

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOMONIC RONALDO MALONE,  
Appellant,  
vs.

THE STATE OF NEVADA,  
Respondent

Supreme Court No. 74859  
District Court Case No. C224572

**FILED**

FEB 01 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

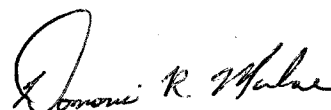
BY  DEPUTY CLERK

MOTION FOR LEAVE TO FILE FULL BRIEF

I DOMONIC RONALDO MALONE, Movant this Court For Leave To File Full Brief pursuant to the Rules that Governs this Court by way of MOTION or PLEADING.

All Supporting Documents attached hereto and all applicable fees be waived.

Affidavit in support of the aforementioned is based on that which sits before the Court that requires Appellant issues to be raised and presented according to the Rules that Governs Such applications that Demands said Appellant to give reference to page number or said issues can be found.



**RECEIVED**

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ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

18-04513

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IN THE SUPREME COURT OF THE STATE OF NEVADA

DOMONIC ROMANEO MALONE,

Appellant

vs.

THE STATE OF NEVADA

Respondent

Supreme Court No. 74859

District Court Case No. C224572

APPELLANT'S OPENING BRIEF

Appellants Opening Brief is based upon all documents on file and before this Court, Appellant shall direct said Court to the issues that are contained in said Brief in accordance to the Rules that governs these procedures, Appendix, Table of Contents and Exhibits where the material may be found herein.

*Domenic R. Malone*

## BRIEFING OF THE CASE

On or about 11/21/2017 I, DOMONIC RONALDO MALONE, the Appellant filed in the EJDC MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE Heard on 12/12/2017 at the time 8:30am and DENIED on the same 12/12/2017.

### ISSUES RAISED IN BRIEFING AS FOLLOWS

- I. DISTRICT COURT JUDGE FAILURE TO INTERPRET THE STATUE NRS 193.165 is a necessary element of the crime to constitute the offense of USE OF A DEADLY WEAPON. The underlined offense is (2) COUNTS OF FIRST DEGREE MURDER NRS 200.010, 200.030. And (2) COUNTS OF ROBBERY NRS 200.380. The element of enhancement was necessary to complete the act therefor can not be applied as an additional penalty which is a violation of Appellants Constitutional Rights under 14th Amendment of double jeopardy by the Appellant being inflicted with the additional sentences it violates the Appellants U.S. 8th Amendment Constitutional Right to be free from Cruel and unusual Punishment. \_\_\_\_\_ See pg. App # 4 of 8. (See JOC)
- II. THE EIGHTH JUDICIAL DISTRICT COURT JUDGE MISCOMPREHENSION OF THE STATUE NRS 193.165 Additional penalty: Use of deadly weapon or tear gas in commission of crime; restriction on Probation lack the ability to defer to the jury for deliberation, Thus, placing the Appellant in the position that greater harm has been inflicted upon him that is prescribed under the Statue NRS 200.010, 200.030 FIRST DEGREE MURDER and NRS 200.380 ROBBERY, Appellant stands upon statue 193.165 Sub Sec (4):
- ... Do not apply where the use of a firearm, other deadly weapon or tear gas is a necessary element of such crime.
- (A) The EIGHTH JUDICIAL COURT can not separate one continuous act as an objective to complete said offense create additional penalty from said act. See NRS 193.165 Sub. Sec. (4) Appellant raised and preserved said issue before Eighth Judicial District Court within MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE on pg. 4. (See JOC pg. 10-14)

*Steven D. Grierson*

1 DOMONIC RONALDO MALONE #69418  
2 Defendant/ In Propria Person  
3 Post Office Box 650  
4 Indian Springs, Nevada 89018

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE  
6 OF NEVADA IN AND FOR THE COUNTY OF CLARK

7  
8 The State of Nevada  
9 Plaintiff,

10 VS

11 DOMONIC RONALDO MALONE  
12 Defendant.

Case No. 06-C-224572-2

13 Dept NO. 17

14  
15 MOTION TO MODIFY AND/OR CORRECT  
16 ILLEGAL SENTENCE

17 Date of hearing : 12-12-17

18 Time of hearing : 8:30 am

19  
20 COMES NOW, DEFENDENT, DOMONIC RONALDO MALONE, proceeding  
21 in proper person, hereby motion this Honorable Court  
22 pursuant to N.R.S 176.555 and Edwards v. state.

