

IN THE SUPREME COURT OF THE STATE OF NEVADA

D'VAUGHN KEITHAN KING,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court
Case No. 74703

APPELLANT'S APPENDIX

Appeal from Denial of Petition for Writ of Habeas Corpus
Second Judicial District

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IN THE SUPREME COURT OF THE STATE OF NEVADA

D'VAUGHN KEITHAN KING,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 74703

INDEX TO APPELLANT'S APPENDIX

<u>Document</u>	<u>Page Numbers</u>
1. Amended Information	AA005-AA008
2. Answer	AA130-AA132
3. Case Appeal Statement	AA148-AA152
4. Guilty Plea Memorandum	AA009-AA014
5. Information	AA001-AA004
6. Judgement of Conviction	AA075-AA076
7. Notice of Appeal (Direct Appeal)	AA077-AA077
8. Notice of Appeal (Post-Conviction)	AA147-AA148
9. Notice of Entry of Order	AA139-AA146
10. Order Denying Post-Conviction Petition	AA133-AA138
11. Order of Affirmance Case 64983	AA078-AA081
12. Petition for Post-Conviction Relief	AA082-AA120
13. Supplemental Petition	AA121-AA129
14. Transcript-Change of Plea	AA015-AA031
15. Transcript-Sentencing	AA032-AA074

DA # 438987

SPD 10-11148

CODE 1800
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Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR12-1160

v.

Dept. No. 7

DVAUGHN KIETHAN KING,
also known as
DVAUGHN KEATHAN KING,
also known as "PRESCHOOL"

Defendant.

_____ /

INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the
County of Washoe, State of Nevada, in the name and by the authority
of the State of Nevada, informs the above entitled Court that DVAUGHN
KIETHAN KING, also known as DVAUGHN KEATHAN KING, also known as
"PRESCHOOL" the defendant above named, has committed the crime of:

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///

1 MURDER WITH THE USE OF A DEADLY WEAPON, a violation of NRS
2 200.010, NRS 200.030, and NRS 193.165, a felony, (F720) in the manner
3 following:

4 That the said defendant on the 5th day of November A.D.
5 2010, or thereabout, and before the filing of this Information, at
6 and within the County of Washoe, State of Nevada, did willfully,
7 unlawfully, and with malice aforethought, deliberation, and
8 premeditation, kill and murder TOMMY YOUNG, a human being, with the
9 use of a deadly weapon to wit, a .40 caliber handgun, by means of
10 shooting said victim multiple times in the head and/or neck and/or
11 torso, thereby inflicting mortal injuries upon the said TOMMY YOUNG
12 from which he died on November 5, 2010, or

13 The defendant did willfully and unlawfully perpetrate
14 and/or attempted to perpetrate an Invasion of the Home and/or Robbery
15 and during the perpetration or attempted perpetration of said acts, a
16 death resulted to TOMMY YOUNG, a human being at 705 York Way, Sparks,
17 Washoe County, Nevada by means of TOMMY YOUNG being shot in the head
18 and/or neck and/or torso with one or more rounds from a deadly
19 weapon, to wit, a .40 caliber handgun.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 All of which is contrary to the form of the Statute in such
2 case made and provided, and against the peace and dignity of the
3 State of Nevada.

4
5 RICHARD A. GAMMICK
6 District Attorney
7 Washoe County, Nevada

8
9 By/s/BRUCE C. HAHN
10 BRUCE C. HAHN
11 5011
12 Chief Deputy District Attorney
13
14
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26

1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:

4 SPARKS POLICE DEPARTMENT

5 DET. KENNETH GALLOP
6 DET. M. BROWN

7 WASHOE COUNTY CRIME LAB

8 KERRI HEWARD
9 DEAN KAUMANS

10 SACRAMENTO POLICE DEPARTMENT

11 OFFICER JUSTIN DONNELL

12 HENRY LEE TOY, 911 Parr Blvd., Reno, NV

13 CHERI MITCHELL, C/O SPD Det. Kenneth Gallop

14 EVELYN YOUNG, 705 York Way, Sparks, NV 89434

15 JOE RODRIGUEZ, RENO-SPARKS CAB, Reno, NV 89503

16 REBECCA MCQUEEN, GSR SECURITY, 2500 E. 2nd St., Reno, NV 89595

17 ERIC KING, C/O SPD Det. Kenneth Gallop

18 QUINIYA DAVIS, 1707 N. Newport, Stockton, CA

19 The party executing this document hereby affirms that this
20 document submitted for recording does not contain the social security
21 number of any person or persons pursuant to NRS 239B.230.

22 RICHARD A. GAMMICK
23 District Attorney
24 Washoe County, Nevada

25 By/s/BRUCE C. HAHN
26 BRUCE C. HAHN
5011
Chief Deputy District Attorney

07234389871

DA #13-54718

SPD 10-11148

1 CODE 1800
2 Richard A. Gammick
3 #001510
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200
7 Attorney for State of Nevada

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No.: CR12-1160

15 v.

Dept. No.: D07

16 DVAUGHN KEITHAN KING,
17 also known as
18 "PRESCHOOL",

19 Defendant.

20
21
22 AMENDED INFORMATION

23 RICHARD A. GAMMICK, District Attorney within and for the
24 County of Washoe, State of Nevada, in the name and by the authority
25 of the State of Nevada, informs the above entitled Court that DVAUGHN
26 KEITHAN KING also known as "PRESCHOOL", the defendant above named,
has committed the crime of:

27 MURDER IN THE SECOND DEGREE WITH THE USE OF A DEADLY
28 WEAPON, a violation of NRS 200.010, NRS 200.030, and NRS 193.165 a
29 felony, (F720) in the manner following:

30 That the said defendant on the 5th day of November A.D.
31 2010, or thereabout, and before the filing of this Information, at

AA005

1 and within the County of Washoe, State of Nevada, did willfully,
2 unlawfully, and with malice aforethought, kill and murder TOMMY
3 YOUNG, a human being, with the use of a deadly weapon to wit, a .40
4 caliber handgun, by means of shooting said victim multiple times in
5 the head and/or neck and/or torso, thereby inflicting mortal injuries
6 upon the said TOMMY YOUNG from which he died on November 5, 2010.

7
8 All of which is contrary to the form of the Statute in such
9 case made and provided, and against the peace and dignity of the
10 State of Nevada.

11
12 RICHARD A. GAMMICK
13 District Attorney
14 Washoe County, Nevada

15
16 By: /s/BRUCE C. HAHN
17 BRUCE C. HAHN
18 5011
19 Deputy District Attorney
20
21
22
23
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25
26

1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:

4
5 SPARKS POLICE DEPARTMENT

6 MICHEL BROWN
7 KENNETH GALLOP
8 LANCE LEHIGH
9 ROBERT BEGBIE
10 ERIC CURTIS
11 AARON LEARY
12 STEVEN FIORE
13 MATTHEW MARQUEZ
14 MICHAEL KEATING
15 PATRICK MCNEELEY
16 JOHN PATTON
17 DENNIS RODRIGUE
18 OFFICER HANE
19 OFFICER ROBERSON

20 WASHOE COUNTY CRIME LABORATORY

21 DEAN KAUMANS
22 KINDRA BAUM
23 KERRY HEWARD
24 DEAN KAUMANS
25 VICTOR RUVALCABA
26 SUZANNE HARMON
TONI LEAL-OLSEN

SACRAMENTO POLICE DEPARTMENT

ASHLEY ENGLEFIELD
DET. MELLO
JUSTIN DONNELL
D.PAIZ

SACRAMENTO SHERIFF'S DEPARTMENT

BRIAN MEUX
ROBERT TRACY
DETECTIVE SWISHER

STOCKTON POLICE DEPARTMENT

SALVADOR SOTO
STEVEN MCCULLOUGH
PATRICIA GRENNINGS

WASHOE COUNTY MEDICAL EXAMINER

Ellen Clark, MD

1 DANNY CONK, 1705 N. Newport Ave., Stockton, CA
2 PRISCILLA CONK, 1705 N. Newport Ave., Stockton, CA
3 CAROLE ELBERT, 5714 Auburn Blvd., Sacramento, CA
4 TERRI RENISON, 5714 Auburn Blvd., Sacramento, CA
5 REBECCA MCQUEEN, 2500 E. 2nd Street, Reno, NV
6 MAURO ZAMORA, 2500 E. 2nd Street, Reno, NV
7 ASHLEY BROOKS, 1847 Purdue Drive, Reno, NV
8 CHRISVALENTOU CHRYSOS, 845 N. Sierra Street, Reno
9 EVELYN YOUNG
10 QUINA YOUNG
11 SHANIQUA MARTIN
12 HANNA MULATU
13 JOE RODRIGUEZ
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The party executing this document hereby affirms that this document submitted for recording does not contain the social security number of any person or persons pursuant to NRS 239B.230.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By: /s/BRUCE C. HAHN
BRUCE C. HAHN
5011
Deputy District Attorney

1 CODE 1785
2 Richard A. Gammick
3 #001510
4 P.O. 30083
5 Reno, NV. 89520-3083
6 (775)328-3200
7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR12-1160

15 v.

Dept No. 7

16 DVAUGHN KEITHAN KING,
17 also known as
18 "PRESCHOOL"

19 Defendant.

20 _____/
21 GUILTY PLEA MEMORANDUM

22 1. I, DVAUGHN KEITHAN KING, also known as "PRESCHOOL",
23 understand that I am charged with the offense of: MURDER IN THE
24 SECOND DEGREE WITH THE USE OF A DEADLY WEAPON, a violation of NRS
25 200.010, NRS 200.030 and NRS 193.165, a felony.

26 2. I desire to enter a plea of guilty to the offense of
MURDER IN THE SECOND DEGREE WITH THE USE OF A DEADLY WEAPON, a
violation of NRS 200.010, NRS 200.030 and NRS 193.165, a felony, as
more fully alleged in the charge filed against me.

3. By entering my plea of guilty I know and understand
that I am waiving the following constitutional rights:

1 A. I waive my privilege against self-incrimination.

2 B. I waive my right to trial by jury, at which trial the
3 State would have to prove my guilt of all elements of the offense
4 beyond a reasonable doubt.

5 C. I waive my right to confront my accusers, that is, the
6 right to confront and cross-examine all witnesses who would testify
7 at trial.

8 D. I waive my right to subpoena witnesses for trial on my
9 behalf.

10 4. I understand the charge against me and that the
11 elements of the offense which the State would have to prove beyond a
12 reasonable doubt at trial are that on November 5, 2010, or
13 thereabout, in the County of Washoe, State of Nevada, I did
14 willfully, unlawfully, and with malice aforethought kill and murder
15 TOMMY YOUNG, a human being, at a residence at 705 York Way, Sparks,
16 Nevada, by shooting him multiple times and did use a deadly weapon in
17 the commission of said offense: a .40 caliber semi-automatic handgun
18 thereby inflicting mortal injuries upon TOMMY YOUNG from which he
19 died on November 5, 2010.

20 5. I understand that I admit the facts which support all
21 the elements of the offense by pleading guilty. I admit that the
22 State possesses sufficient evidence which would result in my
23 conviction. I have carefully examined the State's discovery of
24 evidence against me. I have considered and discussed all possible
25 defenses and defense strategies with my counsel. I understand that I
26 have the right to appeal from adverse rulings on pretrial motions

1 only if the State and the Court consent to my right to appeal in a
2 separate written agreement. I understand that any substantive or
3 procedural pretrial issue which could have been raised at trial are
4 waived by my plea.

5 6. I understand that the consequences of my plea of guilty
6 are that I will be imprisoned for either: a definite term of 25
7 years with eligibility for parole beginning when a minimum of 10
8 years has been served, or, for life with the possibility of parole
9 with eligibility for parole beginning when a minimum of 10 years has
10 been served. I understand that I will also be imprisoned for an
11 additional mandatory consecutive sentence from 1 to 20 years for the
12 use of a deadly weapon.

13 7. My counsel and the State will be free to argue for an
14 appropriate sentence as to the underlying sentence for Murder in the
15 Second Degree. For the mandatory consecutive deadly weapon
16 enhancement term, my counsel is free to argue for an appropriate term
17 and the State agrees to seek no more than an additional 2 to 6 years
18 for the enhancement. My counsel and the State are free to argue as
19 to whether the sentence to be imposed in this case here will run
20 concurrent or consecutive to my separate prison sentence term in
21 California, which I was serving when I was arrested for my charges
22 here.

23 8. I understand that, even though the State and I have
24 reached this plea agreement, the State is reserving the right to
25 present arguments, facts, and/or witnesses at sentencing in support
26 of the plea agreement.

1 9. I also agree that I will make full restitution in this
2 matter joint and several with HENRY TOY, as determined by the Court.
3 Where applicable, I additionally understand and agree that I will be
4 responsible for the repayment of any costs incurred by the State or
5 County in securing my return to this jurisdiction from California.

6 10. I understand that the State, at their discretion, is
7 entitled to either withdraw from this agreement and proceed with the
8 prosecution of the original charges or be free to argue for an
9 appropriate sentence at the time of sentencing if I fail to appear at
10 any scheduled proceeding in this matter OR if prior to the date of my
11 sentencing I am arrested in any jurisdiction for a violation of law
12 OR if I have misrepresented my prior felony criminal history. My
13 prior criminal history consists of a conviction for TRANSPORTATION OF
14 MARIJUANA (Sacramento Superior, 03F06273(2)); BATTERY CAUSING
15 SUBSTANTIAL BODILY HARM (Sacramento Superior, 08F01901); POSSESSION
16 OF A CONTROLLED SUBSTANCE (Sacramento Superior, 10F07661). I
17 understand and agree that the occurrence of any of these acts
18 constitutes a material breach of my plea agreement with the State. I
19 further understand and agree that by the execution of this agreement,
20 I am waiving any claim I may have to remand this matter to Justice
21 Court should I later attempt to withdraw my plea.

22 11. I understand and agree that pursuant to the terms of
23 the plea agreement stated herein, any other cases charged or
24 uncharged which are either to be dismissed or not pursued by the
25 State, may be considered by the court at the time of my sentencing.

26 ///

1 12. I understand that the Court is not bound by the
2 agreement of the parties and that the matter of sentencing is to be
3 determined solely by the Court. I have discussed the charge, the
4 facts and the possible defenses with my attorney. All of the
5 foregoing rights, waiver of rights, elements, possible penalties, and
6 consequences, have been carefully explained to me by my attorney. My
7 attorney has not promised me anything not mentioned in this plea
8 memorandum, and, in particular, my attorney has not promised that I
9 will get any specific sentence. I am satisfied with my counsel's
10 advice and representation leading to this resolution of my case. I
11 am aware that if I am not satisfied with my counsel I should advise
12 the Court at this time. I believe that entering my plea is in my
13 best interest and that going to trial is not in my best interest. My
14 attorney has advised me that if I wish to appeal, any appeal, if
15 applicable to my case, must be filed within thirty days of my
16 sentence and/or judgment.

17 13. I understand that this plea and resulting conviction
18 will likely have adverse effects upon my residency in this country if
19 I am not a U. S. Citizen. I have discussed the effects my plea will
20 have upon my residency with my counsel.

21 14. I offer my plea freely, voluntarily, knowingly and
22 with full understanding of all matters set forth in the Amended
23 Information and in this Plea Memorandum. I have read this plea
24 memorandum completely and I understand everything contained in it.

25 15. My plea of guilty is voluntary, is not the result of
26 any threats, coercion or promises of leniency.

16. I am signing this Plea Memorandum voluntarily with advice of counsel, under no duress, coercion, or promises of leniency.

17. I do hereby swear under penalty of perjury that all of the assertions in this written plea agreement document are true.

DATED this 25 day of November, 2013.

X D'Paughn King
DEFENDANT

Attorney Witnessing Defendant's Signature

Prosecuting Attorney

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)
12 Plaintiffs,)
13 vs.) Case No. CR12-1160 and
14 DVAUGHN KEITHAN KING,) CR13-1149
15 Defendant.) Department 7
16 _____)
17

18 TRANSCRIPT OF PROCEEDINGS

19 CHANGE OF PLEA

20 November 25, 2013

21 9:00 a.m.

22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: BRUCE HAHN, ESQ.
5 P.O. Box 30085
6 Reno, Nevada

7 For the Defendant:

8 JOHN OHLSON, ESQ.
9 Attorney at Law
10 Reno, Nevada
11
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1 RENO, NEVADA, November 25, 2013, 9:00 a.m.

2
3 --oOo--

4 THE CLERK: CR12-1160, State of Nevada versus
5 Dvaughn K. King. Matter set for change of plea. Counsel, I
6 also have the other case on. Are we hearing that one as
7 well?

8 MR. OHLSON: May we have a moment, your Honor?

9 THE COURT: Certainly. Counsel, why don't we just
10 take the break and let me know.

11 MR. OHLSON: We're ready.

12 THE COURT: Are you sure?

13 MR. OHLSON: We are.

14 THE COURT: Ms. Clerk, let's call the other
15 matter.

16 THE CLERK: Case number CR13-1149, State of Nevada
17 versus Dvaughn King. Matter set for change of plea.

18 MR. OHLSON: Change of plea.

19 THE CLERK: Counsel and the Division, please state
20 your appearance.

21 MR. HAHN: Bruce Hahn on behalf of the State.

22 MR. WILSON: Thomas Wilson on behalf of the
23 Division.

24 MR. OHLSON: Your Honor, John Ohlson on behalf of

1 Mr. King. He's present.

2 THE COURT: Mr. King, the State of Nevada has
3 filed an amended information charging you with murder in the
4 second degree with the use of a deadly weapon. Your attorney
5 is being provided a with a copy of the information. Good
6 morning, sir.

7 THE DEFENDANT: Good morning, your Honor.

8 THE COURT: I understand coming to court always
9 makes people a little nervous, but how do you feel here this
10 morning?

11 THE DEFENDANT: I'm all right.

12 THE COURT: Have you taken any pill, drug or
13 medicine in the last 24 hours?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you under the care of a physician
16 or psychiatrist?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you spoken to Mr. Ohlson about
19 what we're going to do here this morning?

20 THE DEFENDANT: Correct.

21 THE COURT: Mr. Ohlson.

22 MR. OHLSON: Yes, your Honor. Mr. King's name is
23 set forth and spelled at line 12 of the amended information
24 and it is correct. We waive the formal reading of the

1 information. We previously had a copy. Mr. King is prepared
2 to enter a plea to the amended information pursuant to a plea
3 bargain.

4 THE COURT: And the terms are?

5 MR. OHLSON: That we have executed, by the way,
6 we've executed a plea bargain memorandum that has been filed
7 with the Court. The terms of the plea bargain are this,
8 Mr. King will plead guilty to the charges set forth in the
9 amended information, murder in the second degree enhanced
10 with a deadly weapon. In return for which the previous
11 information charging, I believe, open murder will be
12 dismissed.

13 The State and the defendant have agreed with each
14 other that on the primary charge, they are both free to argue
15 as to sentencing and as to whether or not any sentence as to
16 this charge and any enhancement will run concurrent or
17 consecutive with the California time that Mr. King has
18 remaining to do that he was serving when he was brought here
19 on this charge.

20 In addition, in regards to the deadly weapons
21 enhancement, the State and the defendant have agreed that the
22 defendant is free to argue as to the enhancement. The
23 defendant will limit his request to two to six years on the
24 enhancement.

1 Further, there are some minor and one major matter
2 that were not included in this plea memorandum as different
3 plea memorandums passed back and forth with each other.
4 Mr. Hahn can inform the Court as to the -- I think they're
5 ministerial or clerical matters, not of great significance
6 that need to be either interlineated or agreed upon orally at
7 this time that supplement this plea bargain memorandum.

8 The major matter involves an additional
9 indictment, which pends before this Court regarding either
10 witness intimidation and tampering or witness bribery. And
11 the issue before the -- before us in that was the dismissal
12 of that second indictment upon the sentence in this case and
13 Mr. King understands that that case would be dismissed.

14 I have to tell you that Mr. Hahn and I have not
15 discussed that specifically and I think we went on sort of a
16 tacit understanding, but our understanding might have been
17 different. We need to hear from Mr. Hahn on that subject.

18 THE COURT: Let me hear from the State in terms of
19 the negotiations. Let's just start with the negotiations as
20 to the amended information.

21 MR. HAHN: Judge, as to the negotiations as
22 Mr. Ohlson set forth, they appear to be correct. The only
23 other minor interlineation I would recommend is as the Court
24 discussed, that Mr. King is not under the influence of any

1 intoxicants or anything that would impair his judgment today.
2 Further, that he understands he's not eligible for probation.

