

1 NOASC

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Feb 09 2018 11:20 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 JAMES CURTIS IVEY, JR.,

13 Defendant,

Case No: C-14-300979-3

Dept No: XXIII

14
15
16 **NOTICE OF APPEAL**

17
18 Notice is hereby given that the Defendant above named, hereby appeals to the Supreme
19 Court of Nevada from the Judgment of Conviction (Plea of Guilty) entered in this action on May
20 12, 2015.

21 STEVEN D. GRIERSON, CLERK OF THE COURT

22 /s/ Heather Ungermann

23 Heather Ungermann, Deputy Clerk

24
25 CERTIFICATE OF E-SERVICE / MAILING

26 I hereby certify that on this 6 day of February 2018, I served a copy of this Notice of Entry on the
27 following:

28 ☒ By e-mail:

Clark County District Attorney's Office

Attorney General's Office – Appellate Division-

- ☒ The United States mail addressed as follows:

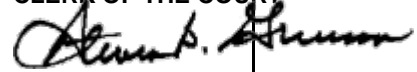
James Ivey, Jr. # 1140194
P.O. Box 650
Indian Springs, NV 89070

Julian Gregory, Esq.
228 S. Fourth St., Suite 300
Las Vegas, NV 89101

- ☒ This appeal was electronically submitted to the Clerk of the Supreme Court.

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk



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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

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10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 JAMES CURTIS IVEY, JR.,

14 Defendant(s),

Case No: C-14-300979-3

Dept No: XXIII

15
16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): James Ivey, Jr.

19 2. Judge: Stefany Miley

20 3. Appellant(s): James Ivey, Jr.

21 Counsel:

22 Julian Gregory, Esq.
23 228 S. Fourth St., Suite 300
24 Las Vegas, NV 89101

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Appellant Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: Yes

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: September 18, 2014

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Judgment of Conviction

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 68011, 68223

12. Child Custody or Visitation: N/A

Dated This 6 day of February 2018.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: James Ivey, Jr.
Julian Gregory, Esq.

DEPARTMENT 23
CASE SUMMARY
CASE NO. C-14-300979-3

State of Nevada
vs
James Ivey, Jr.

§	Location:	Department 23
§	Judicial Officer:	Miley, Stefany
§	Filed on:	09/18/2014
§	Cross-Reference Case	C300979
§	Number:	
§	Defendant's Scope ID #:	7010542
§	ITAG Booking Number:	1400034593
§	ITAG Case ID:	1610841
§	Lower Court Case # Root:	14F10476
§	Lower Court Case Number:	14F10476C
§	Supreme Court No.:	68223

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. ROBBERY WITH USE OF A DEADLY WEAPON	F	06/30/2014	Case Flags:	Appealed to Supreme Court
Filed As: CONSPIRACY TO COMMIT ROBBERY	F	9/22/2014		Custody Status - Nevada
Arrest: 07/02/2014				Department of Corrections
2. CONSPIRACY TO COMMIT ROBBERY	F	06/30/2014		Charge Description Updated
Filed As: ROBBERY WITH USE OF A DEADLY WEAPON	F	9/22/2014		
3. COERCION	F	06/30/2014		
4. CONSPIRACY TO COMMIT ROBBERY	F	06/30/2014		
5. ROBBERY	F	06/30/2014		
6. CONSPIRACY TO COMMIT ROBBERY	F	06/30/2014		
7. ROBBERY WITH USE OF A DEADLY WEAPON	F	06/30/2014		
8. POSSESSION OF STOLEN PROPERTY	F	06/30/2014		

Related Cases

C-14-300979-1 (Multi-Defendant Case)
C-14-300979-2 (Multi-Defendant Case)

Statistical Closures

05/11/2015 Guilty Plea with Sentence (before trial) (CR)

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	C-14-300979-3
Court	Department 23
Date Assigned	09/18/2014
Judicial Officer	Miley, Stefany

PARTY INFORMATION

		Lead Attorneys
Defendant	Ivey, James Curtis, Jr.	Gregory, Julian Retained 702-650-1183(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)













