ phase of the petitioner's pre-trial stages.

It appears, the court requires of the petitioner to demonstrate: 1) the points raised have merit; 2) such merit will tend to be supported by a review of the record. see Peterson v. Warden, 483 P.2d 204 (1971).

a) The Points Raised Have Merit?

Surely, now that the petitioner has sold enough of his dinner meals to obtain the assistance of an inmate, the petitioner believes through the access of the canvassing and sentencing transcripts, the petitioner will be able to demonstrate, the petitioner's attorney knew or should have known, the petitioner was incompetent at the time the petitioner entered into his plea of guilt based upon his limited educational level, rendering the attorney ineffective. see Lyons v. State, 796 P.2d 210 (Nev.) also see Washington v. Strickland, 476 U.S. 6 (1984), where counsel should have sought a psychological evaluation on the levels of education and competency ~~at~~ prior to entry of plea.

b) Supported by Review of the Record?

The sentencing transcripts will ~~show~~ ^{reveal} the petitioner's education was known to counsel; however, the judicial record is absent, counsel sought out Psych. Exam. to determine competency, despite, how the canvassing reflects within the record.

Note: Most attorneys instruct their clients to follow their guidelines during the canvassing phase, eluding the judicial record the defendant understood the canvassing, where in reality, most criminal defendants do not have a clue of their "actual" constitutional rights, despite, an attorney's efforts to convey those rights.

The brief demonstration here, the petitioner suggests the petitioner is entitled to the canvassing and sentencing transcripts to ensure a supportive post-conviction proceeding before the court. Peterson, supra.

Thus, because the petitioner has NOW shown the reason for the transcript request set forth ~~the grounds upon which the petition is based, the petitioner~~ in which, his petition, (Writ of Habeas Corpus and/or Motion to Correct Illegal Sentence) will allow the court to provide fair and unbiased judicial review on the merits of either of the above-mentioned petitions, only after examination of the canvassing and sentencing transcripts in the above-mentioned case number,

III.
CONCLUSION

WHEREFORE, It is prayed, the court grant the above-mentioned petition.

Respectfully Submitted,

DATE: 03-02-2015

Borron Haman
Petitioner - In Pro Se
Borron Haman # 1052272


IV.

CERTIFICATE OF SERVICE

I, hereby certify, that, On the 02 day of March, 2015, I mailed my MOTION to the following;

Daniel K. Pieper
C. Deputy District Attorney,
200 Lewis Ave.
Las Vegas, Nevada 89155-2212

Judge Jennifer Tognolatti
c/o ~~Stacy D. [unclear]~~
200 Lewis Ave. 3rd fl.
Las Vegas, Nevada 89155

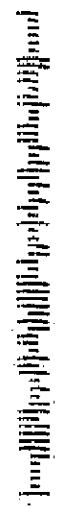

WITNESS

Barton Hamm #1082277
6800 Box 680
Indian Springs Nevada 89070

Hasler FIRST-CLASS MAIL
03/03/93 15
US POSTAGE \$00.48
0471 ZIP 89101
011D12602491

District court
200 Lewis Ave
Las Vegas Nevada 89155

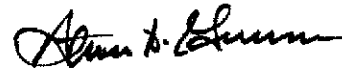
LEGAL MAIL
CONFIDENTIAL
85101ES0000



RECEIVED

MAR 02 2015

HIGH DESERT STATE PRISON
LAW LIBRARY



CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHELLE JOBE
Deputy District Attorney
Nevada Bar #010575
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: XI

ORDER GRANTING DEFENDANT'S PRO PER MOTION
REQUESTING OF THE SENTENCING COURT TO ISSUE ITS ORDER GRANTING
THE PETITIONER A COPY OF HIS PLEA CANVASSING AND SENTENCING
TRANSCRIPTS PURSUANT TO NRS 7.40 ET SEQ AND 7.055

DATE OF HEARING: MARCH 30, 2015
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
30th day of March, 2015, the Defendant not being present, IN PROPER PERSON, the
Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through
MICHELLE JOBE, Deputy District Attorney, without argument, based on the pleadings and
good cause appearing therefor,

///

///

///

///

04-13-15A10:26 RCVD

W:\2009F\092\75\09F09275-ORDR-(HAMM_BARRON)-003.DOCX

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion Requesting of the
2 Sentencing Court to Issue its Order Granting the Petitioner a Copy of his Plea Canvassing
3 and Sentencing Transcripts Pursuant to NRS 7.40 ET SEQ and 7.055, shall be, and it is
4 GRANTED. Defendant can be provided copies of transcripts.

5 DATED this 13th day of April, 2015.

6
7 
8 DISTRICT JUDGE 

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001565

11 BY  Per

12 MICHELLE JOBE
13 Deputy District Attorney
14 Nevada Bar #010575
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

to:

BY

R. JOHNSON

Secretary for the District Attorney's Office

$$r_j/M-1$$

mc
DA
pp

Barron Hamm

Barron Hamm

CLERK OF THE COURT

105-2277/270-7761

Defendant/Improper person

P.O. Box 650 (H.D.S.P.)

Indian Springs Nevada 89070

District court
Clark County Nevada

Barron Hamm

270-7761/105-2277

Defendant

VS

State of Nevada

Respondent

Case No: C-256384

DEPT NO: XI

7-15-15 @ 9:00am

RECEIVED

JUN 23 2015

CLERK OF THE COURT

Motion to ~~revoke~~ ^{vacate} sentence

Come now BARRON HAMM, THE DEFENDANT

IN PROSE MOVE THE COURT'S TO ENTERTAIN AND GRANT
THE ABOVE MENTIONED MOTION.

THIS motion is made AND BASED UPON ALL

THE PAPERS AND PLEADINGS ON FILE HEREIN THE

ATTACHED POINTS AND AUTHORITIES IN SUPPORT HERE OF.

EXECUTED THIS 13th DAY OF JUNE 2015

RECEIVED

JUN-22-2015

CLERK OF THE COURT

Respectfully Submitted

By Barron Hamm 270-7761

Barron Hamm 105-2277

NOTICE OF MOTION

State of Nevada, Plaintiff
District Attorney, Steve Wolfson

Please TAKE Notice that on the 15 day of
July 2015 the above mentioned motion will be
heard in Dept XI at 9:00am or about

By:

Barron Hamm

Barron Hamm
#3707761
1052277

PO Box 686 HD SP

Indian Spring NV 89070

POINTS AND AUTHORITIES

Statement of the Case

on July 22, 2009, Barron HAMM (hereinafter "Defendant") was charged by way of Indictment with count-1-Burglary while in possession of Firearm (Felony-NRS 205.060); count-2-Assault with a deadly weapon (Felony-NRS 200.471); count-3-Murder with the use of a deadly weapon (Felony-NRS 200.010, 200.030, 193.165); and count-4-carrying concealed Firearm or other deadly weapon (Felony-NRS 202.350(1)(d)(3)).

