

No. 70539

No. CR12-0110

Dept. No. _____

IN THE SUPREME COURT OF THE
STATE OF NEVADA

Kupaa Kea

Petitioner/Plaintiff,

v.

STATE OF NEVADA

Respondent/Defendant.

FILED

JUL 18 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

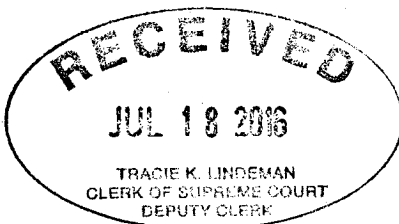
REQUEST FOR SUBMISSION OF MOTION

It is requested that the Kupaa Kea entitled Motion for Appeal for Motion to Modify and/or Correct Illegal Sentence and Motion for Appointment of Counsel, which was submitted/filed on the 13th day of July, 2016, in the above-entitled matter, be submitted to the Court for its consideration.

The undersigned Petitioner/Plaintiff, certifies that a copy of the pleading noted above and this document, have been served upon the Respondent/Defendant.

Dated this 13th day of July, 2016.

Kupaa Kea #1086980
Petitioner/Plaintiff
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989



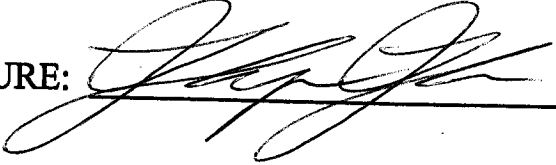
AFFIRMATION PURSUANT TO NRS 239B.030

I, Kupaa Kea, NDOC# 1086980,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Request for Submission of
Motion

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 13th DAY OF July, 2016.

SIGNATURE: 

INMATE PRINTED NAME: Kupaa Kea

INMATE NDOC # 1086980

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

1 Kupaa Kea #1086980
2 Ely State Prison P.O. Box 1089
3 Ely Nevada 89301

4
5 IN THE SUPREME COURT OF
6 THE STATE OF NEVADA
7
8
9

10 Kupaa Kea

11 Plaintiff/PETITIONER

12 vs.

13 STATE OF NEVADA

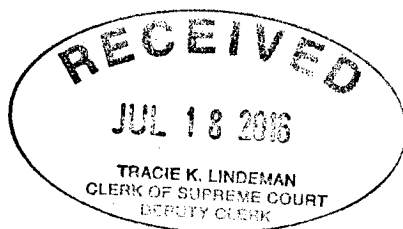
14 Defendant

Case No.: CR12-0110

Motion of Appeal for Motion to
Modify and/or Correct Illegal Sentence

15
16
17 COMES NOW, Kupaa Kea-petitioner, in PRO PER and herein above respectfully
18 moves this Honorable Court for a GRANT of Motion pursuant to NRS. 176
19 555 and Edwards v. State

20
21 The above is made and based on the following Memorandum of Points and Authorities.
22
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MEMORANDUM OF POINTS AND AUTHORITIES

(1) On October 28th 2011 Petitioner (hereafter known as KEA) was arrested for (2) counts of Battery with the use of a deadly Weapon causing substantial Bodily Harm, (2) counts of Gang Enhancement, (4) count of Possession of drug paraphernalia, and (1) count of Possession of a Controlled Substance. He was charged and booked into the Jan Evans Detention Center a.k.a. Wittenburg Juvenile Hall because KEA was 17 years old - a minor.

(2) During arraignment or "detention hearing" as it's known in the juvenile system, KEA was automatically certified due to the deadly weapons charge and a prior adjudication for a non-violent burglary in 2008. He was transported to the Washoe County Sheriff's Office (Adult Jail) on that same day on October 31st 2011.

(3) After taking a plea deal, KEA was sentenced to (2) consecutive 35 to 156 month sentences. The Judgment of Conviction was issued four days after the sentencing hearing on June 5th 2012.

(4) On February 4th 2014, KEA filed a Motion to Correct and/or Modify Illegal sentence.

(5) On August 15th 2014, KEA filed for Appointment of Counsel for Petition of Writ of Habeas Corpus (Post-Conviction) and for Sentence Modification. [emphasis added]

(6) On June 3rd 2015 the Honorable Judge Scott Freeman had GRANTED KEA's motion for appointment of counsel. (see exhibit 4)

(7) On February 23rd 2015, the state filed an Opposition to Motion to Correct and/or Modify Illegal Sentence. KEA responded on March 20th 2015 with a Response to State's Opposition. KEA's initial Motion to modify... was DENIED for "not meeting the range or scope of a motion to modify."

(8) KEA filed an application for extension of time on July 2nd 2015 with the Nevada Supreme Court clerk. (see exhibit 2)

Arguments of Motion

Arguments are made respectively to the Honorable Judge Scott N. Freeman's ORDER DENYING MOTION TO CORRECT AND/OR MODIFY ILLEGAL SENTENCE. KEA does come timely on basis of intentions. On July 2nd 2015 KEA filed an extension of time with this Honorable Court but it was DENIED because "it had not been ruled on by dis. Ct." (see exhibit 2). However, that was wrong and thus this motion should be considered based on intention and delay of course.

ARGUMENT 1

The Honorable Judge Scott N. Freeman erred and abused his power of discretion by DENYING KEA's motion to modify, claiming KEA's argument of being "illegally certified to stand trial as an adult" fell outside the proper scope of a motion to modify, since it did not challenge the facial validity of his sentence nor claim this court lacked jurisdiction. This, however, was an unsupported false and -frankly- a lie of a statement, that served to deprive KEA of his due process rights. NRS 176A.400(3); *Passanisi v. State*, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992). The court may grant a post-conviction motion to modify... in limited circumstances, *id.* at 322-23, 831 P.2d at 1373-74; see also *Edwards v. State*, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996). The district court may modify or correct a sentence when:

(A) The Court Made a Mistake of fact about the defendant's criminal record, and

(B) The mistake worked to the defendant's extreme detriment.

(C) **THE DISTRICT COURT WAS WITHOUT JURISDICTION TO IMPOSE A SENTENCE** [emphasis Added]

(D) The sentence imposed exceeds statutory maximum.