DATE

EVENTS & ORDERS OF THE COURT






INDEX

09/18/2014	 Criminal Bindover Criminal Bindover
09/22/2014	










DEPARTMENT 23
CASE SUMMARY
CASE NO. C-14-300979-3

	 Information <i>Information</i>
09/23/2014	 Initial Arraignment (1:00 PM) (Judicial Officer: De La Garza, Melisa)
10/02/2014	 Transcript of Proceedings <i>Reporter's Transcript of Preliminary Hearing, September 17, 2014</i>
10/23/2014	 Petition <i>Petition for Writ of Habeas Corpus</i>
11/05/2014	 Return <i>Return to Writ of Habeas Corpus</i>
11/07/2014	 Notice of Rescheduling <i>Notice Resetting Date and Time of Hearing</i>
11/19/2014	 Petition for Writ of Habeas Corpus (11:00 AM) (Judicial Officer: Miley, Stefany) <i>Petition for Writ of Habeas Corpus</i>
12/18/2014	 Motion <i>Motion</i>
01/12/2015	 Motion (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Defendant's Pro Se Motion to Dismiss Counsel</i>
02/18/2015	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Expert Witnesses</i>
02/20/2015	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses</i>
03/11/2015	 Calendar Call (9:30 AM) (Judicial Officer: Miley, Stefany)
03/11/2015	Disposition (Judicial Officer: Miley, Stefany) 3. COERCION Amended Information Filed/Charges Not Addressed PCN: Sequence: 4. CONSPIRACY TO COMMIT ROBBERY Amended Information Filed/Charges Not Addressed PCN: Sequence: 5. ROBBERY Amended Information Filed/Charges Not Addressed PCN: Sequence: 6. CONSPIRACY TO COMMIT ROBBERY Amended Information Filed/Charges Not Addressed PCN: Sequence: 7. ROBBERY WITH USE OF A DEADLY WEAPON Amended Information Filed/Charges Not Addressed PCN: Sequence:

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CASE SUMMARY
CASE NO. C-14-300979-3





	<p>8. POSSESSION OF STOLEN PROPERTY Amended Information Filed/Charges Not Addressed PCN: Sequence:</p>
03/11/2015	<p>Plea (Judicial Officer: Miley, Stefany)</p> <p>1. ROBBERY WITH USE OF A DEADLY WEAPON Guilty PCN: Sequence:</p> <p>2. CONSPIRACY TO COMMIT ROBBERY Guilty PCN: Sequence:</p> <p>3. COERCION Charges Amended/Dropped PCN: Sequence:</p> <p>4. CONSPIRACY TO COMMIT ROBBERY Charges Amended/Dropped PCN: Sequence:</p> <p>5. ROBBERY Charges Amended/Dropped PCN: Sequence:</p> <p>6. CONSPIRACY TO COMMIT ROBBERY Charges Amended/Dropped PCN: Sequence:</p> <p>7. ROBBERY WITH USE OF A DEADLY WEAPON Charges Amended/Dropped PCN: Sequence:</p> <p>8. POSSESSION OF STOLEN PROPERTY Charges Amended/Dropped PCN: Sequence:</p>
03/16/2015	<p>CANCELED Jury Trial (1:00 PM) (Judicial Officer: Miley, Stefany) <i>Vacated</i></p>
03/16/2015	<p> Amended Information Filed By: Plaintiff State of Nevada <i>Amended Information</i></p>
03/16/2015	<p> Guilty Plea Agreement</p>
05/04/2015	<p> PSI</p>
05/04/2015	<p> PSI - Victim Impact Statements</p>
05/06/2015	<p> Sentencing (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Sentencing Counts 1 & 2</i></p>
05/06/2015	<p>Disposition (Judicial Officer: Miley, Stefany)</p> <p>1. ROBBERY WITH USE OF A DEADLY WEAPON Guilty PCN: Sequence:</p>

DEPARTMENT 23
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CASE NO. C-14-300979-3


	2. CONSPIRACY TO COMMIT ROBBERY Guilty PCN: Sequence:														
05/06/2015	Sentence (Judicial Officer: Miley, Stefany) 1. ROBBERY WITH USE OF A DEADLY WEAPON Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Minimum:60 Months, Maximum:180 Months Consecutive Enhancement:Use of a Deadly Weapon, Minimum:60 Months, Maximum:180 Months														
05/06/2015	Sentence (Judicial Officer: Miley, Stefany) 2. CONSPIRACY TO COMMIT ROBBERY Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Minimum:13 Months, Maximum:60 Months Consecutive: Charge 1 Credit for Time Served: 309 Days Other Fees 1. , \$880.00 To be paid Jointly and Severally with Co-Defendant Fee Totals: <table border="0"><tr><td>Administrative</td><td></td></tr><tr><td>Assessment Fee</td><td>25.00</td></tr><tr><td>\$25</td><td></td></tr><tr><td>Genetic Marker</td><td></td></tr><tr><td>Analysis AA Fee</td><td>3.00</td></tr><tr><td>\$3</td><td></td></tr><tr><td>Fee Totals \$</td><td>28.00</td></tr></table>	Administrative		Assessment Fee	25.00	\$25		Genetic Marker		Analysis AA Fee	3.00	\$3		Fee Totals \$	28.00
Administrative															
Assessment Fee	25.00														
\$25															
Genetic Marker															
Analysis AA Fee	3.00														
\$3															
Fee Totals \$	28.00														
05/11/2015	 Criminal Order to Statistically Close Case <i>Criminal Order to Statistically Close Case</i>														
05/12/2015	 Judgment of Conviction <i>JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i>														
06/01/2015	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Calendar Call March 11, 2015</i>														
06/01/2015	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Sentencing Counts 1 & 2 May 6, 2015</i>														
06/12/2015	 Notice of Appeal (criminal) <i>Notice of Appeal</i>														
06/12/2015	 Case Appeal Statement <i>Case Appeal Statement</i>														
06/19/2015	 Request <i>Request for Rough Draft Transcripts</i>														
06/26/2015	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Petition for Writ of Habeas Corpus November 19, 2014</i>														
06/26/2015	 Recorders Transcript of Hearing														