~~on March 12, 2010 Defendant was sentenced, pursuant to EPA, as~~
on March 12, 2010 Defendant pled guilty to count 1-second Degree murder with use of a deadly weapon and count 2-Assault with a deadly weapon. an amended Indictment and guilty Ple ~~agreement~~ agreement ("GPA") were filed in open court the same day. on May 14, 2010, Defendant was sentenced, pursuant to the GPA as follows count-1-to life with a minimum parole eligibility of TEN (10) years plus a consecutive term of Two Hundred Forty (240) months with a minimum parole eligibility of ninety-six (96) months for the use of a deadly weapon; and count-2-to a maximum of seventy-two (72) months with a minimum parole eligibility of twenty-four (24) months; count 2 to run consecutive to count 1 with three Hundred seventy-five (375) days credit for time served. Judgment of conviction was filed on May 20, 2010. Defendant filed an untimely Notice of appeal on August 5, 2010 and the Nevada ~~Supreme~~ ^{Supreme} court dismissed Defendant's

appeal on September 10, 2010. remittitur issued on October 6, 2010.

on ~~February~~ ^{February} 13, 2012 Defendant Filed a motion to withdrawal guilty Plea on February 22, 2012 the state Filed it's opposition to the defendant motion to withdraw guilty Plea. on February 24, 2012 the District court denied Defendant's motion to withdraw guilty Plea. In the court minutes from this hearing the court noted that by that time, any petition for writ of Habeas corpus (Post conviction) Defendant would attempt to file would be untimely.

on October 31, 2012 Defendant Filed the instant motion to appoint counsel and petition for writ of Habeas corpus (Postconviction) to which the state response follows.

///

///

State's Response to Defendant's Motion
for Appoint Counsel

///

///

///

(A) Defendant was denied his state and Federal constitutional rights to due process and a reliable sentence were infringed when the judge abused defendant's objection to withdraw his guilty Plea. criminal § 59, 48. Const. Amend. V, VI, VIII, XIV. Nevada Const. Art. I

on or about May 14, 2010 the defendant had a sentencing hearing. During defendant's hearing the judge abused his discretion by not allowing the defendant to withdraw his guilty with good cause. Furthermore, defendant's attorney rudely interfered with defendant's objection to withdraw his guilty plea, by stating to the court's record not to listen to his client because his client has the IQ of a fifth grader. (see sentencing transcripts) which defendant does not have because the court clerk has not yet complied with order granting the petitioner a copy of his plea canvassing and sentencing transcripts pursuant to NRS. 740 ET SEQ AND 7055

Therefore defendant prays that this court vacate defendant's sentence.

||

||

||

||

(B) Defendant is being denied his state and Federal constitutional rights to due process, when the clerk of the courts failed to comply with the order granting Defendant A copy of His Plea ~~and~~ ^{convassing} And Sentencing Transcript's Pursuant to N.R.S. 740 ET seq And 7055

The Defendant strongly argues that he's been more than patient (waiting for the court's clerk to comply with the order granting the petitioner A copy of His Plea convassing and Sentencing Transcript's Pursuant to N.R.S. 740 ET seq and 7055) order granted on or about March 30, 2015.

Furthermore, as defendant patiently awaited for his copies and did not receive as ordered. The defendant kindly wrote to the court's clerk ~~and~~ which she then sent a copy of court minutes. ~~being~~ defendant has an IQ of a fifth grader as stated on record. The court's clerk is fully aware in the difference between "court minutes from the actual sentencing transcripts" an order granted by the Judge. SEE EXHIBIT A, B and C as Followed.

Conclusion

For the foregoing reasons, I respectfully request that
this Court grant my motion to vacate sentence.

Date this 13th day of June 2015

Respectfully Submitted,

By Burton Hamm

Burton Hamm

#1052277
2707761

certificate of service

I hereby certify, that on the 13th day of June 2015, I
mailed my motion to the following,

Steven B. Wolfson

Clark County District Attorney Office

200 Lewis Avenue

PO Box 552212

Las Vegas Nevada 89155

Steven D. Grierson

Clerk of the Courts

200 Lewis Avenue 3rd Floor

Las Vegas Nevada 89155


CLERK OF THE COURT

1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE JOBE
6 Deputy District Attorney
7 Nevada Bar #010575
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13
14 Plaintiff,

-vs-

15 BARRON HAMM,
16 #2707761

Defendant.

CASE NO: 09C256384
DEPT NO: XI

17 ORDER GRANTING DEFENDANT'S PRO PER MOTION
18 REQUESTING OF THE SENTENCING COURT TO ISSUE ITS ORDER GRANTING
19 THE PETITIONER A COPY OF HIS PLEA CANVASSING AND SENTENCING
20 TRANSCRIPTS PURSUANT TO NRS 7.40 ET SEQ AND 7.055

DATE OF HEARING: MARCH 30, 2015
TIME OF HEARING: 9:00 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court on the
22 30th day of March, 2015, the Defendant not being present, IN PROPER PERSON, the
23 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through
24 MICHELLE JOBE, Deputy District Attorney, without argument, based on the pleadings and
25 good cause appearing therefor,

26 ///

27 ///

28 ///

///

EXHIBIT A

04-13-15A10:26 RCVD

W:\2009F\092175\09F09275-ORDR-(HAMM_BARRON)-003.DOCX

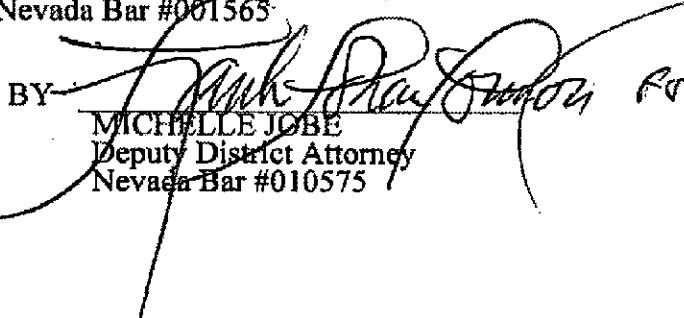
1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion Requesting of the
2 Sentencing Court to Issue its Order Granting the Petitioner a Copy of his Plea Canvassing
3 and Sentencing Transcripts Pursuant to NRS 7.40 ET SEQ and 7.055, shall be, and it is
4 GRANTED. Defendant can be provided copies of transcripts.

5 DATED this 13th day of April, 2015.

6
7 
8 DISTRICT JUDGE

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001563

11 BY

12 
13 MICHELLE JOBE
14 Deputy District Attorney
15 Nevada Bar #010575
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


CERTIFICATE OF SERVICE

I certify that on the 15th day of April, 2014, I mailed a copy of the foregoing Order

to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY



R. JOHNSON
Secretary for the District Attorney's Office

rj/M-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 30, 2015

09C256384

The State of Nevada vs Barron Hamm

March 30, 2015

9:00 AM

Defendant's Pro Per Motion Requesting of the
Sentencing Court to Issue its Order Granting the
Petitioner a Copy of his Plea Canvassing and
Sentencing Transcripts Pursuant to NRS 7.40 et seq
and 7.055

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: April Watkins

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT: : Jobe, Michelle Y.
State of Nevada

Attorney for Pltff.
Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, motion GRANTED. Deft. can be provided copies of transcripts.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Barron Hamm #1052277, High
Desert State Prison, P.O. Box 650, Indian Springs, NV 89018. aw

EXHIBIT B

PRINT DATE: 03/31/2015

Page 1 of 1

Minutes Date: March 30, 2015

Barton
HAMM
C.256 384

DEPT NO IX

TO CLERK OF the courts
200 LEWIS AVENUE
P.O. BOX 552212
LAS VEGAS NEVADA 89155

RE I would like a copy of my
sentencing transcript's & ~~plea~~ court canvassing
Because I was granted permission
District court Judge Jennifer P toganoli.
Dept 9 to receive both ~~transcripts~~
transcript. the case no. is C256 384

Thank For your time & concern
in this matter's.

RECEIVED
MAY 15 2015
COUNTY CLERK

EXHIBIT C

RECEIVED
MAY 11 2015
CLERK OF THE COURT



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3RD FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D Grierson
Clerk of the Court

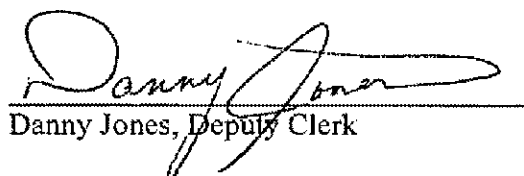
May 18, 2015

Case: C256384

Dear Sir or Madam:

Your copy request cannot be completed for the following reason(s):

- ☐ Case file is not available at this time.
- ☐ Incorrect case number was provided.
- ☐ Copy requests must be paid for in advance. See attached price list.
- ☒ Document(s) requested are not available.
- ☐ Request is not legible.
- ☐ Insufficient information was provided.
- ☒ Other: For sentencing transcripts you must contact Reporter/Recorder: Renee Vincent at (702)671-4339.



Danny Jones, Deputy Clerk

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross
Misdemeanor****COURT MINUTES****May 14, 2010**

09C256384

The State of Nevada vs Barron Hamm

May 14, 2010**8:45 AM****Sentencing**

SENTENCING Court Clerk: Tina Hurd Reporter/Recorder: Renee Vincent
Heard By: Linda Bell

PARTIES

PRESENT:	Coffee, Scott L.	Attorney
	Hamm, Barron	Defendant
	Jimenez, Sonia V.	Attorney
	Public Defender	Attorney

JOURNAL ENTRIES

- Conference at the bench. DEFT. HAMM ADJUDGED GUILTY OF COUNT 1 - SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F) and COUNT 2 - ASSAULT WITH A DEADLY WEAPON (F). Matter argued and submitted. Sworn statements by Karen Kennedy Grill and the victim's mother Kimberly Brown Fleming. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED as follows: Count 1 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of NINETY SIX (96) MONTHS for use of a deadly weapon. Court stated her findings regarding the weapons enhancement. Count 2 - to a MAXIMUM term of SEVENTY TWO (72) MONTHS with a MINIMUM parole eligibility of TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to Count 1. 375 DAYS credit for time served. Deft. to PAY \$36,796.27 RESTITUTION to the Fleming Family and \$6,000.00 RESTITUTION to Victims of Violent Crimes. BOND, if any, EXONERATED.

PRINT DATE: 05/18/2015

Page 1 of 2

Minutes Date: May 14, 2010

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 30, 2015

09C256384

The State of Nevada vs Barron Hamm

March 30, 2015

9:00 AM

Defendant's Pro Per Motion Requesting of the
Sentencing Court to Issue its Order Granting the
Petitioner a Copy of his Plea Canvassing and
Sentencing Transcripts Pursuant to NRS 7.40 et seq
and 7.055

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: April Watkins

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:

Jobe, Michelle Y.
State of Nevada

Attorney for Pltf.
Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, motion GRANTED. Deft. can be provided copies of transcripts.

NDC

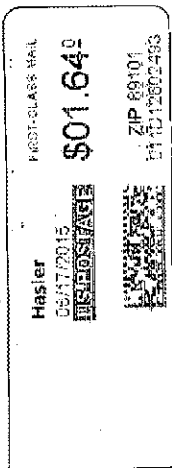
CLERK'S NOTE: The above minute order has been distributed to: Barron Hamm #1052277, High
Desert State Prison, P.O. Box 650, Indian Springs, NV 89018. aw

PRINT DATE: 03/31/2015

Page 1 of 1

Minutes Date: March 30, 2015

1052277
[ADP]
Spring, Nevada



1702612

TO THE CLERK OF THE COURT'S
700 LEWIS AVENUE
LAS VEGAS NEVADA 89155

CONFIDENTIAL
LEGAL MAIL


CLERK OF THE COURT

1 **RTRAN**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6
7 **THE STATE OF NEVADA,**

8 **Plaintiff,**

9 **v.**

10 **BARRON HAMM,**

11 **Defendant.**

} **CASE NO. 09-C-256384**

} **DEPT. VII**

12
13 **BEFORE THE HONORABLE LINDA M. BELL, DISTRICT COURT JUDGE**
14 **FRIDAY, MAY 14, 2010**

15
16 ***RECORDER'S TRANSCRIPT OF***
17 ***SENTENCING***

18 **APPEARANCES:**

19
20 **For the Plaintiff:**

SONIA V. JIMENEZ, ESQ.
Deputy District Attorney

21
22
23 **For the Defendant:**

SCOTT COFFEE, ESQ.
Deputy Public Defender

24
25 **RECORDED BY: RENEE VINCENT, COURT RECORDER**

1 Friday, May 14, 2010 at 9:16 a.m.

2
3 THE COURT: Page 2, State of Nevada versus Barron Hamm, Case
4 Number C256384. Let the record reflect the presence of Mr. Hamm with his
5 counsel, Mr. Coffee. State represented by Ms. Jimenez.

6 This is on for sentencing. Is there any legal cause or reason we
7 should not go forward with sentencing today?

8 MR. COFFEE: No, Judge.

9 THE COURT: Sir, by virtue of your plea of guilty to second degree
10 murder with use of a deadly weapon, a felony, and assault with use of a deadly
11 weapon, a felony, I adjudicate you guilty of those offenses. State?

12 MS. JIMENEZ: Thank you, Judge. Judge, for the most part, the
13 sentence in this case is negotiated. The bottom end of the sentence is a
14 stipulated 20 years. The one thing for the Court to make a determination on is
15 as to the second degree murder charge, whether the Court is going to sentence
16 the Defendant to a term of years of 25 years or to the life tail on this sentence.
17 The State is asking the Court to sentence the Defendant to the life tail. From
18 the State's point of view, this isn't even a close call.

19 If you go through the Defendant's lengthy juvenile record, he has
20 juvenile offenses dating back to 2003. These offenses include multiple
21 instances of violence and other crimes, crimes involving weapons. There's two
22 separate batteries that he committed, malicious destruction of property,
23 possession of stolen vehicle, possession of dangerous weapon, burglary, grand
24 larceny, another burglary. He's violated probation and parole. He had three
25 terms of probation as a juvenile, and, as you know, the juvenile system is aimed

1 towards rehabilitation. It's not the same as the adult system. So he would've
2 had multiple opportunities to get whatever help and treatment he required
3 through the juvenile system.

4 I want to point out as well that there's a paragraph on page 4 that
5 talks about charges which were dismissed or not pursued, and included in there
6 is a robbery, attempt robbery, possession of a dangerous weapon, second
7 offense, a handgun and revolver. The Defendant was actually charged with
8 those as a juvenile. In fact, they began seeking certification on those charges
9 as an adult, but what happened was, there was a plea hearing.

10 He had other charges that were pending, and based on the plea
11 hearing, he pled to a burglary and an amended charge on the possession of
12 dangerous weapon and was continued on parole in the juvenile system. So
13 those weren't charges that were unsubstantiated or not gone forward on. They
14 were simply dismissed as part of a negotiation. And so I would ask that the
15 Court take into consideration that he does have those prior crimes of violences
16 (phonetic).

17 He finished his parole and committed the crime in the instant
18 offense approximately two and a half weeks after he was done with his juvenile
19 parole. The night that this happened, Jared Flemming was having a birthday
20 party. He has a very large family. It's a blended family, and he's got many
21 brothers and sisters. And he had an older sister who was grown, out of the
22 house and had her own apartment where she and her twin babies stayed, along
23 with the babies' father.

24 And she -- Jared was going to turn 15 years old, and she said, you
25 know, you can have your party here at my house. It was sort of his first

1 grownup party without his parents present, and she was letting him have the
2 apartment. There was another party actually going on at his parents' house for
3 one of his younger siblings who was turning, I believe, two years old or
4 somewhere around there.

5 So Jared's older sister Jasmine took her children, her babies over to
6 her parents' house, left them there, picked up Jared and some of his friends and
7 took them back to the apartment, helped them get set up for the party. As
8 people started to arrive, she went back to her parents' house to be there with
9 her kids and her sister or brother who was having the party. And she went
10 back and forth and checked a few times on Jared and his friends. He hadn't
11 had his birthday yet. He was still 14.

12 She checked the first time, and everything was fine. More people
13 had showed up. Some other of Jared's older sisters and brothers were
14 present -- I think his sisters, actually, were present at the party. And when
15 Jasmine returned later in the night, things had gotten a little bit out of control.
16 Some people who weren't invited had showed up. Some of the older kids had
17 brought some alcohol to the party, and she shut things down. She said that
18 everyone needed to leave because she was checking in and responsible for
19 what was going on at the apartment, and she thought, okay, it's late, it's time
20 for everybody to go.

21 One of the uninvited guests was the Defendant and some of his
22 friends, who are a member of what he calls, I guess, a dance crew that goes by
23 ATM, which stands for Addicted To Money. They had showed up at the party
24 uninvited. It was a large apartment complex, and whether he heard the noise or
25 what happened, he showed up uninvited and was basically causing a ruckus in

1 the party. At one point one of the kids saw him lift up his shirt and display a
2 gun.

3 And when Jasmine came home and told everybody to leave, he
4 went outside with his friends, but they kind of stayed outside. Jasmine told
5 Jared he had just a few friends who were going to stay the night, and she told
6 Jared, you know, close the door, don't let anybody else in, and she and one of
7 her sisters went -- they were going to go back to their parents' house to get
8 trash bags to clean up from the party.

9 As they walked out, one of the companions of the Defendant made
10 some comments to her. She didn't pay him any mind. You know, I think her
11 sister maybe said something back, and they continued out to their car and
12 started to drive off to the parents' house, which is when they heard the
13 gunshots. She actually thought she was being shot at because of the exchange
14 that had just happened outside the apartment. She had no idea that those were
15 the shots that were shooting and killing her brother.

16 The Defendant, after Jasmine left, had gone back into the
17 apartment. He walked into the apartment, he pulled out a gun, he pointed it at
18 everyone and told them to get on the floor. What his ultimate intention was we
19 may never know. I think it's very reasonable to assume that his intention was
20 commit a robbery in that apartment and demand money from these individuals.

21 There were still some younger kids there. The youngest, I think,
22 was 12 years old. They were in a side bedroom. They turned around and they
23 saw the Defendant with the gun, and they got scared and hid underneath the
24 cribs, Jasmine's children's cribs, because they were afraid of what the
25 Defendant was going to do.

1 He had the gun pointed, and Jared, as probably most 14-year-olds
2 did, he was scared, and he ran past the Defendant, and he ran out of the
3 apartment. And as he was running, the Defendant took his gun, followed him
4 outside and shot two to three times at Jared. He hit Jared in the back, and
5 Jared was killed as he was running away.

6 There was absolutely no reason for the Defendant to go back into
7 that apartment. The party was shut down. There was certainly no reason for
8 him to shoot a scared 14-year-old boy in the back as he was fleeing.

9 I'm sure when Jared's parents found out what happened -- you
10 know, parents worry about their kids. When they're little, they worry. You
11 know, are they going to climb up on the couch and jump off and hurt
12 themselves? We've got to keep them away from the pool or -- you know, as
13 they get older, is he going to climb a tree and fall out and break his arm or --
14 you know, maybe riding his bike, get into an accident. They probably never
15 imagined they be getting a phone call that their 14-year-old son was shot in the
16 back and then to go to the hospital and find out that he died of those injuries.

17 It was an absolutely senseless crime, a crime that has affected this
18 very large and loving family that will affect all of them for the rest of their lives.
19 And not just them, but the other children who were in that apartment who
20 witnessed what happened, who saw their friend, heard the friend get shot and
21 killed, were themselves afraid and at risk. You know, he probably wouldn't
22 appreciate me saying this, but the little 12-year-old, Tyjuan Bell, who's one of
23 the named victims, he testified at the Grand Jury -- at one point he just broke
24 down balling because of what had happened and the emotion of what had
25 happened to him.

1 This was a horrible incident that occurred, and absolutely based on
2 his record, based on his conduct that night, a life sentence is appropriate, and
3 we would ask that you impose that sentence.

4 THE COURT: Thank you. Sir, is there anything that you'd like to say
5 before your attorney speaks on your behalf?

6 THE DEFENDANT: All that -- no. All that that they say I got arrested
7 on, that wasn't even what I got charged with. Nothing --

8 MR. COFFEE: I'll expound on that, Barron.

9 THE DEFENDANT: All right.

10 THE COURT: Okay. Is there anything else you'd like to say, sir?

11 THE DEFENDANT: I don't even want the deal because I took the deal,
12 right -- I was forced to take this deal. Now I don't want it.

13 THE COURT: Okay. Mr. Coffee?

14 MR. COFFEE: Judge, this is a difficult case. The shooting is senseless.
15 I agree with the District Attorney on that. I'm a little troubled that we feel the
16 need to spin facts at a sentencing like this, but I suppose that's the nature of
17 the business.

18 Barron Hamm showed up at a party and -- his record, by the way,
19 as mentioned, things that he was arrested for that he hasn't been convicted for,
20 a number of things. If the crimes were that serious, this Court is well aware
21 how the criminal justice system works. There was an allegation of kidnapping
22 at some point, for example. If it would've been a legitimate charge, I would've
23 expected the State to do their job and push forward on that prosecution.
24 Perhaps certify him as an adult. That never happened.

25 He hadn't really been formally placed in juvenile detention for a

1 significant period of time. He had been continued on probation. He comes
2 from a tough area of town. There's question about that. He's had contact with
3 law enforcement.

4 But on the night in question, one of Barron's friends got a text that
5 there was a party, and the party was loud. There were a lot of people there.
6 Barron showed up with ATM, which he has described continuously as a dance
7 crew. I don't think there's any reason to doubt that. One of the officers in the
8 police report say it sounds like a dance crew. It's not a gang. They're not
9 jacking people. That's not what was going on.

10 He shows up at the party, and he buys a gun from somebody. We
11 know that he buys a gun that night at the party because he tells his mom that
12 in the police interview room when there's no one around. They don't think
13 they're being heard. He's told the police, I'm not involved in things. He says, I
14 got the gun that night from a friend. Somebody brought it at the party.

15 He leaves the party, and he's trying to avoid a confrontation with
16 some other boys that he's had problems with the past. He goes back into the
17 party. They try to stop him at the door, he walks back in, and he pulls out the
18 gun. He says -- and I take issue with the State's claim that he says get down
19 or -- witnesses at the scene, they are split on what he said. The witness
20 closest to the scene say, he says calm down, calm down. The witness is very
21 sure of that. There's no demand for money, nothing like that.

22 Barron has been -- he's 18, but he's not really 18. I think the Court
23 knows that. He's been in special education classes. He is functioning at a level
24 of a 12-year-old at best. He tries to the control the situation, tries to calm
25 people down. Somebody runs, and he pulls off a shot. And the reason that I

1 say it's a shot -- not shots -- is what the State said a moment go. There's one
2 bullet that is found in the boy's body. This Court knows how homicide
3 scenes work -- scenes work. They look for other shells, for other casings.
4 There are no other shells or casings found at the scene. One that can be
5 verified. He gets frightened and then he leaves.

6 When he's interviewed -- he turns himself in, by the way, with an
7 uncle to the police. They make calls trying to locate him. He's identified easily.
8 It's not a planned event. That's pretty clear from everything we know about
9 this. He is there at the party with people that know him. They identify him very
10 easily. Calls are made, and his family brings him in. We've got family member
11 after family member after family member in the courtroom here with Barron
12 today. They've all helped raise Barron to some extent, I think. They've all tried
13 to take care of him for the better part of his life, done the best that he could.

14 He's placed in a police room, and he denies being involved. Not
15 that big of a surprise. When his mother comes in -- and this is in the PSI, and I
16 think it's very telling -- he says, "I did do that, Mom. I shot that boy. I got
17 scared." And I think that's exactly what happened. He tried to control a
18 situation. He's not the strongest-minded person in the world. Somebody ran,
19 he got scared and fired a shot, and it had tragic consequences for another
20 family that can never have their son back. It is a tragedy.

21 The Court's decision this morning comes down to one of two
22 things, 20 to 52 years, 20 to life. I don't -- there's probably competing views
23 on the different sides of the courtroom as to what the Court should do. He's
24 never had a significant period of incarceration in his life. The Court knows that
25 that can change, how a person acts, how a person feels. We'd ask you

1 consider the sentence of 20 to 52 years given his youth, given the unplanned
2 nature of this all, and it is most certainly unplanned if you look at the facts.
3 There are tragic consequences, but we would ask the Court to give that
4 sentence at least consideration.

5 THE COURT: Okay. Thank you. Anything else from the Defense?

6 MR. COFFEE: No, Judge.

7 THE COURT: Okay.

8 MR. COFFEE: And we spoke with the family. They just want to express
9 their condolences to the victim's family.

10 THE COURT: Okay. Thank you. And do we have any speakers?

11 MS. JIMENEZ: We do, Judge. If I could check and confirm who exactly
12 is going to speak.

13 THE COURT: Okay.

14 [Pause]

15 MS. JIMENEZ: In this court, do we have them stand up and have them
16 speak?

17 THE COURT: That would be fine. In fact, if you put her --

18 MS. JIMENEZ: Wherever you'd like.

19 THE COURT: -- in that chair. I can just see better if she -- that's perfect.
20 Ma'am, and you can go ahead and have a seat.

21 THE SPEAKER: Can I sit here?

22 THE COURT: That's fine, too. The Clerk is going to swear you in.

23 **KAREN KENNEDY GRILL,**

24 being first duly sworn as a speaker, testified as follows:

25 THE CLERK: Thank you. Would you state your name for the record.

1 MS. GRILL: My name is Karen Kennedy Grill. And, Your Honor, one
2 bullet is all it takes to murder a 14-year-old boy. Jared Flemming is dead. He
3 will never skateboard again. He will never smile and laugh and look into his
4 father's eyes. His family will be without him. In their first thoughts every
5 morning will be how shattered their lives are and how much they miss Jared,
6 and their last thoughts at night will be the same, and they will live this day after
7 day for the rest of their lives.

8 I believe the Defendant knows right from wrong. I believe he
9 knows that's wrong to murder other people and shatter lives. His family will
10 suffer every day, and they will never get Jared back, and we will think about
11 Jared every day. I don't think it's fair that Jared's life was taken away and the
12 Defendant has another chance at a life in a possible 20 years, to get and
13 possibly murder somebody's child. Thank you.

14 THE COURT: Thank you, ma'am.

15 [Pause]

16 MS. FLEMMING: Hi, Your Honor. I'm -- I'm Jared's mother.

17 THE COURT: Okay, ma'am. If you could come up, the clerk is just going
18 to swear you in, and then you can say whatever you like.

19 MS. FLEMMING: Okay.

20 THE COURT: And after she's swears you, feel free to sit or stand,
21 whatever you're more comfortable with.

22 THE CLERK: Please raise your right hand.

23 **KIMBERLY BROWN FLEMMING,**

24 being first duly sworn as a speaker, testified as follows:

25 THE CLERK: Thank you. Please state your name for the record.

1 MS. FLEMMING: My name is Kimberly Brown Flemming. I'm Jared's
2 mother. This is my friend Jared. This is his last year of school in the 8th grade
3 graduation. This is what I have left. He had just began 9th grade. I've written
4 something that I'd like to read to you, please.

5 THE COURT: That's fine.

6 MS. FLEMMING: It started out this morning that Jared's father and
7 siblings wanted to speak today. They wanted to let everyone know how much
8 despair has entered our lives the very second we were told Jared is dead. But
9 as they began write down their feelings of anguish, it turned down -- it turned
10 from sadness to anger, so I've decided that I will try my best to speak for our
11 family.

12 For as long as I can remember, I have always tried to protect Jared
13 from evil in this world. Jared had asthma. I was always so scared that
14 something would happen to him during the night while I slept. So every night I
15 would peek in on him while he slept in his room just to calm my mind that he
16 was safe and breathing. I never dreamed I would ever receive a phone call from
17 his sisters telling me my son has been shot.

18 I answered the phone at 1:00 a.m. in the morning to my daughter
19 yelling at me, Kim, he's dead. He's dead. He's dead. Jared's dead. My mind
20 instantly went to denial that it could be that serious of a situation. I figured
21 maybe he'd been shot in the arm or in the leg, and my daughter was just
22 panicking. My husband instantly drove to my oldest daughter's home to find
23 his beloved son laying lifeless on the ground while an emergency medical
24 response team worked relentlessly to revive him.

25 We later learned that Jared had been shot in the back, entering his

1 lung on the right and exiting through his heart. His friends who attended his
2 15th birthday party that had ended only an hour previous to this witnessed
3 Jared take three deep breaths and drop to the ground, never to breathe again.
4 Later that same morning, Jared's father was so devastated, he attempted to kill
5 himself. Luckily, a family member stopped him.

6 Jared's father and I have no doubt that Barron Hamm was the
7 person that had murdered our son. We had only wished it had gone to trial so
8 we, his parents, could've had some kind of understanding how this monster of
9 a human could justify to himself to shoot not only once, but twice at a child
10 whom he already knew was scared of him. Jared never tried to argue nor fight
11 with Barron Hamm. My son was simply running for his life, and Barron Hamm
12 cowardly shot him in the back.

13 Your Honor, I mean no disrespect to you, but our family has not only
14 been let down by the loss of Jared, but we also feel we've been let down by
15 the court in prosecuting this unremorseful animal that killed our son and my
16 children's brother.

17 My son Jared will never graduate high school, let alone be able to
18 go to college like he had planned. He will never get married, and he will never
19 give me any grandchildren. I wish someone could help me to understand why
20 an admitted murderer who intentionally brought a gun and brandished it to
21 several teenagers threatening their lives and intentionally pointing that same gun
22 at my 15-year-old son and shot once and missed, shot a second time hitting
23 him in the back intentionally. How that can be considered second degree
24 murder is a cop-out to our family.

25 How can giving him ten years in prison for a murder charge possibly

1 make up for the death of any human? This monster who has no regard for
2 human life will still get a chance to enjoy freedom, get married, possibly have a
3 family in his future. This is -- this is like a spit in our face. I would have gladly
4 made a deal that Barron Hamm can get out of prison in 10 to 20 years if you
5 could bring my son back to me in 10 to 20 years.

6 Barron Hamm made a choice that day to condemn my son to death.
7 Jared's family did not expect to have this animal kill, but the idea of Barron
8 Hamm getting the possibly of walking freely on the streets again is
9 unbelievable.

10 The one thing I would like to say to Barron Hamm is that Jared has
11 nine other siblings that love, cherish and miss him dearly, not to mention an
12 extended family and friends. Do not ever think you will be forgotten when it
13 comes time for your parole hearing. God willing, Jared's father and myself, as
14 well as every sibling, will be present at every hearing to try to forbid you from
15 ever getting out.

16 I would like for everyone to know Jared was not a gang member as
17 the media portrayed him at first. Jared was a loving son, brother and uncle.
18 He was loyal to his friends and considerate to adults. He was characterized as
19 amicable to his peers. He was recognized as a skilled drummer, dedicated
20 skateboarder and had just begun playing high school football. He always spoke
21 of college and dreamed about what the future could hold for him.

22 Our family will never again feel complete. Every holiday and
23 celebration will hold tears and loneliness for his family and friends. I've always
24 been there for Jared to defend him when I know he is innocent. This will be
25 the final fight for him for at least 20 years, but I will never quit. Even after I die,

1 you will -- Barron Hamm will see me in his nightmares knowing that I am still
2 fighting for my son. As for Jared's father, his son meant the world to him, and
3 that enjoyment will forever be gone. We loved Jared, and we miss him. Thank
4 you.

5 THE COURT: Thank you. Ma'am, I'm sorry to you and your family for
6 your loss.

7 MS. FLEMMING: Thank you.

8 THE COURT: Okay. Ms. Jimenez, anything else?

9 MS. JIMENEZ: No, Judge.

10 THE COURT: Okay. Sir, if you could please stand. Sir, in accordance
11 with the laws of the State of Nevada, on Count 1, second degree murder, I
12 sentence you to life in the Nevada Department of Corrections with minimum
13 parole eligibility after ten years has been served.

14 With regard to the weapon enhancement, I sentence you to a
15 maximum of 20 years or 240 months in the Nevada Department of Corrections
16 and a minimum of 96 months in the Nevada Department of Corrections. That
17 sentence will run consecutively to the 10 to life. The reason for imposing the
18 weapon enhancement is considering the factors under NRS 193.165.

19 First of all, the facts and circumstances of this crime, since it is a
20 murder case, the maximum sentence on the weapon enhancement, I believe, is
21 appropriate. Mr. Hamm does have a fairly significant juvenile record. Certainly,
22 I cannot imagine a crime that would have more impact on the victim, Mr.
23 Flemming, and his family. And based on that, I do think that the sentence and
24 the weapon enhancement is appropriate considering all of the factors.

25 With respect to Count 2, assault with a deadly weapon, sir, I

1 sentence you to a minimum of 24 months and a maximum of 72 months in the
2 Nevada Department of Corrections, and that will run consecutively to Count 1.
3 I have -- you'll also be required to pay restitution to Victims of Violent Crimes in
4 the amount of \$6,000.

5 And Ms. Jimenez, I had some additional receipts, but I wasn't very
6 clear on whether that was -- what the amount was in addition to the \$6,000.

7 MS. JIMENEZ: It was sent directly to you. I don't think I got a copy of
8 those. Could I just check with the family members and find out what it was
9 that they sent? Thank you.

10 THE COURT: And, sir, while they're figuring that out, you'll also be
11 required to pay a \$25 administrative assessment fee and \$150 DNA analysis
12 fee. What's the credit for time served figure, Mr. Coffee?

13 MR. COFFEE: 375 days, Your Honor.

14 THE COURT: You'll receive 375 days credit for time served.

15 [Pause]

16 MS. JIMENEZ: Judge, I'm sorry, I'm going to need to do some math.
17 There is more expenses here. I'm going to have to pull this up and then just
18 subtract the \$6,000 --

19 THE COURT: Okay. I'm going to trail -- just trail it for a moment to get
20 the restitution figure.

21 MS. JIMENEZ: Thank you.

22 [Matter trailed at 9:42 a.m.]

23 [Matter recalled at 9:48 a.m.]

24 THE COURT: Okay. Let's go back to Hamm for a minute. Ms. Jimenez,
25 you have the amount minus the \$6,000?

1 MS. JIMENEZ: Yes, I do, Judge. Just so the record has my math, there
2 was a total of funeral expenses of \$16,300.27. There was also a receipt for
3 medical bills in the amount of \$26,496. That totaled to \$42,796.27. If you
4 subtract the \$6,000 that the Court has ordered be paid to Victims of Violent
5 Crimes, the rest of the amount that is owed to the victim's family is
6 \$36,796.27.

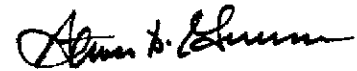
7 THE COURT: Okay. So Mr. Hamm will also be ordered to pay restitution
8 to the Flemming family in the amount of \$36,796.27. Thank you.

9 [Proceedings concluded at 9:44 a.m.]

10
11
12
13
14
15
16
17
18
19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 Renee Vincent, Court Recorder/Transcriber



CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER F. BURTON
Deputy District Attorney
Nevada Bar #012940
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: XI

STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION
TO VACATE SENTENCE

DATE OF HEARING: JULY 15, 2015
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through CHRISTOPHER F. BURTON, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per Motion To Vacate Sentence.

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

//

//

//

//

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On July 22, 2009, an Indictment was filed charging Barron Hamm ("Defendant") as
4 follows: COUNT 1 – Burglary while in Possession of a Firearm (Category B Felony – NRS
5 205.060); COUNT 2 – Assault with a Deadly Weapon (Category B Felony – NRS 200.471);
6 COUNT 3 – Murder with Use of a Deadly Weapon (Category A Felony – NRS 200.010,
7 200.030, 193.165); COUNT 4 – Carrying Concealed Firearm or other Deadly Weapon
8 (Category C Felony – NRS 202.350(1)(d)(3)). On March 12, 2010, an Amended Indictment
9 was filed charging Defendant as follows: COUNT 1 – Second Degree Murder with Use of a
10 Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165) and COUNT 2 –
11 Assault with a Deadly Weapon.

12 On March 12, 2010, Defendant pleaded guilty to the charges included in the Amended
13 Indictment. A Guilty Plea Agreement was filed the same day. On May 14, 2010, Defendant
14 was sentenced to a period of incarceration in the Nevada Department of Corrections as
15 follows: COUNT 1 – Life, with a minimum parole eligibility of 10 years, plus a consecutive
16 sentence of 240 months, minimum parole eligibility of 96 months for the use of a deadly
17 weapon; COUNT 2 – 72 months, minimum parole eligibility of 24 months, to run consecutive
18 to COUNT 1, with 375 days credit for time served. A Judgment of Conviction was filed May
19 20, 2010.

20 On August 5, 2010, Defendant filed a Notice of Appeal. Defendant's appeal was
21 dismissed on September 10, 2010. Remittitur issued October 6, 2010.

22 On February 13, 2012, Defendant filed a Motion to Withdraw his Guilty Plea. The
23 State filed an Opposition on February 22, 2012. Defendant's Motion was denied February 24,
24 2012.

25 On October 31, 2012, Defendant filed a Petition for Writ of Habeas Corpus. The State
26 filed a Response and Motion to Dismiss on November 14, 2012. On January 10, 2013,
27 Defendant's Petition was denied. A Findings of Fact, Conclusions of Law, and Order was
28 filed January 29, 2013.

1 Defendant filed a Notice of Appeal from the dismissal of his Petition on February 22,
2 2013. The judgment of the District Court was affirmed by the Nevada Supreme Court on
3 September 19, 2013. Remittitur issued October 17, 2013.

4 On April 10, 2014, Defendant filed another Motion to Withdraw his Guilty Plea. The
5 State filed an Opposition on May 1, 2014. Defendant's Motion was denied May 5, 2014.

6 Defendant filed a Motion for Transcripts on October 3, 2014. The State filed an
7 Opposition on October 8, 2014. On March 30, 2015, Defendant's Motion was granted.

8 Defendant filed the instant Motion to Vacate Sentence on June 23, 2015. The State's
9 Opposition follows.

10 ARGUMENT

11 To the extent Defendant asks for a third time to withdraw his guilty plea, his Motion is
12 not properly before the court and is precluded by the doctrine of res judicata. See Mason v.
13 State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the
14 criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011).
15 Defendant has on two prior occasions asked this Court to allow him to withdraw his plea.
16 Those prior motions have been denied. Accordingly, by simply continuing to file motions
17 with the same arguments, his motion is barred by the doctrine of res judicata. Id.; Hall v. State,
18 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).¹

19 To the extent Defendant complains of delay in receiving certain transcripts this Court
20 has granted his request for, the State takes no position other than that already outlined in its
21 Opposition filed October 8, 2014. However, the State does point out that a delay in receiving
22 transcripts is not grounds for vacating an otherwise proper sentence.

23 //

24 //

25 //

26 //

27
28 ¹ The State also notes that Defendant's request is not raised in the proper context of a post-conviction Petition for Writ of Habeas Corpus. See Harris v. State, 130 Nev. Adv. Rep. 47, 329 P.3d 619 (2014). This represents an independent reason to dismiss Defendant's instant Motion. See NRS 34.735.

1 CONCLUSION

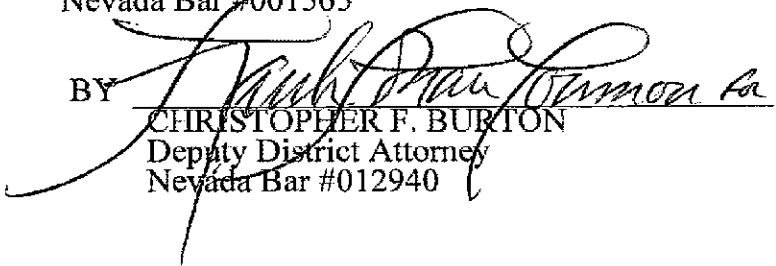
2 For the foregoing reasons, the State asks that Defendant's Motion be DENIED.

3 DATED this 10th day of July, 2015.

4 Respectfully submitted,

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

8 BY

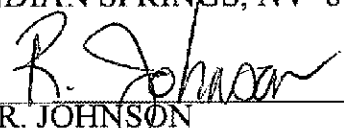

9 CHRISTOPHER F. BURTON
10 Deputy District Attorney
11 Nevada Bar #012940

12 CERTIFICATE OF MAILING

13 I hereby certify that service of the above and foregoing was made this 10th day of July,
14 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

15 BARRON HAMM #1052277
16 HIGH DESERT STATE PRISON
17 P.O. BOX 650
18 INDIAN SPRINGS, NV 89018

19 BY


20 R. JOHNSON
21 Secretary for the District Attorney's Office
22
23
24
25
26
27

28 CFB/rj/M-1

1 IN THE Eighth JUDICIAL DISTRICT COURT OF THE
2 STATE OF NEVADA IN AND FOR THE
3 COUNTY OF Clark
4

5 Barron Hamm)

6 Petitioner,)

7 v.)

8) 09C256384
9 Case No. C756384

10)
11 The State of Nevada)

12) Dept. No. XI

13 Respondent.)
14)
15

16 ORDER FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE
17 OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO
18 CONFERENCE

19 Based upon the above motion, I find that the presence of

20 Barron Hamm is necessary for the hearing that is scheduled in this
21 case on the 15 day of JUNE, 2015, at
22 9:00 a.m.

23 THEREFOR, IT IS HEREBY ORDERED that,

24 ☐ Pursuant to NRS 209.274, Warden _____
25 of _____ is hereby commanded to have
26 _____ transported to appear before me at a hearing
27 scheduled for _____ at _____ at the
28 _____ County Courthouse. Upon completion of the hearing,

08C256384
LSF
Left Side Filing
4471063



1 Barton Hamm is to be transported back to the above
2 named institution.

3
4 ☐ Pursuant to NRS 209.274(2)(a), Petitioner shall be made available for telephonic
5 or video conference appearance by his or her institution. My clerk will contact
6 _____ at _____ to make
7 arrangements for the Court to initiate the telephone appearance for the hearing.

8
9 Dated this _____ day of _____,
10 _____

11
12
13 District Court Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Barron Hamm

NDOC No. 1052277

Barron Hamm

In proper person

IN THE Eighth JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE
COUNTY OF Clark

Barron Hamm)

Petitioner,)

v.)

09C256384

Case No. C 256384

The state of Nevada)

Dept. No. X1

Respondent.)

MOTION AND ORDER FOR TRANSPORTATION
OF INMATE FOR COURT APPEARANCE
OR, IN THE ALTERNATIVE,
FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

Petitioner, Barron Hamm, proceeding pro se, requests
that this Honorable Court order transportation for his personal appearance or, in the
alternative, that he be made available to appear by telephone or by video conference
at the hearing in the instant case that is scheduled for July 15, 2015

9:00 am

09C268384
LSF
Left Side Filing
4473588



CLERK OF THE COURT
JUL 19 2015

RECEIVED

1 In support of this Motion, I allege the following:

2 1. I am an inmate incarcerated at High Desert state prison.

3 My mandatory release date is Life sentence.

4
5 2. The Department of Corrections is required to transport offenders to and
6
7 from Court if an inmate is required or requests to appear before a Court in this state.

8
9 NRS 209.274 Transportation of Offender to Appear Before Court states:

10 "1. Except as otherwise provided in this section, when an offender is
11 required or requested to appear before a Court in this state, the
12 Department shall transport the offender to and from Court on the day
13 scheduled for his appearance.

14 2. If notice is not provided within the time set forth in NRS 50.215, the
15 Department shall transport the offender to Court on the date scheduled
16 for his appearance if it is possible to transport the offender in the usual
17 manner for the transportation of offenders by the Department. If it is
18 not possible for the Department to transport the offender in the usual
19 manner:

20 (a) The Department shall make the offender available on the date scheduled
21 for his appearance to provide testimony by telephone or by video conference,
22 if so requested by the Court.

23 (b) The Department shall provide for special transportation of the offender to
24 and from the Court, if the Court so orders. If the Court orders special
25 transportation, it shall order the county in which the Court is located to
26 reimburse the Department for any cost incurred for the special transportation.

27 (c) The Court may order the county sheriff to transport the offender to and
28 from the Court at the expense of the county."

29 3. My presence is required at the hearing because:

1 ☒ I AM NEEDED AS A WITNESS.

2 My petition raises substantial issues of fact concerning events in which I
3 participated and about which only I can testify. *See U.S. v. Hayman*, 342 U.S.
4 205 (1952) (District Court erred when it made findings of fact concerning
5 Hayman's knowledge and consent to his counsel's representation of a witness
6 against Hayman without notice to Hayman or Hayman's presence at the
7 evidentiary hearing).

8 ☒ THE HEARING WILL BE AN EVIDENTIARY HEARING.

9 My petition raises material issues of fact that can be determined only in my
10 presence. *See Walker v. Johnston*, 312 U.S. 275 (1941) (government's contention
11 that allegations are improbable and unbelievable cannot serve to deny the
12 petitioner an opportunity to support them by evidence). The Nevada
13 Supreme Court has held that the presence of the petitioner for habeas corpus
14 relief is required at any evidentiary hearing conducted on the merits of the
15 claim asserted in the petition. *See Gebers v. Nevada*, 118 Nev. 500 (2002).

16 4. The prohibition against ex parte communication requires that I be present
17 at any hearing at which the state is present and at which issues concerning the claims
18 raised in my petition are addressed. U.S. Const. amends. V, VI.

19 5. If a person incarcerated in a state prison is required or is requested to
20 appear as a witness in any action, the Department of Corrections must be notified in
21 writing not less than 7 business days before the date scheduled for his appearance in
22 Court if the inmate is incarcerated in a prison located not more than 40 miles from
23 Las Vegas. NRS 50.215(4). If a person is incarcerated in a prison located 41 miles or
24 more from Las Vegas, the Department of Corrections must be notified in writing not
25 less than 14 business days before the date scheduled for the person's appearance in
26 Court.

27 6. High Desert State Prison is located approximately
28 60 miles from Las Vegas, Nevada.

1 7. If there is insufficient time to provide the required notice to the Department
2 of Corrections for me to be transported to the hearing, I respectfully request that this
3 Honorable Court order the Warden to make me available on the date of the
4 scheduled appearance, by telephone, or video conference, pursuant to NRS
5 209.274(2)(a), so that I may provide relevant testimony and/or be present for the
6 evidentiary hearing.

7 8. The rules of the institution prohibit me from placing telephone calls from
8 the institution, except for collect calls, unless special arrangements are made with
9 prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my
10 telephone appearance can be made by contacting the following staff member at my
11 institution: RE-ENTRY OFFICER MINDA HDSP
12 whose telephone number is ON COURT FILE

13
14 Dated this 30 day of June, 2015.

15
16 x Burrell Burrell

17
18
19 Defendant/Proper Person
20
21
22
23
24
25
26
27
28
29

Legal Argument

8) the Defendant ask the Judge to please grant his motion to Be transported to Court Because the Defendant is the only one ~~who~~^{who} can argue to what ~~was~~ was said the Day of his sentence. the Defendant can show the court's that the grounds that he ~~argued~~ argued has merit & good cause. the defendant is need as witness & the hearing would Be a Evidentiary hearing to determine facts and substantial Evidences to support the allegation made against the Defendant.

the Defendant can show good cause to ~~the~~ the court to why he need the Judge to grant his motion to transport defendant to court Because the District court would argue that he shouldn't Be present join the ~~the~~ assign hearing 07-15-2015 the Defendant ask the court's to please grant the motion and request.

(see walker vs. sonarson 32 us 215) (1941)

also see Gerber's vs. Nevada 509 sd 1092 (2021).

1 CERTIFICATE OF SERVICE BY MAIL

2
3 I, the undersigned, certify pursuant to NRCP 5(b), that on this _____ day of
4 _____, I served the foregoing Motion and Order for
5 Transportation of Inmate for Court Appearance or, in the Alternative, Motion for
6 Appearance by Telephone or Video Conference, by mailing a true and correct copy
7 thereof in a sealed envelope, upon which first class postage was fully prepaid,
8 addressed to:

9
10 District attorney

11
12 200 Lewis Avenue

13 Btc

14 Las Vegas Nevada, 89155

15
16 and that there is regular communication by mail between the place of mailing and the
17 recipient address.

18
19
20
21 Barton Hamm

22
23 Defendant / Pro SE

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding motion

to vacate sentence
(Title of Document)

filed in District Court Case number C 256-384

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Barron Hamm
Signature

07-01-2015
Date

Barron Hamm
Print Name

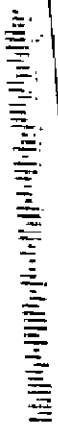
Defendant/Pro SE
Title

STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS NV 89155-1160

RETURN SERVICE REQUESTED

Barron Hamm #1052277
PO Box 650
Indian Springs, NV 89070

Barton Hamm #1082272
PO Box 650 [ADSP]
Indian Springs Nevada 89070



CONFIDENTIAL
LEGAL MAIL

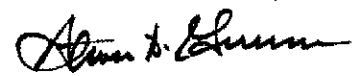
Hasler
07/08/2015
FIRST-CLASS MAIL
\$01.42
ZIP 89101
011012602491

TO THE CLERK OF THE COURTS
200 LEWIS AVENUE 3rd FLOOR
LAS VEGAS NEVADA 89155

HIGH DESERT STATE PRISON

JUL 6 1 2010

UNIT 4 C/D



CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHRISTOPHER J. LAURENT
Chief Deputy District Attorney
Nevada Bar #005043
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: XI

ORDER DENYING DEFENDANT'S PRO PER MOTION
TO VACATE SENTENCE

DATE OF HEARING: JULY 15, 2015
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 15th day of July, 2015, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through CHRISTOPHER J. LAURENT, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

///

///

///

///

///

1 COURT FINDS no new information has been provided, and there is no reason to grant
2 this motion; THEREFORE IT IS HEREBY ORDERED that the Defendant's Pro Per Motion
3 to Vacate Sentence, shall be, and it is DENIED on the same basis the Court denied it
4 previously.

5 DATED this 21st day of July, 2015.

6
7 
DISTRICT JUDGE

8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #001565

10
11 BY  for

12 CHRISTOPHER J. LAURENT
13 Chief Deputy District Attorney
14 Nevada Bar #005043
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 I certify that on the 24th day of July, 2015, I mailed a copy of the foregoing Order

3 to:

4 BARRON HAMM #1052277
5 HIGH DESERT STATE PRISON
6 P.O. BOX 650
7 INDIAN SPRINGS, NV 89018

8 BY


R. JOHNSON

Secretary for the District Attorney's Office

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 rj/M-1

1 Barron Hamm 1052277

2 In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89018

Alvin L. Johnson

CLERK OF THE COURT

5 Eighth DISTRICT COURT

6 Clark COUNTY NEVADA

7
8 STATE OF Nevada,

9 Plaintiff,

10 -v-

Case No. 256384

Dept. No. XI

Docket _____

11 Barron Hamm 1052277,

12 Defendant.

13
14 NOTICE OF APPEAL

15 Notice is hereby given that the DEFENDANT Barron
16 HAMM, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court denying his motion to vacate sentencing

19
20
21 Dated this date, August 8, 2015.

22
23 Respectfully Submitted,

24
25 Barron Hamm II
26 1052277

27 In Proper Person
28

RECEIVED

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, BARRON HAMM, hereby certify, pursuant to NRCP 5(b), that on this 08
day of August, 20 15 I mailed a true and correct copy of the foregoing, "Notice
of appeal motion to vacate sentencing
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

clerk's of the courts
250 Lewis Avenue
Las Vegas Nevada 89155

District attorney
200 Lewis ave / 3rd floor
Las Vegas Nevada 89155

DATED: this 08 day of August, 20 15.

Barron Hamm 2707761
Barron Hamm # 1052277
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs Nevada 89018

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of appeal Denied motion to vacate sentencing
(Title of Document)

filed in District Court Case number C-256-384

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

Barron Hamm
Signature

08-08-2015
Date

Barron HAMM
Print Name

Prose
Title

IT
Barton Hamm 1652277
P.O. Box 250 H.D.S.P.
Indian Springs Nevada 891070

Hasler
08/14/2015
PSN
2nd CLASS MAIL
PSRT
\$10.47
ZIP 89101
011D12602360

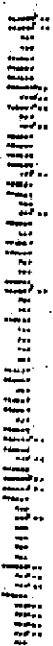


clerk of the courts

200 Lewis Avenue
3rd Floor

Las Vegas Nevada 89155

8910136300



**PLEADING
CONTINUES
IN NEXT
VOLUME**