3 With regard to the subsequent indictment filed
4 against Mr. King in this case, Mr. Ohlson and I, we did
5 briefly discuss this, and on reflection, I think, I think the
6 interest of justice could in fact be served by dismissal of
7 that matter at the time of sentencing in this matter, should
8 the Court be satisfied with the canvass of Mr. King.

9 THE COURT: All right. Thank you. Mr. Ohlson.

10 MR. OHLSON: Thank you, your Honor. Before you
11 commence the canvass, may I add to the record in this matter?

12 THE COURT: Certainly.

13 MR. OHLSON: Thank you. I'd like the record to
14 reflect that Mr. King and I have discussed this potential
15 plea bargain on a number of occasions both at the detention
16 facility at 911 Parr, in person and by telephone. Mr. King
17 appears to understand -- have a thorough understanding of the
18 potential plea bargain and of his case.

19 He is an accomplished, as you might consider, you
20 might call a jailhouse lawyer and he has a good understanding
21 of the precedent involved in the various legal issues in his
22 case, which we have discussed.

23 We've also discussed the factual matters of his
24 defense, the strength and weaknesses of his defense on the

1 merits and a trial in this matter. He understands the
2 initiative for the acceptance of the plea bargain did come
3 from Mr. King. And with that, I'll just put it on the
4 record.

5 THE COURT: Mr. King, good morning, again, sir.

6 THE DEFENDANT: Good morning.

7 THE COURT: You've heard the discussions between
8 your -- from your attorney and the State's attorney. Is that
9 your understanding the negotiations as well?

10 THE DEFENDANT: Correct.

11 THE COURT: Sir, you understand by entering a
12 plea, you're waiving certain important constitutional rights.
13 I'll explain these rights to you, and if you have any
14 questions, let me know, I'll give you a chance to talk with
15 your attorney. Sir, how old are you?

16 THE DEFENDANT: 36.

17 THE COURT: What's the extent of your education?

18 THE DEFENDANT: Some college background.

19 THE COURT: Okay. No question about reading and
20 writing being an issue?

21 THE DEFENDANT: No, sir.

22 THE COURT: If at any time I stumble across some
23 sort of a word or concept you don't understand, just let me
24 know, I'll try to do a better job explaining it to you.

1 THE DEFENDANT: Okay.

2 THE COURT: Sir, by entering a plea of guilty,
3 you're waiving your right to a speedy and public jury trial.
4 If this case had gone to trial, there would have been 12
5 citizens. They would have been sworn, seated in the box to
6 my left. All 12 would have to reach a unanimous verdict
7 before you could be found guilty. By entering a plea of
8 guilty here today, you're waiving that constitutional right.
9 Do you understand that, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Under the Sixth Amendment, you have
12 the right to confront the witnesses against you. Those
13 witnesses would have been sworn. They would be seated in the
14 box to my left. You through your attorney would have an
15 opportunity to cross examine those witnesses. By entering a
16 plea of guilty here today, you're waiving that constitutional
17 right. Do you understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Also, under the Sixth Amendment, you
20 have the right of what's called compulsory process. That
21 means if we went to trial and if there was somebody you felt
22 could testify favorably for you, you through your attorney
23 could apply to the Court for a subpoena. The Court would
24 issue the subpoena and compel the person to attend the

1 proceedings. By entering a plea of guilty here today, you're
2 waiving that constitutional right. Do you understand that,
3 sir?

4 THE DEFENDANT: Yes.

5 THE COURT: Also, under the Fifth Amendment, you
6 have the right to remain silent. If this case had gone to
7 trial, you would not be required to testify. You would not
8 be required to produce any evidence. You could remain
9 silent, seated at table and rest on the presumption of
10 innocence. By pleading guilty, you're waiving that right,
11 because I'm going to be asking you questions and you have to
12 answer me. Do you understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Also under the Sixth Amendment, you
15 have the right to the effective assistance of counsel at
16 trial. Since we're not going to have a trial, you're waiving
17 that right, although you'll still have the good services of
18 Mr. Ohlson throughout the rest of these proceedings. But do
19 you understand by entering a plea of guilty here today,
20 you're waiving that constitutional right? Do you understand
21 that, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Also by entering a plea of guilty here
24 today, you're relieving the State of its obligation to prove

1 each and every element of the offense beyond a reasonable
2 doubt. Do you understand you're waiving that constitutional
3 right as well?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr. Hahn, if this case had gone to
6 trial, what would the State have been prepared to prove?

7 MR. HAHN: Your Honor, the State would have been
8 prepared to prove by competent evidence the elements outlined
9 in the amended information, murder in the second degree with
10 the use of deadly weapon, in that on or about November 5,
11 2010, here in Washoe County, the defendant willfully,
12 unlawfully, with malice aforethought, killed and murdered a
13 human being, that human being Tommy Young, by the use of a
14 deadly weapon, in this particular case it was a 40-caliber
15 handgun, by means of shooting Mr. Young multiple times in the
16 head or neck or torso, inflicting those mortal injuries as
17 pled in the amended information from which Mr. Young died on
18 the same day.

19 THE COURT: Thank you. Now, sir, do you
20 understand what the maximum sentence is that may be imposed
21 in this case?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Tell me what it is.

24 THE DEFENDANT: Ten to life.

1 THE COURT: And is probation available?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Now, do you understand
4 that there's also a weapons enhancement involved in this
5 case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What is the possible sentencing range
8 on the weapons enhancement?

9 THE DEFENDANT: Two to six.

10 THE COURT: You understanding that that must run
11 consecutive to the sentence -- just a minute, counsel.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I understand that -- Mr. Ohlson, I
14 understand that the negotiations are that that was sort of
15 the window frame of the argument from the defense, but the
16 actual sentencing range for the enhancement?

17 THE DEFENDANT: One to twenty.

18 THE COURT: One to twenty years?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you understand that must run
21 consecutive no matter what sentence is placed within that
22 range?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Now, did you sign this plea

1 agreement here?

2 THE DEFENDANT: Correct.

3 THE COURT: Did you read it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you understand it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you talk with your attorney?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you had enough time to talk with
10 your attorney about this case?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you satisfied with the services
13 Mr. Ohlson has provided to you?

14 THE DEFENDANT: Correct.

15 THE COURT: Mr. Ohlson, any question in your mind
16 of your client's competency to understand the nature of these
17 proceedings, enter a plea or assist counsel at trial?

18 MR. OHLSON: None whatsoever, your Honor.

19 THE COURT: Sir, you understand although you've
20 made an agreement with the State, sentencing is in the sole
21 discretion of the Court?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: As I sit here now, I don't know what
24 the sentence is going to be. At the time of sentencing, I'm

1 going to listen you to, I'm going to listen to your attorney,
2 I'm going to listen to the State's attorney, I'm going to
3 review and consider all the information provided to me by the
4 Division of Parole and Probation. But do you understand that
5 sentencing is in the sole discretion of the Court?

6 THE DEFENDANT: Correct.

7 THE COURT: Other than that which is contained in
8 the plea agreement, has anybody threatened you or promised
9 you anything in order to get you to plead guilty here today?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you pleading guilty here freely
12 and voluntarily?

13 THE DEFENDANT: Yes.

14 THE COURT: Tell me what you did.

15 THE DEFENDANT: I'm pleading to my role in the
16 homicide of Tommy Young.

17 THE COURT: Tell me what you did. I understand
18 what you're pleading to. Tell me what happened on
19 November 5th, 2010.

20 THE DEFENDANT: Well, I accompanied Mr. Toy in the
21 assistance of killing of Tommy Young.

22 THE COURT: Did that occur here in Washoe County?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, based upon everything we've done

1 here this morning, do you have any questions of me about
2 these proceedings?

3 THE DEFENDANT: No, sir.

4 THE COURT: Sir, as to the charge contained in the
5 information, the amended information, what is your plea,
6 guilty or not guilty?

7 THE DEFENDANT: Not guilty -- excuse me. Guilty.

8 THE COURT: As to the charge murder in the second
9 degree with the use of a deadly weapon as stated in the
10 amended information filed on or about November 22nd, 2013,
11 what is your plea, guilty or not guilty?

12 THE DEFENDANT: Guilty, sir.

13 THE COURT: The Court finds that the defendant
14 understands the nature of the offense charged, the
15 consequences of his plea, has made a knowing, voluntary and
16 intelligent waiver of his constitutional rights. The Court
17 will accept his plea at this time. Ms. Clerk, do we have a
18 date for sentencing?

19 THE CLERK: Yes, your Honor. Counsel, how does
20 January 29th at 9:00 a.m. look?

21 MR. OHLSON: 29th at 9:00. I expect to be in
22 trial next door on another homicide, but I suppose we
23 could -- I think we'll take sometime with the sentencing.

24 THE CLERK: Are you available on January 22nd?

1 MR. OHLSON: Yes.

2 THE CLERK: January 22nd at 9:00 a.m.. Mr. Hahn,
3 does that work for you?

4 MR. HAHN: It does.

5 THE COURT: Sir, you're going to be given a packet
6 of material from the Division of Parole and Probation. It's
7 mostly biographical information. Fill it out as completely
8 as possible. The more information the Court has about you at
9 the time of sentencing, the better job we're going to be able
10 to do. Do you have any questions of me about what we've done
11 here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Mr. Hahn, anything further
14 on behalf of the State?

15 MR. HAHN: I would just recommend that the trial
16 date of February 15, 2014 in this case CR12-1160 be vacated.
17 And the trial date, I believe, in April for the collateral
18 matter, the bribery of a witness also be vacated.

19 THE COURT: The motions to confirm in both cases
20 will be vacated as well. Mr. Ohlson, anything on behalf of
21 your client?

22 MR. OHLSON: No, your Honor.

23 THE COURT: This court's in recess.

24 --oOo--

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on November 25, 2013, at the hour of
8 9:00 a.m., and took verbatim stenotype notes of the
9 proceedings had upon the change of plea in the matter of THE
10 STATE OF NEVADA, Plaintiff, vs. DVAUGHN KEITHAN KING,
11 Defendant, Case No. CR12-1160 and CR13-1149, and thereafter,
12 by means of computer-aided transcription, transcribed them
13 into typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 17, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 21st day of January, 2014.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)
12 Plaintiffs,)
13 vs.) Case No. CR12-1160 and
14 DVAUGHN KEITHAN KING,) CR13-1149
15 Defendant.) Department 7
16 _____)
17

18 TRANSCRIPT OF PROCEEDINGS

19 SENTENCING

20 January 22, 2014

21 9:00 a.m.

22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: BRUCE HAHN, ESQ.
5 P.O. Box 30083
6 Reno, Nevada

7 For the Defendant:

8 JOHN OHLSON, ESQ.
9 Attorney at Law
10 Reno, Nevada
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1 RENO, NEVADA, January 22, 2014, 9:00 a.m.

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3 --oOo--

4 THE CLERK: Case number CR13-1149, State of Nevada
5 versus Dvaughn King. Matter set for motion to dismiss
6 indictment. And case number CR12-1160, State of Nevada
7 versus Dvaughn Keithan King. Matter set for sentencing.
8 Counsel and the Division, please state your appearance.

9 MR. HAHN: Bruce Hahn for the State.

10 MR. OHLSON: Good morning, your Honor. John
11 Ohlson for the defendant. He's in custody and present.

12 MS. IVESON: Your Honor, Jennifer Iveson for the
13 Division. We have two corrections to make to the presentence
14 investigation report.

15 THE COURT: Just a minute. Let me pull it up.
16 This is the time set for sentencing in the above-entitled
17 case. The Court is in receipt of a presentence investigation
18 report prepared December 31st. Have counsel had an
19 opportunity to review the report and are there any facts,
20 errors or omissions you want to the bring to the Court's
21 attention? Mr. Ohlson, the Court is also in receipt of the
22 defendant's presentence memorandum filed January 16th, 2014.
23 Mr. Ohlson.

24 MR. OHLSON: Yes, your Honor. We did file a

1 presentence memorandum. And as that memorandum states, I've
2 had the opportunity to discuss the presentence report with
3 Mr. King. We've gone over it. We discussed his exceptions
4 to the report, which are noted in the memorandum. We're
5 prepared for sentencing today. Mr. King will want to address
6 the Court and I have one witness to present.

7 THE COURT: Let me hear from the Division. You
8 had some corrections to the report?

9 MS. IVESON: Yes, your Honor. On page one, under
10 sentencing date, it should be January 22nd, 2014.

11 THE COURT: All right.

12 MS. IVESON: On page eight under credit time
13 served, it should be June 6th, 2012 to January 22nd, 2014,
14 596 days is the correct amount.

15 THE COURT: 596?

16 MS. IVESON: Yes, your Honor.

17 THE COURT: All right. Mr. Ohlson.

18 MR. OHLSON: Yes, your Honor. As to the credit
19 time served, I think the record shows that Mr. King was
20 arrested on a warrant dated April 19th, 2012 on this offense.

21 THE COURT: I was confused by that as well.
22 Apparently, Mr. King was out of custody until the Sparks
23 warrant is served and then he picks up the PCS with a weapon.

24 MR. OHLSON: I think not. I think he was

1 arrested -- Sparks Police contacted the authorities in
2 California, who contacted Mr. King, and that resulted in his
3 arrest on the possession.

4 THE COURT: The PCS?

5 MR. OHLSON: Yes. And his incarceration on that
6 offense. Subsequently, he was in prison on California on
7 that offense and arrested on the Sparks warrant and brought
8 to Nevada.

9 THE COURT: How long was he in California custody
10 before that?

11 THE DEFENDANT: 11/8/2010.

12 THE COURT: So the Sparks warrant was served
13 November 8th?

14 MR. OHLSON: April 12th.

15 THE COURT: Was that the warrant or was that just
16 a request?

17 MR. HAHN: Judge, forgive me, Bruce Hahn. I have
18 a little bit different perspective. The arrest affidavit and
19 criminal complaint was filed on April 19, 2012.
20 Subsequently, the defendant, once he discovered of the hold,
21 he initiated detainers. Pursuant to the --

22 THE COURT: Was he already in custody?

23 MR. HAHN: Yes, he was serving a California prison
24 sentence. And so the defendant thereafter initiated

1 proceedings under the IAD. So it's the State's perspective
2 that any -- that the time involved here really begins when he
3 was booked in the Washoe County Jail. When he crossed over
4 the State lines, came to Washoe County from California, that
5 would have been the date that the Division reflects, which I
6 believe is June 6th, 2012.

7 THE COURT: But he's held.

8 MR. HAHN: He was being held in California, that's
9 true, under California charges.

10 THE COURT: Correct.

11 MR. HAHN: We filed the criminal complaint in
12 April of 2012, specifically the date was April 19th of 2012.
13 However, merely because we had filed a complaint, it's the
14 State's perspective that credit wouldn't begin to accrue
15 necessarily. If California wishes to give him credit for
16 that, that's fine. But until he was booked into in Washoe
17 County in June 6th, 2012, that would be effective date.

18 MR. OHLSON: Let's just say something happened in
19 California and he was released on the California charges.

20 THE COURT: He'd still be held on the Nevada
21 charges.

22 MR. OHLSON: That's right.

23 THE COURT: What would be the credit time served
24 if we backed it up to April 19th?

1 MS. IVESON: April 19th to 2012?

2 MR. OHLSON: Another 48 days, we calculate.

3 MS. IVESON: I would have 55 days, your Honor.

4 THE COURT: An additional 55 on top of 596.

5 MS. IVESON: 654, your Honor.

6 THE COURT: 54 or 51?

7 MS. IVESON: I apologize. 651.

8 THE COURT: They warned me in school not to do
9 math in public for a reason.

10 MR. OHLSON: Always an appropriate admonition.

11 THE COURT: And one other thing I had for
12 Division, one of the concerns I have in these presentence
13 investigation reports is every time a prisoner is revoked on
14 parole and reenters, it's counted as another conviction. So
15 you have somebody who is convicted, it's one conviction, he
16 or she is paroled and then parole is revoked, they're
17 returned, the Division counts that as a second conviction.

18 MS. IVESON: We count it a revocation and parole,
19 not another conviction, a felony conviction.

20 MR. OHLSON: In fairness to the department, I
21 think the report counts it as an incarceration, not a
22 separate conviction.

23 THE COURT: I see. All right.

24 MS. IVESON: I'm sorry. Yes, if he goes back to

1 prison, it's another prison sentence.

2 THE COURT: Even though he's serving the same
3 prison sentence?

4 MS. IVESON: That's how California counts it, your
5 Honor.

6 THE COURT: All right.

7 MR. OHLSON: Before we proceed further, can
8 Mr. King be relieved of one of his handcuffs so he can have a
9 drink of water, please?

10 THE COURT: Deputy, yes. You have a witness,
11 Mr. Ohlson?

12 MR. OHLSON: I do. Nancy King, your Honor.

13 (One witness sworn at this time.)

14 THE COURT: Mr. Ohlson.

15 BY MR. OHLSON:

16 Q. What is your name?

17 A. Nancy King.

18 Q. Are you related to the defendant?

19 A. Yes.

20 Q. How are you related?

21 A. I'm his wife.

22 Q. When were you married to him?

23 A. January 9th, 2004.

24 Q. Do you two have any children together?

1 A. Yes. We have a six-year-old son.

2 Q. When did Mr. King go into prison in California?

3 Do you recall? Was it 2012 -- 2010, I'm sorry.

4 A. November of 2010.

5 Q. Have you been in communication with him since he's
6 been incarcerated?

7 A. Yes.

8 Q. Have you noted any change in his character since
9 he has been incarcerated?

10 A. Yes. He's gone to counseling sessions and I see
11 that he's found a purpose in life now that he has, I want to
12 say the gift, but he knows how to reach people and I believe
13 that he wants to help people not follow in his same footsteps
14 and try to keep them from making the same horrible decisions
15 he's had.

16 Q. You're aware of the offense to which your husband
17 has pled guilty?

18 A. Yes. I do want to say that I send my condolences
19 to Mr. Young's family and I'm truly sorry for the pain and
20 the loss that you guys are dealing with.

21 Q. Have you been in regular contact with your husband
22 since he was incarcerated in 2010?

23 A. Yes.

24 Q. You continue up to this date to communicate with

1 him to the extent that you can --

2 A. Yes.

3 Q. -- during his incarceration? Do you have any
4 hopes to be reunited on the outside with your husband?

5 A. I believe that one day our family will be put back
6 together and I believe he's going to be a better person than
7 when he went into jail and that he will not -- he won't make
8 the same mistakes that he's done before. I believe that this
9 has happened for a reason in that he's finally figured out
10 what life is supposed to be about.

11 Q. What's your son's name?

12 A. Daviar King.

13 Q. Are you in contact with other members of your
14 husband's family?

15 A. Yes, all of his family.

16 Q. Are any of them present in court today?

17 A. Yes, his mom, his dad and his brother.

18 Q. Back in the back of the courtroom?

19 A. Yes.

20 Q. And they traveled here from where?

21 A. His dad traveled from Mississippi and his mom and
22 brother traveled from California.

23 Q. Okay. Do you have anything else to add?

24 A. Not that I can think of.

1 MR. OHLSON: That's all, your Honor.

2 THE COURT: Mr. Hahn, any questions?

3 MR. HAHN: I waive. Thank you for coming.

4 THE COURT: Thank you, ma'am. Watch your step.

5 THE WITNESS: Okay.

6 THE COURT: Mr. Ohlson, any further questions?

7 MR. OHLSON: Mr. King would like to be heard, your
8 Honor. I assume by statute, you want that done now.

9 THE COURT: Let me hear from the State.

10 MR. HAHN: Briefly, your Honor. What I would
11 anticipate is just a road map. I will be offering one
12 witness to address just a couple of things. Number one, to
13 address Mr. King's exceptions to the presentence report, to
14 address a few gaps that are in the presentence report, to
15 address perhaps Ms. King's perspective of a change in
16 character of her husband, and then, of course to address one
17 of the issues in this case, which is consecutive versus
18 concurrent with the California matter. So that's the purpose
19 of the statement and the State respects and intends to honor
20 the plea agreement.

21 With that, I would be offering one witness, I'll
22 offer some argument and I'm also informed that three
23 witnesses would like to offer a victim impact statements.
24 They indicate that they're statutorily qualified. Our victim

1 witnesses interviewed them and they are Evelyn Young who is
2 the sister of the deceased, Kianna Pride who is the sister of
3 the deceased and then Karen Jones who is the mother of the
4 deceased. They wish to exercise their right to be heard
5 last.

6 THE COURT: Certainly. You want to proceed with
7 the other witnesses?

8 MR. HAHN: Thank you, just one witness.

9 MR. OHLSON: Can we get a couple of chairs, your
10 Honor, it looks like we're going to be here a while.

11 THE COURT: Certainly.

12 (One witness sworn at this time.)