Subsection (C) above, is the sole basis of KEA's first argument in his

1 initial Motion to modify... This very argument of being "illegally certified"
2 to stand trial as an adult in itself claims that Department 9 of the
3 Second Judicial District Court, Courted by the Honorable Judge Scott N
4 Freeman (hereafter known as Mr. Freeman) did NOT have jurisdiction to
5 sentence KEA to serve (2) consecutive 35 to 56 month sentences or any
6 sentence for that matter. Mr. Freeman's court did NOT have jurisdiction
7 over this case because KEA was deprived of due process rights given to
8 juveniles for safeguards against certification that would have prevented
9 KEA from being certified. Therefore, Mr. Freeman's court should not have
10 accepted jurisdiction to hear this case and shouldn't have imposed any
11 sentence UNTIL KEA's due process rights were fulfilled. By Mr. Free-
12 man's carelessness to sentence KEA without warranted jurisdiction, it
13 sets up an unruly precedent for the certification of Juveniles that
14 come after him.

15 There are several reasons why the certification was illegal.
16

17 Firstly, neither the United States or Nevada State Constitution allow
18 certification without due process or automatic certification unless for
19 capital offenses, attempted capital offenses, or felony sexual offenses. KEA
20 was NEVER charged with any of these. (see lines 3-8 page 2; Points and
21 Authority of Charges)

22 KEA was arrested for this instant offense on October 28th 2011 (a Friday)
23 Due to N.R.S. 34's scheduled court days and absent days during the
24 weekends and holidays, KEA was scheduled for an Arraignment Hearing
25 or Detention Hearing (as it's known in the juvenile system) that following
26 Monday of October 31st 2011. That was KEA's first and only hearing
27 of any kind. This same hearing, KEA was automatically certified
28 for a prior adjudication for a non-violent burglary conviction in 2008
29 when KEA was 14 years old. This automatic certification had voided

1
2 KEA's due process rights. Not only was the automatic certification illegal
3 but it was morally wrong to send a 17 year old child to an adult
4 setting without first reviewing the child's mental stability, substance
5 abuse history, and many other factors that could be deemed mitigating
6 or otherwise the result of the child's youthful age.

7 KEA's due process was violated when the juvenile court automatically
8 certified KEA without allowing a FULL INVESTIGATION to determine
9 whether or not a certification shall be warranted.

10 NRS 62B.390~~(A)~~(B) states:

11 " (3) The Juvenile court shall NOT certify a child for
12 criminal proceedings as an adult pursuant to subsection
13 (2) if the juvenile court specifically finds by clear and
14 convincing evidence that;

15 (A) The child is developmentally or mentally incompetent
16 to understand his situation and the proceedings of the court,
17 or his attorney in those proceedings;

18 (B) The actions of the child were substantially the
19 result of the substance abuse, or emotional, or behavioral
20 problems that may be appropriately treated through the
21 juvenile court jurisdiction.

22 This Section's objective is to prevent children with extreme and/or
23 extraordinary circumstances from being tried as an adult. These standards
24 place a protective barrier for juveniles when taking in consideration
25 their young undeveloped brain, lack of life experience, their mental
26 disability or instability, and substance abuse. KEA meets both (A) & (B)
27 standards.

28 The first standard of (A) is immediately recognized by KEA's age at
29 the commission of the alleged crime. Moreover, the mental disabilities KEA

1 suffers from should have been enough to prevent such certification and
2 called for a psychiatric evaluation. N.R.S. 62C.060(1)(b)2(B) states:

3 "If a child is taken into custody for an unlawful act that involves
4 the possession use or threatened use of a firearm the child must
5 not be released.

6 (2) At the detention hearing the court shall, if the child is taken
7 into custody:

8 (B) Committed an unlawful act involving a firearm, other than
9 the act described in 2A determine whether to order the child to
10 be EVALUATED BY A QUALIFY PROFESSIONAL [emphasis added]

11 While in the custody of Wittenburg Hall Juvenile Detention Center KEA
12 was diagnosed with Anti-Social Disorder/Anti-Social Personality Disorder
13 and Conduct Disorder in 2008 after an evaluation by Dr. Richard
14 Weiher, Ph.D. After being seen by yet another certified psych physician
15 in 2011, the councillor Mrs. Jane Doe had expressed KEA had
16 "Narcissistic personality traits." (see pre-sentencing investigation report
17 page 3 "Mental Health History") Although it came post-certification
18 KEA was diagnosed with Bi-Polar Disorder and Schizophrenia
19 while in the custody of the Washoe County Jail. He was prescribed
20 Vistaril and Risperdal to help contain his mental stability.

21 These factors are detrimental to the safety and developmental
22 stage of a child. These diagnosed disorders are emotional and
23 behavioral problems that can be treated and needed to rehabilitate
24 through the juvenile jurisdiction and NOT punished and pass
25 off responsibility via certification. N.R.S. 62E.220(A)(c) sets many
26 goals for the rehabilitation necessity of children. These address
27 emotional and behavioral patterns that KEA desperately needed.
28 When being sentenced, counsel had retained a well-respected
29 physician Dr. Martha Mahaffey. Her psych-report used during

1 sentencing had blatantly expressed KEA's youthful age was the
2 reason his undeveloped brain could not comprehend a many things.
3 She recommended rehabilitation not prison because prison wouldn't
4 help the child change possibly only worsen him. (see evaluation
5 report). During sentencing, Mr. Freeman acknowledged the report
6 and had even claimed himself that Dr. Mahaffey was the best
7 at her profession. Even though Mr. Freeman acknowledged the
8 report and KEA's age he still did not grasp the need for rehabilitation.
9 When considering KEA's mental disabilities pre-and-post-certification
10 KEA should not have been sentenced nor tried as an adult
11 and Mr. Freeman's court should have seen to it that N.R.S. 62B.390
12 (A) was respected as KEA's due process rights. (see sentencing transcripts
13 last 5:00 minutes of recordings)

14 KEA meets the second standard of N.R.S. 62B.390(3)(B). Once again Mr.
15 Freeman acknowledged KEA's substance abuse during sentencing. (see sentencing
16 transcripts last 5:00 minutes of recordings) Mr. Freeman states:

17 "When mixing methamphetamine, Brandy, and guns it's a
18 recipe for disaster." (paraphrased accordingly to Mr. Freeman's actual statement)

19 Both methamphetamine - an upper narcotic - and Brandy - a stimulant liquor -
20 are considered substances according to the Food Drug Administration. Mr.
21 Freeman's acknowledgements of these two substances goes to prove that
22 without being under the influence of these two "drugs," KEA would
23 NOT have committed the alleged crimes. It was noted in the p.s.I
24 report and during sentencing that these two substances had a
25 SUBSTANTIAL influence on the underlying charges and possibly the
26 only reason why the crime may have taken place. KEA has never
27 had a firearms charge or violent-weapons charge prior to the
28 instant offense. The p.s.I report shows a long history of substance
29 abuse for a child and the initial charges should have forced the

1 juvenile court to investigate accordingly. In Anthony Lee R. v. State
2 113 Nev. 1406, 952 P.2d 1997 Nev. LEXIS 161 states

3 "The juveniles criminal action does not have to be substantially
4 the result of substance abuse but rather substance had to
5 have substantially influenced or contributed to the juvenile's
6 criminal action."

7 Clearly in KEA's circumstance it was when reviewing KEA's
8 drug history and lack of violent weapon charges in his juvenile
9 criminal history. The juvenile court should have investigated properly
10 before sentencing KEA to be tried as an adult. In A minor v. State
11 86 Nev. 691, 476 P.2d 11, 1970 Nev. LEXIS 597 (1970) a child should only
12 be considered for adult proceedings after "a full investigation" was satis-
13 fied. Obviously, no investigation was ever implemented otherwise
14 KEA wouldn't have been certified pursuant to N.R.S. 62B.390(3)(A)
15

16 Secondly, the entire automatic certification violated KEA's due
17 process. In the United States of America and state of Nevada we
18 are given the rights to confront our accusers, challenge false evidence
19 and be innocent until proven Guilty beyond a reasonable doubt. By
20 not being able to be treated equally as a child KEA was deprived
21 of his 5th and 14th Amendment rights. This very court has ruled on
22 these same rights in Rickwell W. v. State 100 Nev. 414, 684 P.2d
23 1121, 1984 Nev. LEXIS 406 (1984). It states:

24 "In cases involving juveniles, fairness and due process requires that
25 some kind of hearing be conducted in order that a juvenile be afforded
26 an opportunity to present contrary evidence in opposition to the pre-
27 liminary hearing. It does mean that he should NOT be foreclosed
28 from presenting his side of the case."

29 How then can any automatic certification be legal if no opportunity
(8) of 24

1 to rebut charges or accusations are given? Nor any investigation be
2 given?

3 KEA was certified in 1 full work day. Where could an adequate
4 investigation find time? It couldn't have been adequate to find the
5 juvenile be able to stand trial as an adult in such small amount of
6 time. The Supreme Court had ruled in a similar matter previously to
7 protect juveniles. In KENT 383 U.S. at 554, 86 S.Ct. 1045 the court
8 inferred that even after full investigation (which N.R.S. 62B.390 requires
9 as well) the statute did not go far enough as to protect the juvenile when
10 considering waiver or transfer of jurisdiction, it is clear that an
11 investigation is necessary as represented by the facts of rights of law.
12 (see also Baker v. Estelle, 413 F.2d 1433, 9th Cir. 1990)

13 N.R.S. 62B.390 does state "full investigation," yet none was
14 given to KEA while he was still a juvenile. The reason for an investi-
15 gation to be held is to determine whether or not the defendant should be
16 tried as an adult based on several factors of competency, mental impairment
17 age, substantial evidence, and elements of the charges. The investigation
18 process is necessary to protect children from punishments competent
19 adults receive.

20 In Powell v. Hacker, 483 F.2d 652, at 654 (9th Cir 1971) the appellate
21 court held:

22 "We do hold that the hearing must measure up to the essentials of
23 Due Process and Fair Treatment [385 U.S. at 562, 86 S.Ct. at 1045] we
24 reiterate this view...as a requirement which is apart of the due
25 process clause of the 14th Amendment of our Constitution."

26 This is an obvious Due Process violation since KEA never received
27 the investigation. In Kline v. State, 86 Nev. 59, 464 P.2d 460, 1970
28 Nev. LEXIS 455 (1970), the Nevada Supreme Court holds that the
29 juvenile court must state that its decision to certify a child is

1 sufficient to demonstrate that the requirement of "full investigation"
2 has been met. KEA again points out no investigation had taken place
3 It was clear from the two standards met in N.R.S. 62B 390(3)
4 (A) & (B) that if an investigation had been held KEA wouldn't have
5 been certified. There were substance abuse, mental health disorders
6 and such present at the time of the crime. There wasn't sufficient
7 evidence to place KEA at the scene of the crime only inadmissible
8 testimony (see ~~exhibits~~, suppressions of ballistics from Reno Police Dept.
9 and Washoe County Forensics lab) he wasn't given additional hearings
10 to cross examine witnesses according to N.R.S. 62D.410 and 420, so
11 then where is there sufficient cause to certify the child?

12 In Harris v. Proconier 48 F.2d 576, 1974 U.S. App LEXIS, determining
13 whether the juvenile should be tried as an adult is the most critical
14 stage in criminal procedures because the adolescent risks losing
15 claims to juvenile rehabilitation treatment.

16 With an automatic certification it is almost like saying the defendant
17 is guilty by presumption without a chance to defend himself or rebut
18 false charges. If an investigation had taken place, KEA would NOT
19 have been certified to stand trial as an adult and would have
20 been rehabbed and released 3 or so more years ago. Because of the
21 due process violation KEA's current expiration is in 2025 when
22 KEA will be 32 years old, which is a hefty punishment for a
23 challenged 17 year old boy who shouldn't have been certified to
24 begin with.