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Transcript of Proceedings: Defendant's Pro Se Motion to Dismiss Counsel January 12, 2015

07/01/2015	 Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing Re: Initial Arraignment September 23, 2014</i>
10/08/2015	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>Nevada Supreme Court Clerk's Certificate Judgment - Dismissed</i>
05/03/2016	 Petition <i>Petition for Writ of Habeas Corpus (PostConviction)</i>
05/20/2016	 Order for Petition for Writ of Habeas Corpus
06/29/2016	 Response <i>State's Response to Defendant's Post-Conviction Petition for Writ of Habeas Corpus</i>
08/03/2016	 Petition for Writ of Habeas Corpus (11:00 AM) (Judicial Officer: Miley, Stefany) Events: 05/03/2016 Petition
08/10/2016	 Status Check (9:30 AM) (Judicial Officer: Miley, Stefany) <i>STATUS CHECK: APPOINTMENT OF POST CONVICTION COUNSEL</i>
08/11/2016	 Motion <i>Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference</i>
09/07/2016	 Status Check (9:30 AM) (Judicial Officer: Miley, Stefany) <i>STATUS CHECK: BRIEFING SCHEDULE FOR POST CONVICTION</i>
09/07/2016	CANCELED Motion for Order (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Vacated - Moot</i> <i>Defendant's Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference</i>
01/13/2017	 Notice of Motion <i>Notice Of Motion Motion For Production Of Documents, Papers, Pleadings And Tangible Property Of Defendant</i>
01/13/2017	 Motion <i>Motion For Production Of Documents, Papers, Pleadings And Tangible Property Of Defendant</i>
01/13/2017	 Notice of Motion <i>Notice Of Motion Motion To Withdraw Counsel</i>
01/13/2017	 Motion <i>Motion To Withdraw Counsel</i>
01/31/2017	 Application to Proceed in Forma Pauperis Filed By: Defendant Ivey, James Curtis, Jr.
02/01/2017	 Motion <i>Motion for Extension of Time to File Supplement to Petition for Writ of Habeas Corpus (Post-</i>

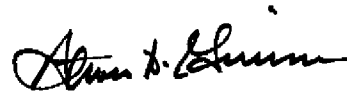
DEPARTMENT 23
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	<i>Conviction)</i>
02/01/2017	 Supplement <i>Supplement to Petition for Writ of Habeas Corpus (Post-Conviction)</i>
02/03/2017	 Petition for Writ of Habeas Corpus <i>Petition for Writ of Habeas Corpus (Post-Conviction)</i>
02/03/2017	 Motion for Appointment <i>Motion for Appointment of Counsel</i>
02/06/2017	Motion (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Defendant's Pro Per Motion For Production Of Documents, Papers, Pleadings And Tangible Property Of Defendant</i>
02/06/2017	Motion to Withdraw as Counsel (9:30 AM) (Judicial Officer: Miley, Stefany) 02/06/2017, 02/27/2017 <i>Defendant's Pro Per Motion To Withdraw Counsel</i>
02/06/2017	 All Pending Motions (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Defendant's Pro Per Motion For Production Of Documents, Papers, Pleadings And Tangible Property Of Defendant; Deft's Pro Per Motion to Withdraw Counsel</i>
02/13/2017	CANCELED Motion (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Vacated - Moot</i> <i>Defendant's Motion for Extension of Time to File Supplement to Petition for Writ of Habeas Corpus (Post-Conviction)</i>
02/14/2017	 Order for Production of Inmate <i>Order for Production of Inmate James Curtis Ivey Jr. BAC #1140194</i>
02/24/2017	 Order for Petition for Writ of Habeas Corpus
02/24/2017	 Notice of Hearing
02/27/2017	Status Check (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Status Check: Resetting of Evidentiary Hearing</i>
02/27/2017	 All Pending Motions (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Defendant's Pro Per Motion To Withdraw Counsel; Status Check: Resetting of Evidentiary Hearing</i>
03/02/2017	CANCELED Evidentiary Hearing (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Vacated</i>
03/22/2017	 Order Denying Application to Proceed in Forma Pauperis <i>Denied as to: Defendant Ivey, James Curtis, Jr.</i>
04/24/2017	CANCELED Motion for Appointment of Attorney (11:00 AM) (Judicial Officer: Miley, Stefany) <i>Vacated</i> <i>Defendant's Motion for Appointment of Counsel</i>
04/26/2017	 Response <i>State's Response to Defendant's Petition for Writ of Habeas Corpus and Supplement to Petition for Writ of Habeas Corpus</i>