13 MR. HAHN: As Mr. Gallop is being seated, can I
14 approach the clerk with an exhibit?

15 THE COURT: Certainly.

16 THE CLERK: Exhibit 1 marked for identification.

17 MR. HAHN: Let the record reflect I'm showing
18 defense counsel Exhibit 1, which has been provided in the
19 course of discovery.

20 THE COURT: Mr. Hahn, your witness.

21 MR. HAHN: May I approach?

22 THE COURT: Certainly.

23 BY MR. HAHN:

24 Q. Mr. Gallop, could you share your full name and

1 spell your last name, please?

2 A. Yes. My name is Ken Gallop, G-a-l-l-o-p.

3 Q. Your occupation, sir?

4 A. Occupation is a detective with the Sparks Police
5 Department in Sparks, Nevada.

6 Q. How long have you served as a sworn law
7 enforcement peace officer in the State of Nevada?

8 A. Just over 20 years.

9 Q. Mr. Gallop, you know why I asked you here, is that
10 true?

11 A. Yes, sir.

12 Q. If I could, I would like you to address a couple
13 of matters. Specifically, I would like to offer your
14 perspective of the evidence, to address perhaps an exception
15 that Mr. Toy, the codefendant, was owed drug money from
16 Mr. Young and to also address the principal suspect, who is
17 the principal suspect in terms of the evidence that you
18 assessed in this case? May I do that?

19 A. Yes, sir.

20 Q. Are you familiar with the term case agent?

21 A. I am.

22 Q. What does it mean?

23 A. A case agent is a term used by our department to
24 define who the detectives are that are responsible for

1 overseeing the entire investigation. The case agent also is
2 an active investigator in the case. So as the investigation
3 proceeds with the numerous detectives, the case agent is
4 ultimately responsible for putting together what we call
5 binders, the binders. So it's a culmination of the entire
6 investigative effort in any case. The case agent puts
7 together a binder to demonstrate the entire case.

8 Q. Was that your role in this case?

9 A. Yes.

10 Q. Are you acquainted with all the law enforcement
11 reports gathered and garnered by the Sparks Police
12 Department?

13 A. I am.

14 Q. Does that also include California authorities as
15 well?

16 A. It did, numerous.

17 Q. With regard to some of the individuals in
18 assessing those two concerns that I addressed to you, is
19 there a document in front of you, Exhibit 1?

20 A. Yes, sir.

21 Q. Are you acquainted with it?

22 A. I am.

23 Q. What is it?

24 A. This is a report called a Penlink report and this

1 indicates some of the people involved in this case.

2 THE COURT: Could you spell that, Penlink?

3 THE WITNESS: Penlink, your Honor. It's
4 P-e-n-l-i-n-k. It's a software program that's utilized by
5 law enforcement, specifically the Sparks Police Department,
6 to enter in cellular phone data and communications and that
7 cellular phone data is used to create a chart for
8 demonstrative purposes to show communications between certain
9 cell phones. In this case, it shows communications between
10 some people involved in this case.

11 BY MR. HAHN:

12 Q. And how was that chart generated or compiled?

13 A. This chart was --

14 MR. OHLSON: Your Honor, I'm going to raise an
15 objection at this point. Testimony at this time as to the
16 defendant's guilt has been usurped by his guilty plea. If
17 we're going to have some testimony that bears upon the
18 Court's decision as to sentencing, that's one thing, but he's
19 accepted responsibility and entered his plea.

20 THE COURT: I understand that, but even under the
21 federal sentencing guidelines, role in the offense is a
22 factor to take into consideration.

23 MR. OHLSON: I understand that, as long as we're
24 not relitigating who done what.

1 THE COURT: All right, with that proviso.

2 MR. HAHN: Again, the purpose of the State
3 offering this is there's been some representations made by
4 Mr. King that I don't know would square with the evidence.
5 We're trying to offer the Court a different perspective for
6 you to make a decision today.

7 THE COURT: Well, this is argument, so go ahead.

8 BY MR. HAHN:

9 Q. Very well. You mentioned that was compiled by
10 data entered into the standard utilized software by Sparks
11 Police Department to generate that document, is that true?

12 A. Correct.

13 Q. Now, with regard to you determining who the
14 primary suspect was, are there some individuals identified on
15 that document?

16 A. Yes, there are.

17 Q. I'd like to start with an individual identified as
18 Tom Young, is that the deceased?

19 A. Yes.

20 Q. Is that person on the document?

21 A. Yes.

22 Q. How did you attempt to determine who the primary
23 suspect was from the data available from Tom Young, the
24 deceased?

1 A. Relating to this document alone, we utilized cell
2 phone data of two cellular telephones that were utilized and
3 identified as being utilized by Tommy Young in this case.

4 Q. And were you able to identify some recent phone
5 traffic between him and an individual in California?

6 A. Not specifically with Tommy Young's cellular
7 telephones.

8 Q. Very well. Did you determine any connection at
9 all between Tommy Young's cellular telephones and the
10 codefendant, Henry Toy?

11 A. No.

12 Q. Very well. With regard to the Tom Young cell
13 phones, were those analyzed?

14 A. Yes.

15 Q. And did you attempt to determine leads of the
16 primary suspect in that with the cell phone?

17 A. Yes. With the physical cell phone, we were
18 attempting to gather information of who may or may not have
19 been speaking to Tommy Young prior to the incident.

20 Q. And were you able to find someone who had been
21 speaking with him recently?

22 A. With his cellular telephones, no, not
23 specifically.

24 Q. Whose cellular telephones did you find a link?

1 A. We found a link to Tommy Young through Dvaughn
2 King's cellular telephones and some other people.

3 Q. Now, with regard to Mr. King's cell phones, how
4 did you gain access to those?

5 A. Mr. King was in possession of one cellular
6 telephone at the time of his arrest for the parole violation
7 in California and then the Sparks Police Department traveled
8 to Sacramento and continued the investigation over there. We
9 worked with the Sacramento authorities, the police department
10 and the sheriffs office, and through their efforts and our
11 investigation, we discovered another cellular telephone
12 pursuant to search warrants over there in Sacramento.

13 Q. Were you able to find communications between the
14 cell phones of Dvaughn King, the defendant, and the deceased,
15 Tommy Young?

16 A. Yes.

17 Q. How recent was that communication, if you recall?

18 A. As recent as approximately four weeks prior to the
19 murder.

20 Q. Now, with regard to another source, are you
21 acquainted with the name Henry Toy, the codefendant in this
22 case?

23 A. Yes, I am.

24 Q. Were you able to obtain information from him?

1 A. Yes.

2 Q. Was he truthful in the initial statements that he
3 made?

4 A. No.

5 MR. OHLSON: Objection.

6 THE COURT: Sustained.

7 BY MR. HAHN:

8 Q. Very well. With regard to his representations,
9 did the initial representations that Mr. Toy offered, did
10 they pan out in terms of your investigation?

11 A. No. The initial statements made by Mr. Toy were
12 not able to be corroborated and therefore our investigation
13 revealed later on that in fact the initial statements were
14 not truthful.

15 Q. With regard to further investigation, did he
16 ultimately provide some type of identification by a photo?

17 A. He did.

18 Q. Who did that lead you to?

19 A. It led us to Dvaughn King.

20 Q. With regard to another name on that Penlink
21 document that you have there, are you acquainted with the
22 name Hanna Malatu?

23 A. Yes.

24 Q. Who is she?

1 A. She was a girlfriend of Dvaughn King.

2 Q. In connection with your contact with her, did
3 you -- is that where you found the other cell phone belonging
4 to Dvaughn King that you referred to?

5 A. Yes.

6 Q. Did you discover any connection or contact between
7 Henry Toy and Ms. Malatu?

8 A. No.

9 Q. Is there another individual on that Penlink
10 document identified as an Eric King?

11 A. Yes.

12 Q. Who is Mr. Eric King?

13 A. Eric King is actually friends of the deceased in
14 this case, Tommy Young. Our investigation revealed he was
15 actually a family friend of Mr. Young's family. We also
16 discovered that he was friends and acquainted with Dvaughn
17 King, but we could not determine that there was any family
18 connection based on the same last name. That's what we found
19 out about Mr. Eric King.

20 Q. Now, with regard to Mr. Eric King, did you find
21 any connection between Mr. Eric King and Henry Toy?

22 A. No.

23 Q. And what was Mr. King, Eric King's connection with
24 Mr. Dvaughn King?

1 A. Mr. Eric King was the middle man who facilitated
2 drug deals between Dvaughn King and Tommy Young.

3 Q. Is there a further name identified on that
4 document as a Sherri Mitchell?

5 A. Yes.

6 Q. Who is Sherri Mitchell?

7 A. Sherri Mitchell is a prostitute who was acquainted
8 with and friends with Dvaughn King.

9 Q. And with regard to Sherri Mitchell, did you find
10 any connection by phone or otherwise or knowledge prior to
11 the murder of Tommy Young between her and Henry Toy?

12 A. No.

13 Q. Did Ms. Mitchell provide you some information that
14 led you to help determine a primary suspect in this case?

15 A. She did.

16 Q. Could you summarize that briefly for the Court,
17 please?

18 A. She was at the Grand Sierra Resort in Reno,
19 Nevada, the early morning hours of the murder. She was
20 picked up by Dvaughn King and Henry Toy. She provided
21 directions to Tommy Young's house, unknowingly. She did not
22 understand or know what was about to occur based on our
23 investigation.

24 The directions were provided at the request of

1 Dvaughn King. Upon arrival to Young's residence, she
2 indicated she was surprised that they actually drove past it
3 when she identified it to Mr. King and Mr. Toy. The vehicle
4 was parked kind of around the corner and she remained in the
5 vehicle when Mr. King, Dvaughn King, and Henry Toy exited the
6 vehicle and proceeded towards Tommy Young's house on foot.

7 Her attention was then drawn to Henry Toy
8 returning to the vehicle, claiming that he had been shot in
9 the legs. Dvaughn King was assisting him coming back to the
10 vehicle. She overheard Henry Toy make a comment about
11 dropping his gun. And both gentlemen got into the vehicle
12 and drove away.

13 She was present when Dvaughn King dropped off
14 Henry Toy in the 800 block of North Sierra in Reno and then
15 pleaded with Mr. King to let her out of the vehicle. She was
16 extremely afraid.

17 Q. So in fairness, did you find evidence that two
18 guns had been recently fired in connection with your
19 investigation with what happened on York?

20 A. Yes.

21 Q. I'd like to move forward, if I may. Are you
22 acquainted with the investigation of the Sacramento County
23 authorities did in connection with the charge that was
24 addressed earlier, specifically, possession of a controlled

1 substance involving Mr. King?

2 A. Yes.

3 Q. With regard to that matter, was that initiated by
4 virtue of search warrants that were obtained in connection
5 with the murder investigation in California?

6 A. The drug charges were as a result of evidence
7 found through those search warrants, yes.

8 Q. Was the approximate amount of the methamphetamine
9 in the case, was it in excess of 100 grams?

10 A. Yes. It was approximately a quarter pound of
11 methamphetamine.

12 Q. And where were the drugs located?

13 A. The drugs were located in a storage unit that was
14 rented in the name of Nancy King.

15 Q. Was there also a separate storage unit that you
16 were able to identify that Mr. Dvaughn King was associated
17 with?

18 A. Yes.

19 Q. And who was that?

20 A. That second storage unit was identified as being
21 rent the by Hannah Malatu or in the name of Hannah Malatu.

22 Q. In addressing this component, did you discover any
23 evidence that you're acquainted with to connect the drugs
24 that were found in the storage unit in Sacramento with

1 Nevada?

2 A. No.

3 Q. With regard to -- as I'm just finishing up the
4 questions I have for you -- with regard to the extradition
5 process, is it your understanding that extradition was sought
6 on or about April 30th, 2012 pursuant to the criminal
7 complaint that was filed on or about April 19, 2012 on
8 Mr. King?

9 A. That is my understanding, yes.

10 Q. And Mr. King was booked into the Washoe County
11 Jail on or about June 6th, 2012?

12 A. Correct.

13 Q. And did your investigation ultimately stop when
14 Mr. King was brought to Washoe County or did it continue?

15 A. The investigation continued.

16 Q. Did that involve monitoring of conversations
17 between Ms. King, Nancy King, the one who testified earlier
18 and Dvaughn King?

19 A. Yes. All communications that Dvaughn King
20 utilized through the detention center here at Washoe County
21 was monitored.

22 Q. Without giving us the content of that those
23 conversations between the two, did that lead you to
24 ultimately recommend a grand jury investigation into

1 Mr. King?

2 A. Yes.

3 Q. And in connection with the investigation that the
4 Grand Jury conducted into Mr. King, did you find any similar
5 conduct that was done by Henry Toy?

6 A. No.

7 MR. HAHN: I don't have any other questions.

8 THE COURT: Mr. Ohlson.

9 BY MR. OHLSON:

10 Q. So we're clear, the Sparks Police Department
11 identified Mr. King as a suspect in the Young killing before
12 he was arrested by California authorities, isn't that right?

13 A. He was identified as being involved in this case,
14 yes, prior to his arrest in California.

15 Q. Okay. And after he was identified, there was some
16 information received by Sparks Police Department that he was
17 physically located in Sacramento, isn't that right?

18 A. Yes. Sacramento contacted Sparks Police
19 Department upon his arrest.

20 Q. You weren't involved prior to his arrest in
21 California?

22 A. No. We actually left for California that night.

23 Q. Okay. Were you involved in the application for a
24 search warrant in California?

1 A. At what point?

2 Q. At any point.

3 A. Yes, I was.

4 Q. So the reports that indicate you were involved in
5 that are accurate?

6 A. Excuse me. That I was or was not?

7 Q. The reports that your department was involved in
8 the application for the search warrant are accurate, isn't
9 that right?

10 A. Yes, sir. I'm actually named in some of those
11 affidavits.

12 Q. The handgun that was recovered, that was
13 determined not to be involved in the Young killing, isn't
14 that right?

15 A. Which handgun, sir?

16 Q. The handgun that was retrieved in California, in
17 Sacramento, from Mr. King's residence?

18 A. We didn't find a gun at his residence.

19 Q. You found it in the storage facility?

20 A. No, sir.

21 Q. Where?

22 A. A handgun was located at Hanna Malatu's residence.

23 Q. And that wasn't involved?

24 A. That handgun was not involved, no, sir.

1 MR. OHLSON: Okay. That's all.

2 THE COURT: Any questions, Mr. Hahn?

3 BY MR. HAHN:

4 Q. I'm sorry. I neglected to ask one question.
5 Mr. Gallop, with regard to Mr. Toy, did you discover any
6 evidence that Mr. Toy was in any type of narcotics debt
7 relationship with Tommy Young?

8 A. Throughout this three-year investigation, we found
9 no evidence whatsoever that Henry Toy and Tommy Young knew
10 one another prior to the murder.

11 MR. HAHN: Nothing else. Thank you.

12 THE COURT: That raise any questions, Mr. Ohlson?

13 MR. OHLSON: No, thank you.

14 MR. HAHN: That's the State's representation with
15 regard to evidence. We're prepared to proceed to argument
16 when the time the Court is ready.

17 THE COURT: Let's talk about argument.
18 Mr. Ohlson.

19 MR. OHLSON: Your Honor, we raised bigger issues
20 that were supported in our presentence memorandum, basically
21 with regard to the consecutive or concurrent sentencing in
22 this case with the time that Mr. King has already been
23 sentenced in California. And we believe that the appropriate
24 sentence in this case would recognize the California sentence

1 as arising and consequential of the Nevada investigation and
2 that accordingly this Court ought to sentence Mr. King
3 concurrently with his California conviction.

4 In addition, Mr. King does have family that's
5 supportive of him that would like to see him on the outside
6 at some point in time. He has taken the effort to
7 demonstrate a path towards rehabilitation while he's been
8 both in prison and in the Washoe County Jail, which is
9 indicative of the programs that he's been involved in and his
10 behavior in jail.

11 With that, further, Mr. King would like to address
12 the Court.

13 THE COURT: I'll give him an opportunity. Let me
14 hear argument from the State.

15 MR. HAHN: I would invite the Court to reflect on
16 some of the earlier testimony that Mr. Gallop had offered
17 this Court at the time when Mr. Molezzo was Mr. King's
18 counsel and some of the representations and whatnot that
19 were, again, offered by Detective Gallop.

20 Judge, with regard to the sentence in this case,
21 the State is recommending that the Court impose a term of
22 life imprisonment with the possibility of parole within ten
23 years. Further, the State is recommending for the
24 enhancement, the 24- to 72-month consecutive to the term.

1 Judge, with regard to these two terms, we are also
2 recommending that these terms run consecutive to his
3 underlying California sentence and I would offer the Court a
4 couple of comments with regard to this.

5 Almost a quarter pound of methamphetamine that was
6 discovered in a storage unit that was being -- that was under
7 Nancy King's name, it suggests, I think, perhaps, a
8 meaningful distribution network, if not just store-housing.
9 I think the evidence is fair for the Court to conclude that
10 there was interest in opening up perhaps a new market in
11 Reno. And so when I hear a concern that Mr. King has about
12 maybe this sort of being collateral damage, the California
13 matter, with ultimately the murder that occurred in Nevada, I
14 don't have -- I don't share that same perspective, judge.

15 What we're talking about is we're talking about a
16 convicted felon who had access to a weapon, who had 100 grams
17 of methamphetamine, in excess, in a storage unit in
18 California that happened to be discovered in connection with
19 a much larger investigation, two different locations, two
20 different distribution networks. And for that reason, judge,
21 alone, I believe that mitigates in favor of the consecutive
22 sentence with whatever the Court renders here in connection
23 with the California sentence he was serving time for. Absent
24 that, I stand ready to answer any questions.

1 THE COURT: No. Thank you.

2 MR. OHLSON: One point, if I may?

3 THE COURT: Certainly.

4 MR. OHLSON: Apparently, in the California case,
5 Mr. King's conviction relates to the substances found at the
6 residence and not in the storage unit.

7 THE COURT: Storage unit.

8 MR. OHLSON: That those storage unit substances,
9 that case was dismissed upon his conviction in the other
10 matter. So that's the only final argument.

11 THE COURT: Mr. King, the law affords you an
12 opportunity to address the Court at the time of sentencing in
13 terms of the presentence investigation report, mitigation,
14 punishment, any matter you want to bring to the Court's
15 attention, I invite you to do that at this time, if you wish.

16 THE DEFENDANT: I'll take responsibility for my
17 actions. I understand you've been doing this for quite
18 sometime and you pretty much heard everything, you know. And
19 I know you're not someone who is going to be conned into
20 being swayed one way or another. But with my utmost
21 sincerity, your Honor, I stand before you today not the same
22 man that I was three years ago.

23 I'm not going to sit here and tell you that I
24 found God, because that would be lying, to much like saying I

1 found my car keys or something. But he has definitely found
2 me. On one token, I am thank you for these circumstances
3 that have produced growth and transformation in me. On
4 another, I have a great deal of sadness and empathy for the
5 families involved in this case, especially the Young family,
6 Karen, Kianna, Evelyn, Shaniqua.

7 THE WITNESS: Joseph.

8 THE DEFENDANT: Yes. And Ms. Evelyn Mount. I
9 understand that forgiveness is the result of receiving proof
10 over a period of time and needing more proof than anything.
11 So today I will not ask that of you, which makes sense to me
12 given the gravity of matters. I am deeply sorry for your
13 loss and I look forward to the day you can truly forgive me
14 for the pain and suffering my actions have caused your
15 family, which I can only imagine you might be feeling.

16 Your Honor, as I ponder my legacy I will leave, I
17 decided that 100 years from now that I want to be known as
18 somebody who brought out the best in people, somebody who
19 left the world a better place. Material accomplishments will
20 soon be forgotten. The only thing that lasts is the
21 investment we make in other people's lives.

22 With that being said, I pray to the Court and the
23 families for an opportunity to give back to the others, other
24 wayward youth who may find themselves in similar

1 circumstances from bad decision making. I pray to someday to
2 be in a position where society welcomes me and I'm able to
3 allow my life experiences to be a beacon to others.

4 At the end of the day, I'm not what I once was and
5 I know I'm not who I ought to be. He's not done with me. So
6 by the grace of God, I'm not who I used to be. I thank the
7 Court for allowing me to share and I'm prepared to accept
8 whatever you deem is appropriate.

9 THE COURT: Thank you, sir. Mr. Hahn. You may be
10 seated.

11 MR. HAHN: Court's indulgence, please.

12 THE COURT: Take your time.

13 (One witness sworn at this time.)