25
26 Thirdly, KEA's 6th Amendment Right to Effective Counsel had been
27 violated on grounds of incompetency and lack of understanding of
28 the juvenile's rights. During the arraignment hearing at the Wittenberg
29 Hall Juvenile Detention Center, KEA's then counsel did not provide

1 meaningful effective assistance of counsel that could amount to ineffective
2 standards set forth in Strickland v. Washington. KEA's juvenile attorney
3 Mrs. Jane Doe (hereafter known as Mrs. Doe) had told KEA he would not
4 get certified at the arraignment hearing. Come time for the hearing, the
5 prosecution had opened by saying "they believed the juvenile court
6 did not have jurisdiction due to a prior adjudication." When Mrs. Doe
7 had presented her argument with a chance to prevent the certification
8 she had said, "I wish I would have known he had been adjudicated
9 (paraphrased. See arraignment hearing transcripts; juvenile court of Washoe County Juvenile
10 Evans Facility 10/31/11)

11 Mrs. Doe clearly did not understand or know enough about her client's
12 circumstances and lacked experience of the juvenile court proceedings to
13 defend him properly.

14 Once again we reiterate N.R.S. 62B.390.(3)(A):

15 "(A) The child is developmentally or mentally incompetent
16 to understand his situation and the proceedings of the court
17 or HIS ATTORNEY IN THOSE PROCEEDINGS" [emphasis added]

18 In certain degrees for obvious reasons juveniles have more rights
19 and safeguards than adults. Mrs. Doe's "wish" statement in itself shows
20 she was inadequately and ill-prepared to defend her client and this
21 is ineffective assistance of counsel. This also coincides with the
22 statute listed above to have prevented certification.

23 Dickson v. Second Judicial District Court, ex rel. County of Washoe, 95 Nev. 225
24 S92 P.2d 166, 1979 Nev. LEXIS 573 (1979) states:

25 "Due Process and Nevada Law mandates that an accused child
26 be afforded a right to counsel and reasonable opportunity to prepare
27 a defense to the charges."

28 Mrs. Doe's statement proves this once again. Mrs. Doe should have
29 motioned for a continuance due to her ill-prepared case and the

1 residing juvenile Judge should have granted her motion, to ensure
2 the juvenile's 5th and 14th and 6th Amendment rights were met. Regardless
3 of Age, KEA's due process mandated effective assistance of counsel in
4 this juvenile proceeding to defend KEA against the charges and
5 to prevent certification. The right to counsel is meaningless unless
6 that right is interpreted to mean "effective counsel." If KEA was given
7 effective counsel he would NOT have been certified.

8
9 Fourthly, KEA was not a principal actor in the instant offense.
10 In Anthony Lee R. v. State, 113 Nev. 1406, at 1410 (1997), the Nevada
11 Supreme Court held,

12 "The Juvenile division shall certify the child for proper criminal
13 proceedings [to the adult court] unless the court 'specifically'
14 finds that the child was NOT a 'principal actor' in the
15 offense." Quoting N.R.S. 62B.390 (formally 62.080)

16 N.R.S. 62B.330 does not require determination of whether the juvenile
17 was the 'principal actor,' as expressed by the Nev. Sup. Court in Anthony
18 Lee R., supra, N.R.S. 62B.390(2)(B) where the juvenile court must specifically
19 find that the juvenile was a principal actor.

20 By not requiring the court find that the child was a principal actor
21 before waiving its jurisdiction denies the juvenile the fair treatment
22 requirement advanced in Powell v. Tucker.

23 Further, in this case on top of having not been found to be the
24 principal actor, KEA nor any representation was ever afforded the
25 chance to rebut accusations of being a principal factor.

26 "It was therefore incumbent upon Gino to rebut the presu-
27 mption by a showing that he was not a principal factor in
28 the offense." Anthony Lee R. v. State supra at 1421, 952 P.2d at 11

29 In this case it would be impossible for the juvenile court to
(12) of 24

1 determine KEA was a principal actor with that some type of investigation
2 In KEA's case, the record does not reflect any finding by the
3 juvenile court that a hearing took place to determine KEA was
4 the principal actor.

5 "Appointment of counsel without affording an opportunity for a
6 hearing on a critically important decision is tantamount to
7 denial of counsel." Kent v. U.S., 383 U.S. 54 at 56 (1966)

8 It should be noted KEA was NOT the principal actor in this
9 case and never claimed he was, or was found guilty of being "principal actor"
10

11 Lastly, even if the certification was legal and met all necessary crit-
12 eria for the certification process, the entire process contradicts one another.
13 Especially in KEA's situation where he was certified on this instant
14 offense (firearm related) for a prior non-violent burglary adjudication 3
15 years before the instant offense. KEA was 17 YEARS OLD and was
16 being supervised by the Nevada Youth Parole Bureau. This seems to conflict
17 with N.R.S. 62A.030(4):

18 "1. Child means:

19 (A) A person who is LESS than 18 years of age

20 (B) A person who is LESS than 21 years of age and subject
21 to the jurisdiction of the juvenile court for an unlawful act
22 that was committed before the person reached 18 years of age."

23 This also seems to conflict with N.R.S. 62B.335 where it says
24 jurisdiction relies with the court if the crime was committed as
25 a minor. How then can KEA be considered a child under 62A.030 b
26 be certified as an adult under 62B.335. Shouldn't 62A.030(4)(A) be
27 amended to say 16 years of age to compliment 62B.335(1)(A)? If not
28 why then even have terminology in statute that contradicts
29 one another? In a country and state where rights of democracy

1 and fairness are foundation how can we contradict ourselves in send
2 ing children to prison?

3 By law we are saying KEA was NOT old enough to purchase to-
4 bacco products (legal age 18) or liquor beverages (legal age 21) but he was old
5 enough to go to prison for a non-capital offense? This doesn't make
6 sense even to third world and impoverished countries like Mexico and
7 Africa. How can a state like Nevada who's greatest revenue is night
8 life - legal gambling and prostitution - (legal age 21), say that children - regar-
9 less of crimes they committ - may NOT partake in these activities but are
10 allowed to go to prison. It's double standard and runs counter to U.S.
11 beliefs and ideology.