23 This motion is made in based upon all papers and pleadings  
24 on file, the points and authorities and exhibits attached  
25 here to.

26  
27 Dated; this 9th day of NOVEMBER, 20 17.

28 -1-

Domonic R. Malone #69418  
DOMONIC RONALDO MALONE  
DEFENDENT/In Propria Person

MC  
DA  
PP

RECEIVED

NOV 15 2017

CLERK OF THE COURT

### POINTS AND AUTHORITIES

"Motion to modify sentence" is limited in scope to sentences based on mistaken assumptions about defendant's criminal record which work to defendant's extreme detriment, while " Motion to correct illegal sentence " addresses only facial legality of sentence. State v. District Court, 100 Nev. 90, 97, 677 p.2d 1044 1048 (1984), and Edwards v. State, 918 p.2d 321 (nev. 1996).

Further N.R.S 176.555 Motion to Modify and/or Correct a sentence, may be filed at any time.

Defendant herein alleges that his sentence should be modified and/or corrected pursuant to the following facts.

ON MAY 2006 I DOMONIK RONALDO MALONE WAS CHARGED WITH (3) COUNTS OF FIRST DEGREE MURDER WITH THE USE OF A DEADLY WEAPON & (2) COUNTS OF ROBBERY WITH THE USE OF A DEADLY WEAPON. ON OR ABOUT JANUARY 2012, I DOMONIK RONALDO MALONE WENT TO TRIAL AND WAS FOUND GUILTY BY JURY ON OR ABOUT FEBRUARY 2012 & SENTENCE ON OR ABOUT APRIL 2012. Specific to COUNTS 13 & 14 FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (CATEGORY A FELONY) IN VIOLATION OF NRS 200.010, 200.030, 193.165 TO LIFE in the Nevada Department of Corrections (NDC) without the possibility of Parole plus a CONSECUTIVE term of LIFE in the Nevada Department of Corrections (NDC) without the possibility of Parole for Use of a Deadly Weapon COUNT 14 to run CONSECUTIVE to COUNT 13; & also

Specific to COUNT 15 & 16 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165 TO A MAXIMUM OF ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS MINIMUM for Use of Deadly

-CONT-

Weapon COUNT 16 to run CONSECUTIVE to COUNT 15;

### ARGUMENT

I DOMONIC RONALDO MALONE SPECIFICALLY ALLEGE THIS: Because of the manner of which the victims in my case MAGHEE & CAMBADO Died "BLUNT FORCE TRAUMA (golf club as seen in States exhibit) & "SHARP FORCE TRAUMA" (knife as seen in States exhibit) were a necessary element of the COUNTS of which I was sentence under NRS 193.165.

However, NRS 193.165 Sub. Sec. 4 clearly states that:

"The provision of subsection 1, 2, and 3 do not apply where the use of a firearm, other deadly weapon or tear gas is a necessary element of such crime emphasis added

Therefore in regards to COUNTS 13 through 16 See case no. 06-C-24572-2 I, DOMONIC RONALDO MALONE should not have been sentence to an equally & CONSECUTIVE sentence Because the States expert witness Chief Medical Examiner Dr. Piotr Kubiszek stated the manner in which MAGHEE & CAMBADO died which was BLUNT FORCE TRAUMA & SHARP FORCE TRAUMA this making the weapons used to commit these crimes (golf club & knife) a necessary element.

And therefore under sub sec. 4 of NRS 193.165 makes the currently sentence that I am under illegal and therefore must be corrected.

Also under the "inherently dangerous" test the golf club should not been considered a weapon under NRS 193.165 because when used in the ordinary manner contemplated by their design or construction, golf clubs do not cause bodily harm nor are they designed for that purpose. *Hutchins v. State* 110 Nev. 103, 867 P.2d 1136.