14 BY MR. HAHN:

15 Q. Would you tell us your name and spell your last
16 name, please?

17 A. Evelyn Young, Y-o-u-n-g.

18 Q. Are you related to the young man we were speaking
19 of earlier this morning, Tommy Young?

20 A. Yes.

21 Q. What was your relationship with him?

22 A. I'm his sister.

23 Q. Ms. Young, what I want to do, is I don't have any
24 questions for you, I just want to allow you to share from

1 your heart to Judge Flanagan some of your feelings about the
2 crime, the loss and the impact it has had upon you. Please
3 feel free.

4 A. I was there the night that the murder happened and
5 it's a huge loss. It was my brother taken away from me, my
6 friend, my -- someone who I deeply loved was taken away. And
7 there's no reason good enough for his life not being here
8 today. There's no reason good enough.

9 I mean, he had children that are now left behind.
10 He was a father, a brother, a son. He was somebody important
11 and he's not here today and there's no reason why he
12 shouldn't be here today. He will truly be missed and there's
13 no reason for him not to be here. There's no excuse
14 whatsoever.

15 THE COURT: Thank you, ma'am. Mr. Hahn, next
16 witness.

17 (One witness sworn at this time.)

18 BY MR. HAHN:

19 Q. Could you tell us your name and spell your last
20 name, please?

21 A. Kianna Young, but now it's Pride, P-r-i-d-e.

22 Q. Ma'am, could you share with us, are you related to
23 the deceased in this case, Tommy Young, that we've been
24 speaking of?

1 A. He's my older brother.

2 Q. Older brother?

3 A. He's number two of the older brothers.

4 Q. Okay. Very well. If you would, I don't have any
5 specific questions for you, I'm just going to ask you if you
6 would be so kind, if you wish, to share with the judge some
7 of the feelings on your heart about the crime, about how it's
8 impacted you and your family and the loss.

9 A. I don't even know where to start. Whatever you
10 guys had going on, it wasn't that serious. You shouldn't
11 take an incident like this to make a better man. The minute
12 you had children, you should have become that better man.
13 Whatever the issue was, it could have been prevented.

14 They speak about saying that he had -- it wasn't
15 something that he wanted to do or it wasn't intended or
16 whatever. If that's the case, then he wouldn't have gone up
17 there with that intent. This man came from across state
18 lines to inflict harm on somebody. And, obviously, whatever
19 it was he meant to do happened and to me that doesn't seem
20 like somebody -- they did something they wanted to do, ain't
21 no sorry in that. Right now I'm bitter and there's nothing
22 nobody can say can probably make me feel better right now.
23 Maybe in the future things will be better for me. For right
24 now, today, everything that Dvaughn did was intended, it's

1 what he meant to do and this is the outcome of what he did.

2 He can't take it back. You can say you're sorry
3 to however many people you want to, but you're going to go
4 home to your son and your daughters eventually, you know, or
5 however. My brother will never go back to his children. His
6 girls will never see him. He'll never see them become the
7 young women they'll become one day. And for that I don't
8 have any -- ain't nothing you can say or do can make me
9 better today, nobody.

10 To your family, I'm sorry that we all got to go
11 through this, and excuse the way I feel right now, but I
12 don't have no feelings for any of you right now. Not to say
13 that anything bad about you. Maybe in the future, like I
14 said, it will change. But I'm pretty sure you can understand
15 where I'm coming from right now.

16 I know you from school, Dvaughn. I never thought
17 we would ever come across each other's path like this. I was
18 almost at a loss when I found out who it was that they were
19 even saying. You know what I mean? Whatever it is, is
20 whatever it is, it can't be brought back now. You claim to
21 be a better man, it shouldn't have took this to become a
22 better man.

23 I don't want to see nobody go to jail. I have
24 another brother that's doing life in jail. You know what I

1 mean? That's bullshit. It's just not that serious. And I
2 don't know what to say. I'm hurt. Can't bring my brother
3 back. I'd like to see you spend the rest of your life in
4 jail. It's up to him, but that's how I feel today.

5 THE DEFENDANT: I understand.

6 THE WITNESS: That's all I got to say.

7 THE COURT: Mr. Ohlson.

8 MR. OHLSON: No, thank you.

9 (One witness sworn at this time.)

10 BY MR. HAHN:

11 Q. Would you share with us your name and spell your
12 last name, please?

13 A. My name is Karen Jones, J-o-n-e-s.

14 Q. How are you related to the deceased Tommy Young?

15 A. He's my son.

16 Q. Ms. Jones, did you ask to be able to be heard
17 today?

18 A. I did.

19 Q. Would you like to share some of your feelings on
20 the impact of the crime and the loss and the circumstances
21 with Judge Flanagan?

22 A. I would.

23 Q. Go ahead and just share from your heart, if you
24 would.

1 A. I waited a long time for this. It's been three
2 years have passed, have been lost. Horrible time that I've
3 ever had to endure, losing a child in my own home. My other
4 kids were there. So imagine when I got that phone call. It
5 was more than I thought I could bear.

6 These people invaded my home. That wasn't Tommy's
7 home, that was my home. He was there, but that was my home.
8 I wasn't their friend. They came in my home and they killed
9 my son.

10 I am grateful that I serve a God that has brought
11 me to this point. We've had to go through some changes. It
12 was months later that I found out that my youngest daughter
13 that was there was going through some things. She was at
14 school one day and she just totally freaked out thinking
15 about what she had witnessed from her brother. At the time,
16 she was 16 years old. She's gone through counseling since
17 then and she's better. She's out in the hall now. We have
18 to be in that home every day in the room where he was killed.

19 In the beginning, I was very, very angry at what
20 you had done. You had no right to do that. Your name is not
21 God, it's Dvaughn.

22 THE DEFENDANT: Yes, ma'am.

23 THE WITNESS: And you had no right to do what you
24 did. The one consolation that I do have and I'm not sure if

1 you meant it or not, but you're heading in the right
2 direction getting and developing a relationship with God,
3 because that's the only thing and the only one that is going
4 to bring you through. And it's because of him I'm able to
5 say to you today, Dvaughn, that I forgive you. I truly
6 forgive you for what you've done. And it's my true desire
7 that you do develop a righteous relationship with God and
8 learn who you can be and what you can do for the future,
9 because that's all you have to look forward to. We can't go
10 back and change anything that has happened. All of this is
11 not going to bring my son back.

12 But the fact that you even mentioned that you know
13 that there is a God brings joy to my heart. I'm able to do
14 this today. I just want you to understand, by going through
15 that, you will realize what you had done. You've changed
16 people's lives that didn't have any reason whatsoever to be
17 changed like that. You had no right to do that, none
18 whatsoever. That's all.

19 THE COURT: Thank you, ma'am.

20 MR. HAHN: Your Honor, I will advise that's the
21 sum of all the witnesses who want to be heard. And if I may,
22 I just wanted to tender Exhibit 1 for our record.

23 MR. OHLSON: No objection.

24 THE COURT: Thank you. Exhibit 1 is admitted. A

1 judge has to take a lot of things into consideration in
2 imposing judgment on a human being. The Court has to take
3 into consideration the defendant, the defendant's background,
4 the defendant's personal history, the defendant's family,
5 employment, military history, education.

6 In this case, the Court finds the defendant is a
7 very intelligent, articulate individual and that is to his
8 credit and it is in many sense a shame, a waste. So much
9 good could have been brought with the proper application of
10 that intelligence.

11 The Court has to take into consideration the
12 victim. In this case, there's not one victim, there are many
13 victims, many innocent victims. We have the parents of the
14 decedent, the parents of the defendant, children, innocent
15 children who grow up not knowing their father, fathers. Our
16 communities will lose what good could have come from the
17 contribution these men could have made.

18 The Court has to take into consideration the
19 nature of the crime. This is murder, murder most foul, shot
20 cold-blooded in a mother's home. The Court has to take into
21 consideration the impact the crime has not just on the
22 family, but on everybody.

23 The Court has to take into consideration the goals
24 of punishment, rehabilitation, isolation, revenge,

1 retribution. Those are legitimate penological
2 considerations.

3 General deterrence, specific deterrence,
4 specifically, the sentence has to deter the individual from
5 committing the crime again. Generally, whatever sentence is
6 imposed has to reflect the voice and the values of the
7 community, what the community feels about this crime such
8 that if someone reads it in the paper, hears about it, they,
9 too, will be deterred from following this example and perhaps
10 spare the life of another human being.

11 For as long as human beings have gathered together
12 in society, there have been certain immutable laws. You find
13 them in the Old Testament, in Deuteronomy and Leviticus, the
14 Decalogue log, the Ten Commandments, as old as that. The
15 Fifth Commandment, four simple words, thousand shalt not
16 kill.

17 We can go back to the Roman stoics that form much
18 of the law that we follow here today. Cicero speaks of
19 certain laws that have always been part of who we are as
20 human beings sui generis, law of the people, one of which is
21 a law against violent acts against other human beings. It's
22 that old. And yet today we have before us another example of
23 a young man's death at the hands of another man. Senseless,
24 senseless death. Senseless, senseless death.

1 Many people consider judges to be powerful people.
2 The longer I've been doing this, the more I realize what
3 little power judges have. I cannot restore to a young girl a
4 sense of innocence that has been taken from her. I cannot
5 restore to a homeowner a sense of security when their house
6 has been violated. I cannot restore to a mother the body of
7 her dead child. I cannot turn back the hands of time. And
8 while I cannot change the past, I can shape the future and
9 that's just what I'm going to do.

10 All right. Mr. King, it will be the order of this
11 Court that the defendant is to pay a \$25 administrative
12 assessment fee, \$3 DNA, \$150 DNA, \$500 attorney's fees. In
13 addition to the sentence, the underlying sentence, this Court
14 is required by law to impose a consecutive sentence pursuant
15 to NRS 193.165, subsection one. In determining the length of
16 that additional penalty for the use of a deadly weapon, this
17 Court must consider; A, the facts and circumstances of the
18 crime; B, the criminal history of the person; C, the impact
19 of the crime on any victim; D, any mitigating factors
20 presented by the person; and, E, any other relevant
21 information. The Court will state for the record it has
22 considered all of these factors in coming to the following
23 sentence.

24 Therefore, it will be the order of the Court that

1 the defendant, Dvaughn King, be sentenced to the custody of
2 the Nevada Department of Corrections for a term of
3 imprisonment of life with the possibility of parole after ten
4 calendar years. The defendant is also to serve a consecutive
5 sentence for a deadly weapon enhancement in the term of 53 to
6 240 months. That is consecutive. This crime is consecutive
7 to 10F07661 with 651 days credit time served. Anything else,
8 Ms. Iveson?

9 MS. IVESON: No, your Honor.

10 THE COURT: Mr. Hahn.

11 MR. HAHN: No, thank you, your Honor.

12 THE COURT: Mr. Ohlson.

13 MR. OHLSON: No, your Honor.

14 THE CLERK: Your Honor, is CR13-1149 dismissed?

15 THE COURT: CR13-1149 is dismissed. This Court's
16 in recess.

17 --oOo--
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24

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on January 22, 2014, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the sentencing in the matter of THE STATE OF NEVADA,
10 Plaintiff, vs. DVAUGHN KEITHAN KING, Defendant, Case
11 No. CR12-1160 and CR13-1149, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 43, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 5th day of February 2014.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 **CODE 1850**
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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

9 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

Case No. CR12-1160

12 **DVAUGHN KEITHAN KING,**

Dept. No. 7

13 **Defendant.**
14 _____/

15 **JUDGMENT OF CONVICTION**

16 The Defendant, having entered a plea of guilty, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him,
18 the Court rendered judgment as follows:

19 Dvaughn Keithan King is guilty of the crime of Murder in the Second Degree
20 With the Use of a Deadly Weapon, a violation of NRS 200.010, NRS 200.030 and NRS
21 193.165, a felony, as charged in the Amended Information, and that he be punished by
22 imprisonment in the Nevada State Prison for the term of Life With the Possibility of
23 Parole, with parole eligibility beginning when a minimum of Ten (10) years has been
24 served. Further, the Court, having considered Paragraphs (a) through (e) as described in
25 NRS 193.165(1), imposes an additional penalty of a consecutive term of imprisonment in
26 the Nevada State Prison for a minimum term of Fifty-Three (53) months to a maximum
27 term of Two Hundred and Forty (240) months for the Use of a Deadly Weapon
28 enhancement. It is further ordered that both sentences will be served consecutively to

1 the sentence previously imposed in Case No. 10F07661, with credit for time served in the
2 amount of Six Hundred and Fifty-One Days (651) days.

3 It is further ordered that the Defendant shall pay the statutory Twenty-Five
4 Dollar (\$25.00) administrative assessment fee, the One Hundred Fifty Dollar (\$150.00)
5 DNA testing fee, and submit to a DNA analysis to determine the presence of genetic
6 markers, if not previously ordered, the Three Dollar (\$3.00) administrative assessment
7 fee for obtaining a biological specimen and conducting a genetic marker analysis, if not
8 previously ordered, and reimburse the County of Washoe the sum of Five Hundred
9 Dollars (\$500.00) for legal representation.

10 Any fine, fee or administrative assessment imposed upon the Defendant
11 today as reflected in this Judgment of Conviction constitutes a lien, as defined in Nevada
12 Revised Statutes (NRS 176.275). Should the Defendant not pay these fines, fees or
13 assessments, collection efforts may be undertaken against him.

14 Dated this 23rd day of January, 2014.

15
16
17 Patrick Flanagan
18 DISTRICT JUDGE
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CR12-1160 DC-09900053457-002
STATE OF NEVADA VS. D'VAUGHN K. 1 Page
District Court 01/31/2014 09:45 AM
Washoe County 2515
DGC ASMITH

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

FILED

JAN 31 2014

JOEY HASTINGS, CLERK
By [Signature]
DEPUTY CLERK

THE STATE OF NEVADA,
PLAINTIFF,

CASE No. CR12-1160

v.

DEPT No. 7

D'VAUGHN KING,
DEFENDANT.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT D'VAUGHN KEITHAN KING, THE DEFENDANT ABOVE NAMED, HEREBY APPEALS TO THE SUPREME COURT OF NEVADA FROM THE JUDGEMENT OF CONVECTION ENTERED IN THIS ACTION OF JANUARY 22, 2014.

THIS NOTICE OF APPEAL IS MADE IN ACCORDANCE WITH THE 30-DAY TIME CONTRAINT, AS WELL AS TO GIVE NOTICE OF SAID SUCH APPEAL.

THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON. (PURSUANT TO NRS 239B.030).

RESPECTFULLY SUBMITTED THIS 29TH DAY OF JANUARY, 2014.

D'Vaughn King
D'VAUGHN K. KING
DEFENDANT.

IN THE SUPREME COURT OF THE STATE OF NEVADA

D'VAUGHN KEITHAN KING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64983

CR12-1160
D7

FILED

NOV 12 2014

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant D'Vaughn King argues that he is entitled to a new sentencing hearing on the bases that (1) the State breached the plea agreement, (2) the district court abused its discretion by sentencing him to a term consecutive to his sentence in California on a separate conviction and by deviating significantly from the recommended sentence in the plea agreement as to the deadly weapon enhancement, and (3) King's guilty plea ceased to be knowing and voluntary because he did not know that the district court would significantly deviate from the recommended period for the deadly-weapon enhancement. We disagree.

As part of the plea agreement, the State agreed that it would argue for a consecutive sentence of no more than two to six years for King's use of a deadly weapon. The State expressly reserved the right to argue that the sentences should be consecutive to King's current prison term in California. King argues that the State breached the spirit of the plea agreement by presenting evidence relating to King's role in the crime, which he contends violated the State's commitment not to argue for an

enhancement term greater than two to six years for the use of a deadly weapon. The State is held to "the most meticulous standards of both promise and performance" in fulfillment of both the terms and spirit of the plea bargain. *Van Buskirk v. State*, 102 Nev. 241, 243, 720 P.2d 1215, 1216 (1986) (internal quotation marks omitted). The violation of either the terms or the spirit of the agreement requires reversal. *Id.*

Here, the plea agreement expressly reserved to the State the right to argue for consecutive sentencing, as well as for the agreed-upon term for the deadly-weapon enhancement. The record shows that the State clearly recommended the agreed-upon term for the deadly-weapon enhancement. The testimony and exhibit that the State submitted did not implicitly undermine the State's fulfillment of its commitment but rather provided context relating to the pre-sentence investigation report and factual disputes raised by King, without introducing new material information. *See Sullivan v. State*, 115 Nev. 383, 389, 990 P.2d 1258, 1261-62 (1999) (holding that a promise to recommend a particular sentence does not restrict the State from arguing or presenting facts in favor of its sentence recommendation, although the State must be careful to avoid explicitly or implicitly undermining that recommendation). The State's evidence supported the arguments that it was permitted to make under the plea agreement, without implicitly undermining the agreed recommendation. *Compare id.* at 389-90, 990 P.2d at 1261-62 (holding that an agreement to concur in the parole and probation department's recommendation did not preclude the State from making comments intending to support the sentence that the State agreed to recommend), *with Wolf v. State*, 106 Nev. 426, 794 P.2d 721 (1990) (holding that a plea agreement was breached when the State implicitly argued for the

department of parole and probation's recommendation of a nine-year sentence after agreeing to argue for a sentence of no more than five years), and *Klutz v. Warden*, 99 Nev. 681, 669 P.2d 244 (1983) (holding that the spirit of a plea agreement was breached when the prosecutor stated that he entered the plea bargain without knowledge of the defendant's criminal record, thus implying that he was seeking a longer term than contained in the agreement). Accordingly, we conclude that the State did not breach the terms or the spirit of the plea agreement. See *Sullivan*, 115 Nev. at 387, 990 P.2d at 1260.

We also reject King's argument that the district court abused its discretion by sentencing him to a term consecutive to his sentence in California on a separate conviction and by imposing a sentence for the use of a deadly weapon that significantly deviated from the plea agreement's recommendation. King has not demonstrated that the district court abused its discretion in determining that his sentence shall be served consecutively to his California sentence, see NRS 176.045(1), nor has he shown that the district court relied only on impalpable or highly suspect evidence in imposing a consecutive sentence that deviated from the recommended term in the plea agreement, see *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996). The district court imposed a sentence within the statutory parameters. See NRS 176.045; NRS 193.165. Further, the plea agreement stipulated that both parties would be free to argue the consecutive-sentencing issue, and King acknowledged that the district court had sole discretion in determining his sentence and that he was subject to a possible sentencing range for the deadly-weapon enhancement of one to twenty years. We conclude that the district court did not abuse its discretion. See *Denson*, 112 Nev. at 492, 915 P.2d at 286



(holding that the sentencing judge has wide discretion in imposing a sentence).

King does not cite authority for his argument that his guilty plea ceased to be knowing and voluntary because he did not know that the district court would significantly deviate from the recommended period for the deadly-weapon enhancement. Accordingly, we need not consider this claim. *See Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 938 (1978) (holding that contentions unsupported by legal authority need not be considered on appeal).

Having considered King's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Patrick Flanagan, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

CR12-1160
DC-09900068269-037
STATE OF NEVADA VS. D'VAUGHN KING
District Court 07/16/2015 03:24 PM
Washoe County 3565
WASHOE COUNTY

Code No. ~~4100~~

Case No.

Dept. No.

FILED

2015 JUL 16 PM 3:24

JACQUELINE BRYANT
CLERK OF THE COURT

BY  DEPUTY

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

D'VAUGHN KING,
Petitioner

V.

PETITION OF WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

THE STATE OF NEVADA
Respondent.

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities o deposit to hour credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or retrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district challenging your original conviction or sentence. Copies must conform in al particulars to the original submitted for filing.

PETITION

1. Name of the institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:

North Kern State Prison
Kern County

2. Name and location of court which entered the judgment of conviction under attack:

Honorable Judge Patrick Flanagan
Second Judicial District Court

3. Date of Judgment of conviction: January 23, 2014

4. Case number: Dist. Ct. CR12-1160

5. (a) Length of sentence: 10 to Life; 53-240 months; 8 years (California)

(b) if sentence is death, state any date upon which execution is scheduled: n/a

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes X No.....