12 N.R.S. 62B.330 seems to be the prevalent factor on KEA's certificate
13 However subsection (C)(1) conflicts with 62A.030(1)(A). (1)(A) should be amended
14 to compliment (C)(1) with age. 62B.330(A) contradicts (C). (A) is a capital or
15 attempted capital offense. (C) describes all firearm charges that include violent
16 or threatened violence. "It was clearly NOT the intention of legislature
17 that certification should automatically result in all deadly weapons cases."
18 as quoted in Anthony Lee R. v. State. Finally (C) conflicts with (D)(1) in
19 regards to where it took place.

20 "(D)(1) Felony resulted in death or substantial bodily harm
21 to the victim and any other related offense, if

22 (1) Committed on property of a public or private school" N.R.S. 62B.330(1)

23 The instant offense did not take place at any school grounds nor was it
24 a capital or attempted capital offense. The intent of legislature was
25 clear that not all firearm cases should automatically result in certification
26 even if he had been previously been adjudicated the offense took place
27 away from a school as said in (D)(1). Why would legislature put these
28 subsections in there if they didn't intend it to be a safeguard?

29 The late Honorable Supreme Justice Antonio Scalia had
(14) of 24

1 his opinion recorded regarding contradicting statutes in Scalia & Garner, supra
2 at 180, Nevada State Dept. of Motor Vehicles v. Turner, 89 Nev. 511, 517,
3 515 P.2d 1265, 1266 (1973) states:

4 "Statutes should be interpreted in a way that renders them
5 compatible, not contradictory." [emphasis added]

6 Again in Scalia & Garner, supra, at 185 it states:

7 "Legislators are often - despite the presumption to the contrary -
8 unfamiliar with the enactments of their predecessors. They unwittingly
9 contradict them."

10 It is important to emphasize these quotes from a respected Supreme Court
11 Justice because N.R.S. 62B.330 and every other statute in the certifi-
12 cation process contradicts itself and one another.

13 "The Supreme Court of Nevada declares the ENTIRETY of
14 Nevada's presumptive certification provisions unconstitutional because
15 they require the juvenile to make incriminating statements to rebut the
16 certification presumption in violation of U.S. Const. Amendment V. (see
17 William M. v. State - in re William - 196 P.3d 456, 2008 Nev. LEXIS 1102)

18 The certification process is contradictory to itself and due process
19 of law and thusly, KEA should NOT have been certified according to
20 these statutes or any statute for that matter.

21

22

23 What we have discovered here today is that KEA's due process rights
24 were violated and argument 4 of this motion holds merit for reversal.
25 KEA has shown that the Adult District Court lacked jurisdiction to
26 sentence KEA because the certification was illegally implemented
27 for not meeting any standards of Due Process of law.

28 KEA reiterates that automatic certification violates
29 due process if:

(A) No investigation of charges, juvenile's mental incompetency/disabilities, or substance abuse was taken. (There was no investigation)

(B) No opportunity to challenge charges, rebut accusations, see evidence, or cross-examine witnesses was given. (There wasn't any chance given)

(C) 6th Amendment Right to Effective Assistance of Counsel was violated. (Juvenile Counsel Mrs. Doe was not prepared or effective)

(D) The defendant was not a principal actor but was still certified. (No evidence or agreement KEA was principal actor)

(E) The statutes defendant is being certified under is conflicting or contradicting with safeguards (it clearly was)

With all of these criteria met, KEA's automatic certification was illegal and the Adult District Court lacked jurisdiction to sentence KEA.

"Although the juvenile court is structurally organized as a division of the district court, the juvenile court is a separate court with separate and exclusive jurisdiction." Castillo v. State, 106 Nev. 349, 792 P.2d 1133, 1990 Nev.

The Attorney's General of Nevada concurs.

"Under Const., Art. 3, § 1 relating to separation of powers, Const., Art. 6, § 1, relating to vesting of judicial power and statute relating to the District Court's original jurisdiction over juvenile matters and retention of such jurisdiction. The district Court has and retains exclusive jurisdiction in juvenile matters until the juvenile reaches age 21." AGO (8-25-1999)

According to N.R.S. 390(5)(B) KEA should be sent back to the juvenile detention. Therefore, KEA petitions for remand accordingly to N.R.S. 62D 550(1) and 62B.370.

This sentence was illegally enforced because the Adult District Court did not have jurisdiction. This sentence therefore should be vacated on ground 1 and remanded back to the juvenile court.

Argument 2

The Honorable Judge Scott N. Freeman erred in Denying KEA's motion to modify... on grounds that "petitioner's second claim, regarding the 'ambush theory, fails as it also falls outside the proper scope of a motion to modify or a motion to correct an illegal sentence." (See order page 3 lines 3-4 and 3a-3b). This error carries a manifest injustice because Mr. Freeman's clerical is one of the only four standards that a motion to modify and/or correct illegal sentence can be made under.

In Passanisi V. State and Edwards V. State a district court may modify or correct an illegal sentence when:

(A) The Court made a mistake of fact about the defendant's criminal record, and

(B) The mistake worked to the defendant's extreme detriment.

(C) The District Court was without jurisdiction to impose a sentence

(D) The sentence imposed exceeds statutory maximum

KEA points out that Argument 2's "ambush theory" holds merit and is supported by section (A) & (B) listed above.

On March 14th 2012, Parole and Probation (hereafter known as PandP) a division of the Nevada government required by state law and federal law to prepare a pre-sentence investigation report (p.s.i or p.s.r), filed it's final report to Dept. IX of the Second Judicial District Court regarding it's conclusions and recommendations for the defendant.

In it's assessed report, Pand P falsely stated that on October 27th 2011 in the County of Washoe Nevada, KEA "ambushed victims" Cesar Ant and Oscar Valencia while committing 2 counts of Battery with the use of a knife. Specifically, Pand P stated in it's report that KEA "ambushed the victims as he hid behind trees (see p.s.i report page #9)

Largely because of this believed ASSUMPTION belied by the record

1 Pand P emphasized what a threat and danger to the community KEA would
2 be if released; and therefore recommended KEA to serve a prison term of
3 two consecutive 35 to 156 month sentences (see p.s.I report page #13).