DEPARTMENT 23
CASE SUMMARY
CASE NO. C-14-300979-3

06/21/2017	 Petition for Writ of Habeas Corpus (11:00 AM) (Judicial Officer: Miley, Stefany) 04/24/2017 <i>Continued to 06/21/2017 - At the Request of Interested Parties - Ivey, James Curtis, Jr.</i>
02/05/2018	 Findings of Fact, Conclusions of Law and Order Filed By: Defendant Ivey, James Curtis, Jr. <i>Findings of Fact, Conclusions of Law and Order Issuing Writ of Habeas Corpus (Post-Conviction)</i>
02/06/2018	 Notice of Entry <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
02/06/2018	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
02/06/2018	 Case Appeal Statement <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION
	Defendant Ivey, James Curtis, Jr.
	Total Charges 28.00
	Total Payments and Credits 0.00
	Balance Due as of 2/6/2018 28.00



CLERK OF THE COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C300979-3

DEPT. NO. XXIII

JAMES CURTIS IVEY, JR.
#7010542

Defendant.

JUDGMENT OF CONVICTION

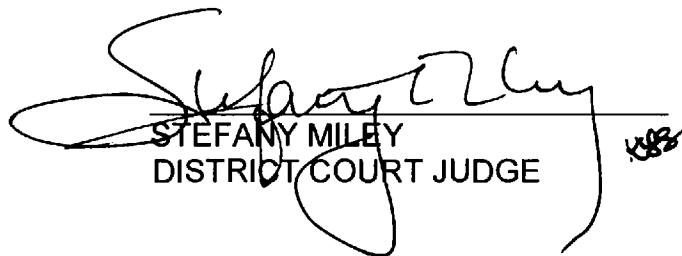
(PLEA OF GUILTY)

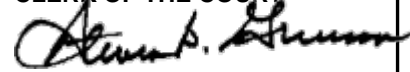
The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; and COUNT 2 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; thereafter, on the 6th day of May, 2015, the Defendant was present in court for sentencing with counsel CARMINE J. COLUCCI, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee

1 including testing to determine genetic markers, and \$880.00 Restitution to be paid
2 jointly and severally with Co-Defendants plus \$3.00 DNA Collection Fee, the Defendant
3 is sentenced to the Nevada Department of Corrections as follows: as to COUNT 1 – a
4 MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole
5 eligibility of SIXTY (60) MONTHS plus a CONSECUTIVE term of ONE HUNDRED
6 EIGHTY (180) MONTHS with a MINIMUM parole eligibility of SIXTY (60) MONTHS for
7 the Use of a Deadly Weapon; and COUNT 2 - a MAXIMUM of SIXTY (60) MONTHS
8 with a MINIMUM parole eligibility of THIRTEEN (13) MONTHS; CONSECUTIVE to
9 COUNT 1; with THREE HUNDRED NINE (309) DAYS credit for time served. The
10 AGGREGATE TOTAL sentence is FOUR HUNDRED TWENTY (420) MONTHS
11 MAXIMUM with a MINIMUM of ONE HUNDRED THIRTY-THREE (133) MONTHS.
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14 DATED this 11 day of May, 2015
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19 STEFANY MILEY
20 DISTRICT COURT JUDGE
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FCL

JULIAN GREGORY, ESQ.
Nevada Bar No. 11978
LAW OFFICE OF JULIAN GREGORY, L.L.C.
228 South Fourth Street, Suite #300
Las Vegas, NV 89101
T: (702) 625-1183
F: (702) 302-4286
E: Julian@jglawlv.com
Attorney for James Ivey

**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES IVEY, JR., #7010542,

Defendant.

Case No. C-14-300979-3
Dep't No. XXIII

Hearing Date June 21, 2017
Hearing Time 11:00 AM

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER ISSUING WRIT OF
HABEAS CORPUS
(POST-CONVICTION)**

FINDINGS OF FACT

On July 7, 2014, the State of Nevada filed a Criminal Complaint against Petitioner James Ivey and co-defendants Cristopher Roach and Jeffrey German charging them with conspiracy to commit robbery, robbery with use of a deadly weapon, possession of stolen property, and possession of credit or debit card without cardholder's consent. On July 30, 2014, the State filed a Second Amended Criminal Complaint alleging counts of three counts of conspiracy to commit robbery, coercion, robbery, two counts of robbery with use of a deadly weapon, possession of stolen property, and two counts of possession of credit or debit card without cardholder's consent. Following a preliminary hearing, the justice court bound the case over for trial in this Court.

The State filed its Information on September 22, 2014. On March 16, 2015, Mr. Ivey entered a guilty plea agreement to an Amended Information charging him with robbery with use of a deadly weapon and conspiracy to commit robbery; the State retained the right to argue at sentencing. At sentencing on May 6, 2015, this Court sentenced Mr. Ivey to 60

1 to 180 months as to count one with a consecutive 60 to 180 months for the weapon
2 enhancement, and a consecutive 13 to 60 months as to count to. The Judgment of
3 Conviction was filed May 12, 2015.