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

H11370.1(A) POSS CONTROLLED SUBSTANCE WITH POSSESSION OF FIREARM

SAC 10F07661

8 YEARS

7. Nature of offense involved in conviction being challenged: 2nd Degree Murder

8. What was your plea? (check one)

(a) Not guilty

(h) Guilty X

(c) Guilty but mentally ill

(d) Nolo contendere

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

2nd Degree Murder, Free to argue on the underlying sentence; 2-6 year limit on Weapon enhancement

(PLEASE VIEW ENCLOSED EMAIL FROM DISTRICT ATTORNEY)

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

(a) Jury n/a

(b) Judge without a jury n/a

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

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

13. If you did appeal, answer the following: Yes

(a) Name of court: Nevada Supreme Court

(b) Case number or citation: SUPREME COURT NO. 64983

(c) Result: DENIED

(d) Date of result: DECEMBER 8, 2014

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

14. If you did not appeal, explain briefly why you did not: n/a

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No.....

16. If you answer No. 15 was "yes," give the following information: NO

(a)

(1) Name of court: n/a

(2) Nature of proceeding: n/a

(3) Grounds raised: n/a

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes.... No X

(5) Result: n/a

(6) Date of result: n/a

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

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

(1) Name of court: n/a

(2) Nature of proceeding: n/a

(3) Grounds raised:

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes.... No....

(5) Result:

(6) Date of result:

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

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

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

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

Citation or date of decision:

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

Citation or date of decision:

(3) Third or subsequently petitions, applications or motions? Yes.... No.....

Citation or date of decision:

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

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

(a) Which of the grounds is the same:

Grounds:

V, VI, VII & VIII

(h) The proceedings in which these grounds were raised:

DIRECT APPEAL

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

ALL Grounds apply.

Please view enclosed Writ of Habeas Corpus.

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

Grounds:

I, II, III & IV

Appointed counsel elected not to raise these grounds unbeknownst to petitioner.

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? NO

If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

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

If yes, state what court and the case number: n/a

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

arraignment and plea "Richard Molezzo Esq." Appointed
trial/guilty plea "John Ohlson" Appointed
sentencing "John Ohlson" Appointed
direct appeal "Karla Butko" Appointed
1st post-conviction petition "D'Vaughn King" Pro se

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

If yes, specify where and when is to be served if you know:

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

(a) Ground one:

The Court relied upon suspect evidence in sentencing. Counsel failed to present mitigation witnesses to reduce sentence. Counsel failed to present expert testimony of a psychologist to demonstrate that Petitioner was not a concern for recidivism or future dangerousness. Counsel failed to adequately investigate and prepare for the sentencing proceeding. Counsel failed to present family witnesses to testify about Petitioner's amenability to

treatment and rehabilitation, all in violation of the Fifth, Sixth & Fourteenth Amendments. See further argument herein.

Supporting FACTS (Tell your story briefly without citing cases or law.):

(b) Ground two:

The guilty plea was not knowing or voluntary and was coerced by counsel.

Supporting FACTS (Tell your story briefly without citing cases or law.):

(c) Ground three:

The State breached the spirit of the plea bargain when the prosecutor knowingly presented false testimony and did not correct testimony that he knew to be false, in violation of the Fifth and Fourteenth Amendments.

Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground four:

The District Court abused its discretion when it sentenced Petitioner to a sentence augmented by invalid prior criminal history. Which is in violation of the Fifth, Sixth and Fourteenth Amendments. A new sentencing hearing is warranted.

Supporting FACTS (Tell your story briefly without citing cases or law.):

(e) Ground five:

The State breached the spirit of the plea bargain in violation of the Fifth & Fourteenth Amendments. A new sentencing hearing is warranted.

Supporting FACTS (Tell your story briefly without citing cases or law.):

(f) Ground six:

The District Court abused its discretion when it ruled that Mr. King would serve his Nevada prison time consecutively with his California prison time. The District Court improperly relied upon suspect evidence in imposition of sentence.

Supporting FACTS (Tell your story briefly without citing cases or law.):

(g) Ground seven:

The District Court abused its discretion when it sentenced Mr. King to an additional 53-240 month sentence for the use of a deadly weapon. Given the mitigating factors in this case, a lower sentence should have been imposed by the Court.

Supporting FACTS (Tell your story briefly without citing cases or law.):

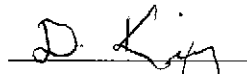
(h) Ground eight:

The District Court abused its discretion when it sentenced Mr. King to a period of time severely disproportionate to the time stated in the plea bargain.

Supporting FACTS (Tell your story briefly without citing cases or law.):

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTE at..... on the 30th of the month of JUNE of the year 2015


Signature of petitioners

D'Vaughn K. King V-03209
North Kern State Prison
P.O. Box 5000 A2 128 Low
Delano, Can. 93216

VERIFICATION

Under penalty of perjury, the undersigned declares hat the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleasing is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

Petitioner
Attorney for petitioner

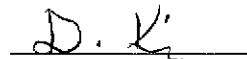
CERTIFICATE OF SERVICE BY MAIL

I, D'VAUGHT KEITHAN KING, hereby certify, pursuant to N.R.C.P 5(b), that this 30th day of the month of JUNE of the year 2015 .

I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

District Attorney of County of Conviction

CHRIS HICKS, ESQ.,
WASHOE COUNTY DISTRIC ATTORNEY'S OFFICE
P.O. BOX 11130
RENO, NV 89520


Signature of Petitioner

**IN THE SECOND JUDICIAL COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.**

D'VAUGHN KEITHAN KING,

Appellant,

SUPREME COURT No. 64983

vs.

Dist. Ct. Case CR 12-1160

THE OF THE STATE OF NEVADA,

Respondent,

**POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS PURSU
ANT TO 28 U.S.C. 2254 BY A PERSON IN STATE CUSTODY**

**POST-CONVICTION
WRIT OF HABEAS CORPUS**

D'VAUGHN KING V-03209

Petitioner

P.O. Box 5000 A-2 128 Low

North Kern State Prison

Delano, Can. 93216

STATEMENT OF JURISDICTION

This Court has jurisdiction over the habeas corpus from the remittitur which entered on December 8, 2014.

STATEMENT OF THE ISSUES

I. THE COURT RELIED UPON SUSPECT EVIDENCE IN SENTENCING. COUNSEL FAILED TO PRESENT MITIGATION WITNESSES TO REDUCE SENTENCE. COUNSEL FAILED TO PRESENT EXPERT TESTIMONY OF A PSYCHOLOGIST TO DEMONSTRATE THAT PETITIONER WAS NOT A CONCERN FOR RECIDIVISM OR FUTURE DANGEROUSNESS. COUNSEL FAILED TO ADEQUATELY INVESTIGATE AND PREPARE FOR THE SENTENCING PROCEEDING. COUNSEL FAILED TO PRESENT FAMILY WITNESSES TO TESTIFY ABOUT PETITIONER'S AMENABILITY TO TREATMENT AND REHABILITATION.

II. THE GUILTY PLEA WAS NOT KNOWING OR VOLUNTARY AND WAS COERCED BY COUNSEL

III. THE STATE BREACHED THE SPIRIT OF THE PLEA BARGAIN WHEN THE PROSECUTOR KNOWINGLY PRESENTED FALSE TESTIMONY AND DID NOT CORRECT TESTIMONY THAT HE KNEW TO BE FALSE.

IV. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT SENTENCED PETITIONER TO A SENTENCE AUGMENTED BY INVALID PRIOR CRIMINAL HISTORY.

V. THE STATE BREACHED THE SPIRIT OF THE PLEA BARGAIN IN VIOLATION OF THE FIFTH & FOURTEENTH AMENDMENTS. A NEW SENTENCING HEARING IS WARRANTED.

VI. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT RULED THAT MR. KING WOULD SERVE HIS NEVADA PRISON TIME CONSECUTIVE WITH HIS CALIFORNIA PRISON TIME. THE DISTRICT COURT IMPROPERLY RELIED UPON SUSPECT EVIDENCE IN IMPOSITION OF SENTENCE.

VII. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT SENTENCED MR. KING TO AN ADDITIONAL 53-240 MONTH SENTENCE FOR THE USE OF A DEADLY WEAPON. GIVEN THE

MITIGATING FACTORS IN THIS CASE, A LOWER SENTENCE SHOULD HAVE BEEN IMPOSED BY THE COURT.

VIII. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT SENTENCED MR. KING TO A PERIOD OF TIME SEVERELY DISPROPORTIONATE TO THE TIME STATED IN THE PLEA BARGAIN.

STATEMENT OF THE CASE

A criminal complaint was filed against Mr. King charging him with one count of open murder with the use of a deadly weapon with alternative theories for first degree murder. Mr. King, as a tactical decision, chose not to appear at his preliminary hearing on July 19, 2012. AA 2.

Following the preliminary hearing, on July 23, 2012, an Information was filed against Mr. King charging him with violations of NRS 193.165, 200.010, 200.030; murder with a deadly weapon enhancement. AA 3-5. At his arraignment on August 22, 2012, Mr. King pled not guilty to all charges. Given the extensive pre-trial discovery (69 CDs), a three week trial was requested and set for August 12, 2013.

However, before trial, the lawyer-client relationship between Mr. King and Mr. Molezzo, his then attorney, broke down. After Mr. King's handwritten motion to relieve counsel, the court held two status hearings concerning Mr. Molezzo's representation of Mr. King. The court granted Mr. King's motion on May 13, 2013, and replaced Mr. Molezzo's with John Olson, Esq., court-appointed counsel through the Robert Bell administration for indigent defense in Washoe County.

After a final Status Hearing on May 22, 2013, trial was set for January 22, 2014. On November 22, 2013, an Amended Information was filed removing the open murder charge and charging one count of second degree murder, a violation of NRS 200.010 & 200.030, along with the deadly weapon enhancement under NRS 193.165. AA 159. The Amended Information came about as the result of plea negotiations by which the Distry Attorney's office agreed to change the open murder charge to second degree murder with a deadly weapon and drop pending witness tampering charges in exchange for a guilty plea to a second degree murder charge enhanced by deadly weapon use. AA 10-15. The State agreed not to seek a term of more than 2-6 years in prison on the deadly weapon enhancement. Both Parties were free to argue whether the sentences should run concurrently to a related California charge or consecutive to that case. AA 12.

With that in mind, Mr. King changed his plea to guilty in conformance with the amended information. AA 16-32. A presentence investigation report was generated in preparation of sentencing. Mr. King filed a pre-sentence memorandum noting his points of contention. AA 33-45.

The case proceeded to sentencing. The Honorable Judge Patrick Flanagan sentenced Mr. King to a term of life in prison with parole eligibility at ten (10) years for the second degree murder charge and to a consecutive term of 53 months minimum/240 months maximum in prison on the deadly weapon enhancement, AA 46-47; 90.

Mr. King filed a timely in proper person notice of appeal. AA 92. On appeal, John Ohlson was removed as counsel and Karla K. Butko was appointed to the case. The aforementioned direct appeal was subsequently denied. Remittitur dated November 12, 2014. A timely f

ederal habeas corpus is now being filed with the Nevada Supreme Court. The instant Habeas Corpus follows.

STATEMENT OF FACTS

On November 5th 2010, Tommy Young's home was broke into. During this entry, Tommy Young was shot and killed. Mr. King took responsibility for his part in the crime and pled guilty. AA 16-32. At sentencing Mr. King expressed sincere regret for his actions, stating:

"I have a great deal of sadness and empathy for the families involved in this case, especially the Young family, Karen, Kianna, Evelyn, Shaniqua...I am deeply sorry for your loss" A A 53

Mr. King, unlike most prisoners, embraced the rehabilitative arm of our penal system. At sentencing, he said:

"Your Honor, as I ponder my legacy I will leave, I decided that 100 years from now that I want to be known as somebody who brought out the best in people, somebody who left the world a better place. Material accomplishments will soon be forgotten. The only thing that lasts is the investment we make in other people's lives." I'd.

However, actions speak louder than words. While incarcerated, Mr. King completed and passed a number of courses including: Domestic Violence I and II; Parenting the Adolescent and the Teenager; 23 weekly domestic violence groups with American Comprehensive Cou

nseling Services ("ACCS"); 8 weekly Substance Abuse Classes are the Washoe County Sheriff's Office; and a glowing review from Dan Lemaire with ACCS citing 60 attendance's at a weekly Domestic Violence group. AA 33-44.

In fact, a short excerpt from the letter is appropriate:

"Mr. King is a learner, always interested in going a little deeper than most into any given subject. He is interested in what others bring to the group, and typically is attentive to whatever is being discussed. He does not monopolize a discussion, but will be sure to give his input if he has an opinion. He seems to be well respected by others, and is certainly respectful towards everyone else in the room as I have experienced him. He speaks fondly of his children and family, and his concerns for them seem to be consistent and authentic." AA 44.

Despite, or perhaps because of, his prior criminal history, with convictions for Transportation of Marijuana, Battery Causing Substantial Bodily Harm, and Possession of a Controlled Substance, when Mr King leaves prison, he wants to use his past experience as a beacon of how not to behave. He wants to counsel wayward youths in situations similar to his own and prevent them from walking down the wrong path. AA 79-80. this desire appears to be genuine; his wife confirmed his intentions without reservation. AA 57-58. The change in Mr. King's behavior and religious conversion convinced the mother of the victim to forgive him at sentencing. AA 86.

It is also clear that Mr. King has a family that supports and believes in him. At sentencing, his mother and brother came in from California and his father came all the way from Mississippi to attend the hearing. AA 58. While in prison, he has been in continual communication

on with his wife, Nancy King. She wants to be reunited with her husband and has noted the change in her husband:

"Yes. He's gone to counseling sessions and I see that he's found a purpose in life now that he has, I want to say the gift, but he knows how to reach people and I believe that he wants to help people not follow in his same footsteps and try to keep them from making the same horrible decisions he's had." AA 57.

Mr. Ohlson failed to present mitigating witnesses who were present and at his disposal to reduce sentence. Counsel failed to present expert testimony of a psychologist to demonstrate that petitioner was not a concern for recidivism or future dangerousness. Counsel failed to adequately investigate and prepare for the sentencing proceeding. Counsel failed to present family witnesses and spiritual advisors to testify about petitioner's amenability to treatment and rehabilitation.

During the sentencing hearing, the State presented a lengthy argument coupled with the testimony of Detective Gallop from the Sparks Police Department. Remember, the plea bargain called for the State to not seek more than 2-6 years in prison on the deadly weapon enhancement. Bruce Hahn, Chief Deputy District Attorney stated that his presentation of evidence was intended to be related to whether the Nevada term should run concurrently with California case and told the Court the State "respects and intends to honor the plea agreement". AA 59. However, the argument by the State and presentation of witness evidence relating to the guilt or innocence of Mr. King versus Mr. Toy went beyond that necessary to deal with concurrent versus consecutive sentences and netted Mr. King a maximum term on the deadly weapon enhancement.

Mr. Ohlson objected timely to the State's argument on the guilt or innocence of his client , as Mr. King had pled guilty and accepted responsibility by entry of the plea. AA 63. The District Court allowed the evidence under the guise of the federal sentencing guidelines, which find that role in the offense is a factor to take into consideration. AA 63. Mr. Hahn advised the Court that he disagreed with the Defendant's representations and perspective of his involvement in the crime. AA 64. After that, Mr. Hahn called witness Gallop to testify about the 'Pen link' report (Exhibit 1) which was based upon cell phone data and created a chart. Mr. Ohlson reminded the Court that he did not wish to relitigate "who done what". AA 63.

Detective Gallop admitted that the cell phone data of two phones used by victim Tommy Young did not net a primary suspect on the case. AA 65. Mr. King was in possession of a cell phone at the time of his arrest in California and the police gained information from his cell phone which tied Mr. King to speaking to the victim four weeks before the incident. AA 66. Police interviewed Mr. Toy and determined that his initial statements to police were false. AA 67. Mr. King's friend, Hanna Mulatu's cell phone was traced to Mr. King. AA 68.

Information was entered by the State at sentencing that Eric King was a middle man who facilitated drug deals between the victim and Mr. King. AA 69. Evidence about Ms. Mitchell's presence when the victim was shot, that Mr. Toy dropped his and that Mr. Toy was shot in the legs was admitted at the sentencing. AA 70.

Mr. Hahn did not stop there. In his quest to maximize the sentence imposed upon Mr. King, Mr. Hahn admitted evidence of drug charges in California, the location of the drugs, the quantity of drugs, location of another storage unit which did not contain contraband , and the location and confiscation of a gun that was not involved in this case. AA 71-74. Durin

g the argument stage of the sentencing, Mr. Hahn reminded the Court with one sentence that the State recommended 24-72 months on the enhancement but then went on for an entire typed page as to the drug involvement in the fact setting. AA 76-77. Mr. Hahn was aware at the time of sentencing that the drug conviction information that he presented to the Courts to be inaccurate and testimony in concerns to this matter by Detective Gallop to be false. In reality, Mr. King's drug conviction in California related to drugs of a minimum quantity found at a residence and ALL charges in concerns to a storage unit(s) were dismissed in the interest of justice. AA 78.

When imposing sentence, the District Court made a perfunctory comment that it considered the factors found in NRS 193.165 by stating what those factors were but not by relating any factual support to its enhancement decision. AA 89. At that point, the District Court imposed a term of life in prison with parole eligibility at ten years, a consecutive enhancement for the weapon of 53-240 months, and ordered the sentence to be served consecutive to the California related case. AA 90.

Last but not least, when the division (Jennifer Iverson) presented their presentence investigation report to the Court at the sentencing, Ms. Iverson and the Division presented an invalid and erroneous computation of Mr. King's prior prison sentences. Justifying their erroneous assertion that Mr. King has a number of more prison commitments than he actually does, with a simple inaccurate statement that:

"That's how California counts it". AA 55-56.

The assertion that California calculates violations in this manner is untrue.

In closing, Mr. King did not commit the murder of Tommy Young, but essentially conceded to the charges after consulting with Counsel.

This Habeas Corpus follows.

ARGUMENT

Standard of Review:

A defendant must show actual prejudice to warrant a new sentencing hearing based on an alleged due process violation. *McKenna v. State*, 114 Nev. 1044, 968 P.2d 739 (1998) and *Herman v. State*, 122 Nev. 199, 204, 128 P.3d 469, 472 (2006), overruled on other grounds by *Nunnery v. State*, 127 Nev. Adv. Op. 69 (decided October 27, 2011). The district court is afforded wide discretion in its sentencing decisions and the Supreme Court has refrained from interfering with the sentence imposed when "the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

- I. THE COURT RELIED UPON SUSPECT EVIDENCE IN SENTENCING. COUNSEL FAILED TO PRESENT MITIGATION WITNESSES TO REDUCE SENTENCE. COUNSEL FAILED TO PRESENT EXPERT TESTIMONY OF A PSYCHOLOGIST TO DEMONSTRATE THAT

PETITIONER WAS NOT A CONCERN FOR RECIDIVISM OR FUTURE DANGEROUSNESS. COUNSEL FAILED TO ADEQUATELY INVESTIGATE AND PREPARE FOR THE SENTENCING PROCEEDING. COUNSEL FAILED TO PRESENT FAMILY WITNESSES TO TESTIFY ABOUT PETITIONER'S AMENDABILITY TO TREATMENT AND REHABILITATION, ALL IN VIOLATION OF THE FIFTH, SIXTH & FOURTEENTH AMENDMENTS. SEE FURTHER HEREIN:

An attorney must make a reasonable investigation in preparation for trial, or make a reasonable decision not to investigate. *Kirksey v. State*, 112 Nev. 980, 923 P.2d 1102 (Nev. 1996). In this case, reasonable investigation certainly included efforts to provide the court with evidence that the Petitioner was amenable to rehabilitation efforts.

Petitioner was sentenced based upon suspect evidence. This record demonstrates prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence. The Court can not rely upon suspect evidence at sentencing.

Defense counsel presented family support by way of presence of family members in court and by way of letters of support to the Court in advance of the hearing. Defense counsel failed to present an expert opinion on the question of whether Petitioner was subject to being rehabilitated, whether Petitioner was dangerous to the community in a future sense and whether some act short of a life sentence would be appropriate in this case. Petitioner will present evidence that he suffered from ADHD as a child and had a learning disability,

that he suffered from an ugly childhood living in an environment filled with drug abuse, alcohol abuse, mental health issues and religious differences with his family which caused his youth to be troubled. A sentencing hearing is a critical stage of the proceedings and Petitioner was entitled to the effective assistance of counsel under the Sixth Amendment. The Eighth Amendment requires a defendant to be sentenced individually, taking into account the individual and the charged crime. *U.S. v. Lai*, 944 F.2d 1434 (9th Cir. 1991). A new sentencing hearing is mandated under the facts of this case.

The record demonstrates prejudice resulting from reliance upon suspect evidence. The sentence imposed was based upon palpable or highly suspect evidence. *Silks v. State*, 92 Nev. 91, 545 P.2d 1159 (1976).