4 When KEA was being sentenced Mr. Freeman had said "Pand P got
5 their recommendation exactly right." (see sentencing transcripts last 3:00) He
6 then sentenced KEA to that exact sentence based on Pand P's recommend
7 ation. (see ~~the~~ Judgment of Conviction June 5th 2012)

8 Also at Sentencing, the District Attorney (D.A.) argued KEA hid behind
9 trees with a .22 caliber firearm but KEA never confessed or pled guilty
10 to this element. Neither in the plea agreement nor plea canvass was there
11 mention of the "ambush theory." The D.A. should NOT have been allowed to
12 use this. There was no physical evidence, other than a police report of
13 shell casings "found" near a landscaped area of trees and bushes. It was NEVER
14 proven at a pre-liminary hearing or a trial that KEA ambushed said victim.
15 The "ambush theory" was first brought up by witnesses from the victims
16 gang that were never cross-examined or ever testified. This theory
17 should have been inadmissible (however it was still used during
18 sentencing) because it was unproven and made KEA look like an ISIS member then a victim.

19 Since KEA pled guilty to the charges, the D.A. should have included
20 the "ambush theory" in the plea agreement or during the plea hearing.

21 During the plea hearing when KEA pled guilty the presiding plea
22 hearing judge had said:

23 "Tell me what happened." (see page 18 of plea hearing transcripts)

24 After a brief skeptical discussion with his attorney KEA forcefully
25 said:

26 "I shot a kid at the park close to my house. And it was a mutual
27 fight that altered into gunshots." (see page 18 of plea hearing transcripts)

28 Shouldn't KEA's acceptance of guilt become contrary to his guilty plea
29 agreement because it wasn't in accordance with the actual element of the

1 crime section? The D.A. should've objected at that moment and requested
2 the "ambush theory" factor of the crime be stated for the record and if
3 KEA refused to do so then the guilty plea should have been nullified.
4 However, the D.A. made no such request and KEA stated the role of his
5 actions, which resulted from the fight.

6 The District Attorney and Pand P waited til KEA pled guilty, before
7 revealing this alleged information. This played a key factor as to portraying
8 KEA's character, psychological thought process as a criminal, and willing-
9 ness to hurt others to Mr. Freeman. To fabricate such an aggravating
10 factor would make KEA seem dangerous, less humane, or -frankly- evil.
11 Ultimately this denied KEA due process to a fair sentencing hearing in
12 violation of his 5th and 14th amendment rights.

13 Pand P requested 2 consecutive 35 to 156 month sentences and the D.A.
14 requested the max of 2 consecutive 72 to 180 month sentences. Both requested
15 such sentences largely because of KEA's willingness to "ambush" his victims,
16 (making him a much more threat and danger to the community) while
17 ignoring the fact that this was his first violent offense with a weapon (first
18 offense ever as an adult) and the aggravating "theory" was Not legally permis-
19 sible nor true.

20 KEA rose this ground based on the claim that the sentence was
21 illegal and was based on untrue assumptions or materially untrue statement
22 that amounted to denial of Due Process. Id. Passinisi v. State, 831 P.2d
23 1371:108 Nev. 318 (1992)

24 "The district courts inherent authority to correct a judgement or sentence
25 founded on mistake is in accord with the constitutional considerations
26 underlying the sentencing process. The U.S. Sup. Court has expressly
27 held that where a defendant is sentenced on the basis of materially
28 untrue assumptions, 'the result, whether caused by carelessness or
29 design, is inconsistent with due process of law.' Townsend v. Bucke, 33

1 U.S. 736, 741: 68 S. CT. 1252, 1255 (1948).

2 Cases clearly establish that constitutionality violate "materially
3 untrue assumptions" ... "may arise either as a result of a sentencing judges
4 correct perception of inaccurate or false information, or a ~~sentencing~~ SENTENCING
5 JUDGES INCORRECT PERCEPTION OR MISAPPREHENSION OF otherwise
6 accurate or true information." [emphasis added] Id. 677 P.2d at 1048, n.3
7

8 Mr. Freeman clearly sentenced KEA to Panel P's recommendation,
9 he had even said so himself. If not for this "ambush" theory (materially
10 untrue assumption) Panel P would NEVER have recommended such a long
11 sentence nor would the D.A. be able to portray a 17 year old boy as
12 a monster lying in wait. Therefore Mr. Freeman would not have sentenced KEA to the
13 With that this theory KEA would and should have been given
14 a lesser sentence that compliments the true elements of the crime
15 and his character.
16

17 Thusly, KEA prays for this honorable court to remand his
18 case back to the district court for re-sentencing that only
19 includes proven and true facts and nothing fabricated or assumed.
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Conclusion

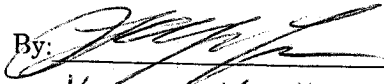
KEA prays this honorable court modifies his sentence by remanding this case back to the proper lower courts.

This court should vacate KEA's sentence according to grand 1 and remand the case back to District Court for re-sentencing according to Grand 2. This will provide KEA his due process rights and ensure he be given a fair procedure.

As a side note KEA would like to point out A.B. 267 (enacted 2016) section 1, is fully supportive of sentencing juveniles as adults with safeguard considerations as youths. If that took affect when KEA was sentenced that would have been another mitigating factor preventing a long sentence after certification. This Court has the opportunity to set case law guidelines into why or why not a juvenile may be certified and only for certain offenses.

Ultimately, KEA prays for relief from this Honorable Court and hopes they reverse and remand this case.

Dated this 18th day of July, 2016.

By: 
Kupaa Kea #1086480

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein and that on this 13th day of July, 2016, I mailed a true and correct copy of the foregoing Appeal for Motion to Modify to the following:

Clerk of the Court
201 S. Carson Street, Suite #201
Carson City NV 89701

BY: Kupaa Kea #1086480



(22-25)

AFFIRMATION PURSUANT TO NRS 239B.030

I, Kupaa Kea, NDOC# 1086980,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Appeal for Motion to
Modify and/or Correct Illegal Sentence,

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 13th DAY OF July, 2016.