*Dominic R. Malone*

DOMONIC RONALDO MALONE # 69418  
Defendent/ In proper person



Theraby, pursuant to the facts and the law stated herein,  
Defendant, request that his sentence be modified/corrected as  
follows: In regards to COUNTS 13 & 14 FIRST DEGREE MURDER WITH USE OF A DEADLY  
WEAPON "that the CONSECUTIVE term of LIFE without the possibility of Parole for the Use  
of a Deadly Weapon" be dismissed with prejudice.

In regards to COUNTS 15 & 16 ROBBERY WITH USE OF A DEADLY WEAPON "that the  
CONSECUTIVE FORTY-EIGHT (48) to ONE HUNDRED EIGHTY (180) MONTHS" to be dismissed  
with prejudice,

Dated; this 9th DAY OF NOVEMBER, 2017.

Dominic R. Malone

DONALD DONALDO MALONE # 69418  
Defendant/propria person

**CERTIFICATE OF SERVICE BY MAILING**

I, DOMINIC RONALD MAWUE, hereby certify, pursuant to NRCP 5(b), that on this 9th day of NOVEMBER, 2017, I mailed a true and correct copy of the foregoing, "MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Clerk of the Court  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1160

CC:FILE

DATED: this 9th day of November, 2017.

Domonic R Mawue  
DOMINIC RONALD MAWUE # 67418  
/In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

- 6 -

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION TO

MODIFY AND/OR CORRECT ILLEGAL SENTENCE  
(Title of Document)

filed in District Court Case number 06-C-224572-2

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

-OR-


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

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

\_\_\_\_\_  
(State specific law)

-or-

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

  
Signature

11/9/2017  
Date

DOMINIC A. MALONE  
Print Name

Proper Person  
Title

-7-  
\* App. 8 of 8 \*

Felony/Gross Misdemeanor

COURT MINUTES

December 12, 2017

06C224572-2      The State of Nevada vs Domonic R Malone

December 12, 2017      08:30 AM      Defendant's Motion to Modify and/or Correct Illegal Sentence

HEARD BY:      Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: Black, Olivia

RECORDER:      Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Frank R. LoGrippe

Attorney for Plaintiff

State of Nevada

Plaintiff

## JOURNAL ENTRIES

Defendant not present. Court stated it would base its decision on the pleadings on file herein. COURT ADOPTED the Procedural History as set forth by the State. Court noted it was a jury determination that the golf club was used in such a fashion to qualify as a deadly weapon. Court further noted the issue was appealed and Defendant's conviction was affirmed by the Nevada Supreme Court. Court noted Defendant was sentenced within statutory guidelines and ORDERED, Motion DENIED; State to prepare the Order. COURT FURTHER ORDERED, Status Check SET for filing of the Order. Court stated the status check date would be vacated if the Order was filed.

NDC

01/09/18 8:30 AM STATUS CHECK: FILING OF ORDER

CLERK'S NOTE: The above minute order has been distributed to:

DOMONIC MALONE #69418

P O BOX 650

INDIAN SPRINGS, NV 89070 //ob/12/18/17

# App. #9 \*

ORIGINAL

FILED

MAY 08 2012

*Ch. J. L. L.*  
CLERK OF COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

08C224572-2

JOC

Judgment of Conviction

1848239



THE STATE OF NEVADA,

Plaintiff,

CASE NO. C224572-2

-vs-

DEPT. NO. XVII

DOMONIC RONALDO MALONE  
#1670891

Defendant.

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – BATTERY WITH SUBSTANTIAL BODILY HARM (Category C Felony), in violation of NRS 200.481; COUNT 2 – CONSPIRACY TO COMMIT KIDNAPPING (Category B Felony), in violation of NRS 200.310, 200.320, 199.480; COUNT 3 – FIRST DEGREE KIDNAPPING (Category A Felony), in violation of NRS 200.310, 200.320; COUNT 4 – BATTERY WITH SUBSTANTIAL BODILY HARM (Category C Felony), in violation of NRS 200.481; COUNT 5 – ROBBERY (Category B Felony), in violation of NRS 200.380; COUNT 6 - PANDERING (Category C Felony), in violation of NRS 201.300; COUNT 7 - CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor), in violation of NRS 205.060, 199.480; COUNT 8 - CONSPIRACY TO COMMIT KIDNAPPING (Category B Felony), in violation of NRS 200.310, 200.320, 199.480; COUNT 9 -