Petitioner will bring forth evidence of a psychologist who is prepared to testify in court and express the fact that Petitioner was amenable to rehabilitation efforts.

Counsel's failure to object to victim impact evidence at the sentencing hearing caused the appellate review of the issues to be for plain error only. *Vega v. State*, 126 Nev. 236 P.2d 632 (2010). This deprived petitioner effective appellate review of a key issue which occurred during his sentencing hearing. If the evidence had been properly objected to by counsel, the appellate review would have been for harmless error. *Sherman v. State* 114 Nev. 998, 965 P.2d 903 (1998).

II. THE GUILTY PLEA WAS NOT KNOWING AND WAS COERCED BY COUNSEL:

Petitioner is entitled to withdraw his plea. Absent counsel's advice Mr. King would never have entered this guilty plea. *Hill v. Lockhart*, 474 U.S. 52 (1985) and *Nollette v. State*, 118 Nev. 341, 348-49, P. 3d 87, 92 (2002). If this court allows Petitioner to withdraw his previously entered guilty plea, he will take this case to jury trial and assume the risk of all charges returning to the table.

The case of *Bryant v. State*, 102 Nev. 268, 721 P.2d 364 (1986) stands for the proposition that the court will not invalidate a plea simply because the plea canvas is technically deficient as long as the record shows that the plea was knowing and voluntary. The Court must review the entire proceedings to determine whether this plea was coerced or was free and voluntary.

Petitioner did not commit the murder of Tommy Young, but essentially conceded to the charges after consulting with counsel. Being that the petitioner is not a resident of the state of Nevada, in conjunction with the fact that Washoe County Detention Facility offers absolutely no law or statutory information, it is not even remotely capable of expecting the Petitioner to be able to enter this plea knowingly or voluntarily; and Petitioner was coerced by counsel to believe that the judge would not deter from the plea agreement.

Over the years the Supreme Court decided several 'access to the Courts' cases involving inmates. The most important came in 1977, when the court said that prison administrators have the affirmative duty to provide inmates with assistance or resources to allow them to meaningfully exercise their right of access to the courts, *Bound v. Smith*. A 1996 Supreme Court decision dealing with access to the courts reaffirmed the core principle in *Bounds*, i.e., that the institution has an affirmative duty to provide some form of assistance (librarians or persons trained in the law) sufficient to give inmates the capability of filing non-frivolous

ious lawsuits challenging their sentence or the conditions of their confinement, *Lewis v. Casey*. The principle from *Bounds* (and now *Lewis*) has been extended to jails, although application of the principle may be slightly different in the jail context depending in part on how long inmates remain in the jail. The longer an inmate remains in a jail, the more the right of "access to the courts" places the same demands on the jail as it does on the prison. I would like to take this opportunity to enlighten this Court that Petitioner incurred an excess of three (3) years of continuous incarceration, while spending over two (2) years in the Washoe County Detention Facility, which is the focus of these contentions. The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law. This quote is taken from *Bounds v. Smith* (430 U.S. 817), the 1977 landmark Supreme Court decision, which led to the establishment of law libraries in most major U.S. prisons.

The due process clause of the fourteenth amendment guarantees state inmates the right to "adequate, effective, and meaningful" access to the courts. *Bounds v. Smith* 430 U.S. 817, 822, 97 S. Ct. 1491, 1495, 52 L.Ed. 2d 72 (1977); *Green v. Johnson*, 977 F.2d 1383, 1389 (10th Cir. 1992).

INEFFECTIVE ASSISTANCE OF COUNSEL AUTHORITY:

In *State v. Love*, 109 Nev. 1136, 865 P.2d 322 (1993), the Nevada Supreme Court reviewed the issue of whether or not a defendant had received ineffective assistance of counsel at trial in violation of the Sixth Amendment. The Nevada Supreme Court held that this question is a mixed question of law and fact and is subject to independent review. The Supreme C

court reiterated the ruling of *Strickland v. Washington*, 466 U.S. 668 (1984). The Nevada Supreme Court indicated that the test on a claim of ineffective assistance of counsel is that of "reasonably effective assistance" as enunciated by the United States Supreme Court in *Warden v. Lyons*, 100 Nev. 439, 683 P. 2d 504 (1984) and *Dawson v. State*, 108 Nev. 112, 825 P.2d 593 (1992). The Nevada Supreme Court has provided a two-prong test in that the Defendant must show first that counsel's performance was deficient and second, that the Defendant was prejudiced by this deficiency.

The court went on in *Warden v. Lischko*, 90 Nev. 220, (1974), to hold that the standard of review of counsel's performance was whether the representation of counsel was of such low caliber as to reduce the trial to a sham, a farce or a pretense. Prejudice is demonstrated where counsel's errors were so severe that there was a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability that, but for counsel's unprofessional errors the result of the proceeding would have been different, is a probability sufficient to undermine confidence in the outcome of the trial. *Riley v. State*, 110 Nev. 638, 878 P.2d 272 (1994). Petitioner seeks an evidentiary hearing on all issues raised in all post-conviction pleadings on file. Petitioner seeks the right to amend his prior documents to include the claims raised herein in addition to those pending.

III. THE STATE BREACH THE SPIRIT OF THE PLEA BARGAIN WHEN THE PROSECUTOR KNOWINGLY PRESENTED FALSE TESTIMONY AND DID NOT CORRECT

**TESTIMONY THAT HE KNEW TO BE FALSE, IN VIOLATION
OF THE FIFTH AND FOURTEENTH AMENDMENTS.**

The due process clause of the fourteenth amendment forbids the government from knowingly using, or failing to correct false testimony.

see *Giglio v. United States*, 405 U.S. 150, 153, 92 S. Ct. 763, 31 L.E.d 2d 104 (1972); *Napue v. Illinois*, 360 U.S. 264, 271, 79 S.Ct. 1173, 3 L.E.d.2d 1217 (1959).

To prove a due process violation, the appellants must establish that

(1) Detective Gallop testified falsely; (2) the government knew the testimony was false; and (3) the testimony was material. see *Giglio*, 405 U.S. at 153-54, 92 S. Ct. 763; *Knox v. Johnson*, 224 F.3d 470, 477 (5th Cir. 2000).

Under direct examination by the government, Detective Gallop stated that he was the "Case Agent" in regards to these matters. And goes on to explain that a Case Agent "is a term used by our department to define who the detectives are that are responsible for overseeing the entire investigation".

AA 61-62.

The State made clear to the Court that their intentions were "to offer the Court a different perspective for you to make a decision today". AA 64. Under direct examination by the government, Detective Gallop misrepresented the charges the Petitioner incurred that resulted in a possession of a control substance finding in California when he stated that it stemmed from "approximately a quarter pound of methamphetamine... the drugs were located in a storage unit that was rented in the name of Nancy King". AA 71.

This testimony was false and the government knew it. When in fact the possession of a control substance charges stemmed from a minimum amount of approximately three (3) grams of methamphetamine, along with a handgun located in Ms. Hanna Mulatu's apartment complex.

Since the Petitioner has easily established the first two elements of his due process claim, we must turn to the question of whether Detective Gallops false testimony was material.

The State does not simply stop there. In their assertion that it was in excess of 100 grams, the State further goes into a narrative of cautionary intentions to the Court as to why the Petitioner should receive the maximum penalty possible, AA 77:

"Almost a quarter pound of methamphetamine that was discovered in a storage unit that was being -- that was under Nancy King's name, it suggests, I think, perhaps, a meaningful distribution network, if not just store-housing. I think the evidence is fair for the Court to conclude that there was interest in opening up perhaps a new market in Reno. And so when I hear a concern that Mr. King has about maybe this sort of being collateral damage, the California matter, with ultimately the murder that occurred in Nevada, I don't have -- I don't share that same perspective, judge. What we're talking about is we're talking about a convicted felon who had access to a weapon, who had 100 grams of methamphetamine, in excess, in a storage unit in California that happened to be discovered in connection with a much larger investigation, two different locations, two different distribution networks. And for that reason, judge, Alone, I believe that mitigates in favor of the consecutive sentence with whatever the Courts renders here in connection with the California sentence he was serving time for. Absent that, I stand ready to answer any questions".

As a result of the State knowingly presenting false testimony and not correcting testimony that he knew to be false, Petitioners right to due process under the fourteenth amendment have been violated. A new sentencing hearing is warranted.

IV. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT SENTENCED PETITIONER TO A SENTENCE AUGMENTED BY INVALID PRIOR CRIMINAL HISTORY. WHICH IS IN VIOLATION OF THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS. A NEW SENTENCING HEARING IS WARRANTED.

Petitioners next argument is that in calculating his criminal history the District Court improperly considered three (3) revocations of parole as if they were three (3) additional prison sentences. Bringing the total number of prison sentences from three (3) to seven (7) [including current sentence]. Petitioner submitted a Pre-Sentence Memorandum, dated 1/16/2014, vicariously through his then attorney John Ohlson Esq., challenging the misrepresentation in the presentence report to no avail. As evident by the sentencing transcript, dated 1/22/2014, AA 55-56, where the court questioned the Division concerning the matter:

THE COURT: "... One of the concerns I have in these presentence investigation reports is every time a prisoner is revoked on parole and reenters, it's counted as another conviction. So you have somebody who is convicted, it's one

conviction, he or she is paroled and then parole is revoked, they're returned, the Division counts that as a second conviction."

DIVISION: "I'm sorry. Yes, if he goes back to prison, it's another prison sentence."

THE COURT: "Even though he's serving the same prison sentence?"

DIVISION: "That's how California counts it, your honor."

THE COURT: "All right"

This entire assertion is in error. A "violation of parole" in California and even Nevada for that matter is not considered another prison sentence, no matter if the parolee is returned to custody or not. In essence, the parolee or probationer is still serving his or her term whether in-custody or out-of-custody. Making the reliance on this recommendation is invalid, and it can not be considered part of petitioners criminal history for sentencing purposes.

A prisoner lawfully on parole remains technically in custody

(Pen. Code, 3056), and is serving his sentence, although not in physical custody (Ex Parte Casey, 160 Cal. 357 [116 P. 1104]). The adult authority may for cause (Pen. Code 3063) suspend or revoke parole, and order the parolee returned to prison (Pen. Code, 3060).

Notwithstanding this, the essence of review for plain error is that the error be plain. The District Courts reliance on the presentence report was insufficient and does not meet the indicium of reliability to warrant a Constitutional valid sentence. Which entail was augmented

ted by the invalid prior prison sentence calculation. U.S. v. McClennon 1F.3d 1250 (1993); Rogers (1980) 28 C3d 429, 169 CR 222; Woods (1966) 64 C2d 3, 48 CR 689; Bartlett (1971) 15 CA 3d 176, 93 CR 96; U.S. v. Dietz 950 F.2d 50 (1991).

The comprehensive crime control act sets forth four purposes of sentencing.

(see 18 U.S.C. 3553 (a)(2)). A defendant's record of past criminal conduct is directly relevant to those purposes. A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of greater punishment. General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence. To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered. Repeated criminal behavior is an indicator of a limited likelihood of successful rehabilitation.

(Aguilera v. California Dept. of Corrections 247 Cal. App 2d 151). In light of the aforementioned information, the Division's Pre-Sentence Report and recommendation was instrumental and material to the Courts decision to apply petitioner an invalid and excessive sentence, in violation of his fifth, sixth and fourteenth amendments.

V. THE STATE BREACHED THE SPIRIT OF THE PLEA BARGAIN IN VIOLATION OF THE FIFTH & FOURTEENTH AMENDMENTS. A NEW SENTENCING HEARING IS WARRANTED.

Standard of Review:

Since *Santobello v. New York*, 404 U.S. 257, 262 (1971), this Court has stated that the State's violation of a plea agreement " 'requires reversal.' "

Our case law has implicitly rejects harmless-error analysis in the event of a breach of a plea agreement, and a new sentencing must be heard before a new judge. *Echeverria v. State*, 119 Nev. 41, 62 P. 3d 743 (2003).

Argument:

The United States Supreme Court has held that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Santobello v. New York*, 404 U.S. 257, 262 (1971). This court has held that when the state enters a plea agreement, it is held to the most meticulous standards of both promise and performance. *Citti v. State*, 107 Nev. 89, 91, 807 P. 2d 724, 726 (1991). Violation of either the terms or the spirit of the agreement requires reversal. *Id.*

This court also ordered resentencing in *Wolf v. State*, 106 Nev. 426, 794 P.2d 721 (1990), where the prosecutor acknowledged that he could not argue for a sentence of more than five years, but after detailing the defendant's criminal history implicitly argued for the presentence report's recommendation of nine years, and in *Doane v. State*, 98 Nev. 75, 639 P.2d 1175 (1982), where the prosecution violated an agreement to stand silent at sentencing when it asked the court if the sentences for multiple counts were consecutive. The State's violation of a plea agreement requires reversal and is not subjected to harmless error review.

ew. When the State breaches a plea agreement, the case must be reassigned to a different sentencing judge for resentencing. *Echeverria v. State*, 119 Nev. 41, 62 P.3d 743 (2003).

The argument of the State, coupled with admission of Exhibit 1, the Pen link chart, and the testimony of Detective Gallop violated the spirit of the plea bargain. The reality of the State's argument was to seek imposition of maximum consecutive sentences upon Mr. King and it worked. Judge Flanagan failed to even note on the record that he was disregarding the plea bargain of the Parties or why he found the plea bargain to be inappropriate. This, after Mr. King spent 651 days in custody before accepting a plea bargain. A new sentencing before a new judge is the proper remedy.

VI. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT RULED THAT MR. KING WOULD SERVE HIS NEVADA PRISON TIME CONSECUTIVELY WITH HIS CALIFORNIA PRISON TIME. THE DISTRICT COURT IMPROPERLY RELIED UPON SUSPECT EVIDENCE IN IMPOSITION OF SENTENCE.

NRS 176.045 grants the District Court the discretion to choose whether or not a sentence from another jurisdiction against the defendant will be run concurrently or consecutively with the Nevada offense. While case law dealing with NRS 176.045 is scarce, nonetheless, courts have entertained appeals pursuant to an abuse of discretion.

The District Court abused its discretion when it chose to impose Mr. King's Nevada penalties consecutively with his California penalties. The California case for which Mr. King was incarcerated arose out of the Nevada investigation. As such, the charges that arose in California are effectively "collateral damage" resulting from the crime committed in Nevada. T

he parity between the two investigations is clear, and serving time in Nevada for the greater crime should have been sufficient to accomplish the retributive and rehabilitative goals of incarceration.

Further, the additional time would serve no legitimate punitive purpose. Generally speaking, the three punitive purposes are retribution, rehabilitation, and removal. The crime for which Mr. King was imprisoned in Nevada, second degree murder with a deadly weapon, was addressed at the sentencing hearing. Punishing him further for drug possession in California does not further serve Nevada's interests in punishing him for crimes committed in Nevada.

The additional time also does not serve a rehabilitative purpose. Mr. King's conduct in prison and at sentencing show that he, in a few short years, is already a radically different person. He attended a number of classes while in prison:

Domestic Violence I and II; Parenting the Adolescent and the Teenager; 23 weekly domestic violence groups with American Comprehensive Counseling Services ("ACCS"); 8 weekly Substance Abuse Classes at the Washoe County Sheriff's Office; and a glowing review from Dan Lemaire with ACCS citing 60 attendances at a weekly Domestic Violence group. AA 121-126. Not only has he attended these classes, he appears to have also incorporated their teachings into his life. The letter written by Dan Lemaire shows that Mr. King is doing more than simply vegetating at the classes:

"Mr. King is a learner, always interested in going a little deeper than most into any given subject. He is interested in what others bring to the group, and typically is attentive to whatever is being discussed. He does not monopolize a discussion, but will be sure

to give his input if he has an opinion. He seems to be well respected by others, and is certainly respectful towards everyone else in the room as I have experienced him. He speaks fondly of his children and family, and his concerns for them seem to be consistent and authentic." AA 126.

Further, it's clear that Mr. King has learned from his prison experience and wants to change the purpose and effect of his life. As Mr. King said at sentencing:

"Your Honor, as I ponder my legacy I will leave, I decided that 100 years from now that I want to be known as somebody who brought out the best in people, somebody who left the world a better place. Material accomplishments will soon be forgotten. The only thing that lasts is the investment we make in other people's lives." Id.

Additional prison time from a California conviction will not serve to rehabilitate him any further.

Finally, the ultimately purpose behind incarceration is to remove a threat from the people and keep it safely locked behind closed doors. The clear change in Mr. King's demeanor, outlook, and purpose in life makes it clear that he is no longer a threat to the community. Keeping him in prison longer will not serve to protect the public. In fact, further incarceration of Mr. King could harm the public by depriving it of his new purpose in life -- helping at-risk kids to make the right choices.

The Court improperly admitted Exhibit 1, over defense objection, and the State's argument on the facts and evidence in California. The Detective testified that the Penlink did not show a connection between Mr. King and the victim on the victim's phone. The evidence was that one of Mr. King's phone which was taken into evidence upon his arrest in California, had calls from the victim four weeks prior to the incident. The Pen link chart was put together with a computer program and was suspect evidence at best. Sentencing decisions based upon "impalpable or highly suspect evidence" warrant a new sentencing hearing. *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Admission of sentencing evidence is bound by constitutional constraints. Admission of the Penlink chart violated the spirit of the plea bargain and interposed highly suspect evidence into this sentencing proceeding, in violation of the Fifth Amendment and due process rights of Mr. King.

It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue. *Gall v. United States*, 128 S. Ct. 586 (2007) and *Rita v. United States*, 127 S. Ct. 2456, 2469 (2007).

The Federal and Nevada Constitutions provide that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. Amend. XIV, 1; Nev. Const. art. 1, 8(5).

A substantively reasonable sentence is one that is "sufficient, but not greater than necessary" to accomplish 3553(a)(2)'s sentencing goals. 18 U.S.C. 3553(a); see, e.g., *United States v. Vasquez-Landaver*, 527 F.3d 798, 804-05 (9th Cir. 2008). This sentence was in excess of that needed for society's interests. See *Rita v. United States*, 551 U.S. 338, 127 S. Ct. 2456,

2468-69 (2007). This Court must proceed to review the reasonableness of the available sentence. See *United States v. Cantrell*, 433 F.3d 1269, 1279 (9th Cir. 2006). Sentencing schemes in Nevada are not blind to rehabilitative interests and the Court is required to consider the need for the sentence imposed to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Because the California case was a direct result of his Nevada conviction, and because further incarceration of Mr. King does not serve any further punitive purposes, the District Court erred when it increased the amount of his prison term by running the Nevada and California punishments consecutively.

VII. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT SENTENCED MR. KING TO AN ADDITIONAL 53-240 MONTH SENTENCE FOR THE USE OF A DEADLY WEAPON. GIVEN THE MITIGATING FACTORS IN THIS CASE, A LOWER SENTENCE SHOULD HAVE BEEN IMPOSED BY THE COURT.

NRS 193.165 provides an additional penalty for using a deadly weapon during the commission of a crime. The statute provides the judge with discretion to add an additional sentence of a one year minimum and twenty year maximum. However, the statute requires that the judge consider five factors and state that he/she has considered these factors on the record. A careful consideration of the NRS 193.165 (1) factors demonstrates that the impos

ition of a 4.5 year minimum and 20 year maximum was an abuse of discretion by the court

. The factors are:

- (a) The facts and circumstances of the crime;
- (b) The criminal history of the person;
- (c). The impact of the crime on any victim;
- (d). Any mitigating factors presented by the person; and
- (e). Any other relevant information.

The defendant will admit that the facts and circumstance of the crime do not weigh in his favor. His criminal history consists of convictions for Transportation of Marijuana, Battery Causing Substantial Bodily Harm, and Possession of a Controlled Substance. In effect, his prior criminal history consisted of two drug crimes and a single serious crime. His criminal history is not the best, but it is also, assuredly, not the worst criminal history that this Court has seen. As such, it is at worst a neutral factor.

The third factor, impact of the crime on the victims is an interesting factor. Clearly, the biggest impact was on Tommy Young, who died. Such a result, however, is a necessary consequence of the crime and does not make Mr. King's crime unique. At sentencing, three victim impact statements were given, one from Tommy's sister, Evelyn Young, one from Tommy's younger sister, Kianna Pride, and one from Tommy's mother, Karen Jones. Evelyn Young gave a short statement summarizing her loss and remorse. AA 32-33. Kianna Pride gave a clear statement that she was still feeling bitter and angry towards Mr. King. AA 82. Tommy's mother, Karen Jones, on the other hand, forgave him for his crime. AA 86. Clearly, as with any murder, there was a distinct negative impact. Nonetheless, Mr. King's change and remorse was so significant and genuine that it convinced the mother of the victim to f

orgive him. The court did not address Mr. King's reformation, and its failure to do so was a n abuse of discretion.