SIGNATURE: 

INMATE PRINTED NAME: Kupaa Kea

INMATE NDOC # 1086980

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

Exhibitions

The following are exhibits 1-2 and it should be noted that KEA has yet to be contacted from his Motion to modify... attorney; granted to him by Mr. Freeman on June 3rd 2015 ORDER (see lines 5-6). Thus Mr. Freeman shouldn't have DENIED KEA's motion to modify.. until his attorney had contacted him, amended the complaint if necessary, and provided necessary counsel of effectiveness.

The letter he wrote Mr. Freeman went unanswered.

EXHIBIT 1

EXHIBIT 1

1 income with which to pay the costs associated with his *Petition*. The Court further finds the issues
2 presented in Petitioner's *Petition for Writ of Habeas Corpus (Post-Conviction)* are complex and
3 diverse and thus appointment of counsel is warranted to assist Petitioner with those claims.

4 Accordingly, and good cause appearing the Court's order is as follows:

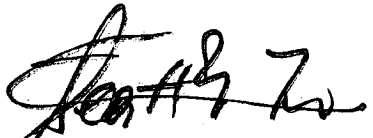
5 IT IS HEREBY ORDERED Petitioner's *Motion for Appointment of Counsel for Petition of*
6 *Writ of Habeas Corpus (Post-Conviction) and for Sentence Modification* is GRANTED.

7 IT IS FURTHER ORDERED the above-entitled matter is referred to Robert Bell, Esq.,
8 Administrator of the Court Appointed Counsel, for the appointment of counsel to represent
9 Petitioner with his *Petition for Writ of Habeas Corpus (Post-Conviction)*.

10 IT IS FURTHER ORDERED Appointed Counsel may file and serve a supplemental petition
11 for writ of habeas corpus within thirty (30) days after the date of counsel's appointment pursuant to
12 NRS 34.750(3)(b).

13 IT IS FURTHER ORDERED the State's *Motion to Dismiss Petition for Writ of Habeas*
14 *Corpus (Post-Conviction)* is DENIED WITHOUT PREJUDICE. The State may re-new and
15 supplement its *Motion to Dismiss* within forty-five (45) days of receipt of the supplemental petition
16 for writ of habeas corpus, if any, pursuant to NRS 34.745,

17 DATED: this 3 day of June, 2015.

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DISTRICT JUDGE

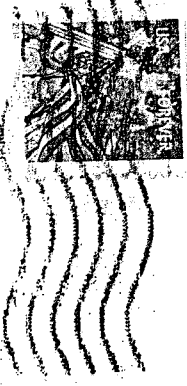
(c) Counsel is necessary to proceed with discovery.

² 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.

Kupaa Kea #1086480
Ely State Prison
P.O. Box 1989
Ely, NV 89301

LAS VEGAS NV 890

15 APR 2016 PM 3:11



RECEIVED

APR 18 2016

MAIL DESK

Clerk of The Court
% Honorable Judge Scott Freeman
Department 9
75 Court Street

89501
Reno, NV 89501

69501198275

Honorable Judge Scott Freeman
Washoe County Courthouse
Dept. 9
75 Court Street
Reno, Nevada

Your Honor,

Greetings, how are you doing today? I hope all is well. This letter is in regards to my Motion to Modify Illegal Sentence filed on February 7th 2014.

Sir, I am not sure if you recall but I am young and very inexperienced in the legal field. You had ORDERED and GRANTED me counsel for this motion on 6-3-15 through your order. (see page 2 line 5-6). To this day I have NOT been contacted by this motion's counsel. I had tried contacting the Robert Bell, esq group only to no avail. My current counsel Mrs. Victoria Oldenburg (CR12-0110 Writ of Habeas Corpus Post-Conviction) has made it abundantly clear she has NOT been hired for my Motion to Modify... only my Writ of Habeas Corpus. On 7-2-15 I had filed a Notice of Appeal with the Nevada Supreme Court only to be told I cannot file there for I had no petition's pending, yet you denied my Motion to Modify... on 6-3-15. Sir, I am confused and don't know what to do next or how to go about things.
Your Honor,

I had written the Clerk of Department 9 about looking up my appointed counsel but she said she could not. I don't mean to be a hassle sir, I understand you are a hardworking and busy man but I don't know how this process works. Being that

Exhibits ① - 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

Kupaa Kea

Petitioner/Plaintiff,

v.

State of Nevada

Respondent/Defendant.

Case No. CR12-0110

Dept. No. IX

Docket No. _____

APPLICATION FOR EXTENSION OF TIME

COMES NOW, Petitioner/Plaintiff, Kupaa Kea, pro per,
and respectfully moves this Honorable Court for a 60 day extension of time
from July 2nd, 2015, to September 2nd, 2015, within which to file
Petitioner/Plaintiff's Motion to Modify and/or correct
Illegal Sentence.

This motion is made and based pursuant to the supporting attached affidavit, as well as all papers,
pleadings, and documents on file herein.

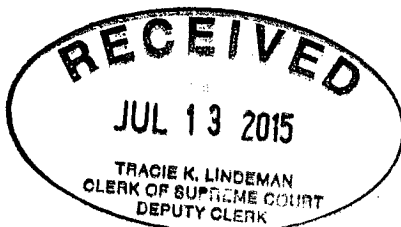
CONCLUSION

WHEREFORE, all of the above stated reasons, Petitioner/Plaintiff respectfully requests this
Honorable Court to Grant the Petitioner/Plaintiff an extension of time from July 2nd 2015 to
September 2nd 2015, within which to file his
Motion to Modify and/or correct Illegal Sentence.

DATED this 2nd day of July, 2015.

Respectfully submitted,

[Signature]
Petitioner/Plaintiff

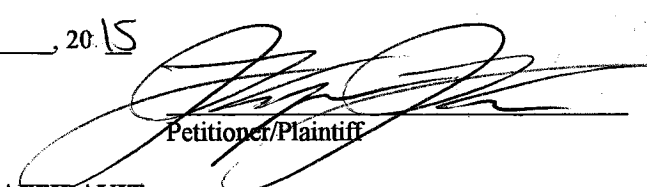


CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner/Plaintiff in the foregoing Application for Extension of Time, and that on this 2nd day of July, 2015 I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

Nevada Supreme Court
c/o Clerk of Court
201 S. Carson St.
Carson City NV 89701

DATED this 2nd day of July, 2015


Petitioner/Plaintiff

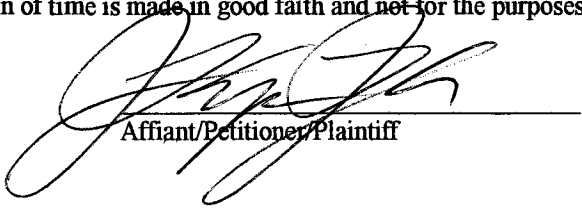
AFFIDAVIT

STATE OF NEVADA

COUNTY OF White Pine, ss.

Kupaa Kea, being first duly sworn, deposes and says:

1. That Affiant is the Petitioner/Plaintiff in the above-entitled cause of action;
2. That Affiant is over the age of twenty-one (21) years, of sound mind, and competent to swear to the within matters of the above listed cause of action;
3. That due to the failed attempts to establish communication and collaboration as well as guidance with newly appt. counsel, Affiant is unable to prepare and write his Motion to Modify and/or Correct Illegal Sentence by the current due date;
4. That Affiant believes the necessary research and preparation can be accomplished within the additional 60 days requested;
5. That this request for extension of time is made in good faith and not for the purposes of delay.


Affiant/Petitioner/Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Kupaa Kea

Petitioner,

CASE NO. CR12-0118

**MOTION FOR THE APPOINTMENT
OF COUNSEL**

-vs-

STATE OF NEVADA

Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, Kupaa Kea, proceeding pro se, within the above entitled cause of action and respectfully requests this Court to consider the appointment of counsel for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, Local Rule 7-2 of the Local Rules Of Practice, Rule 7 of the Federal Rules of Civil Procedure, Rule 11 of the Rules Governing Section 2254 Cases, the attached Memorandum of Points and Authorities, as well as all other pleadings and documents on file within this case.

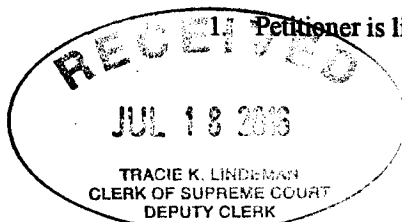
MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner Kupaa Kea, in state custody, pursuant to Title 28, Section 2254, petition for Writ of Habeas Corpus.

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the following:



Nevada Department of Corrections decision to refuse to supply any additions and/or updates to the Federal Practice Digest 4th Edition; United States Code Service; and, United States Code Annotated, since 2001. See Exhibit 1, Letter to Inmate Services and answer in response. Also Exhibit 2, Letter to Board of Prison Commissioner's and Response.

2. The merits of claims for relief in this action are of Constitutional dimension, and Petitioner is likely to succeed in this case.
3. Petitioner is incarcerated at the Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
4. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
5. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
6. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
7. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
8. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
9. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
10. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a

severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.

11. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel under 28 U.S.C., Section 1915(d), and are addressed to the sound discretion of the Court. See, United States v. McQuade, 579 F. 2d 1180 (9th Cir. 1978). Under 28 U.S.C., Section 1915(d), the Court may request an attorney to represent any such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to 28 U.S.C., Section 1915(d), the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination. See, Ulmer v. Chancellor, 691 F.2d 209 (5th Cir. 1982).

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition. See, Godwin v. Wisconsin Gas Co., 788 F.Supp. 1019 (E.D. Wis. 1992). And finally the District Court's decision is subject to the abuse of discretion review. See, Richardson v. Henery, 902 F.2d 414, 417 (5th Cir.) cert. Denied, 498 U.S. 901, 111 S.Ct. 260, 112 L.Ed. 2d 218 (1990); also, United States v. 30.64 Acres of Land, 795 F.2d 796, at 604 (9th Cir. 1986).

Also, the law as to what is needed and required in a prison law library has been addressed and settled by the federal courts here in Nevada. See Craig v. Hocker, 405 F. Supp. 656 (D. Nev. 1975). There are also Ninth Circuit cases that deal with the requirements of law library: Johnson v. Moore, 948 F. 2d 517, 521 n. 2, (9th Cir. 1991); Lindquist v. Idaho State Bd. Of Corrections, 776 F. 2d 851, 856 n. 1, (9th Cir. 1985); and, a holding that inmates need not make a showing of prejudice where core Bounds requirements are denied, see Harris v. Malouhney, 827 F. Supp. 1488 (D. Mont. 1993). The Ninth Circuit

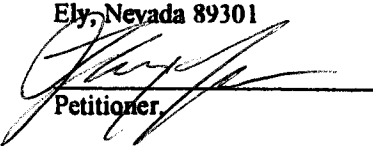
in Casey v. Lewis, 43 F. 3d 1261 (9th Cir. 1994), also held that updates are required, which was not overturned by the Supreme Court's decision in Lewis v. Casey, 116 :S. Ct. 2174, 518 U.S. 334 (1996).

III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 13th day of July, 20 16

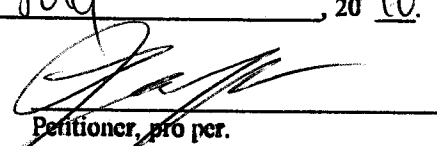
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301


Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

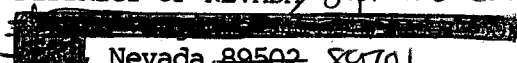
Dated this 13th day of July, 20 16.


Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

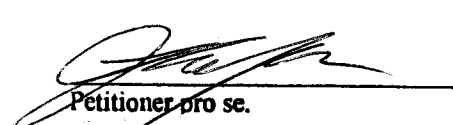
I hereby certify that a true and correct copy of the foregoing document was mailed to:

CLERK OF THE COURT
DISTRICT OF NEVADA / Supreme Court

 S. Carson Dr. #201
Nevada 89502-80701

Carson City

On this 13th day of July, 20 16


Petitioner pro se.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion For

The Appointment of Counsel
(Title of Document)

filed in [REDACTED] Case No. CR12-0110

☒ 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)

7/13/17
(Date)