4 Trial counsel Carmine Colucci filed a Notice of Appeal on June 12, 2015. Remittitur
5 issued following dismissal of that appeal as untimely. Mr. Ivey filed a timely proper person
6 post-conviction petition for writ of habeas corpus on May 3, 2016.

7 CONCLUSIONS OF LAW

8 Mr. Ivey was deprived of his right to effective assistance of counsel under the Sixth
9 and Fourteenth Amendments to the United States constitution, and article I, sections three,
10 six, and eight of the Nevada Constitution. To establish a claim of ineffective assistance of
11 counsel, the petitioner must show (1) that counsel's performance was beneath "an objective
12 standard of reasonableness," and (2) that, but for counsel's deficiency, a different result
13 would have been had at trial. *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *Rubio v.*
14 *State*, 12 Nev. 1032, 1039-40, 194 P.3d 1224, 1229 (2008). A reasonable probability is one
15 that undermines confidence in the outcome. *Strickland*, 466 U.S. at 694. "Effectiveness"
16 means performance "within the range of competence demanded of attorneys in criminal
17 cases." *Jackson v. Warden*, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting *McMann*
18 *v. Richardson*, 397 U.S. 759, 771 (1970)).

19 Nevada Rule of Appellate Procedure 4(b)(1)(A) provides for thirty days within which
20 to file an appeal. NRAP 4(c)(1) provides for an untimely direct appeal after a petition for a
21 writ of habeas corpus "asserting a viable claim that the petitioner was unlawfully deprived
22 of the right to a timely direct appeal from a judgment of conviction and sentence." Trial
23 counsel is obligated to file a notice of appeal when a defendant expresses such a desire.
24 *Hathaway v. State*, 119 Nev. 248, 253-54, 71 P.3d 503, 507 (2003); *Thomas v. State*, 115
25 Nev. 148, 151, 979 P.2d 222, 224 (1999). When a defendant expresses a desire to appeal and
26 counsel fails to do so, prejudice is presumed. *Mann v. State*, 118 Nev. 351, 353-54, 46 P.3d
27 1228, 1229-30 (2002).

28 ///

1 The Judgment of Conviction in this case entered on May 12, 2015. (Ex. I.) In this
2 case, the Notice of Appeal was due Thursday, June 11, 2015. The Notice of Appeal was
3 instead filed the next day, June 12, 2015. (Ex. J.) Mr. Ivey is prepared to testify that he
4 informed Mr. Colucci by writing of his intent to appeal within the thirty-day period, and
5 Mr. Colucci failed to timely file the notice. Because trial counsel has a duty to appeal when
6 directed by a client, and the failure to do so creates a presumption of prejudice, Mr. Ivey is
7 entitled to the issuance of a writ of habeas corpus.

8 **ORDER**

9 Mr. Colucci's error deprived Mr. Ivey of his rights under the United States and
10 Nevada constitutions. Accordingly, this Court orders the issuance of a writ of habeas corpus
11 permitting Mr. Ivey to appeal his conviction pursuant to NRAP 4(c). The Clerk of this Court
12 shall enter a Notice of Appeal on Mr. Ivey's behalf in accordance with that rule.

13
14 DATED this 5th of January, 2018.

15
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17 
18 for STEFANY MILEY
19 DISTRICT COURT JUDGE
20
21

22 SUBMITTED this 20 of December, 2017.

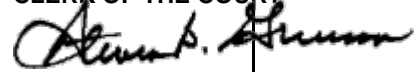
23 /s/ Julian Gregory
24 JULIAN GREGORY, ESQ.
25 **LAW OFFICE OF JULIAN GREGORY, L.L.C.**
26 Attorney for James Ivey

27 **AFFIRMATION**

28 Pursuant to NRS 239B.030, this document contains no social security numbers.

/s/ Julian Gregory
Julian Gregory, Esq.

12-20-17
Date



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES IVEY, JR.,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-14-300979-3

Dept No: XXIII

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

PLEASE TAKE NOTICE that on February 5, 2018, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on February 6, 2018.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 6 day of February 2018, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

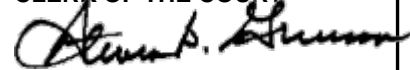
☒ The United States mail addressed as follows:

James Ivey, Jr. # 1140194
P.O. Box 650
Indian Springs, NV 89070

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/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk



FCL

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**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES IVEY, JR., #7010542,

Defendant.

Case No. C-14-300979-3
Dep't No. XXIII

Hearing Date June 21, 2017
Hearing Time 11:00 AM

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER ISSUING WRIT OF
HABEAS CORPUS
(POST-CONVICTION)**

FINDINGS OF FACT

On July 7, 2014, the State of Nevada filed a Criminal Complaint against Petitioner James Ivey and co-defendants Cristopher Roach and Jeffrey German charging them with conspiracy to commit robbery, robbery with use of a deadly weapon, possession of stolen property, and possession of credit or debit card without cardholder's consent. On July 30, 2014, the State filed a Second Amended Criminal Complaint alleging counts of three counts of conspiracy to commit robbery, coercion, robbery, two counts of robbery with use of a deadly weapon, possession of stolen property, and two counts of possession of credit or debit card without cardholder's consent. Following a preliminary hearing, the justice court bound the case over for trial in this Court.

