

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

FILED

MICHAEL TODD BOTELHO
PETITIONER

OCT 19 2015

CASE NO: CRO3-2156
DEPT. NO: 3

VS

JACQUELINE BRYANT, CLERK

By: DEPUTY CLERK

Electronically Filed
Oct 23 2015 09:15 am
Trade K. Lindeman
Clerk of Supreme Court

JAMES BENEDETTI, WARDEN
STATE OF NEVADA, ET-AL
RESPONDENTS

NOTICE OF APPEAL AND
DESIGNATION OF RECORD ON APPEAL

NOTICE IS HEREBY GIVEN THAT MICHAEL TODD BOTELHO, IN PROPER PERSON,
HEREBY APPEALS THE ORDER DENYING HABEAS CORPUS PETITION ENTERED IN
THIS ONCE HONORABLE COURT ON THE 15TH DAY OF SEPTEMBER, 2015.

PETITIONER, FURTHER, HEREIN DESIGNATES THE ENTIRE RECORD ON APPEAL TO
THE CLERK OF THE NEVADA SUPREME COURT. [ALL] MOTIONS, PLEADINGS AND
TRANSCRIPTS, AND EXHIBITS.

DATED THIS 14TH DAY OF OCTOBER, 2015.

MICHAEL T. BOTELHO # 80837
NNCC, P.O. BOX 7000
CARSON CITY, NEV. 89702

AFFIRMATION AND CERTIFICATE OF SERVICE

I SWEAR UNDER THE PENALTY OF PERJURY, UNDER THE LAWS OF THE
U.S., PURSUANT TO 18 USC 1621 AND 28 USC 1746, THAT THE FOREGOING IS TRUE
AND CORRECT, AND THAT THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL-
SECURITY-NUMBER OF ANY PERSON

I FURTHER CERTIFY THAT I MAILED A TRUE AND COMPLETE COPY OF NOTICE
OF APPEAL & DESIGNATION OF RECORD ON APPEAL TO THIS COURT AND ADDRESSED
BELOW, BY PLACING SAID NOTICE IN U.S. MAIL VIA PRISON LAW LIBRARY STAFF,
PURSUANT TO FRCP 5(b), MAILBOX RULE - HOUSTON V. JACKS, 487 U.S. 266 (1988),
AND SIGNED APPEAL LOG BOOK, BRASS SLIP NO. 2169635

DATED THIS 14TH DAY OF OCTOBER, 2015

Michael T. Botelho
MICHAEL T. BOTELHO # 80837
NNCC, P.O. BOX 7000
CARSON CITY, NV. 89702

TO:
WASHOE CO. DIST. ATTY'S OFFICE
ATTN: CHRIS HICKS - INVALID D.A.
P.O. BOX 11130
RENO, NEVADA 89520-0027

AFFIDAVIT

STATE OF NEVADA

COUNTY OF CARSON CITY)

} SS. AFFIDAVIT OF: MICHAEL TODD BOTE LHO

IN SUPPORT OF ISSUES PRESENTED ON APPEAL OF CRO3-2156

TO WHOM IT MAY CONCERN:

I, MICHAEL TODD BOTE LHO, THE UNDER SIGNED, DO HEREBY SWEAR UNDER THE PENALTY OF PERJURY, THAT THE ASSERTIONS OF THIS AFFIDAVIT ARE TRUE AND CORRECT. THE AFFIANT, BOTE LHO, RESPECTFULLY REQUESTS THIS AFFIDAVIT IS TO REMAIN ATTACHED TO THIS NOTICE OF APPEAL AND SHALL BE TRANSMITTED TO WHICHEVER COURT IS TO ADJUDICATE THIS APPEAL.

AFFIANT, FIRST AND FORMOST, SHALL SWEAR AND ATTEST TO THE FACT THAT THE SHAMEFUL, REPUGNANT, ERRONEOUS, ARBITRARY, CAPRICIOUS, UNLAWFUL ACTS, AND BEYOND THE COURTS JURISDICTION, HAVE BEEN PERPETRATED UPON BOTE LHO, BY THE ALLEGED PROFESSIONAL & ALLEGEDLY EDUCATED, DISTRICT COURT JUDGE, JEROME POLAHA, DEPT. 3, SECOND JUDICIAL DISTRICT COURT, AND THE FURTHER PREJUDICAL FAILURE OF CHIEF DISTRICT COURT JUDGE HARDY TO GRANT BOTE LHOS WRIT OF MANDAMUS, HE DID NOT EVEN BOTHER TO RULE, LEAVING BOTE LHO FURTHER PREJUDICED BY THE CRIMINAL AND BIASED DECISION OF POLAHA DENYING BOTE LHOS WRIT OF HABEAS CORPUS, EXCEEDING THE JURISDICTION OF THIS COURT AND ABUSING HIS DISCRETION, HIS AUTHORITY, VIOLATING JUDICIAL CANNONS, NV. LAW, THE NV. AND U.S. CONSTITUTIONS, AND VIOLATING BOTE LHOS PROCEDURAL DUE PROCESS EVEN FURTHER. FURTHERMORE COMMITTING PERJURY, FRAUD UPON THE RECORD AND COVERING UP OBSTRUCTION OF JUSTICE AND WITNESS TAMPERING AND FRAUD BY THE STATE. (EMPHASIS STRONGLY ADDED)

IT IS CLEAR AND OBVIOUS, BY THE COURT RECORD, THAT POLAHA HAS NOW CONSPIRED WITH THE STATE TO FORM AN ACT OF COLLUSION WITH MEMBERS OF THE ALREADY PROVEN NOT TO BE VALIDLY HOLDING THE OFFICE OF WASHOE COUNTY DISTRICT ATTORNEY, AND HIS DEPUTIES, IN AN EFFORT TO SHIELD THESE INDIVIDUALS, AS UNQUALIFIED STATE ACTORS IN BOTE LHOS CASE.

FOR FAILURE TO POST VALID, LAWFUL BOND, THESE ARE NOT LAWS THAT THE STATE AND NEVADA COURTS CAN [CHOOSE] TO FOLLOW IF IT FITS THEIR AGENDA. THEY ARE [NOT] ABOVE THE LAW.

THE FACTS ARE PRESENTED UPON THE RECORD AS CLEARLY DESCRIBED, BUT NOT LIMITED TO BOTE LHO'S MOTION TO SHOW-CAUSE, REGARDING THE LACK OF PROPERLY REQUIRED BOND TO PERFECT OFFICE OF WASHOE COUNTY DISTRICT ATTORNEY

BOTE LHO HAS PRESENTED IRREFUTABLE EVIDENCE, STATUTORY LAW, AND PUBLIC RECORD, THAT UNQUESTIONABLY PROVE HIS FACTUAL CLAIMS, WITHOUT DISPUTE BY THE STATE AND THE COURT. AS SUCH, BOTE LHO HAS CHALLENGED BOTH THIS "ALLEGEDLY" EDUCATED AND IMPARTIAL JUDGE POLAHA AND THE UNLAWFULLY HELD OFFICE OF WASHOE COUNTY DISTRICT ATTORNEY AND HIS DEPUTIES, TO OPPOSE, ARGUE AGAINST OR CONTRADICT BOTE LHO'S ALREADY PROVEN CLAIMS REGARDING HIS PETITION, MOTIONS AND STATUS CHECK, THE BOND ISSUE, THE CHALLENGE TO S-M-J, THE NOW (5) VALID ATTEMPTS TO PROPERLY RECUSE POLAHA, IGNORING THE COURT RULES, STATE RULES, JUDICIAL CANNONS, THE NV. AND U.S. CONSTITUTION(S) AND THE EGREGIOUS, BAD FAITH VIOLATIONS OF BOTE LHO'S CONSTITUTIONAL RIGHT TO REDRESS HIS GRIEVANCES BEFORE THE COURT UNDER THE 1ST AMENDMENT, THE ON-GOING VIOLATIONS OF BOTE LHO'S PROCEDURAL DUE-PROCESS AND EQUAL PROTECTIONS GUARANTEED BY THE 14TH AMENDMENT(S) OF THE U.S. CONSTITUTION. THIS HAS CAUSED EXTREME PREJUDICE AND IRREPARABLE HARM TO BOTE LHO, AND THE FACT THAT THE COURT ACTED BEYOND ITS JURISDICTION, REPEATEDLY!

THIS ORDER IS A NULLITY, WITHOUT FORCE AND EFFECT. BOTE LHO'S CASE IS NOT VOIDABLE, BUT, SIMPLY VOID, AND THIS EVEN BEFORE ITS LEGALLY REQUIRED REVERSAL. BOTE LHO, WHETHER THE COURT LIKES IT OR NOT, IS CLEARLY ENTITLED TO A VOID JUDGMENT WITH PREJUDICE, AND HIS REQUIRED RELIEF REQUESTED THEREIN.