The mandatory consecutive prison term of 20 years for the weapons enhancement was e xcessive and constituted cruel and unusual punishment under Eight Amendment. See Lloyd d v. State, 94 Nev. 167, 576 P. 2d 740 (1978) and Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991((plurality opinion).

The court, in its discussion before declaring sentence, never discussed how Mr. King's cle ar mitigating factors influenced its decision. The Court delivered a significant and intellige nt lecture concerning murder in the abstract, but failed to note the clear changes in Mr. Ki ng's person. The Court's failure to address his reformation coupled with its clear distaste o f any murder implies that the court did not sentence this case specifically, but rather punis hed the crime of murder in the abstract. As such, because it failed to address relevant info rmation (such as forgiveness from the mother of the deceased) and focused too heavily on the crime in general, the 4.5 to 20 year sentence given for the deadly weapon enhanceme nt was an abuse of discretion. The Court was advised that Mr. King somehow was tied to a gun which was not involved in this case. This evidence was suspect and inadmissible. A ne w sentencing is warranted.

VIII. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT SENTENCED MR. KING TO A PERIOD OF TIME SEVERELY DISPROPORTIONATE TO THE TIME STATED IN THE PLEA BARGAIN.

Lastly, although it must be admitted that the court possesses the power at sentencing to differ from the terms of a plea bargain, a severe departure from the terms of the plea bargain begin to undermine the intelligence and voluntariness of a defendant's plea. Put in simple terms, if a defendant enters into a plea bargain expecting that the State, his adversary, will argue for a deadly weapon enhancement of 2-6 years, he/she reasonably expects that the court will not order much more than that. If the court, instead, orders an enhancement of 4.5-20 years, such a departure from what was expected assuredly undermines the reasonable expectation of the defendant. Had he/she known that the court would depart so radically from the State's recommendation, he/she would likely not have accepted the bargain.

The above hypothetical is not a hypothetical. It represents the undisputed facts of this case. Mr. King accepted a guilty plea knowing, yes, that the court could depart from the terms. AA 14, 29. The question remains, did he have actual knowledge that the court would depart so radically from the terms of the plea? If such a situation arose in a civil contract matter, the court would assuredly be offended at the degree of difference. Because the court differed so radically on the deadly weapon enhancement from what the plea bargain stated, Mr. King's assent to the bargain cannot be construed as knowing or voluntary. At no time did the Court express its reason for determining that the plea bargain entered into between the parties was improper in any way. A new sentencing should be granted.

CONCLUSION

Mr. King's rights under the 5th and 14th Amendments to due process under the law were violated. The sentence is excessive under the 8th Amendment. This judgement of conviction should be vacated and the case should be remanded for a new sentencing hearing ordered to be conducted before a court that has not been involved in the case to date.

DATED this 30 day of June, 2015.

By: D'Vaughn K.

D'VAUGHN K. KING V-03209
NORTH KERN STATE PRISON
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DELANO, CA. 93216

IN THE SUPREME COURT OF THE STATE OF NEVADA

D'VAUGHN KEITHAN KING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 64983
District Court Case No. CR121160

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

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

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

DATE: December 08, 2014

Tracie Lindeman, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. Patrick Flanagan, District Judge
Washoe County District Attorney
Attorney General/Carson City
Karla K. Butko

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on _____.

District Court Clerk

1 CODE 1850
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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

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR12-1160

12 DVAUGHN KEITHAN KING,

Dept. No. 7

13 Defendant.
14 _____ /

15 JUDGMENT OF CONVICTION

16 The Defendant, having entered a plea of guilty, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him,
18 the Court rendered judgment as follows:

19 Dvaughn Keithan King is guilty of the crime of Murder in the Second Degree
20 With the Use of a Deadly Weapon, a violation of NRS 200.010, NRS 200.030 and NRS
21 193.165, a felony, as charged in the Amended Information, and that he be punished by
22 imprisonment in the Nevada State Prison for the term of Life With the Possibility of
23 Parole, with parole eligibility beginning when a minimum of Ten (10) years has been
24 served. Further, the Court, having considered Paragraphs (a) through (e) as described in
25 NRS 193.165(1), imposes an additional penalty of a consecutive term of imprisonment in
26 the Nevada State Prison for a minimum term of Fifty-Three (53) months to a maximum
27 term of Two Hundred and Forty (240) months for the Use of a Deadly Weapon
28 enhancement. It is further ordered that both sentences will be served consecutively to

1 the sentence previously imposed in Case No. 10F07661, with credit for time served in the
2 amount of Six Hundred and Fifty-One Days (651) days.

3 It is further ordered that the Defendant shall pay the statutory Twenty-Five
4 Dollar (\$25.00) administrative assessment fee, the One Hundred Fifty Dollar (\$150.00)
5 DNA testing fee, and submit to a DNA analysis to determine the presence of genetic
6 markers, if not previously ordered, the Three Dollar (\$3.00) administrative assessment
7 fee for obtaining a biological specimen and conducting a genetic marker analysis, if not
8 previously ordered, and reimburse the County of Washoe the sum of Five Hundred
9 Dollars (\$500.00) for legal representation.

10 Any fine, fee or administrative assessment imposed upon the Defendant
11 today as reflected in this Judgment of Conviction constitutes a lien, as defined in Nevada
12 Revised Statutes (NRS 176.275). Should the Defendant not pay these fines, fees or
13 assessments, collection efforts may be undertaken against him.

14 Dated this 23rd day of January, 2014.

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17 Patrick Flanagan
18 DISTRICT JUDGE
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CODE:
TROY C. JORDAN
Nevada Bar No. 9073
300 South Arlington, Suite B
Reno, Nevada 89501
Tel: 775-432-1581
Attorney for Petitioner

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

D'VAUGHN KEITHAN KING,
Petitioner,

vs.

Case No. CR12-1160

STATE OF NEVADA,

Dept. No. 7

Respondents.

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

1. Name of the institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: **High Desert State Prison, Clark County Nevada.**
2. Name and location of the Court which entered the Judgment of Conviction under attack: **Second Judicial District Court of the State of Nevada in and for the County of Washoe.**
3. Date of Judgment of Conviction:
4. Case Number: **CR12-1160**
5. Length of Sentence: **Life with the possibility of parole after ten (10) years plus an additional 53 months to 240 months consecutive for the deadly weapons enhancement.**
6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion: **No**
7. Nature of Offenses: **2nd Degree Murder**
8. What was your plea? **Guilty**

9. What were the terms of the plea agreement? **In exchange for the Petitioner's guilty plea, the parties would be free to argue except that the state would cap its recommendation**

10. If you were found guilty at trial: **N/A**

11. Did you testify at trial: **N/A**

12. Did you appeal from the Judgment of Conviction: **Yes**

13. If you did appeal

a) Name of the Court: **Nevada Supreme Court**

b) Case Number: **64983**

c) Result: **Affirmed**

d) Date: **11-12-2014**

14. If you did not appeal explain why: **N/A**

15. Other than a direct appeal from the Judgment of Conviction and Sentence, have you previously filed any petitions, applications or motions with respect this Judgment in any court, state or federal: **No.**

16. If the answer to 15 is yes: **N/A**

17. Has any ground being raised in this Petition been previously raised in another post-conviction proceeding: **No.**

18. If any of the grounds listed in No. 23 below were not previously presented to any other court why were they not presented: **Pursuant to Pellegrini v. State, 117 Nev. 860, 881-84, 34 P. 3d 519, 533-35 (2001), claims of ineffective assistance of counsel are allowed to be presented for the first time in a timely post-conviction writ of habeas corpus.**

19. Are you filing this Petition more than one year following the filing of the Judgment of Conviction or the filing of a decision on direct appeal? **No. The petition in timely and filed within one year.**

20. Do you have any Petitions or appeal now pending in any court, either state or federal, as to the Judgment under attack? **No.**

21. Give the name of each attorney that represented you in the proceeding resulting in your

conviction and direct appeal

1) Richard Molezzo –pre-trial proceedings

2) John Ohlson-Trial

3) Karla Butko-Direct Appeal

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

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

I. Applicable Law Regarding Ineffective Assistance of Counsel

A defendant possesses a constitutional right to reasonably effective assistance of counsel at trial. *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984); *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984), *cert. denied*, 471 U.S. 1004, 85 L. Ed. 2d 159, 105 S. Ct. 1865 (1985).

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a convicted defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that he was prejudiced as a result of counsel's performance. *Strickland*, 466 U.S. at 687-88, 692. Prejudice is demonstrated where counsel's errors were so severe that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 466 U.S. at 694. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of trial. *Id.* The defendant carries the affirmative burden of establishing prejudice. *Id.* at 466 U.S. at 693. Prejudice in an ineffective assistance of counsel claim is shown when the reliability of the jury's verdict is in doubt. *Id.* at 466 U.S. at 687. Reliability is in doubt where the defendant can

1 show that, but for counsel's errors, there is a reasonable probability that the result of the
2 trial would have been different. See *State v. Love*, 109 Nev. 1136, 1139 (1993).

3 Prejudice in an ineffective assistance of counsel claim is shown when the reliability
4 of the jury's verdict is in doubt. *Strickland*, 466 U.S. at 687. Reliability is in doubt where
5 the defendant can show that, but for counsel's errors, there is a reasonable probability
6 that the result of the trial would have been different. See *State v. Love*, 109 Nev. 1136
7 (1993); *Strickland*, 466 U.S. at 694.

8 A defendant is entitled to effective assistance of counsel at the both the trial and appellate
9 level. *Kirksey v. State*, 112 Nev. 980,998,923 P. 2d 1102, 1113-14 (1996); A claim of
10 ineffective assistance of appellate counsel is reviewed under the "reasonably effective
11 assistance" test set forth in *Strickland*. Effective assistance of appellate counsel does not
12 mean that appellate counsel must raise every non-frivolous issue. *Jones v. Barnes*, 463 U.S.
13 745, 751-54, 77 L. Ed. 2d 987, 103 S. Ct. 3308 (1983). An attorney's decision not to raise
14 meritless issues on appeal is not ineffective assistance of counsel. *Daniel v. Overton*, 845 F.
15 Supp. 1170, 1176 (E.D. Mich. 1994); *Leaks v. United States*, 841 F. Supp. 536, 541 (S.D.N.Y.
16 1994), aff'd, 47 F.3d 1157 (2d Cir.), cert. denied, U.S. , 133 L. Ed. 2d 228, 116 S. Ct. 327
17 (1995). To establish prejudice based on the deficient assistance of appellate counsel, the
18 defendant must show that the omitted issue would have a reasonable probability of success
19 on appeal. *Duhamel v. Collins*, 955 F.2d 962, 967 (5th Cir. 1992); *Heath v Jones*, 941 F.2d
20 1126, 1132 (1991). In making this determination, a court must review the merits of the omitted
21 claim. *Id.*

22 **II. Supplemental Points and Authorities to Ground I of the proper person petition**

23 Mr. King is being held in the Nevada Department of Corrections in violation of his Due
24 Process rights under the Fifth, Sixth, and Fourteenth Amendments to the United States
25 Constitution, *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), *Viperman v.*
26 *State*, 96 Nev. 592, 614 P.2d 532 (1980), *U.S. v. Nixon*, 418 U.S. 683 (1974), *State v.*
27 *Fouquette*, 67 Nev. 505, 221 P.2d 404 (1950), and *Vallery v. State*, 118 Nev. 357, 372, 46
28 P.3d 66, 76-77 (2002) (quoting *Margetts v. State*, 107 Nev. 616, 619, 818 P.2d 392, 394

1 (1991) and deserves an evidentiary hearing under *Lewis v. State*, 100 Nev. 456, 686 P.2d 219
2 (1984), *Bolden v. State*, 99 Nev. 181, 659 P.2d 886 (1983), and *Gibbons v. State*, 97 Nev.
3 520, 634 P.2d 1214 (1981).

4 Trial Counsel John Ohlson was ineffective for failure to present appropriate
5 mitigating testimony or evidence on behalf of Mr. King at sentencing to support an argument
6 that Mr. King should receive a sentence of 10-25 years of incarceration and a lighter sentence
7 the deadly weapons enhancement.

8 If granted an evidentiary hearing, would present Dr. Martha Mahaffey who is
9 expected to testify that had the evaluation been presented, it would have shown a low risk to
10 reoffend, was amenable to treatment and rehabilitation. Further, other mitigating
11 psychological evidence such as the impact Mr. King's ADHD, learning disabilities, drug abuse,
12 and childhood would have been presented indicating the need for rehabilitation. This piece of
13 mitigating evidence would have been crucial and sentencing. The failure of counsel to
14 present this evidence was deficient performance. Further, King suffered prejudice. Mr. King
15 was sentenced to a life sentence plus an additional 53 months to 240 months. Had the
16 evaluation been presented to the Court, the outcome would have been different. Mr. Hoffman
17 either would not have been adjudicated to less than a life sentence or would have been
18 sentenced to less than 53 months to 240 months for the weapons enhancement. Based on
19 the above, both prongs of the *Strickland* standard are met and the Petitioner is entitled to a
20 new sentencing hearing in this matter.

21 **III. Supplemental Points and Authorities to Ground II of the proper person petition**

22 Petitioner was deprived of his rights under the 5th, 6th, and 14th Amendments of the
23 Constitutions of the United States and the State of Nevada to effective assistance of counsel
24 and entry of a voluntary, intelligent and knowing plea.

25 The totality of the circumstances test has been the standard for reviewing the validity of
26 guilty pleas for some years. In *Bryant v. State*, 102 Nev. 268, 721 P.2d 364 (1986), the
27 Nevada Supreme Court urged trial courts to be as complete as possible in conducting a plea
28 canvass, but stressed that the failure to utter talismanic phrases will not invalidate a plea

1 where a totality of the circumstances demonstrates that the plea was freely, knowingly and
2 voluntarily made.

3 While trial courts should in all circumstances conduct sufficient and thorough plea
4 canvasses, an appellate court reviewing the validity of a plea cannot be constrained to look
5 only to the technical sufficiency of a plea canvass to determine whether a plea has been
6 entered with a true understanding of the nature of the offense charged. *State v. Freese*, 116
7 Nev. 1097, 1104 (2000).

8 As the United States Supreme Court has recognized, a court should review the entire
9 record and look to the totality of the facts and circumstances of a defendant's case to
10 determine whether a defendant entered his plea with an actual understanding of the nature of
11 the charges against him. See *Marshall v. Lonberger*, 459 U.S. 422, 74 L. Ed. 2d 646, 103 S.
12 Ct. 843 (1983); *Henderson v. Morgan*, 426 U.S. 637, 49 L. Ed. 2d 108, 96 S. Ct. 2253 (1976).
13 When a guilty plea is challenged for ineffective assistance, the defendant must show a
14 reasonable probability that, but for counsel's errors, he would not have pleaded guilty and
15 would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 994 (1996). When
16 claims of ineffective assistance of counsel are alleged due to an involuntary guilty plea, the
17 Strickland prejudice prong requires a showing by the petitioner "that there is a reasonable
18 probability that, but for counsel's errors, he would not have pleaded guilty and would have
19 insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

20 In this case Mr. King alleges and will testify that his plea was the product of coercion
21 because trial counsel promised him if he pled guilty he would receive the exact sentence as
22 stated in the plea bargain. As this Court is aware, sentencing is solely within the discretion of
23 the Court. Further, given the seriousness of the allegations, a sentence beyond the plea
24 bargain was a definite possibility. To claim that the sentence was guaranteed was deficient
25 performance. Further, Mr. King was prejudiced. But for counsel's promise of a particular
26 sentence, Mr. King would not have plead guilty and insisted on going to trial.

27 WHEREFORE, Petitioner requests an evidentiary hearing on his claims in the Petition
28 and Supplemental Petition and any other relief as deemed appropriate by the Court.

1 Dated this 30th day of March, 2017

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4 /S/ TROY C.JORDAN
5 TROY C. JORDAN
6 Attorney at Law
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1 **VERIFICATION**

2 Under penalty of perjury, the undersigned declares he is the Counsel for the Petitioner named in
3 the foregoing petition and knows the contents to be true based on information and belief.

4 Petitioner has specifically authorized counsel to file a supplemental petition.

5
6 Dated this 30th day of March 2017.

7 /S/ TROY C.JORDAN
8 TROY C. JORDAN
9 Attorney at Law
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1 **AFFIRMATION**

2 **Pursuant to NRS 239B.030**

3
4 The undersigned does hereby affirm that the preceding document, filed in the above
5 captioned case does not contain the social security number of any person
6

7 Dated this 30th day of March, 2017.

8
9 /S/ TROY C. JORDAN
10 TROY C. JORDAN
11 Attorney at Law
12
13
14

15 **CERTIFICATE OF SERVICE**

16 I, Troy C. Jordan, hereby certify that pursuant to NRCP 5(b), I served via the Eflex
17 system with a true and correct copy of the forgoing document with notice to:

18 Washoe County District Attorney
19 1 South Sierra Street
20 Reno, NV 89501

21 Dated this 30th day of March, 2017
22
23
24

25 /S/ TROY C. JORDAN
26 TROY C. JORDAN
27 Attorney at Law
28

1 CODE No. 1130
2 CHRISTOPHER J. HICKS
3 #7747
4 P. O. Box 11130
5 Reno, Nevada 89520-0027
6 (775) 328-3200
7 Attorney for Respondent

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 D'VAUGHN KEITHAN KING,
14
15 Petitioner,
16
17 v.

Case No. CR12-1160

18 THE STATE OF NEVADA,
19
20 Respondent.

Dept. No. 7

21
22 ANSWER TO PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS
23 CORPUS (POST-CONVICTION)

24 COMES NOW, Respondent, by and through counsel, to answer the petition filed on July
16, 2015, and the supplemental petition filed on March 30, 2017, as follows:

1. That Respondent denies any and all allegations contained in the petition and
supplemental petition.

2. That your affiant is informed and does believe that all relevant pleadings and
transcripts necessary to resolve the petition and supplemental petition are currently available.

///

///

1 3. That aside from an unsuccessful appeal from his judgment of conviction,
2 Respondent is informed and does believe that Petitioner has not applied for any other relief
3 from this conviction.

4 AFFIRMATION PURSUANT TO NRS 239B.030

5 The undersigned does hereby affirm that the preceding document does not contain the
6 social security number of any person.

7 DATED: May 10, 2017.

8 CHRISTOPHER J. HICKS
9 District Attorney

10 By /s/ JOSEPH R. PLATER
11 JOSEPH R. PLATER
12 Appellate Deputy

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Troy C. Jordan, Esq.

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
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9 D'VAUGHN KEITHAN KING, Case No.: CR12-1160
10 Petitioner, Dept. No.: 7

11 vs.

12 STATE OF NEVADA,
13 Respondent.
14 _____/

15 ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (POST-
16 CONVICTION)
17

18 Before this Court is Petitioner D'Vaughn Keithan King's timely petition for writ of
19 habeas corpus along with his supplemented petition filed by post-conviction counsel and
20 Respondent State of Nevada's answer. The petition is dismissed for the reasons set forth
21 below.

22 Petitioner is a prisoner at High Desert State Prison, Clark County, Nevada. On
23 January 23, 2014, this Court entered a judgment of conviction pursuant to a guilty plea of
24 second-degree murder with the use of a deadly weapon. The Nevada Supreme Court
25 affirmed his conviction on appeal. Petitioner asserts eight grounds for relief in his
26 petition: (1) counsel was ineffective for failure to present appropriate mitigating
27 testimony or evidence at sentencing to show Petitioner should receive a a lighter
28 sentence; (2) Petitioner's rights were violated because his plea was coerced by counsel;

(3) Petitioner argues the State breached the spirit of the plea bargain when the prosecutor knowingly presented false testimony and did not correct testimony that he knew to be false; (4) Petitioner argues the district court abused its discretion when it sentenced Petitioner to a sentence augmented by invalid prior criminal history; (5) the State breached the spirit of the plea bargain in violation of Petitioner's constitutional rights; (6) Petitioner argues the district court abused its discretion when it ruled Petitioner would serve his Nevada prison time consecutively with his California prison time.; (7) Petitioner argues the district court abused its discretion when it sentenced Petitioner to an additional 53-240 months for use of a deadly weapon given the mitigating factors; and (8) Petitioner argues the district court abused its discretion when it sentenced Petitioner to a period of time severely disproportionate to the time stated in the plea bargain.

I. Legal Standard

The district court reviews a claim of ineffective assistance of counsel under the two-part test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984). The petitioner must demonstrate (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for the deficient performance, there is a reasonable probability the outcome would have been different. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "A court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

Petitioner must demonstrate the underlying facts by a preponderance of the evidence. Means, 120 Nev. at 1012, 103 P.3d 33. If a petitioner who pled guilty argues his or her counsel was ineffective, the question is whether there is a reasonable probability that but for counsel's error the defendant would not have entered a guilty plea and would have insisted on going to trial. Kirksey, 112 Nev. at 988, 923 P.2d at 1107.

To make a sufficient showing to warrant an evidentiary hearing, a petitioner's claims must be supported by specific factual allegations that are not belied by the record and, if true, would warrant relief. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d

222, 225 (1984). If the court determines an evidentiary hearing is not warranted, it must dismiss the petition without a hearing. NRS 34.770(2).

II. Discussion

a. Ground 1: Petitioner argues trial counsel was ineffective for failure to present appropriate mitigating testimony or evidence.

Such mitigating testimony or evidence would support an argument of a lighter sentence. If granted an evidentiary hearing, Petitioner would present testimony from Dr. Martha Mahaffey who would testify Petitioner was at low risk to reoffend, amenable to treatment, and rehabilitation. Petitioner would also present psychological evidence of his ADHD, learning disabilities, drug abuse, and childhood indicating the need for rehabilitation.

The Supreme Court has recognized counsel in capital cases has an obligation to conduct a thorough investigation of the defendant's background. Wiggins v. Smith, 539 U.S. 510, 522 (2003). A thorough investigation is one that is reasonable given the circumstances; therefore, counsel is "not require[d] ... to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing." Id. at 533.

Here, this was not a capital case. Petitioner has failed to show trial counsel's performance fell below an objective standard of reasonableness. Further, Petitioner's argument is belied by the record. During the sentencing hearing, Petitioner's trial counsel did have Petitioner's wife testify. She testified about how Petitioner had found a purpose in life and wanted to help prevent people from making the same horrible decisions Petitioner made. Tr. of Sentencing Proceedings 9:8-15 (Jan. 22, 2014). Petitioner's mother, father, and brother traveled from Mississippi and California for the sentencing hearing as well. Id. at 10:13-22. Given the circumstances, trial counsel's investigation and presentation of mitigating evidence was reasonable and he did not need to "investigate every conceivable line of mitigating evidence." Wiggins, 539 U.S. at 522.

///

1 **Ground 2: Petitioner argues his rights were violated because his guilty plea**
2 **was coerced by counsel.**

3 Petitioner argues his guilty plea was the product of coercion because trial counsel
4 promised him if he pled guilty, he would receive the exact sentence as stated in the plea
5 bargain. Such a promise, Petitioner argues, was deficient performance because
6 sentencing is solely within the discretion of the court. Petitioner's argument fails because
7 it is belied by the record as shown in the following exchange:

8 THE COURT: Sir, you understand although you've made an agreement
9 with the State, sentencing is in the sole discretion of the Court?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: As I sit here now, I don't know what the sentence is going to
12 be. At the time of sentencing, I'm going to listen you to [sic], I'm going to
13 listen to your attorney, I'm going to listen to the State's attorney, I'm going
14 to review and consider all the information provided to me by the Division
15 of Parole and Probation. But do you understand that sentencing is in the
16 sole discretion of the Court?

17 THE DEFENDANT: Correct.

18 Tr. of Change of Plea Proceedings 13:19-14:6 (Nov. 25, 2013).

19 Furthermore, in reviewing the transcript, trial counsel testified Petitioner had a thorough
20 understanding of the plea bargain and the strength and weaknesses of his case. *Id.* at
21 7:13-8:4. Petitioner accurately stated the maximum sentences to the charges. *Id.* at 11:19-
22 12:22. Petitioner acknowledged that no promises had been made to induce his guilty plea
23 and affirmatively answered he was pleading guilty freely and voluntarily. *Id.* at 14:7-13.
24 Since Petitioner's allegations are belied by the record, an evidentiary hearing is not
25 warranted.

26 **b. Petitioner's grounds three through eight are dismissed.**

27 Under NRS 34.810(1)(a), a court must dismiss a petition if the "petitioner's
28 conviction was upon a plea of guilty ... and the petition is not based upon an allegation
that the plea was involuntarily or unknowingly entered or that the plea was entered
without effective assistance of counsel." Because Petitioner pled guilty, his petition is
subject to such procedural bars. *Id.* The following claims fall outside the scope of claims

1 permissible in a post-conviction habeas petition challenging conviction upon a guilty
2 plea:

3 Ground (3): Petitioner argues the State breached the spirit of the plea bargain when
4 the prosecutor knowingly presented false testimony and did not correct testimony that
5 he knew to be false.

6 Ground (4): Petitioner argues the district court abused its discretion when it
7 sentenced Petitioner to a sentence augmented by invalid prior criminal history.

8 Ground (5): The State breached the spirit of the plea bargain in violation of
9 Petitioner's constitutional rights.

10 Ground (6): Petitioner argues the district court abused its discretion when it ruled
11 Petitioner would serve his Nevada prison time consecutively with his California prison
12 time.

13 Ground (7): Petitioner argues the district court abused its discretion when it
14 sentenced Petitioner to an additional 53-240 months for use of a deadly weapon given the
15 mitigating factors.

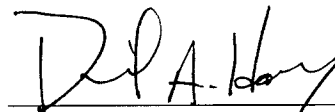
16 Ground (8): Petitioner argues the district court abused its discretion when it
17 sentenced Petitioner to a period of time severely disproportionate to the time stated in
18 the plea bargain.

19 **III. Conclusion**

20 Because this Court has determined an evidentiary hearing is not warranted, the
21 Petition is dismissed.

22 **IT IS SO ORDERED.**

23 Dated: November 21, 2017.

24 
25 David A. Hardy
26 District Court Judge
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28

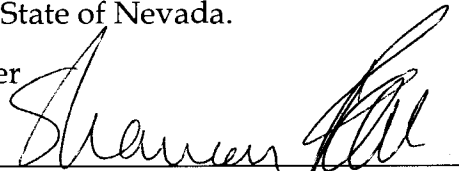
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 21 day of November, 2017, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Terrance McCarthy, Esq. attorney for the State of Nevada.

Troy C. Jordan, Esq. attorney for Petitioner


Judicial Assistant

1 CODE: 2540
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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 D'VAUGHN KEITHAN KING,
9 Petitioner,

CASE NO: CR12-1160

10 vs.

DEPT. NO.: 7

11 STATE OF NEVADA,

12
13 Respondent,
14 _____/

15 **NOTICE OF ENTRY OF ORDER**

16 PLEASE TAKE NOTICE that on the 21st day of November, 2017 the Court entered
17 a decision or order in this matter, a true and correct copy of which is attached hereto.

18 You may appeal to the Supreme Court from the decision or order of the Court. If
19 you wish to appeal, you must file a notice of appeal with the Clerk of this Court within thirty-
20 three (33) days, after the date this notice is mailed to you. This notice was mailed on the
21 22nd day of November, 2017.

22
23 JACQUELINE BRYANT
24 Clerk of the Court

25 By /s/ Mia Cholico
26 Deputy Clerk
27
28

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CR12-1160

3 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial
4 District Court of the State of Nevada, County of Washoe; and that on the 22nd day of
5 November, 2017, I electronically filed the Notice of Entry of Order with the Clerk of the
6 Court by using the ECF system which will send a notice of electronic filing to:

7 Troy Jordan, Esq. for Dvaughn Keithan King

8 Div. of Parole & Probation

9 Joseph Plater, III, Esq. for State of Nevada

10 Jennifer Noble, Esq. for State of Nevada

11
12 I further certify that on the 22nd day of November, 2017, I deposited in the Washoe County
13 mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a
14 true and correct copy of the Notice of Entry of Order, addressed to:
15

16 Dvaughn Keithan King #1115593

17 c/o HDSP

18 P.O. Box 650

19 Indian Springs, NV 89070-0650

20 Attorney General's Office

21 100 N. Carson Street

22 Carson City, NV 89701-4717

23 /s/ Mia Cholico

24 Mia Cholico

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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

9 D'VAUGHN KEITHAN KING, Case No.: CR12-1160
10 Petitioner, Dept. No.: 7

11 vs.

12 STATE OF NEVADA,
13 Respondent.
14 _____/

15 **ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (POST-**
16 **CONVICTION)**

17 Before this Court is Petitioner D'Vaughn Keithan King's timely petition for writ of
18 habeas corpus along with his supplemented petition filed by post-conviction counsel and
19 Respondent State of Nevada's answer. The petition is dismissed for the reasons set forth
20 below.

21 Petitioner is a prisoner at High Desert State Prison, Clark County, Nevada. On
22 January 23, 2014, this Court entered a judgment of conviction pursuant to a guilty plea of
23 second-degree murder with the use of a deadly weapon. The Nevada Supreme Court
24 affirmed his conviction on appeal. Petitioner asserts eight grounds for relief in his
25 petition: (1) counsel was ineffective for failure to present appropriate mitigating
26 testimony or evidence at sentencing to show Petitioner should receive a a lighter
27 sentence; (2) Petitioner's rights were violated because his plea was coerced by counsel;
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(3) Petitioner argues the State breached the spirit of the plea bargain when the prosecutor knowingly presented false testimony and did not correct testimony that he knew to be false; (4) Petitioner argues the district court abused its discretion when it sentenced Petitioner to a sentence augmented by invalid prior criminal history; (5) the State breached the spirit of the plea bargain in violation of Petitioner's constitutional rights; (6) Petitioner argues the district court abused its discretion when it ruled Petitioner would serve his Nevada prison time consecutively with his California prison time.; (7) Petitioner argues the district court abused its discretion when it sentenced Petitioner to an additional 53-240 months for use of a deadly weapon given the mitigating factors; and (8) Petitioner argues the district court abused its discretion when it sentenced Petitioner to a period of time severely disproportionate to the time stated in the plea bargain.

I. Legal Standard

The district court reviews a claim of ineffective assistance of counsel under the two-part test set forth in Strickland v. Washington, 466 U.S. 668, 687 (1984). The petitioner must demonstrate (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for the deficient performance, there is a reasonable probability the outcome would have been different. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "A court may consider the two test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

Petitioner must demonstrate the underlying facts by a preponderance of the evidence. Means, 120 Nev. at 1012, 103 P.3d 33. If a petitioner who pled guilty argues his or her counsel was ineffective, the question is whether there is a reasonable probability that but for counsel's error the defendant would not have entered a guilty plea and would have insisted on going to trial. Kirksey, 112 Nev. at 988, 923 P.2d at 1107.

To make a sufficient showing to warrant an evidentiary hearing, a petitioner's claims must be supported by specific factual allegations that are not belied by the record and, if true, would warrant relief. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d

222, 225 (1984). If the court determines an evidentiary hearing is not warranted, it must dismiss the petition without a hearing. NRS 34.770(2).

II. Discussion

a. Ground 1: Petitioner argues trial counsel was ineffective for failure to present appropriate mitigating testimony or evidence.

Such mitigating testimony or evidence would support an argument of a lighter sentence. If granted an evidentiary hearing, Petitioner would present testimony from Dr. Martha Mahaffey who would testify Petitioner was at low risk to reoffend, amenable to treatment, and rehabilitation. Petitioner would also present psychological evidence of his ADHD, learning disabilities, drug abuse, and childhood indicating the need for rehabilitation.

The Supreme Court has recognized counsel in capital cases has an obligation to conduct a thorough investigation of the defendant's background. Wiggins v. Smith, 539 U.S. 510, 522 (2003). A thorough investigation is one that is reasonable given the circumstances; therefore, counsel is "not require[d] ... to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing." Id. at 533.

Here, this was not a capital case. Petitioner has failed to show trial counsel's performance fell below an objective standard of reasonableness. Further, Petitioner's argument is belied by the record. During the sentencing hearing, Petitioner's trial counsel did have Petitioner's wife testify. She testified about how Petitioner had found a purpose in life and wanted to help prevent people from making the same horrible decisions Petitioner made. Tr. of Sentencing Proceedings 9:8-15 (Jan. 22, 2014). Petitioner's mother, father, and brother traveled from Mississippi and California for the sentencing hearing as well. Id. at 10:13-22. Given the circumstances, trial counsel's investigation and presentation of mitigating evidence was reasonable and he did not need to "investigate every conceivable line of mitigating evidence." Wiggins, 539 U.S. at 522.

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1 **Ground 2: Petitioner argues his rights were violated because his guilty plea**
2 **was coerced by counsel.**

3 Petitioner argues his guilty plea was the product of coercion because trial counsel
4 promised him if he pled guilty, he would receive the exact sentence as stated in the plea
5 bargain. Such a promise, Petitioner argues, was deficient performance because
6 sentencing is solely within the discretion of the court. Petitioner's argument fails because
7 it is belied by the record as shown in the following exchange:

8 THE COURT: Sir, you understand although you've made an agreement
9 with the State, sentencing is in the sole discretion of the Court?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: As I sit here now, I don't know what the sentence is going to
12 be. At the time of sentencing, I'm going to listen you to [sic], I'm going to
13 listen to your attorney, I'm going to listen to the State's attorney, I'm going
14 to review and consider all the information provided to me by the Division
15 of Parole and Probation. But do you understand that sentencing is in the
16 sole discretion of the Court?

17 THE DEFENDANT: Correct.

18 Tr. of Change of Plea Proceedings 13:19-14:6 (Nov. 25, 2013).

19 Furthermore, in reviewing the transcript, trial counsel testified Petitioner had a thorough
20 understanding of the plea bargain and the strength and weaknesses of his case. Id. at
21 7:13-8:4. Petitioner accurately stated the maximum sentences to the charges. Id. at 11:19-
22 12:22. Petitioner acknowledged that no promises had been made to induce his guilty plea
23 and affirmatively answered he was pleading guilty freely and voluntarily. Id. at 14:7-13.
24 Since Petitioner's allegations are belied by the record, an evidentiary hearing is not
25 warranted.

26 **b. Petitioner's grounds three through eight are dismissed.**

27 Under NRS 34.810(1)(a), a court must dismiss a petition if the "petitioner's
28 conviction was upon a plea of guilty ... and the petition is not based upon an allegation
that the plea was involuntarily or unknowingly entered or that the plea was entered
without effective assistance of counsel." Because Petitioner pled guilty, his petition is
subject to such procedural bars. Id. The following claims fall outside the scope of claims

1 permissible in a post-conviction habeas petition challenging conviction upon a guilty
2 plea:

3 Ground (3): Petitioner argues the State breached the spirit of the plea bargain when
4 the prosecutor knowingly presented false testimony and did not correct testimony that
5 he knew to be false.

6 Ground (4): Petitioner argues the district court abused its discretion when it
7 sentenced Petitioner to a sentence augmented by invalid prior criminal history.

8 Ground (5): The State breached the spirit of the plea bargain in violation of
9 Petitioner's constitutional rights.

10 Ground (6): Petitioner argues the district court abused its discretion when it ruled
11 Petitioner would serve his Nevada prison time consecutively with his California prison
12 time.

13 Ground (7): Petitioner argues the district court abused its discretion when it
14 sentenced Petitioner to an additional 53-240 months for use of a deadly weapon given the
15 mitigating factors.

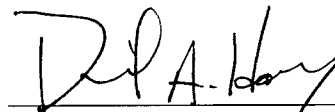
16 Ground (8): Petitioner argues the district court abused its discretion when it
17 sentenced Petitioner to a period of time severely disproportionate to the time stated in
18 the plea bargain.

19 **III. Conclusion**

20 Because this Court has determined an evidentiary hearing is not warranted, the
21 Petition is dismissed.

22 **IT IS SO ORDERED.**

23 Dated: November 21, 2017.

24 
25 David A. Hardy
26 District Court Judge
27
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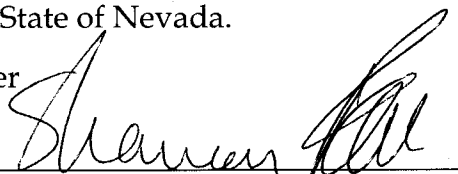
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 21 day of November, 2017, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Terrance McCarthy, Esq. attorney for the State of Nevada.

Troy C. Jordan, Esq. attorney for Petitioner


Judicial Assistant

1 CODE: 2515
TROY C. JORDAN
2 Nevada Bar No. 9073
300 South Arlington, Suite B
3 Reno, Nevada 89501
Tel: 775-432-1581
4 Attorney for Petitioner

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

9 D'VAUGHN KEITHAN KING,
10
11 Petitioner,

12 vs.

Case No. CR12-1160

13 STATE OF NEVADA,

Dept. No. 7

14 Respondents.

NOTICE OF APPEAL

15 COMES NOW, Petitioner, D'VAUGHN KEITHAN KING, by and through his court appointed
16 counsel, Troy C. Jordan, and respectfully appeals from the order dismissing his habeas corpus petition
17 (post-conviction).
18

19 Dated this 12th day of December, 2017.

20 /S/ TROY C. JORDAN
21 TROY C. JORDAN
22 ATTORNEY FOR PETITIONER
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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, filed in the above captioned case does not contain the social security number of any person

Dated this 12th day of December, 2017.

/S/ TROY C. JORDAN

TROY C. JORDAN

Attorney at Law

CERTIFICATE OF SERVICE

I, Troy C. Jordan, hereby certify that pursuant to NRCP 5(b), I served via the Eflex system with a true and correct copy of the forgoing document with notice to:

Washoe County District Attorney's Office
1 South Sierra Street
Reno, NV 89501

And mailing to

Nevada Attorney General
101 N. Carson Street
Carson City, NV 89701

Dated this 12th day of December, 2017

/S/ TROY C. JORDAN

TROY C. JORDAN

Attorney at Law

CODE: 1310
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Nevada Bar No. 9073
300 South Arlington, Suite B
Reno, Nevada 89501
Tel: 775-432-1581
Attorney for Petitioner

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

D'VAUGHN KEITHAN KING,
Petitioner,

vs.

Case No. CR12-1160

STATE OF NEVADA,

Dept. No. 7

Respondents.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: **D'VAUGHN KEITHAN KING**
2. Identify the judge issuing the decision, judgment, or order appealed from: **Second Judicial District Court, Honorable David Hardy.**
3. Identify each appellant and the name and address of counsel for each appellant: **D'Vaughn Keithan King is the only Appellant. The name and address of counsel for appellant is:**
Troy Jordan
Law Offices of Troy Jordan, Ltd
300 S. Arlington Ave, Suite B
Reno, NV 89501
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel): **The State of Nevada is the Respondent. The**

1 State of Nevada is represented by the Washoe County District Attorney and the Nevada Attorney
2 General's Office, whose addresses are:

3
4 Washoe County District Attorney
5 P.O. Box 11130
6 Reno, NV 89520

7 Office of the Attorney General
8 100 N. Carson St.
9 Carson City, NV 89701

10 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed
11 to practice law in Nevada and, if so, whether the district court granted that attorney permission to
12 appear under SCR 42 (attach a copy of any district court order granting such permission): **All attorneys
are licensed to practice law in the State of Nevada.**

13 6. Indicate whether appellant was represented by appointed or retained counsel in the district
14 court: **Counsel for the Appellant was appointed in the District Court.**

15 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
16 **Appellant is represented by appointed counsel on appeal.**

17 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of
18 entry of the district court order granting such leave: **The District Court entered the order granting in
19 forma pauperis status on 2-26-2016.**

20 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
21 indictment, information, or petition was filed): **A Petition for Writ of Habeas Corpus was filed by
22 Petitioner on 7-16-2015.**

23 10. Provide a brief description of the nature of the action and result in the district court,
24 including the type of judgment or order being appealed and the relief granted by the district court: **This
25 is an appeal from an order dismissing a Petition for Writ of Habeas Corpus (Post-Conviction)
26 filed on 11-21-2017.**

1 11. Indicate whether the case has previously been the subject of an appeal to or original writ
2 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior
3 proceeding: **N/A**

4 12. Indicate whether this appeal involves child custody or visitation: **N/A**

5 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:
6 **N/A**

7
8
9 Dated this 12th day of December, 2017.

10
11 /S/ TROY C. JORDAN
12 TROY C. JORDAN
13 Attorney at Law
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IN THE SUPREME COURT OF THE STATE OF NEVADA

D'VAUGHN KEITHAN KING,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 74703

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on May 2, 2018. Electronic service of the foregoing document was made in accordance with the Master Service List to:

Washoe County District Attorney's
Office

Adam Laxalt
Attorney General of the State of
Nevada

Attorneys for Respondents

By: /S/ TROY C. JORDAN
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