\*App 10\*

1 CONSPIRACY TO COMMIT MURDER (Category B Felony), in violation of NRS  
2 200.010, 200.030, 199.480; COUNT 10 - BURGLARY (Category B Felony), in violation  
3 of NRS 205.060; COUNT 11 - FIRST DEGREE KIDNAPPING (Category A Felony), in  
4 violation of NRS 200.310, 200.320; COUNT 12 - FIRST DEGREE KIDNAPPING  
5 (Category A Felony), in violation of NRS 200.310, 200.320; COUNT 13 - MURDER  
6 WITH USE OF A DEADLY WEAPON (Category A Felony), in violation of NRS 200.010,  
7 200.030, 193.165; COUNT 14 - MURDER WITH USE OF A DEADLY WEAPON  
8 (Category A Felony), in violation of NRS 200.010, 200.030, 193.165; COUNT 15 -  
9 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of  
10 NRS 200.380, 193.165; and COUNT 16 - ROBBERY WITH USE OF A DEADLY  
11 WEAPON (Category B Felony), in violation of NRS 200.380, 193.165; and the matter  
12 having been tried before a jury and the Defendant having been found guilty of the  
13 crimes of COUNT 1 - BATTERY WITH SUBSTANTIAL BODILY HARM (Category C  
14 Felony), in violation of NRS 200.481; COUNT 2 - CONSPIRACY TO COMMIT  
15 KIDNAPPING (Category B Felony), in violation of NRS 200.310, 200.320, 199.480;  
16 COUNT 3 - FIRST DEGREE KIDNAPPING (Category A Felony), in violation of NRS  
17 200.310, 200.320; COUNT 4 - BATTERY (Misdemeanor), in violation of NRS 200.481;  
18 COUNT 7 - CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor), in violation  
19 of NRS 205.060, 199.480; COUNT 8 - CONSPIRACY TO COMMIT KIDNAPPING  
20 (Category B Felony), in violation of NRS 200.310, 200.320, 199.480; COUNT 9 -  
21 CONSPIRACY TO COMMIT MURDER (Category B Felony), in violation of NRS  
22 200.010, 200.030, 199.480; COUNT 11 - FIRST DEGREE KIDNAPPING (Category A  
23 Felony), in violation of NRS 200.310, 200.320; COUNT 12 - FIRST DEGREE

\* App 11 \*

1 KIDNAPPING (Category A Felony), in violation of NRS 200.310, 200.320; COUNT 13 -  
2 FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony),  
3 in violation of NRS 200.010, 200.030, 193.165; COUNT 14 - FIRST DEGREE MURDER  
4 WITH USE OF A DEADLY WEAPON (Category A Felony), in violation of NRS 200.010,  
5 200.030, 193.165; COUNT 15 - ROBBERY WITH USE OF A DEADLY WEAPON  
6 (Category B Felony), in violation of NRS 200.380, 193.165; and COUNT 16 -  
7 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony), in violation of  
8 NRS 200.380, 193.165; thereafter, on the 24<sup>th</sup> day of April, 2012, the Defendant was  
9 present in court for sentencing with his counsel, CHARLES CANO, Special Deputy  
10 Public Defender, and good cause appearing,  
11

12 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in  
13 addition to the \$25.00 Administrative Assessment Fee, Indigent Defense Civil  
14 Assessment Fee of \$250.00, and to PAY \$2,554.41 RESTITUTION jointly and  
15 severally, the Defendant is SENTENCED as follows: AS TO COUNT 1 - TO A  
16 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of  
17 NINETEEN (19) MONTHS in the Nevada Department of Corrections (NDC); AS TO  
18 COUNT 2 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility  
19 of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC),  
20 COUNT 2 to run CONSECUTIVE to COUNT 1; AS TO COUNT 3 - LIFE with a  
21 MINIMUM Parole Eligibility after FIVE (5) YEARS in the Nevada Department of  
22 Corrections (NDC), COUNT 3 to run CONCURRENT with COUNT 2; AS TO COUNT 4  
23 - SIX (6) MONTHS in the Clark County Detention Center, COUNT 4 to run  
24 CONCURRENT with COUNT 3; AS TO COUNT 7 - TWELVE (12) MONTHS in the  
25  
26  
27  
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\* App 12 \*