BOTELHO HAS FACTUALLY ESTABLISHED, AND THE STATE DOES NOT DISPUTE, THAT THE STATE, THIS COURT, AND SPECIFICALLY, JUDGE POLAHA, HAS KNOWINGLY, WITH PURPOSE AND SPECIFIC INTENT, COVERED-UP, CONCEALED, MISREPRESENTED THE FACTS, THE LAW, OBSTRUCTED JUSTICE, TAMPERED WITH A WITNESS, SUBORNED PERJURY, FRAUD, FAILED TO DETERMINE JURISDICTION, THEN EXCESSED JURISDICTION ANY WAY! VIOLATED 18 USC 241, 242 (VIOLATING BOTELHO'S CIVIL RIGHTS, VIOLATING 28 USC 1985, 1986, AS WELL)

BOTELHO RESPECTFULLY SUBMITS THIS COMPLETELY FACTUAL AND TRUTHFUL AFFIDAVIT, SO THAT THE IRREPARABLE HARM BE PROPERLY ADDRESSED WITHOUT THE NEXT COURT SHIRKING ITS DUTIES AND AGAIN IGNORE THE NV AND U.S. CONSTITUTIONS, TO FURTHER PROTECT THE STATE, POLAHA, THE CHIEF JUDGE, THIS COURT, THE POLICE, AND ALL THOSE INVOLVED IN THIS SICKENING, GROSS AND CRIMINAL, MISCARRIAGE OF JUSTICE AS PERPETRATED AT ALL COSTS AGAINST BOTELHO.

BOTELHO FURTHER STATES WITH COMPLETE CONFIDENCE THAT THIS CASE WILL BE INVESTIGATED BY THE REAL POLICE AND PROPER LEGAL AND INVESTIGATIVE AGENCIES. ALSO THE STATE DOES NOT HAVE IMMUNITY BECAUSE OF INVALIDLY HELD POSITIONS, AND THIS COURT, JUDGE POLAHA AND NOW CHIEF JUDGE ARE CRIMINAL ACTORS AGAINST BOTELHO'S DENIED JUSTICE IN THIS CASE. THEREFORE ALL IMMUNITY IS LOST, BETVA! (STRONGLY EMPHASIZED)

DATED 10-14-2015

Michael Todd Botelho
MICHAEL TODD BOTELHO
NNCC
P.O. BOX 7000
CARSON CITY, NV, 89702

1 **Code 1310**

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

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

8 **MICHAEL TODD BOTELHO,**

9 **Petitioner,**

Case No. CR03-2156

10 **vs.**

Dept. No. 3

11 **JAMES BENEDETTI, WARDEN,**
12 **STATE OF NEVADA, et al,**

13 **Respondents.**

14
15 **CASE APPEAL STATEMENT**

16 This case appeal statement is filed pursuant to NRAP 3(f).

- 17 1. Appellant is Michael T. Botelho.
- 18 2. This appeal is from an order entered by the Honorable Judge Jerome Polaha.
- 19 3. Appellant is representing himself in Proper Person on appeal. The Appellant's
- 20 address is:
- 21 Michael T. Botelho #80837
- 22 N.N.C.C.
- 23 P.O. Box 7000
- 24 Carson City, Nevada 89702
- 25 4. Respondent is the State of Nevada. Respondent is represented by the Washoe
- 26 County District Attorney's Office:
- 27 Terrance McCarthy, Esq., SBN: 2745
- 28 P.O. Box 11130
- Reno, Nevada 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a

6. Appellant was not represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed on February 17, 2010 in the District Court.
9. Proceeding commenced by the filing of an Indictment filed on October 8, 2003.
10. This is a criminal proceeding and the Appellant is appealing the Order Granting Motion to Dismiss Petition and Denying Motion to Strike filed on September 16, 2015.
11. The case has been been the subject of a previous appeal to the Supreme Court: Supreme Court No: 43247 and 49586
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 22nd day of October, 2015.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

3035

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

MICHAEL T. BOTELHO,

Petitioner,

Case No. CR03P2156

vs.

Department No.: 3

THE STATE OF NEVADA,

Respondent.

ORDER GRANTING IN FORMA PAUPERIS

Having read Petitioner's Request and Affidavit in Support of Request to Proceed in *Forma Pauperis*, the Court finds that Petitioner is currently serving a sentence in a correctional institution.

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

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

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

1 IT IS HEREBY FURTHER ORDERED that the Court allow said MICHAEL T.
2 BOTELHO to bring such action without costs and file or issue any necessary writ,
3 process, pleading or paper without charge, with the exception of jury fees.

4 IT IS HEREBY FURTHER ORDERED that the Sheriff or any other appropriate
5 officer within the state make personal service of any necessary writ, process, pleading
6 or paper without charge for MICHAEL T. BOTELHO.

7 IT IS HEREBY FURTHER ORDERED that the above entitled matter is referred to
8 the Honorable Jerome Polaha, the assigned Judge presiding over the underlying
9 matter, for the Court's determination as to whether or not the Petitioner should be
10 appointed counsel to represent him in this matter.

11 DATED this 16th day of February, 2010.

12
13 Connie J. Steinheimer
14 CHIEF DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the
18th day of February, 2010, I deposited in the county mailing system, a
true copy of the attached document, addressed to:

Michael T. Botelho
Inmate no. 80837
P.O. Box 7000
Carson City, Nevad 89702
Via U.S. Postal Service

I hereby certify that on the 17th day of February, 2010, I
electronically filed the foregoing with the Clerk of the Court by using the ECF system which
will send a notice of electronic filing to the following:

Gary Hatlestad, Esq.
Chief Deputy District Attorney


Marci L. Stone

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE**

Case History - CR03-2156

DEPT. D3

HON. JEROME M. POLAHA

Report Date & Time

10/22/2015

9:20:37AM

Case Description: STATE VS. MICHAEL TODD BOTELHO (D3)

Case ID: CR03-2156

Case Type: CRIMINAL

Initial Filing Date: 10/8/2003

Parties

| | |
|------|------------------------------------|
| APPE | MICHAEL TODD BOTELHO - @154004 |
| PNP | Div. of Parole & Probation - DPNP |
| RESP | STATE OF NEVADA - STATE |
| PATY | John Reese Petty, Esq. - 10 |
| PLTF | STATE OF NEVADA - STATE |
| DA | Terrence P. McCarthy, Esq. - 2745 |
| DEFT | MICHAEL TODD BOTELHO - @154004 |
| PD | Sean B. Sullivan, Esq. - 7534 |
| DATY | Gary Howard Hatlestad, Esq. - 1525 |

Charges

| <i>Charge No.</i> | <i>Charge Code</i> | <i>Charge Date</i> | | <i>Charge Description</i> |
|-------------------|--------------------|--------------------|-----|---|
| 1 | F610 | 10/8/2003 | IND | KIDNAPPING IN THE FIRST DEGREE |
| 2 | F110 | 10/8/2003 | IND | BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT ON A CHILD |
| 3 | F1000 | 10/8/2003 | IND | SEXUAL ASSAULT ON A CHILD |
| 4 | F1000 | 10/8/2003 | IND | SEXUAL ASSAULT ON A CHILD |
| 5 | F1000 | 10/8/2003 | IND | SEXUAL ASSAULT ON A CHILD |

Plea Information

| <i>Charge No.</i> | <i>Plea Code</i> | <i>Plea Date</i> | <i>Plea Description</i> |
|-------------------|------------------|------------------|-------------------------|
| 1 | F610 | 12/11/2003 | PLED GUILTY |
| 2 | F110 | 11/6/2003 | PLED NOT GUILTY |
| 3 | F1000 | 12/11/2003 | PLED GUILTY |
| 4 | F1000 | 12/11/2003 | PLED GUILTY |
| 5 | F1000 | 12/11/2003 | PLED GUILTY |

Sentences

| <i>Date</i> | <i>Charge No.</i> | <i>Charge Desc</i> | <i>Time Served</i> | <i>Sentence Text</i> |
|-------------|-------------------|--------------------------|--------------------|---|
| 4/7/2004 | 1 | Life With Poss of Parole | | NDOC LIFE WITH POSSIBILITY OF PAROLE AFTER A MINIMUM OF 5 YEARS HAS BEEN SERVED WITH A SPECIAL SENTENCE OF LIFETIME SUPERVISION TO COMMENCE ANY TERM OF PROBATION, OR ANY TERM OF IMPRISONMENT OR AFTER ANY PERIOD OF RELEASE ON PAROLE + \$632.00 RESTITUTION + FEES |
| 4/7/2004 | 3 | Life With Poss of Parole | | NDOC LIFE WITH POSSIBILITY OF PAROLE AFTER A MINIMUM OF 20 YEARS HAS BEEN SERVED TO BE SERVED CONSECUTIVELY TO THE SENTENCE IMPOSED IN COUNT I. |
| 4/7/2004 | 4 | Life With Poss of Parole | | NDOC LIFE WITH POSSIBILITY OF PAROLE AFTER A MINIMUM OF 20 YEARS HAS BEEN SERVED TO BE SERVED CONCURRENTLY WITH THE SENTENCES IMPOSED IN COUNTS 1 AND 3. |
| 4/7/2004 | 5 | Life With Poss of Parole | | NDOC LIFE WITH POSSIBILITY OF PAROLE AFTER A MINIMUM OF 20 YEARS HAS BEEN SERVED TO BE SERVED CONSECUTIVELY TO THE SENTENCES IMPOSED IN COUNTS 1, 3 AND 4. |

Report Does Not Contain Sealed Cases or Confidential Information

Case Description: STATE VS. MICHAEL TODD BOTELHO (D3)

Case ID: CR03-2156

Case Type: CRIMINAL

Initial Filing Date: 10/8/2003

Release Information

Custody Status

Hearings

| | Department | Event Description | Sched. Date & Time | | Disposed Date |
|--|------------|-------------------|---|----------|---------------|
| 1 | D3 | ARRAIGNMENT | 10/23/2003 | 08:30:00 | 10/23/2003 |
| Event Extra Text: | | | Disposition: D455 10/23/2003 | | |
| | Department | Event Description | Sched. Date & Time | | Disposed Date |
| 2 | D3 | ENTRY OF PLEA | 11/6/2003 | 08:30:00 | 11/6/2003 |
| Event Extra Text: | | | Disposition: D725 11/6/2003 COUNTS I, II, III, IV, AND V OF THE INDICTMENT | | |
| | Department | Event Description | Sched. Date & Time | | Disposed Date |
| 3 | D3 | CHANGE OF PLEA | 12/11/2003 | 08:30:00 | 12/11/2003 |
| Event Extra Text: | | | Disposition: D655 12/11/2003 COUNTS 1, 3, 4 AND 5 OF THE INFORMATION | | |
| | Department | Event Description | Sched. Date & Time | | Disposed Date |
| 4 | D3 | SENTENCING | 2/11/2004 | 09:30:00 | 1/28/2004 |
| Event Extra Text: SET FOR 2 HOURS - CLOSED HEARING | | | Disposition: D870 1/28/2004 Reset for February 18, 2004 | | |
| | Department | Event Description | Sched. Date & Time | | Disposed Date |
| 5 | D3 | SENTENCING | 2/18/2004 | 10:00:00 | 2/17/2004 |
| Event Extra Text: | | | Disposition: D870 2/17/2004 Reset for Motions Hearing on March 11, 2004, at 10:00 and Sentencing on April 7, 2004. | | |
| | Department | Event Description | Sched. Date & Time | | Disposed Date |
| 6 | D3 | HEARING... | 3/11/2004 | 10:00:00 | 3/11/2004 |
| Event Extra Text: ON MOTION | | | Disposition: D430 3/11/2004 | | |
| | Department | Event Description | Sched. Date & Time | | Disposed Date |
| 7 | D3 | SENTENCING | 4/7/2004 | 08:30:00 | 4/7/2004 |
| Event Extra Text: | | | Disposition: D765 4/7/2004 | | |

Case Description: STATE VS. MICHAEL TODD BOTELHO (D3)

Case ID: CR03-2156 Case Type: CRIMINAL Initial Filing Date: 10/8/2003

| <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|-------------------|--------------------------|--|----------|----------------------|
| 8 D3 | MOTION TO CONFIRM TRIAL | 7/15/2004 | 08:30:00 | 12/11/2003 |
| Event Extra Text: | | <i>Disposition:</i> D845 12/11/2003 | | |

| <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|--------------------------|--------------------------|--|----------|----------------------|
| 9 D3 | TRIAL - JURY | 7/26/2004 | 08:30:00 | 12/11/2003 |
| Event Extra Text: 4 DAYS | | <i>Disposition:</i> D845 12/11/2003 | | |

| <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|--|--------------------------|---------------------------------------|----------|----------------------|
| 10 D3 | Request for Submission | 8/13/2015 | 12:26:00 | 9/16/2015 |
| Event Extra Text: MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS | | <i>Disposition:</i> S200 9/16/2015 | | |

| <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|--|--------------------------|---------------------------------------|----------|----------------------|
| 11 D3 | Request for Submission | 9/23/2015 | 11:02:00 | 9/28/2015 |
| Event Extra Text: REPLY AND OBJECTION TO OPPOSITION TO MOTION (PAPER ORDER NOT PROVIDED) | | <i>Disposition:</i> S200 9/28/2015 | | |

Agency Cross Reference

| <i>Code</i> | <i>Agency Description</i> | <i>Case Reference I.D.</i> |
|-------------|--------------------------------|----------------------------|
| DA | District Attorney's Office | DA318167 |
| RJ | Reno Justice's Court | RCR2003011479 |
| SC | Supreme Court | SCN 43247 |
| WC | Washoe County Sheriff's Office | WCSOWC03008924 |

| <i>Actions</i> | | | |
|--------------------------|-------------|-------------------------------|---|
| <i>Action Entry Date</i> | <i>Code</i> | <i>Code Description</i> | <i>Text</i> |
| 10/8/2003 | 3370 | Order ... | ORDER STAYING JUSTICE COURT PROCEEDINGS (RJC) |
| 10/8/2003 | 1300 | Bench Warrant Filed-Case Clsd | BAIL SET AT \$250,000.00 CASH ONLY |
| 10/8/2003 | 1795 | Indictment | |
| 10/14/2003 | 3892 | Return of Service B/W | SERVED 10-10-03 |
| 10/15/2003 | 1325 | ** Case Reopened | |
| 10/15/2003 | 1250 | Application for Setting | 10-23-03 @08:30 |
| 10/20/2003 | 1775 | General Receipt | GRAND JURY (DA) |
| 10/20/2003 | 4185 | Transcript | GRAND JURY TRANSCRIPT 10-8-03 |
| 10/30/2003 | 1810 | Inmate Request Form Filed | REQUEST RE: MISSED COURT DATE, REFERRED TO COUNSEL PER JUDGE POLAHA |
| 11/6/2003 | 1280 | ** 60 Day Rule - Waived | |
| 11/20/2003 | 4185 | Transcript | 10/23/03 ARRAIGNMENT/ CONTINUED |
| 12/8/2003 | 1250 | Application for Setting | 12-11-03 @08:30 |
| 12/11/2003 | 1785 | Guilty Plea Memo/Agreement | |
| 12/22/2003 | 4185 | Transcript | 12/11/03 CHANGE OF PLEA |

| Case Description: STATE VS. MICHAEL TODD BOTELHO (D3) | | | | |
|---|-----------|--------------------------------|---|--------------------------------|
| Case ID: | CR03-2156 | Case Type: | CRIMINAL | Initial Filing Date: 10/8/2003 |
| 1/12/2004 | 4185 | Transcript | 11/6/03 ENTRY OF PLEA | |
| 1/26/2004 | 3839 | Request Agree Ord Recp Discv | | |
| 1/26/2004 | 2528 | Not/Doc/Rc'd/Not/Cons/by Crt | CONFIDENTIAL PSYCHOLOGICAL / SUBSTANCE ABUSE EVALUATION TO BE FILED UNDER SEAL ***SE/ | |
| 1/30/2004 | 4025 | Stip & Ord to Continue | SENTENCING TO 2-18-04 | |
| 2/3/2004 | 2610 | Notice ... | NOTICE OF INTENT TO INTRODUCE PRIOR OR OTHER BAD ACT EVIDENCE AT SENTENCING HEARING | |
| 2/11/2004 | 4500 | PSI - Confidential | | |
| 2/13/2004 | 2645 | Opposition to Mtn ... | OPPOSITION TO STATE'S INTRODUCTION OF PRIOR OR OTHER BAD ACT EVIDENCE AT SENTENCING | |
| 2/17/2004 | 1250 | Application for Setting | 3-11-04 @10:00 | |
| 2/17/2004 | 2528 | Not/Doc/Rc'd/Not/Cons/by Crt | CONFIDENTIAL LETTERS FROM FAMILY TO BE FILED UNDER SEAL ***SEALED*** | |
| 2/20/2004 | 3795 | Reply... | IN OPPOSITION TO DEFENDANT'S OPPOSITION TO STATE'S INTRODUCTION OF OTHER BAD ACT EVID | |
| 2/24/2004 | 4025 | Stip & Ord to Continue | Sentencing reset for April 7, 2004. Motion Hearing set for March 11, 2004. | |
| 3/31/2004 | 4185 | Transcript | 3/11/04 HEARING ON MOTIONS | |
| 4/6/2004 | 1775 | General Receipt | GRAND JURY TRANSCRIPT - SEAN SULLIVAN, ESQ. | |
| 4/7/2004 | 1850 | Judgment of Conviction | | |
| 4/19/2004 | 4185 | Transcript | 4/7/04 SENTENCING | |
| 4/22/2004 | 2295 | Mtn to Dismiss Counts ... | COUNT II | |
| 4/28/2004 | 2905 | Ord for Dismissal of Counts | COUNT II | |
| 4/30/2004 | 1310 | Case Appeal Statement | | |
| 4/30/2004 | 2515 | Notice of Appeal Supreme Court | | |
| 5/3/2004 | 1350 | Certificate of Clerk | | |
| 5/3/2004 | 1365 | Certificate of Transmittal | | |
| 5/6/2004 | 1188 | Supreme Court Receipt for Doc | SUPREME COURT CASE NO. 43247 | |
| 5/6/2004 | 1187 | **Supreme Court Case No. ... | SUPREME COURT CASE NO. 43247 | |
| 5/17/2004 | 2230 | Mtn Trial Trans. Public Exp | | |
| 6/1/2004 | 3000 | Ord Trial Transcript/Public\$ | | |
| 4/6/2005 | 4134 | Supreme Court Order Affirming | SUPREME COURT CASE NO. 43247 | |
| 5/3/2005 | 4145 | Supreme Court Remittitur | SUPREME COURT CASE NO. 43247 | |
| 5/3/2005 | 4111 | Supreme Ct Clk's Cert & Judg | SUPREME COURT CASE NO. 43247 | |
| 5/3/2005 | 4134 | Supreme Court Order Affirming | SUPREME COURT CASE NO. 43247 | |
| 7/13/2005 | 1030 | Affidavit in Support... | MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS | |
| 7/13/2005 | 1075 | Affidavit ... | OF DEFENDANT | |
| 7/13/2005 | 2260 | Mtn to Relieve Counsel | NOTICE OF MOTION AND MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF | |
| 8/18/2005 | 3860 | Request for Submission | DOCUMENT TITLE: MOTION FOR WITHDRAWAL OF ATTORNEY | |
| 9/13/2005 | 3060 | Ord Granting Mtn ... | ORDER GRANTING MOTION TO WITHDRAW COUNSEL | |
| 9/13/2005 | 1315 | ** Case Closed | | |
| 6/12/2007 | 4185 | Transcript | 05/11/07 - WRIT OF HABEAS CORPUS (POST CONVICTION) | |
| 6/4/2012 | NEF | Proof of Electronic Service | Transaction 2995817 - Approved By: NOREVIEW : 06-04-2012:16:43:46 | |
| 6/4/2012 | 4128 | Supreme Court Order Denying | SUPREME COURT CASE NO. 60556/ORDER DENYING PETITION - Transaction 2995756 - Approved By: NO | |
| 7/31/2012 | 4128 | Supreme Court Order Denying | SUPREME COURT ORDER DENYING REHEARING - Transaction 3118134 - Approved By: NOREVIEW : 07-3 | |

Case Description: STATE VS. MICHAEL TODD BOTELHO (D3)

| Case ID: | CR03-2156 | Case Type: | CRIMINAL | Initial Filing Date: | 10/8/2003 |
|-----------------|------------------|--------------------------------|---|-----------------------------|------------------|
| 7/31/2012 | NEF | Proof of Electronic Service | Transaction 3118173 - Approved By: NOREVIEW : 07-31-2012:11:04:10 | | |
| 8/22/2012 | 4131 | Supreme Ct Not/Lieu/Remittitur | SUPREME COURT CASE NO. 60556/NOTICE IN LIEU OF REMITTITUR - Transaction 3168665 - Approved By | | |
| 8/22/2012 | NEF | Proof of Electronic Service | Transaction 3168719 - Approved By: NOREVIEW : 08-22-2012:14:27:23 | | |
| 7/24/2015 | 2300 | Mtn to Dismiss Pet | MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS - Transaction 5060792 - Approved By: MC | | |
| 7/24/2015 | NEF | Proof of Electronic Service | Transaction 5060978 - Approved By: NOREVIEW : 07-24-2015:09:54:48 | | |
| 8/11/2015 | 1075 | Affidavit ... | | | |
| 8/11/2015 | 2490 | Motion ... | MOTION TO STRIKE AND OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION FOR POST-C | | |
| 8/13/2015 | 3795 | Reply... | REPLY TO OPPOSITION TO MOTION TO DISMISS, AND OPPOSITION TO MOTION TO STRIKE - Transacti | | |
| 8/13/2015 | NEF | Proof of Electronic Service | Transaction 5092514 - Approved By: NOREVIEW : 08-13-2015:12:41:02 | | |
| 8/13/2015 | NEF | Proof of Electronic Service | Transaction 5092489 - Approved By: NOREVIEW : 08-13-2015:12:26:52 | | |
| 8/13/2015 | NEF | Proof of Electronic Service | Transaction 5092474 - Approved By: NOREVIEW : 08-13-2015:12:21:06 | | |
| 8/13/2015 | 2526 | Notice of Change of Attorney | TERRENCE MCCARTHY OBO RESPONDENT IN PLACE OF GARY HATLESTAD - Transaction 5091963 - Ap | | |
| 8/13/2015 | 3860 | Request for Submission | Transaction 5091960 - Approved By: YLLOYD : 08-13-2015:12:26:07 | | |
| 8/19/2015 | 4330 | Writ of Mandamus | EXTRAORDINARY WRIT OF MANDAMUS FOR THE RECUSAL AND THE DISQUALIFICATION OF JUDGE P | | |
| 8/21/2015 | 2490 | Motion ... | MOTION TO SHOW CAUSE | | |
| 8/25/2015 | 3790 | Reply to/in Opposition | REPLY TO OPPOSITION TO MOTION TO STRIKE | | |
| 8/27/2015 | 1020 | Addendum | ADDENDUM TO SHOW CAUSE MOTION | | |
| 9/16/2015 | S200 | Request for Submission Complet | | | |
| 9/16/2015 | 3060 | Ord Granting Mtn ... | ORDER GRANTING MOTION TO DISMISS PETITION AND DENYING MOTION TO STRIKE - Transaction 514 | | |
| 9/16/2015 | NEF | Proof of Electronic Service | Transaction 5143730 - Approved By: NOREVIEW : 09-16-2015:12:03:55 | | |
| 9/22/2015 | 1030 | Affidavit in Support... | | | |
| 9/22/2015 | 3860 | Request for Submission | DOCUMENT TITLE: REPLY AND OBJECTION TO OPPOSITION TO MOTION (PAPER ORDER NOT PROVIE | | |
| 9/22/2015 | 2490 | Motion ... | MOTION TO VACATE JUDGMENT OF CONVICTION AND INR IV.P RULE 9 (6)FRAUD | | |
| 9/25/2015 | 2645 | Opposition to Mtn ... | OPPOSITION TO "MOTION TO VACATE JUDGMENT OF CONVICTION AND NRCIV P. RULE 9 (b) FRAUD - ' | | |
| 9/25/2015 | NEF | Proof of Electronic Service | Transaction 5158987 - Approved By: NOREVIEW : 09-25-2015:10:33:51 | | |
| 9/28/2015 | S200 | Request for Submission Complet | | | |
| 10/1/2015 | 2175 | Mtn for Reconsideration | MOTION FOR RECONSIDERATION | | |
| 10/2/2015 | 2610 | Notice ... | JUDICIAL NOTICE | | |
| 10/6/2015 | 2645 | Opposition to Mtn ... | OPPOSITION TO MOTION FOR RECONSIDERATION - Transaction 5173465 - Approved By: TBRITTON : 10-(| | |
| 10/6/2015 | NEF | Proof of Electronic Service | Transaction 5173760 - Approved By: NOREVIEW : 10-06-2015:09:56:34 | | |
| 10/9/2015 | 3795 | Reply... | REPLY AND OBJECTION TO OPPOSITION TO MOTION TO VACATE JUDGMENT OF CONVICTION FOR NF | | |
| 10/14/2015 | 3860 | Request for Submission | Transaction 5187258 - Approved By: YVILORIA : 10-14-2015:08:59:59 | | |
| 10/14/2015 | NEF | Proof of Electronic Service | Transaction 5187367 - Approved By: NOREVIEW : 10-14-2015:09:00:52 | | |
| 10/15/2015 | 3795 | Reply... | REPLY AND OBJECTION TO OPPOSTION TO MOTION FOR RECONSIDERATION | | |
| 10/19/2015 | 3860 | Request for Submission | Transaction 5193956 - Approved By: YVILORIA : 10-19-2015:09:23:13 | | |
| 10/19/2015 | NEF | Proof of Electronic Service | Transaction 5194069 - Approved By: NOREVIEW : 10-19-2015:09:24:17 | | |
| 10/19/2015 | 2515 | Notice of Appeal Supreme Court | Appellant, MICHAEL TODD BOTELHO, proper | | |
| 10/22/2015 | 1310E | Case Appeal Statement | Transaction 5200845 - Approved By: NOREVIEW : 10-22-2015:09:18:07 | | |
| 10/22/2015 | NEF | Proof of Electronic Service | Transaction 5200851 - Approved By: NOREVIEW : 10-22-2015:09:19:08 | | |

Case Description: STATE VS. MICHAEL TODD BOTELHO (D3)

| | | | | | |
|-------------------|------------------|----------------------|--|-----------------------------|------------------|
| Case ID: | CR03-2156 | Case Type: | CRIMINAL | Initial Filing Date: | 10/8/2003 |
| <u>10/22/2015</u> | 1350 | Certificate of Clerk | CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 5200845 - Approved By: I | | |

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE**

Case History - CR03P2156

DEPT. D3

HON. JEROME M. POLAHA

Report Date & Time

10/22/2015

9:21:01AM

| | | | |
|--|------------------|-----------------------------|------------------------|
| Case Description: POST: MICHAEL TODD BOTELHO (D3) | | | |
| Case ID: | CR03P2156 | Case Type: | POST CONVICTION |
| | | Initial Filing Date: | 3/6/2006 |

Parties

| | |
|------|-----------------------------------|
| RESP | STATE OF NEVADA - STATE |
| PETR | MICHAEL TODD BOTELHO - @154004 |
| DA | Terrence P. McCarthy, Esq. - 2745 |
| CAA | Mary Lou A. Wilson, Esq. - 3329 |

Charges

| | | | |
|-------------------|--------------------|--------------------|---------------------------|
| <i>Charge No.</i> | <i>Charge Code</i> | <i>Charge Date</i> | <i>Charge Description</i> |
|-------------------|--------------------|--------------------|---------------------------|

Plea Information

| | | | |
|-------------------|------------------|------------------|-------------------------|
| <i>Charge No.</i> | <i>Plea Code</i> | <i>Plea Date</i> | <i>Plea Description</i> |
|-------------------|------------------|------------------|-------------------------|

Release Information

Custody Status

Hearings

| <i>Department</i> | | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|-------------------|----|--------------------------|--|----------|----------------------|
| 1 | D3 | EVIDENTIARY HEARING | 5/11/2007 | 13:30:00 | 5/11/2007 |
| Event Extra Text: | | | Disposition: D355 5/11/2007 PETITION DENIED, STATE TO PREPARE THE ORDER | | |

Agency Cross Reference

| | | |
|-------------|---------------------------|----------------------------|
| <i>Code</i> | <i>Agency Description</i> | <i>Case Reference I.D.</i> |
| SC | Supreme Court | SCN 49586 |

Actions

| <i>Action Entry Date</i> | <i>Code</i> | <i>Code Description</i> | <i>Text</i> |
|--------------------------|-------------|-------------------------------|---|
| 3/6/2006 | 1955 | Memorandum Points&Authorities | IN SUPPOR OF PETITION FOR POST CONVICTION |
| 3/6/2006 | 2385 | Mtn Proceed Forma Pauperis | |
| 3/6/2006 | 3565 | Pet Post-Conviction Relief | |
| 3/6/2006 | 1670 | Ex-Parte Mtn... | FOR APPOINTMENT OF COUNSEL |
| 3/6/2006 | 1030 | Affidavit in Support... | OF MOTION TO PROCEED IN FORMA PAUPERIS |
| 3/6/2006 | 2180 | Mtn for Recusal | |
| 4/4/2006 | 3862 | **Criminal Submit | DOCUMENT TITLE: MOTION TO PROCEED IN FORMA PAUPERIS / POST CONVICTION |
| 6/5/2006 | 3370 | Order ... | ORDER TO PROCEED IN FORMA PAUPERIS |

Case Description: POST: MICHAEL TODD BOTELHO (D3)

| Case ID: | CR03P2156 | Case Type: | POST CONVICTION | Initial Filing Date: | 3/6/2006 |
|------------|-----------|--------------------------------|---|----------------------|----------|
| 6/5/2006 | 2715 | Ord Appointing Counsel | AND ORDER FOR RESPONSE | | |
| 6/27/2006 | 2610 | Notice ... | NOTICE OF APPEARANCE AND REQUEST FOR 45 DAYS TO FILE SUPPLEMENTAL PETITIOIN TO RUN FI | | |
| 6/30/2006 | 2715 | Ord Appointing Counsel | AMENDED ORDER FOR RESPONSE AND APPOINTMENT OF COUNSEL | | |
| 7/17/2006 | 2610 | Notice ... | NOTICE OF DICIPLINARY HEARING AND POSSIBLE MOTION TO CONTINUE SUBMISSION OF SUPPLEME | | |
| 7/25/2006 | 3862 | **Criminal Submit | DOCUMENT TITLE: EXPARTE REQUEST FOR DOCUMENTS TO BE COPIED BY THE WASHOE COUNTY (| | |
| 7/26/2006 | 1670 | Ex-Parte Mtn... | EXPARTE REQUEST FOR DOCUMENTS TO BE COPIED BY THE WASHOE COUNTY CLERK'S OFFICE IN : | | |
| 7/26/2006 | 2610 | Notice ... | OF FILE REVIEWED AND POTENTIAL EXHIBITS USED FOR SUPPLEMENTAL PETITION FOR WRIT OF HA | | |
| 7/28/2006 | 1675 | Ex-Parte Ord... | EXPARTE ORDER FOR DOCUMENTS TO BE COPIED BY THE WASHOE COUNTY CLERK'S OFFICE IN SU | | |
| 8/8/2006 | 4100 | Supplemental Petition | FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) | | |
| 8/8/2006 | 1670 | Ex-Parte Mtn... | FOR APPROVAL OF FES IN THE SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-COI | | |
| 8/9/2006 | 3862 | **Criminal Submit | DOCUMENT TITLE: EX PARTE APPLICATION FOR FEES/ SUPPLEMENTAL PETITION FOR WRIT OF HABI | | |
| 8/14/2006 | 1670 | Ex-Parte Mtn... | REQUESTING APPOINTMENT OF DR. MAHAFFEY FOR PSYCHOSEXUAL EVALUATION IN SUPPORT OF : | | |
| 8/14/2006 | 3862 | **Criminal Submit | DOCUMENT TITLE: EX PARTE MOTION REQUESTING APPOINTMENT OF DR. MAHAFFEY FOR PSYCHO | | |
| 8/23/2006 | 3370 | Order ... | EXPARTE ORDER FOR APPROVAL OF FEES IN THE SUPPLEMENTAL PETITION FOR WRIT OF HABEAS : | | |
| 9/6/2006 | 3060 | Ord Granting Mtn ... | ORDER GRANTING EX-PATE MOTION REQUESTING APPOINTMENT OF DR. MAHAFFEY FOR PSYCHOSI | | |
| 10/9/2006 | 2155 | Mtn Partial Dismissal ... | | | |
| 10/9/2006 | 1130 | Answer ... | ANSWER TO PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVIC | | |
| 10/9/2006 | 3897 | Return | | | |
| 10/18/2006 | 2645 | Opposition to Mtn ... | OPPOSITION TO MOTION FOR PARTIAL DISMISSAL OF THE SUPPLEMENTAL PETITION FOR WRIT OF H | | |
| 10/26/2006 | 3795 | Reply... | REPLY TO OPPSOTION TO MOTION FOR PARTIAL DISMISSAL OF PETITION AND SUPPLEMENTAL PETI' | | |
| 10/26/2006 | 3860 | Request for Submission | DOCUMENT TITLE: MOTION FOR PARTIAL DISMISSAL OF PETITION AND SUPPLEMENTAL PETITION FC | | |
| 12/14/2006 | 2610 | Notice ... | NOTICE OF INVESTIGATION AND AMENDED SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPU: | | |
| 12/29/2006 | 3370 | Order ... | | | |
| 1/8/2007 | 1670 | Ex-Parte Mtn... | EXPARTE MOTION FOR APPROVAL OF FEES IN THE CONTINUED SUPPORT OF THE SUPPLEMENTAL P | | |
| 1/9/2007 | 1250 | Application for Setting | Evidentiary Hearing: May 11, 2007, at 1:30 pm, 2 hours | | |
| 1/9/2007 | 1675 | Ex-Parte Ord... | EXPARTE ORDER FOR APPROVAL OF FEES IN THE CONTINUED SUPPORT OF THE SUPPLEMENTAL PE | | |
| 4/12/2007 | 3340 | Ord to Produce Prisoner | | | |
| 4/12/2007 | 1260 | Application Produce Prisoner | | | |
| 4/30/2007 | 2610 | Notice ... | OF DR. MARTHA MAHAFFEY'S PSYCHOSEXUAL REPORT IN SUPPORT OF THE SUPPLEMENTAL PETITI | | |
| 5/11/2007 | MIN | ***Minutes | EVIDENTIARY HEARING | | |
| 5/22/2007 | 1670 | Ex-Parte Mtn... | EX PARTE MOTION FOR APPROVAL OF FEES IN THE PREPARATION AND COMPLETION OF THE EVIDEI | | |
| 5/31/2007 | 1675 | Ex-Parte Ord... | FOR APPROVAL OF FEES IN THE PREPARATION AND COMPLETION OF THE EVEDENTIARY HEARING II | | |
| 5/31/2007 | 2515 | Notice of Appeal Supreme Court | | | |
| 5/31/2007 | 2840 | Ord Denying ... | PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) | | |
| 6/1/2007 | 3868 | Req to Crt Rptr - Rough Draft | | | |
| 6/1/2007 | 1310 | Case Appeal Statement | | | |
| 6/5/2007 | 1350 | Certificate of Clerk | | | |
| 6/5/2007 | 1365 | Certificate of Transmittal | | | |
| 6/11/2007 | 1188 | Supreme Court Receipt for Doc | SUPREME COURT CASE NO. 49586 | | |

| Case Description: POST: MICHAEL TODD BOTELHO (D3) | | | | |
|---|-----------|-------------------------------|---|-------------------------------|
| Case ID: | CR03P2156 | Case Type: | POST CONVICTION | Initial Filing Date: 3/6/2006 |
| 6/11/2007 | 4185 | Transcript | WRIT OF HABEAS CORPUS 5/11/07 | |
| 6/11/2007 | 1187 | **Supreme Court Case No. ... | SUPREME COURT CASE NO. 49586 | |
| 6/12/2007 | 2540 | Notice of Entry of Ord | | |
| 6/25/2007 | 3370 | Order ... | PAYMENT OF TRANSCRIPT FEES GRANTED AND THAT THE NEVADA STATE PUBLIC DEFENDER PAY S | |
| 9/17/2007 | 1670 | Ex-Parte Mtn... | FOR APPROVAL OF FEES IN THE APPELLANT'S OPENING BRIEF AND APPELLANT'S APPENDIX IN THE I | |
| 9/20/2007 | 1675 | Ex-Parte Ord... | FOR APPROVAL OF FEES IN THE APPELLANT'S OPENING BRIEF AND APPELANT'S APPENDIX IN THE D | |
| 11/5/2007 | 1325 | ** Case Reopened | | |
| 11/5/2007 | 1670 | Ex-Parte Mtn... | EXPARTE MOTION FOR FEES IN THE PREPARATION AND COMPLETION OF THE REPLY BRIEF IN THE C | |
| 11/5/2007 | 3862 | **Criminal Submit | | |
| 12/17/2007 | 1315 | ** Case Closed | | |
| 12/17/2007 | 1675 | Ex-Parte Ord... | EXPARTE ORDER FOR FEES IN THE PREPARATION AND COMPLETION OF THE REPLY BRIEF IN THE DI | |
| 5/19/2008 | 4134 | Supreme Court Order Affirming | SUPREME COURT CASE NO. 49586 | |
| 6/11/2008 | 4134 | Supreme Court Order Affirming | SUPREME COURT CASE NO. 49586 | |
| 6/11/2008 | 4145 | Supreme Court Remittitur | SUPREME COURT CASE NO. 49586 | |
| 6/11/2008 | 4111 | Supreme Ct Clk's Cert & Judg | SUPREME COURT CASE NO. 49586 | |
| 1/27/2010 | 2385 | Mtn Proceed Forma Pauperis | MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS | |
| 1/27/2010 | 3860 | Request for Submission | DOCUMENT TITLE: IFP/MOTION FOR APPOINTMENT OF COUNSEL/PETITION FOR WRIT OF HABEAS CC | |
| 1/27/2010 | 3585 | Pet Writ Habeas Corpus | PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) | |
| 1/27/2010 | 1030 | Affidavit in Support... | AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS | |
| 1/27/2010 | 2490 | Motion ... | MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO NRS 34.750 | |
| 2/17/2010 | 3335 | Ord Proceed Forma Pauperis | AND REFERRING MATTER TO D3 FOR DETERMINATIONAS TO WHETHER COUNSEL SHOULD BE APPOI | |
| 2/17/2010 | NEF | Proof of Electronic Service | Transaction 1326388 - Approved By: NOREVIEW : 02-17-2010:12:06:13 | |
| 2/18/2010 | 2180 | Mtn for Recusal | | |
| 2/18/2010 | 1030 | Affidavit in Support... | AFFIDAVIT OF PETITIONER IN SUPPORT OF MOTION FOR RECUSAL | |
| 12/28/2011 | 2490 | Motion ... | PETITIONERS MOTION FOR WRIT OF QUO WARRANTO AND SUPPORTING MEMORANDUM IN SUPPOR | |
| 3/6/2012 | 2490 | Motion ... | PETITIONER'S MOTION TO CORRECT CLERKS ERROR AND AS A MATTER OF LAW, ISSUE A DIRECTED | |

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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **MICHAEL TODD BOTELHO,**

Case No. CR03-2156

10 **Petitioner,**

Dept. No. 3

11 **vs.**

12
13 **JAMES BENEDETTI, STATE OF**
14 **NEVADA, et. al,**

Respondents.

15 _____ /
16 **ORDER GRANTING MOTION TO DISMISS PETITION AND DENYING MOTION TO**
17 **STRIKE**

18 Currently before the Court is the Respondent's Motion to Dismiss Petition for Writ of
19 Habeas Corpus filed July 24, 2015. The Petitioner filed a Motion to Strike the State's motion and an
20 Opposition to it on August 11, 2015, and a Reply was filed August 13, 2015. The matter was
21 submitted for decision the same day. Because of the age of the file with the exception of the very
22 recent filings, and since nothing was done to advance the matter in 5 years, the Court reviewed the
23 entire file in an effort to fairly address the parties' issues especially concerning the reason for the
24 delay.

25 The procedural history of this matter is nothing to downplay. The Petitioner was convicted
26 on April 7, 2004, pursuant to guilty pleas to one count of first-degree kidnapping and three counts
27 of sexual assault on a child. The victim was a 14 year old girl who was enticed by the petitioner to
28 accompany him on a promise of a baby sitting job which resulted in her being driven by him to a
secluded area and sexually assaulted. He admitted in his probation investigation statement that he

1 had acted out a fantasy he had. Petitioner was sentenced to a combined term of 45 years to life for
2 his criminal actions. The Supreme Court of Nevada upheld the sentence and affirmed the
3 Petitioner's judgment of conviction in April of 2005.

4 Thereafter, the Petitioner filed his first Petition for Writ of Habeas Corpus (Post-Conviction)
5 on March 6, 2006. After appointing counsel, allowing a Supplemental Petition to be filed, and
6 conducting an evidentiary hearing, the Court denied the petitions on May 31, 2007. Earlier, on
7 December 29, 2006, this Court denied most of the grounds of the original *pro se* petition. Without a
8 hearing. The Petitioner subsequently appealed those dismissals and the Nevada Supreme Court
9 issued an Order of Affirmance on May 18, 2008, upon a finding that this Court did not err in
10 rejecting the claims presented in the First and Supplemental Petitions.

11 Subsequently, on January 27, 2010 the Petitioner filed his second, albeit untimely, Petition
12 for Writ of Habeas Corpus which is the subject of the instant motion¹. After some five years of
13 inaction, the Respondent filed the instant Motion to Dismiss.

14 In support of its motion, the Respondent argues that dismissal is warranted for want of
15 prosecution under NRCP 41(e) as the Petitioner has failed to bring the action to trial within five
16 years of filing the petition. Alternatively, it is asserted that the petition should be dismissed as it was
17 untimely filed and because it is successive in nature.

18 In opposition, the Petitioner's main contention is that the Court and the Respondent have
19 acted in concert and purposefully ignored his filings for the previous five years. Specifically, the
20 Petitioner claims that the Court has acted in concert with the Respondent in not taking any action on
21 the petition in violation of his constitutional rights. In doing so, the Petitioner asserts that he cannot
22 be found at fault for his failure to prosecute the matter as it was the clerk of this Court who never
23 informed him regarding the status of his case. As such, and based upon the Petitioner's belief that it
24 was the Respondent who has failed to act, it is asserted that dismissal would be inappropriate at this
25 time. The Court agrees with the State as to who has the burden of moving the case forward but also

26
27 ¹ On February 18, 2010, the Petitioner filed a motion for recusal of this Court but he failed to follow the requirements of NRS 1.235
28 in that he never personally served this Court with the motion notwithstanding he was granted the status of *in forma pauperis* and
could have had a sheriff deputy effect such service at no cost to him and he never submitted the matter for decision which would have
at least brought its pendency to the Court's attention. This was after the sentencing hearing when he and his lawyer were told what
statute controls judicial recusal procedure. That motion was procedurally ineffective and the Court was not made aware of it.

1 agrees with the Petitioner that it would be inappropriate and unfair to dismiss the successive petition
2 summarily for the NRC 41(e) reason put forth by the State. In reviewing the entire file it appears
3 that administrative peculiarities occurring over the time frame of this case resulted in this matter
4 languishing as it has. The review of the file and the Second Judicial Court's procedures in
5 processing filings revealed some flaws in the process which certainly are not Petitioner's fault. At
6 the time of the processing of the criminal case all such cases were numbered CR, indicating a
7 Criminal case and included a number indicating the year of its filing and a hyphen followed by a
8 number assigned to the particular case –i.e., CR03-2156. Post-conviction cases at the time were
9 designated with the letter 'P' after the year – CR03P – 2156. During the course of this case's
10 progress there were 3 different Court Administrators and a major change in the manner cases were
11 moved forward and finally the 'P' designation was abandoned and the originally assigned case
12 number remained even if there were post-conviction pleadings. What this meant was there had to
13 be a re-designation of those earlier cases into the original designated case file. While these cases
14 were being changed the Second Judicial District was converting from paper files to digital files.
15 Also involved in the situation was the fact that there were no 'Request for Submissions' filed on any
16 of the Petitioner's motions until the State's Reply to its motion for dismissal on August 13, 2015.²
17 Had there been such a request the matter would have been noted and forwarded to this Court for
18 decision. That is the only way this Court is made aware of a pending matter that must be decided
19 along with the 'open case history' sheet that normally indicates how many days a matter which is
20 awaiting decision have passed. Each judge has a 60 day limit for pending matters of open files.

21 What happened here apparently was that in May 2005 the Supreme Court issued its remitter
22 in Case No. 43247 –the criminal case appeal – CR03-2156 and on September 13, 2005 this Court
23 signed an order granting a motion to relieve counsel from further representation in this case. On
24 that date the criminal file was designated as being closed. That file was never designated 're-
25 opened' notwithstanding numerous subsequent filings and the merging of the post-conviction files
26 into the criminal files.

27
28

² NCR 13 (4); WDCR 12 (4); also LCR 7 (f).

1 As for the 'P' file in this matter, it was opened on March 6, 2006 with the filing of
2 Petitioner's Petition and Points and Authorities. It contains the post-conviction filings up to
3 December 17, 2007 when it too was designated as being 'closed'. Although later Nevada Supreme
4 Court filings were placed into the file subsequently, that file was never re-opened nor was the 2010
5 petition brought to the Court's attention in any manner, notwithstanding NRS 34.740, until the State
6 requested submission on its motion to dismiss this year. Since the file was never re-opened, an
7 'open case' history was never set into motion. Additionally, the order granting petitioner *in forma*
8 *pauperis* status and transferring the case to Department 3, (this Court), was signed by the Chief
9 Judge on February 17, 2010 but there is no record of that order being served on or of this case
10 having been officially assigned to, Department 3 by the court administration.³

11 What all that means is that the Court was not aware of the petition filed in 2010 and hence, it
12 languished. Therefore the Court finds that the petitioner was not at fault for the 5 year period of
13 inaction in this matter and justice requires the Court to consider the petition on its merits. Hence the
14 State's motion to dismiss for undue delay pursuant to NRCP 41(e) is DENIED.

15 The Court turns next to the State's alternate argument for dismissal: the Petition was
16 untimely and is successive in nature. For this analysis the Court will disregard the 5 year delay and
17 consider the petition as of the date it was filed – January 27, 2010. NRS 34.726 requires petitions
18 for post-conviction relief to be filed within 1 year of the appellate court's remittitur; here the 2010
19 petition was filed in excess of 4 ½ years after the remittitur issued, hence the filing is untimely The
20 Court's processing delay occurred after the filing and had no effect on the petitioner's delay of 4 ½
21 years to filing. NRS 34.810 provides additional reasons for dismissal of petitions. Any petition that
22 presents arguments about anything other than the plea was involuntary or unknowing or without the
23 effective assistance of counsel must be dismissed. NRS 34.810 (1) (a).

24 A successive petition must be dismissed if it fails to allege new or different grounds for
25 relief and the prior determination was on the merits. An abuse of the writ finding results in a
26 dismissal when the grounds raised could have been included in the prior petition. NRS 34.810 (2).

27
28 ³ The usual procedure is for such assignments to be filed with the Clerk who then prepares a Notice of Case Assignment to whatever
department that gets the case. There is no record of that in the Court's file.

1 1. Successive Claims

2 The standards this Court must follow when considering a petition for post-conviction relief
3 are set out in NRS 34.720 et seq. and certain relevant case decisions of the Nevada Supreme Court.
4 As that Court pointed out, the Nevada Legislature never intended for petitioners to have multiple
5 opportunities to obtain post-conviction relief absent extraordinary circumstances. *Pelligrini v. State*,
6 117 Nev. 860, 876, 34 P.3d 519 (2001).

7 NRS 34.726 (1) requires that a petition that challenges the validity of conviction or sentence
8 must be filed within one year of the entry of judgment or after remitter from the Supreme Court
9 after appeal, unless good cause is shown for the delay. Good cause exists if the petitioner
10 demonstrates that the delay was not his fault and that the dismissal of the petition as untimely would
11 unduly prejudice him. NRS 34.745(4) and 34.810(2) require the court to dismiss second or
12 successive petitions found to be abusive of the writ process. NRS 34.810 requires dismissal for
13 other reasons also. An untimely or successive petition is procedurally barred and must be dismissed
14 absent a demonstration of good cause for the delay and undue prejudice. *Id.*; NRS 34.810(1)(b)(2).

15 Without good cause for the delay and prejudice, the procedural bar may be excused only if
16 the petitioner can demonstrate that a failure to consider his claims would result in a fundamental
17 miscarriage of justice. *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); *cf.* NRS
18 34.800(1

19 “Good cause” means a “substantial reason; one that affords a legal excuse”. *Colley v. State*,
20 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). In order to demonstrate good cause, a Petitioner
21 must show that an impediment external to the defense prevented him or her from complying with
22 the state procedural default rules. *Pellegrini v. State*, 117 Nev. 860, 886–87, 34 P.3d 519, 537
23 (2001); *Lozada v. State*, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). An impediment external to
24 the defense may be demonstrated by a showing “that the factual or legal basis for a claim was not
25 reasonably available to counsel, or that ‘some interference by officials,’ made compliance
26 impracticable.” *Murray v. Carrier*, 477 U.S. 478, 488 (1986). “[T]he mere fact that counsel failed to
27 recognize the factual or legal basis for a claim, or failed to raise the claim despite recognizing it,
28 does not constitute cause for a procedural default.” *Id.* at 486. Prejudice can be shown by

1 demonstrating that the errors worked to a petitioner's actual and substantial disadvantage. *Hogan v.*
2 *Warden*, 109 Nev. 952, 959-960, 860 P.2d 710, 716 (1993).

3 The 2010 petition was untimely in as much as the date of conviction was April 7, 2004 and
4 the remittitur had been issued in May, 2005 and there was no good cause demonstrated in the
5 pleading other than petitioner's conclusory statement that his filing was timely because he was still
6 within the original 1 year window. The Court disagrees with his reasoning.

7 In Ground One of the Second Petition the Petitioner alleges that the decisions made by Post-
8 Conviction counsel in pursuit of the First Petition and Supplemental Petition were so faulty as to
9 constitute ineffective assistance of counsel. The Petitioner argues that these failures on the part of
10 Post-Conviction counsel leave him unable to exhaust all of his claims in state court and therefore
11 unable to pursue those claims in federal court. Thus, Petitioner in effect argues; the Court should
12 find that the instant successive petition is justified because Post-Conviction counsel's ineffective
13 assistance amounts to good cause for Petitioner's failure to bring all of the claims contained in the
14 instant successive Second Petition in the First Habeas Proceeding, and prejudice exists because the
15 Petitioner will be unable to pursue all of the claims from both the First Petition and the Second
16 Petition in federal court upon exhaustion of state remedies. This Court disagrees. Just as there is no
17 right to counsel in Post-Conviction proceedings under the U.S. Constitution or the Nevada
18 Constitution, there can be no constitutional claim of ineffective assistance of counsel in Post-
19 Conviction proceedings. *Pennsylvania v. Finley*, 492 U.S. 551 (1987); *Brown v. McDaniel*, 130
20 Nev. ____, 331 P.3d 867 (Nev. 2014); *McKague v. Whitley*, 112 Nev. 159, 164-165, 912 P.2d 255,
21 259 (1996). Hence the Petitioner has not demonstrated good cause for the successive claims in the
22 Second Petition.

23 2. New or Additional Claims

24 As far as any new or different grounds stated in the Second Petition, NRS 34.810 provides
25 for dismissal based on abusive filing of successive petitions. NRS 34.810 (2) states that a second or
26 successive petition must be dismissed if new and different grounds are alleged, and the judge finds
27 that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the
28 writ." NRS 34.810 (3) provides that the petitioner has the burden of pleading specific facts that

1 demonstrate good cause for their failure to present the claim in the first petition and actual prejudice
2 to the petitioner.

3 The only claim listed in the Second Petition that could not have been brought in the First
4 Petition is the allegation regarding Post-Conviction Counsel. However, the argument has already
5 been considered and rejected, *supra*, as the ground for the Petitioner's argument that his successive
6 claims should be heard. Again, since there is no right to counsel in Post-Conviction proceedings
7 under the U.S. Constitution or the Nevada Constitution, there can be no constitutional claim of
8 ineffective assistance of counsel in Post-Conviction proceedings. *Pennsylvania v. Finley*;
9 *McCaughey v. Whitley*; *Brown v. McDaniel*, *supra*. Furthermore, this Court's December 29, 2006
10 Order dismissed all of the claims the Petitioner asserts that his counsel failed to pursue. Therefore,
11 the Petitioner's claim regarding Post-Conviction counsel's failure to litigate every claim in the First
12 Petition is baseless and need not be considered.

13 3. Additional Discussion

14 In any event, the Court finds that it would not have mattered if the Petitioner's Post-
15 Conviction counsel had pursued all of the claims in the First Petition, as the Petitioner's claims lack
16 merit. A selection of the claims which lack merit include, (1) any claim of ineffective assistance of
17 counsel relating to pretrial matters, (2) any claim arising from the use of testimonial evidence
18 considered at sentencing, (3) any claim alleging that the Petitioner's guilty plea was not entered
19 knowingly, intelligently, and voluntarily.

20 a. *Ineffective Assistance of Counsel in Pretrial Matters*

21 Throughout the two Petitions, the Petitioner makes numerous arguments in which he alleges
22 that trial counsel was ineffective based on pretrial actions. Many of these arguments are based on
23 allegations that trial counsel failed to secure the Petitioner's attendance at Grand Jury proceedings,
24 or failed to make various pretrial motions. Any of these arguments relating to anything other than
25 whether the Petitioner's guilty plea was knowingly, intelligently, and voluntarily entered are barred.