The State filed its Information on September 22, 2014. On March 16, 2015, Mr. Ivey entered a guilty plea agreement to an Amended Information charging him with robbery with use of a deadly weapon and conspiracy to commit robbery; the State retained the right to argue at sentencing. At sentencing on May 6, 2015, this Court sentenced Mr. Ivey to 60

1 to 180 months as to count one with a consecutive 60 to 180 months for the weapon
2 enhancement, and a consecutive 13 to 60 months as to count to. The Judgment of
3 Conviction was filed May 12, 2015.

4 Trial counsel Carmine Colucci filed a Notice of Appeal on June 12, 2015. Remittitur
5 issued following dismissal of that appeal as untimely. Mr. Ivey filed a timely proper person
6 post-conviction petition for writ of habeas corpus on May 3, 2016.

7 CONCLUSIONS OF LAW

8 Mr. Ivey was deprived of his right to effective assistance of counsel under the Sixth
9 and Fourteenth Amendments to the United States constitution, and article I, sections three,
10 six, and eight of the Nevada Constitution. To establish a claim of ineffective assistance of
11 counsel, the petitioner must show (1) that counsel's performance was beneath "an objective
12 standard of reasonableness," and (2) that, but for counsel's deficiency, a different result
13 would have been had at trial. *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *Rubio v.*
14 *State*, 12 Nev. 1032, 1039-40, 194 P.3d 1224, 1229 (2008). A reasonable probability is one
15 that undermines confidence in the outcome. *Strickland*, 466 U.S. at 694. "Effectiveness"
16 means performance "within the range of competence demanded of attorneys in criminal
17 cases." *Jackson v. Warden*, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting *McMann*
18 *v. Richardson*, 397 U.S. 759, 771 (1970)).

19 Nevada Rule of Appellate Procedure 4(b)(1)(A) provides for thirty days within which
20 to file an appeal. NRAP 4(c)(1) provides for an untimely direct appeal after a petition for a
21 writ of habeas corpus "asserting a viable claim that the petitioner was unlawfully deprived
22 of the right to a timely direct appeal from a judgment of conviction and sentence." Trial
23 counsel is obligated to file a notice of appeal when a defendant expresses such a desire.
24 *Hathaway v. State*, 119 Nev. 248, 253-54, 71 P.3d 503, 507 (2003); *Thomas v. State*, 115
25 Nev. 148, 151, 979 P.2d 222, 224 (1999). When a defendant expresses a desire to appeal and
26 counsel fails to do so, prejudice is presumed. *Mann v. State*, 118 Nev. 351, 353-54, 46 P.3d
27 1228, 1229-30 (2002).

28 ///

1 The Judgment of Conviction in this case entered on May 12, 2015. (Ex. I.) In this
2 case, the Notice of Appeal was due Thursday, June 11, 2015. The Notice of Appeal was
3 instead filed the next day, June 12, 2015. (Ex. J.) Mr. Ivey is prepared to testify that he
4 informed Mr. Colucci by writing of his intent to appeal within the thirty-day period, and
5 Mr. Colucci failed to timely file the notice. Because trial counsel has a duty to appeal when
6 directed by a client, and the failure to do so creates a presumption of prejudice, Mr. Ivey is
7 entitled to the issuance of a writ of habeas corpus.

8 **ORDER**

9 Mr. Colucci's error deprived Mr. Ivey of his rights under the United States and
10 Nevada constitutions. Accordingly, this Court orders the issuance of a writ of habeas corpus
11 permitting Mr. Ivey to appeal his conviction pursuant to NRAP 4(c). The Clerk of this Court
12 shall enter a Notice of Appeal on Mr. Ivey's behalf in accordance with that rule.

13
14 DATED this 5th of January, 2018.

15
16
17 
18 for STEFANY MILEY
19 DISTRICT COURT JUDGE
20
21

22 SUBMITTED this 20 of December, 2017.

23 /s/ Julian Gregory
24 JULIAN GREGORY, ESQ.
25 **LAW OFFICE OF JULIAN GREGORY, L.L.C.**
26 Attorney for James Ivey

27 **AFFIRMATION**

28 Pursuant to NRS 239B.030, this document contains no social security numbers.

/s/ Julian Gregory
Julian Gregory, Esq.

12-20-17
Date

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 23, 2014

C-14-300979-3 State of Nevada
 vs
 James Ivey, Jr.

September 23, 2014 1:00 PM Initial Arraignment

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Roshonda Mayfield

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Colucci, Carmine James	Attorney
	DiGiacomo, Sandra	Attorney
	Ivey, James Curtis, Jr.	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. IVEY ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, counsel has 21 days from the filing of the preliminary transcript to file any writs.