1 Clark County Detention Center, COUNT 7 to run CONSECUTIVE to COUNT 3; AS TO  
2 COUNT 8 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility  
3 of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC),  
4 COUNT 8 to run CONCURRENT with COUNT 7; AS TO COUNT 9 - TO A MAXIMUM  
5 of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of  
6 FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC),  
7 COUNT 9 to run CONSECUTIVE to COUNT 8; AS TO COUNT 11 - LIFE in the Nevada  
8 Department of Corrections (NDC) without the possibility of Parole, COUNT 11 to run  
9 CONSECUTIVE to COUNT 9; AS TO COUNT 12 - LIFE in the Nevada Department of  
10 Corrections (NDC) without the possibility of Parole, COUNT 12 to run CONSECUTIVE  
11 to COUNT 11; AS TO COUNT 13 - LIFE in the Nevada Department of Corrections  
12 (NDC) without the possibility of Parole plus a CONSECUTIVE term of LIFE in the  
13 Nevada Department of Corrections (NDC) without the possibility of Parole for Use of a  
14 Deadly Weapon, COUNT 13 to run CONSECUTIVE to COUNT 12; AS TO COUNT 14 -  
15 LIFE in the Nevada Department of Corrections (NDC) without the possibility of Parole  
16 plus a CONSECUTIVE term of LIFE in the Nevada Department of Corrections (NDC)  
17 without the possibility of Parole for Use of a Deadly Weapon, COUNT 14 to run  
18 CONSECUTIVE to COUNT 13; AS TO COUNT 15 - TO A MAXIMUM of ONE  
19 HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of FORTY-  
20 EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC) plus a  
21 CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM and  
22 FORTY-EIGHT (48) MONTHS MINIMUM for Use of a Deadly Weapon, COUNT 15 to  
23 run CONCURRENT with COUNT 14; AS TO COUNT 16 - TO A MAXIMUM of ONE  
24  
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\* App 13 \*



1 HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of FORTY-  
2 EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC) plus a  
3 CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM and  
4 FORTY-EIGHT (48) MONTHS MINIMUM for Use of a Deadly Weapon, COUNT 16 to  
5 run CONSECUTIVE to COUNT 15; with TWO THOUSAND ONE HUNDRED FORTY-  
6 EIGHT (2,148) DAYS Credit for Time Served. As the Fee and Genetic Testing have  
7 been previously imposed, the Fee and Testing in the current case are WAIVED.  
8  
9

10  
11 DATED this 4 day of May, 2012

12   
13  
14 MICHAEL VILLANI  
15 DISTRICT JUDGE   
16  
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\* App 14 \*

Application of Declarations

I DOMONIC RONALDO MALONE, Request this Honorable Court to waive all fees associated with this action under the above title and case number be waived due to the fact Appellant is indigent.

Furthermore, the Court ORDERS Time for Briefing be set And the Clerk of the Court notify Respondent by way of ORDER.

DATED THIS \_\_\_\_ of \_\_\_\_\_ 2018

*Domonic R. Malone*

DOMONIC R. MALONE NO. 69418  
P.O. BOX 650, HIGH DESERT STATE PRISON  
Indian Springs, NV. 89070

CERTIFICATION OF MAILING

I DOMONIC RONALDO MALONE, Hereby certify that I mailed in a U.S. Postal Box designated for Out going mail all postage and fees attached thereto the aforementioned MOTION FOR LEAVE TO FILE FULL BRIEF enclosed therein and a copy of the formentioned sent to the name and address listed below as Respondent in this action

The State of Nevada  
200 LEWIS AVENUE  
P.O. BOX 55 2212  
LAS VEGAS, NV. 89155-2212

DATED THIS \_\_\_\_ of \_\_\_\_\_ 2018

So it is written So is it done

*Domonic R. Malone*

DOMONIC R. MALONE NO. 69418  
P.O. BOX 650, HIGH DESERT STATE PRISON  
LAS VEGAS, NV. 89155-2212