26 By pleading guilty a defendant waives all errors, including the deprivation of constitutional
27 rights that occurred prior to the entry of his guilty plea. *Tollet v. Henderson*, 411 U.S. 258, 267;
28 *Webb v. St.* 91 Nev. 469, 470, 538 P.2d 164 (1975). ' . . . [A] Guilty plea represents a break in the

1 chain of events which has preceded it in the criminal process. When a criminal defendant has
2 solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he
3 may not thereafter raise independent claims relating to the deprivation of constitutional rights that
4 occurred prior to the entry of the guilty plea. . . .’ *Webb*, at 470 (quoting *Cline v. State*, 90 Nev. 17,
5 518 P.2d 159 (1974)).

6 Therefore, at the moment the Petitioner pleaded guilty in open court, he foreswore any
7 claims for ineffective assistance of trial counsel based on anything other than trial counsel’s failure
8 to ensure that the Petitioner entered a knowing, intelligent, and voluntary plea.

9 *b. Knowing, Intelligent, and Voluntary Guilty Plea*

10 The Petitioner alleges that because he was not fully informed of the consequences of
11 pleading guilty, his guilty pleas were not entered knowingly, intelligently, and voluntarily. Among
12 those items that the Petitioner alleges he was unaware are; (i) that the Court had sole discretion to
13 impose consecutive or concurrent terms, (ii) in effect, that the Court had sole discretion as to the
14 appropriate sentence and that it was not bound by plea negotiations between the parties, (iii) that the
15 Court did not properly advise the Petitioner of the assorted statutory consequences of pleading
16 guilty (including, *inter alia*, lifetime registration on a list of known sex offenders, and lifetime post
17 release counseling), (iv) that his counsel allegedly promised him that he would receive less than the
18 maximum sentence if he did not proceed to trial, (v) a repetition of the allegations already disposed
19 of in the Court’s discussion of the testimonial evidence considered at sentencing, (vi) the Petitioner
20 reiterates the argument from the First Petition that he will be prejudiced in future parole proceedings
21 because of the lack of a baseline psychological report.

22 All of these allegations were raised and pleaded in the Petitioner’s First Petition or in the
23 Supplemental Petition. They were disposed of during those previous proceedings when the
24 Petitioner, through his counsel, either elected not to pursue them or were dismissed by this Court
25 and subsequently affirmed by the Nevada Supreme Court.

26 In addition, and more specifically, Items (i) - (iii) of these allegations are belied by the
27 record. Specifically, the Defendant’s signed and witnessed December 20, 2003 Guilty Plea
28 Memorandum indicates assent to Paragraph 12 of the Guilty Plea Memorandum, which states:

1 “12. I understand that the Court is not bound by the agreement
2 of the parties and that the matter of sentencing is to be
3 determined solely by the Court. I have discussed the charge(s)
4 with my attorney. All of the foregoing rights, waiver of rights,
5 elements, possible penalties, and consequences have been
6 carefully explained to me by my attorney. I am satisfied with
7 my counsel’s advice and representation leading to this
8 resolution of my case. I am aware that if I am not satisfied
9 with my counsel I should advise the Court at this time...”

10 The Transcript of Proceedings: Change of Plea dated December 11, 2003 (“the Transcript”),
11 also contradicts the Petitioner’s allegations. The Transcript shows that the Petitioner was thoroughly
12 canvassed by the Court before his guilty pleas were accepted and entered. According to lines one
13 through five of the Transcript, the Petitioner indicated that he had read and understood the Guilty
14 Plea Memorandum. At the Change of Plea hearing the Petitioner was again asked each of the
15 questions set out in the Guilty Plea Memorandum and answered each in the affirmative. Thus, the
16 Petitioner’s allegations are refuted in the Transcript in addition to the Guilty Plea Memorandum.
17 Specifically, as to (iv) the Transcript provides the Petitioner’s statement indicating that no promises
18 were made to him in return for his guilty plea.

19 ...
20 THE COURT: All right. Do you understand that what happens to you at sentencing is up to
21 the court?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Now, in this regard, *did anybody make any promises to you in that*
24 *respect?*

25 THE DEFENDANT: No, sir.

26 (Transcript at 14) (Emphasis added).

27 ...

28 Allegation (iii) is likewise contradicted by the record. The Petitioner states that he was
unaware that he would be required to endure lifetime supervision if he is granted parole. The
Transcript states, specifically:

...

1 THE COURT: All right. And then the District Attorney reminded the court that pursuant to
2 NRS 176.093(1) lifetime supervision is required. That means that if you get out on parole
3 you are required to undergo supervision for life. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 ...

6 (The Transcript at 15).

7 Therefore, by the Petitioner's own statement; the Petitioner understood the consequences of
8 pleading guilty, all of the rights, waiver of rights, and possible penalties that were set to result from
9 his pleas; the Petitioner had not been promised anything by the Prosecutor or Defense Attorney in
10 return for his guilty pleas; understood the meaning of concurrent and consecutive terms; and
11 understood that the final sentencing decision belonged to the Court alone. The Court finds that the
12 Petitioner did, indeed, fully understand the consequences of his guilty pleas, including, but not
13 limited to; the nature of the waiver of his rights, the possible penalties, and the fact that the Court
14 had sole discretion to assign an appropriate sentence.

15 *c. Testimonial Evidence Considered at Sentencing*

16 The Petitioner asserts in several Grounds across the two petitions that the Court abused its
17 discretion by allowing improper testimony at the sentencing stage of the proceedings in the form of
18 the testimony of witness Detective Greg Herrera ("the Detective") regarding the content of
19 conversations the Detective held with the Petitioner's ex-wife, Melissa Botelho. The Petitioner
20 argues that the contents of the Detective's conversations with the Petitioner's ex-wife should have
21 been excluded from the sentencing hearing as a privileged communication under the marital
22 privilege evidentiary exception or alternatively as hearsay evidence.

23 Again, NRS 34.810 (1) (a) states that a court shall dismiss a petition if the conviction was
24 based upon a plea of guilty and the petition is not based upon an allegation that the plea was
25 involuntary or unknowing or entered without effective assistance of counsel. The sentencing aspect
26 of a case is well after the plea hearing; hence this is an additional ground to dismiss the petition.

27 ///

1 CONCLUSION

2 Accordingly, and good cause appearing,

3 Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus filed July 24, 2015, is
4 hereby GRANTED because the claims in the March 6, 2006 Petition were considered and
5 dismissed and the Petitioner has failed to demonstrate that good cause and prejudice require the
6 successive claims to be reheard and the sole original claim in the January 27, 2010 Petition to be
7 considered. The Petition is procedurally barred as a matter of law under the provisions of NRCP 34.
8 726(1) and NRS 34.810 (1)(a) and (2).

9 The Court finds the second petition is untimely, successive and constitutes an abuse of the
10 writ process and must be and is, dismissed.⁴

11 Lastly, as a consequence of the above reasoning, Petitioner's motion to strike is DENIED.

12 IT IS SO ORDERED.

13 Dated this 15TH day of September, 2015.

14 
15 JEROME POLAHA
16 DISTRICT JUDGE
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⁴ Since the Second Petition was procedurally dismissed there was no need to have appointed counsel.

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Gillespie

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

05/11/07
HONORABLE
JEROME M.
POLAHA
DEPT. NO. 3
P. Meacham
(Clerk)
J. Dotson
(Reporter)

EVIDENTIARY HEARING
Deputy District Attorney Terrence McCarthy represented the State. Defendant (Petitioner) was present with counsel, Mary Lou Wilson, Esq.. Probation Officer was not present.
Court advised that there are 17 claims named in the petition and the Court will hear argument re: claims 7 and 15 and the supplemental petition.
Petitioner's counsel addressed the Court advising that Dr. Martha Mahaffey is present today and will testify re: her report.
Petitioner calls Dr. Martha Mahaffey who was sworn and examined. Cross-Examination was conducted, no Re-Direct and the witness was excused.
Petitioner rests.
Respondent rests.
Petitioner's counsel addressed the Court arguing in support of the petition advising that Dr. Mahaffey's report may have led the Court to give a lesser sentence if it had been presented during sentencing.
COURT ORDERED: Court finds that the report would not have made any difference in the sentence, the petition is **DENIED**. State's counsel will prepare the order and include the lack of evidence re: prior defense counsel Sullivan in the order.

Defendant remanded to the custody of the Dept. of Prisons.

CR03P2156
DC-8900000999-259
POST: MICHAEL TODD BOTELHO (D. 1 Page)
District Court 05/11/2007 03:19 PM
Washoe County
MTN
PMF:ARCHD

1 **Code 1350**

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

8 **MICHAEL TODD BOTELHO,**

Case No. CR03-2156

Dept. No. 3

9 **Petitioner,**

10 **vs.**

11 **JAMES BENEDETTI, WARDEN,**
12 **STATE OF NEVADA, et al,**

13 **Respondents**
14 _____ /

15 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**
16

17 I certify that I am an employee of the Second Judicial District Court of the State of
18 Nevada, County of Washoe; that on the 22nd day of October, 2015, I electronically filed
19 the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

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

22 Dated this 22nd day of October, 2015

23 Jacqueline Bryant
24 Clerk of the Court

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