CUSTODY

3/11/15 9:30 A.M. CALENDAR CALL (DEPT. 23)

3/16/15 1:00 P.M. JURY TRIAL (DEPT. 23)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 19, 2014

C-14-300979-3 State of Nevada
vs
James Ivey, Jr.

**November 19, 2014 11:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	Bateman, Caroline	Attorney
	Colucci, Carmine James	Attorney
	Ivey, James Curtis, Jr.	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Argument by counsel regarding counts 4, 5 and 8. Court finds slight or marginal evidence, noted all three Defts. were identified, pointed out items were located in the vehicle and ORDERED, petition DENIED. Trial date STANDS.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 12, 2015

C-14-300979-3 State of Nevada
vs
James Ivey, Jr.

January 12, 2015

9:30 AM

Motion

**Defendant's Pro Se
Motion to Dismiss
Counsel**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	Colucci, Carmine	James	Attorney
	DiGiacomo, Sandra		Attorney
	Ivey, James Curtis, Jr.		Defendant
	State of Nevada		Plaintiff

JOURNAL ENTRIES

- Counsel advised he had spoken with Deft., stated Deft. is withdrawing the motion and Deft. WITHDREW motion. COURT ORDERED, matter OFF CALENDAR as withdrawn.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 11, 2015

C-14-300979-3 State of Nevada
 vs
 James Ivey, Jr.

March 11, 2015 9:30 AM Calendar Call

HEARD BY: Miley, Stefany **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Colucci, Carmine James Attorney
 Ivey, James Curtis, Jr. Defendant
 State of Nevada Plaintiff
 Sudano, Michelle L. Attorney

JOURNAL ENTRIES

- Amended Information FILED IN OPEN COURT. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. IVEY ARRAIGNED AND PLED GUILTY to COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (F) and COUNT 2 - CONSPIRACY TO COMMIT ROBBERY (F). Court ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing. Trial date VACATED.

CUSTODY

05-06-15 9:30 AM SENTENCING COUNTS 1 & 2

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 06, 2015**

C-14-300979-3 State of Nevada
vs
James Ivey, Jr.

May 06, 2015**9:30 AM****Sentencing****Sentencing Counts 1
& 2****HEARD BY:** Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

PRESENT:	Cannizzaro, Nicole J.	Attorney
	Colucci, Carmine James	Attorney
	Ivey, James Curtis, Jr.	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Argument by the State. Argument by counsel. Statement by Deft. DEFT. IVEY ADJUDGED GUILTY of COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (F) and COUNT 2 - CONSPIRACY TO COMMIT ROBBERY (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$3.00 DNA Collection fee, \$150.00 DNA Analysis fee including testing to determine genetic markers and \$880.00 Restitution to be paid Jointly and Severally, Deft. SENTENCED as to COUNT 1 - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE sentence of MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and a MINIMUM of SIXTY (60) MONTHS for the use of Deadly Weapon and COUNT 2 - to a MAXIMUM of SIXTY (60) MONTHS and MINIMUM of THIRTEEN (13) MONTHS in the Nevada Department of Correction (NDC) to run CONSECUTIVE to COUNT 1, with THREE HUNDRED NINE (309) DAYS credit for time served. The AGGREGATE TOTAL sentence is FOUR HUNDRED TWENTY (420) MONTHS with a MINIMUM of ONE HUNDRED THIRTY-THREE (133) MONTHS. BOND, if any, EXONERATED.

NDC

CLERK'S NOTE: The above minute order has been amended to reflect aggregate sentence. 05/07/15
kls

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 03, 2016

C-14-300979-3 State of Nevada
vs
James Ivey, Jr.

**August 03, 2016 11:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Colucci, Carmine James Attorney
State of Nevada Plaintiff
Sudano, Michelle L. Attorney

JOURNAL ENTRIES

- Mr. Colucci moved to withdraw as counsel, request GRANTED. Court noted Deft. was not transported as no oral argument was needed. Court finds Deft's claim of ineffectiveness of counsel had no validity no was information provided, therefore, DENIED; Court further finds Deft's claim of not knowing what robbers were doing is without merit and is belied by the record as three witnesses at Preliminary Hearing identified Deft. as a participant also one witness stated Deft. had a gun, therefore, claim is DENIED; Deft's claim counsel failed to file pre-trial motions, COURT ORDERED, claim DENIED as it is belied by the record, Court also finds no merit to counsel failing to object to BB gun being a deadly weapon; Deft's claim of involuntarily entering plea is belied by the record and counsel's failure to argue is also belied by the record, therefore, claims are DENIED; Deft's claim counsel failing to object to the admission of erroneous information contained in the presentence report is DENIED/ LASTLY, Deft's claim counsel failed to file a timely Notice of Appeal, COURT ORDERED, matter SET for status check for appointment of counsel. Law Clerk to contact Drew Christensen.

