

In The Supreme Court Of The State Of Nevada

* * * * *

Ferrill J. Volpicelli,
Petitioner/Appellant,

Case No. 70126

FILED

MAY 03 2016

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

- vs -

State Of Nevada,
Respondent/Appellee.

MOTION TO TAKE
JUDICIAL NOTICE

Petitioner - Appellee, Ferrill J. Volpicelli moves
the Court to take Judicial Notice of this affidavit
in support of his instant appeal.

This Motion is based upon the records of
this Court, as well as the applicable rule(s) of
Appellate Procedure.

DATED this 28 day of April, 2016.

BY:

[Signature]
Ferrill J. Volpicelli #79565
Lovelock Corr. Center
1200 Prison Road
Lovelock, Nevada 89419

RECEIVED

MAY 02 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

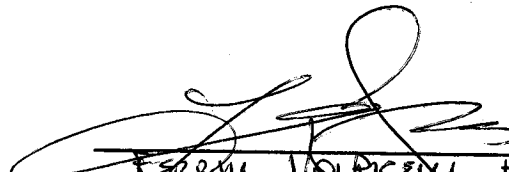
Appellant in Pro Se

16-13853

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing MOTION TO TAKE JUDICIAL NOTICE to the below address(es) on this 27 day of APRIL, 2016, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

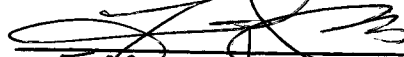
WASHOE COUNTY
DISTRICT ATTORNEY
75 COURT ST
RENO, NV 89501


FERRIN VOLPKEN # 79505
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
APPELLANT In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION TO TAKE JUDICIAL NOTICE filed in NSC District Court Case No. 70124 does not contain the social security number of any person.

Dated this 27 day of APRIL, 2016.


FERRIN VOLPKEN
APPELLANT In Pro Se

1 Ferrill J. Volpicelli
2 NDOC # 79565
3 Lovelock Corr. Center
4 1200 Prison Road
5 Lovelock, NV. 89419

6
7 Petitioner/Appellant in Pro Se

8
9 In The Supreme Court Of The State Of Nevada

10 FERRILL J. VOLPICELLI,
11 Petitioner/Appellant

D.C. case No. CR03-1263
S.C. case No. 70126

12 v.

13 ROBERT LEGRAND, WARDEN,
14 NEVADA ATTORNEY GENERAL,

Affidavit Of
Ferrill J. Volpicelli

15 State Of Nevada

16

17 County Of Pershing

} ss:

18

19 I, Ferrill J. Volpicelli, declare and state the
20 following under penalty of perjury pursuant to
21 28 U.S.C. § 1746; that the following statements are
22 true and correct based upon my own personal
23 knowledge:

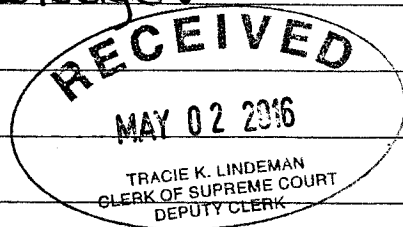
24

25

26

27

28



1 1) That I am a prisoner incarcerated at
2 Lovelock Correctional Center in Pershing County,
3 State Of Nevada, and making this affidavit in
4 support of the instant motion.

5
6 2) That I am above the age of eighteen (18)
7 years and I am competent to testify regarding
8 the matters herein.

9
10 3) That I am the petitioner in this case
11 and proceeding as an indigent in Pro Se.

12
13 4) That I am a sexagenarian currently
14 serving nine (9) Life Sentences for minor property
15 crimes enhanced by Nevada's Habitual Criminal
16 Statute at NRS 207.010 (1)(b)(2).

17
18 5) That I have been challenging my
19 conviction and sentences in CR03-1263 since
20 April 1, 2004.

21
22 6) That I have been in continuous custody
23 for cases CR02-0148 (exhibit-1), CR98-2160 (exhibit-2),
24 CR 96-46-HDM-RAM (exhibit-3) and CR03-1263
25 since 1998.

26
27 7) That prior to that, and for purposes of
28 punishment for recidivism and the opportunity

1 to reform in between punishment, I had not
2 spent one twenty-four (24) hour period in either
3 jail or prison for any conviction of a crime.
4

5 8) That on April 1, 2004, I was adjudicated
6 a Habitual Criminal with the specific status at
7 NRS 207.010(1)(b)(2), based on the Previously
8 three times convicted of a felony provision.
9

10 9) That on April 1, 2004, the state presented
11 three (3) separate Exhibits alleging three (3)
12 Constitutionally proper historical Felony Judgments
13 Of Convictions in support of its request to
14 adjudicate at NRS 207.010(1)(b)(2).
15

16 10) Exhibits involved:

17 EXHIBIT ONE: involved a state felony conviction
18 in CR02-0148 of one count of Aiding and Abetting in
19 the commission of an attempt to obtain money
20 under false pretense (NRS 205.380).

21 I was found guilty at a bench trial of
22 misdirecting my son to retrieve \$ 886 dollars
23 from the Washoe County Sherriff's Office,
24 subsequent to an illegal seizure of same, absent
25 a search warrant and the presence of a
26 custodial parent.

27 I was sentenced to four (4) years
28 imprisonment and served from June of 2003

1 through March of 2006.

2

3 EXHIBIT TWO: involved a State Felony conviction
4 in CR 98-2160 of two (2) counts of burglary.
5 (NRS 205.060).

6

7 I pled guilty to entering a Comp. U.S.A.
8 store with the intent to manipulate the purchase
9 price on a computer mouse from eighty dollars
10 (\$ 80.00) to twenty dollars (\$ 20.00).

11

12 I also pled guilty to entering an Office Depot
13 store with the intent to manipulate the purchase
14 price on a computer keyboard from seventy
15 dollars (\$ 70.00) to fifteen dollars (\$ 15.00).

16

17 I was sentenced to two (2) consecutive
18 eight year (8yr) terms of imprisonment to
19 which I served from August of 1999 through June
20 of 2003.

21

22 EXHIBIT THREE: involved a Federal Felony
23 conviction in CR 96-46-HDM-RAM of four (4) counts
24 of tax perjury. (26 U.S.C. § 7206 (1)).

25 That on July 10, 1996, I was indicted on
26 twenty-one (21) counts for felonies consisting of
27 fourteen (14) counts of Wire Fraud (18 U.S.C. § 1340),
28 four (4) counts of Tax Perjury (26 U.S.C. § 7206 (1)),
and three (3) counts of False Bank Loan Statements
(18 U.S.C. § 1014).

I pled guilty to the following elements of

(4)

1 Tax Perjury in my plea colloquy on May 16, 1997,
2 as follows:

3

4 (a) that I made and subscribed a document that
5 was false as to a material matter;

6 (b) that the document contained a written
7 declaration that was made under penalty of
8 perjury;

9 (c) that I did not believe the document to
10 be true and correct as to every material matter;

11 (d) that I falsely subscribed to the document
12 with the specific intent to Violate the law.

13

14 1) 1. That for purposes of the Federal
15 Judgment Of Conviction and the Sentencing
16 Guidelines that the only offense date considered
17 was July 23, 1993.

18 2. That the record is silent as to whether
19 the perjured documents were mailed or
20 personally delivered to the Internal Revenue
21 Service (I.R.S.), either individually & separately,
22 or collectively and at the same time.

23 3. That for purposes of the Federal
24 Sentencing Guidelines the aggregate tax indebtedness
25 from legitimate and illegitimate income was
26 \$ 57,553.31.

27 4. There was no count specifying a
28 charge as to a plan running over at least four

1 years with numerous transactions, through which
2 [Petitioner] fraudulently gained at least \$800,000;
3 Nor did I plead guilty to same, within my plea
4 colloquy.

5

6 Nor did I plead guilty to counts 1 through
7 12 involving 12 wire fraud transactions with
8 Target Stores in which approximately \$2838 were
9 posted as credits to my credit accounts from
10 January 1992 through March of 1993. (Said
11 counts were dismissed).

12

13 Nor did I plead guilty to counts 13 and 14
14 involving 2 transactions at Mervyns Stores in
15 which 4 gold Jewelry Necklaces were purchased
16 with the accounts credits referenced in
17 counts 1 through 12. (Said counts were dismissed).

18

19 Nor did I plead guilty to counts 19 through
20 21 involving 3 transactions at Great Basin Federal
21 Credit Union (1993), World Savings and Loan (1993)
22 and Pioneer Citizens (1990), wherein loans were
23 obtained based on the submission of false W-2
24 statements. (That all 3 property loans were
25 satisfied in full as they were collateralized). (Said
26 counts were dismissed.)

27

28

Prior to my incarceration, I satisfied in

(6)

1 full a \$3,000 dollar fine for said Federal Felony
2 conviction, and the Internal Revenue Service
3 lien for my tax indebtedness has been satisfied
4 in full.

5

6 12) In my judgment, Counsel, collectively,
7 failed to investigate and challenge improper
8 evidence presented by the State at sentencing
9 & to which both Nevada Courts relied upon.

10

11 13) In consequence, I incurred prejudice
12 based on the State's errors, Counsel's errors
13 and the Court's errors, as I should have been
14 adjudicated a habitual criminal at NRS 207.010(1)(a)

15

16 14) Absent the erroneously imposed Life
17 Sentence enhancements, and based upon my
18 aggregate time and credits posted for my
19 property crime convictions, I have been
20 imprisoned unjustifiably for a decade.

21

22 15) I believe that I am innocent of the
23 adjudicated status at NRS 207.010(1)(b)(2), and
24 that this Court should provide immediate relief
25 with a reversal as to said status determination
26 and miscarriage of justice.

27

Further, Affiant sayeth naught.

28

Dated this 28 day of April, 2016.

Respectfully Submitted

BY:

Ferrill J. Volpicelli #79565
Lovelock Corr. Center
1200 Prison Road
Lovelock Nevada 89419

Affirmation Pursuant To NRS 239B.030

The undersigned does hereby affirm that the preceding Affidavit of Ferrill J. Volpicelli does not contain the social security number of any person.

BY:

Ferrill J. Volpicelli #79565

Certificate Of Service

I, Ferrill J. Volpicelli do certify under penalty of perjury that I mailed a true and correct copy of the Affidavit Of Ferrill J. Volpicelli to the address below on this 28 day of April, 2016:

BY:

Ferrill J. Volpicelli #79565
Lovelock Corr. Center
1200 Prison Road
Lovelock, NV. 89419

1 Ferrill J. Volpicelli
2 NDOC # 79565
3 Lovelock Corr. Center
4 1200 Prison Road
5 Lovelock, NV. 89419

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