NDC

08-10-16 9:30 AM STATUS CHECK: APPOINTMENT OF POST CONVICTION COUNSEL

CLERK'S NOTE: The above minute order has been distributed to: James C. Ivey #1140194, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. 08/05/16 kls

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 10, 2016

C-14-300979-3 State of Nevada
 vs
 James Ivey, Jr.

August 10, 2016

9:30 AM

Status Check

**STATUS CHECK:
APPOINTMENT OF
POST CONVICTION
COUNSEL**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Gregory, Julian Attorney
 State of Nevada Plaintiff
 Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Julian Gregory Esq. present and CONFIRMED as post conviction counsel. Court noted Deft. made allegation regarding direct appeal and ORDERED, matter SET for status check.

NDC

09-07-16 9:30 AM STATUS CHECK: BRIEFING SCHEDULE REGARDING POST CONVICTION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 07, 2016

C-14-300979-3 State of Nevada
 vs
 James Ivey, Jr.

**September 07, 2016 9:30 AM Status Check STATUS CHECK:
BRIEFING
SCHEDULE FOR
POST CONVICTION**

HEARD BY: Miley, Stefany **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Thoman, Charles W. Attorney

JOURNAL ENTRIES

- John Parris Esq. present on behalf of Mr. Gregory, requested 90 days in which to file Opening Brief and noted counsel is requesting JAVS recording of the sentencing. COURT ORDERED, matter SET for hearing. Briefing Schedule is as follows: Deft's Opening Brief due on November 30, 2016; State's Response due on January 25, 2017; and Deft's Reply due on February 22, 2017.

NDC

03-02-17 9:30 AM EVIDENTIARY HEARING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 06, 2017**

C-14-300979-3 State of Nevada
vs
James Ivey, Jr.

February 06, 2017	9:30 AM	All Pending Motions	Defendant's Pro Per Motion For Production Of Documents, Papers, Pleadings And Tangible Property Of Defendant; Deft's Pro Per Motion to Withdraw Counsel
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HEARD BY: Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

PRESENT:	Graham, Elana L.	Attorney
	Gregory, Julian	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present. Counsel advised he found no basis and noted he and Deft. had different ideas. Upon Court's inquiry, counsel advised he had provided Deft. with everything he received when appointed and stated they needed to file a supplement, however, they missed the deadline to request an extension. Court noted counsel was re-appointed for post conviction relief and ORDERED, Motion to Withdraw Counsel is CONTINUED. Counsel advised Deft. is housed in High Desert State Prison. Court noted the State would need time to file a response to writ and ORDERED, matter SET for status check. FURTHER, Motion for Extension of Time is OFF CALENDAR as moot.

NDC

02-27-17 9:30 AM DEFT'S PRO PER MOTION TO WITHDRAW COUNSEL; STATUS CHECK:
RESETTING OF EVIDENTIARY HEARING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 27, 2017

C-14-300979-3 State of Nevada
vs
James Ivey, Jr.

February 27, 2017	9:30 AM	All Pending Motions	Defendant's Pro Per Motion To Withdraw Counsel; Status Check: Resetting of Evidentiary Hearing
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	Gregory, Julian	Attorney
	Ivey, James Curtis, Jr.	Defendant
	State of Nevada	Plaintiff
	Zadrowski, Bernard B.	Attorney

JOURNAL ENTRIES

- Counsel advised there had been a misunderstanding and noted Deft. does not want him withdrawn. COURT ORDERED, Motion to Withdraw is OFF CALENDAR. FURTHER, matter SET for hearing. Briefing schedule is as follows: State's Response due by May 1, 2017 and Defendant's Reply due by June 5, 2017.

NDC

06-21-17 11:00 AM DEFT'S PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 21, 2017**

C-14-300979-3 State of Nevada
vs
James Ivey, Jr.

**June 21, 2017 11:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

PRESENT:	Gregory, Julian	Attorney
	Ivey, James Curtis, Jr.	Defendant
	LoGrippo, Frank R.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Counsel advised the supplemental petition addressed one issue, prior counsel's failure to file timely appeal, however, previous counsel had since passed away and believed Deft. could testify as to timing issues. Argument by the State. Counsel advised Deft. originally filed in Proper Person, noted he had been hired to supplement and pointed out original filing was on May 3, 2016. State believed these to be successive claims. Court noted everything appeared timely considering the circumstances, several issues were denied at the hearing and believed this matter to have fallen through the cracks. Argument by the State. Court FINDS defense counsel failed to file appeal and ORDERED, writ GRANTED, Deft. may file an untimely appeal and directed Mr. Julian to file said appeal. FURTHER, Mr. Julian to prepare the Order.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; JUDGMENT OF CONVICTION (PLEA OF GUILTY); FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ISSUING WRIT OF HABEAS CORPUS (POST-CONVICTION); NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW NA ORDER; DISTRICT COURT MINUTES

STATE OF NEVADA,

Plaintiff(s),

vs.

JAMES CURTIS IVEY, JR.,

Defendant(s).

Case No: C-14-300979-3

Dept No: XXIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 6 day of February 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk