

2515  
ADAM PAUL LAXALT  
Attorney General  
KATHLEEN BRADY (Bar No. 11525)  
Deputy Attorney General  
State of Nevada  
Office of the Attorney General  
555 Wright Way  
Carson City, NV 89711  
(775) 684-4605 (phone)  
(775) 684-4601 (fax)  
[kbrady@ag.nv.gov](mailto:kbrady@ag.nv.gov)  
Attorneys for State of Nevada  
Board of Parole Commissioners

Electronically Filed  
May 10 2018 11:52 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Case No. C78-1052

Petitioner,

Dept. No. IV

vs.

MARLIN THOMPSON,

Respondent.

**NOTICE OF APPEAL**

Notice is hereby given that the State of Nevada, Board of Parole Commissioners, by and through counsel, Adam Paul Laxalt, Attorney General and Kathleen Brady, Deputy Attorney General, hereby appeals to the Nevada Supreme Court from the Order Denying Petition filed by this Court on March 23, 2018. Notice of Entry of Order was served on March 26, 2018. A copy of said Notice of Entry of Order is attached hereto as Exhibit 1.

DATED this 30th day of April, 2018.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Kathleen Brady  
Kathleen Brady (Bar. No. 11525)  
Deputy Attorney General

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DATED this 30th day of April, 2018.

By: /s/ Kathleen Brady  
Kathleen Brady (Bar. No. 11525)  
Deputy Attorney General

## CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on April 30, 2018, I filed the foregoing document via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically as follows:

Terrence McCarthy, Esq.  
Deputy District Attorney  
P.O. Box 11130  
Reno NV 89520-0027

For those parties not registered, service was made by depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada to the following:

Marlin Thompson  
194 Wye Street  
Yerington NV 89447

/s/ B. Cozens  
B. Cozens, an employee of  
the office of the Nevada Attorney General

1 **INDEX OF EXHIBITS**

2

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Notice of Entry of Order	5

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EXHIBIT “1”

EXHIBIT “1”

1 **CODE 2540**

2  
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4  
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
6 **IN AND FOR THE COUNTY OF WASHOE**  
7

8 **THE STATE OF NEVADA,**

9 **Petitioner,**

**Case No: C78-1052**

10 **vs.**

11 **MARLIN THOMPSON,**

**Dept. No: 4**

12 **Respondent.**  
13 \_\_\_\_\_/

14 **NOTICE OF ENTRY OF ORDER**  
15

16 PLEASE TAKE NOTICE that on March 23, 2018, the Court entered a decision or  
17 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  
20 thirty-three (33) days after the date this notice is mailed to you.  
21

22 Dated March 26, 2018.  
23

24 JACQUELINE BRYANT

25 Clerk of the Court

26 /s/ SM Wolfe

27 Deputy Clerk  
28

1 **CERTIFICATE OF SERVICE**

2 Case No. **C78-1052**

3 Pursuant to NRCP 5 (b), I certify that I am an employee of the Second  
4 Judicial District Court; that on March 26, 2018, I electronically filed the Notice of Entry of  
5 Order with the Court System which will send a notice of electronic filing to the following:  
6

7 DIV. OF PAROLE & PROBATION

8 TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

9 KATHLEEN BRADY, ESQ. for NEVADA STATE BOARD OF PAROLE COMMISSIONERS  
10 et al  
11

12 I further certify that on March 26, 2018, 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 copy of the attached document, addressed to:  
15

16 Attorney General's Office  
17 100 N. Carson Street  
18 Carson City, NV 89701-4717

19 MARLIN THOMPSON  
20 194 WYE STREET  
YERINGTON, NV 89447

21 The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the preceding  
22 document does not contain the personal information of any person.

23 Dated March 26, 2018.  
24

25 /s/ SM Wolfe  
26 Deputy Clerk  
27  
28

1 CODE No.  
2  
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4

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

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

Case No. C78-1052

12 MARLIN THOMPSON,

Dept. No. 4

13 Defendant.  
14 \_\_\_\_\_/

15 ORDER DENYING PETITION

16 Currently before this court is a "Petition for Modification of Sentence" filed by the State  
17 Board of Parole Commissioners, seeking an order from this court to modify the sentence of  
18 Defendant Marlin Thompson.

19 Thompson was convicted of murder and attempted murder in 1979. He has expired the  
20 sentence for the attempted murder. For the murder, he was sentenced to a term of life  
21 imprisonment, with the opportunity for parole after ten years. He was paroled from that life  
22 sentence in 1992.

23 Now, on September 11, 2017, the Board of Parole Commissioners has petitioned this  
24 court to modify the sentence. NRS 176.033(2) does indeed allow for such a petition, and  
25 provides this court with authority to modify certain sentences. However, the final line of that  
26 statute provides that the maximum term may not be reduced below the minimum allowed by



1 statute for that crime. The relevant sentencing statute is the statute in force at the time of the  
2 crime. *State v. District Court (Pullin)*, 124 Nev. 564, 188 P.3d 1079 (2008). The statute in  
3 effect at the time of the crime, NRS 200.030, allowed for only two sentences for first-degree  
4 murder. *See* 1977 Statutes of Nevada at 864, 1541, 1627. Those were life without parole and  
5 life with the possibility of parole after ten years. That is, the only available sentence was life  
6 imprisonment. As NRS 196.033(2) prohibits reducing the maximum term to less than life  
7 imprisonment, the petition must be denied. The court voices no opinion on the merits of the  
8 petition, or on the merits of some future petition for clemency from the Pardons Board. The  
9 court merely holds that the remedy sought by the State Board of Parole Commissioners is not  
10 available through this court and so the petition is denied.

11  
12 DATED this 22 day of March, 2018.

13  
14 Connie I. Steinheimer  
15 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
STATE OF NEVADA, COUNTY OF WASHOE; that on the 23<sup>rd</sup> day of  
March, 2018, I filed the attached document with  
the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document  
by the method(s) noted below:

       Personal delivery to the following: [NONE]

X Electronically filed with the Clerk of the Court, using the eFlex system which  
constitutes effective service for all eFiled documents pursuant to the efile User  
Agreement:

Terrence McCarthy, Esq.  
Deputy District Attorney

Kathleen Brady, Esq.  
Deputy Attorney General

       Transmitted document to the Second Judicial District Court mailing system  
in a sealed envelope for postage and certified mailing with the United States Postal  
Service in Reno, Nevada: [NONE]

       Placed a true copy in a sealed envelope for service via:

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service – [NONE]

       Inter-Office Mail – [NONE]

DATED this 23<sup>rd</sup> day of March, 2018.

Mandy Stone

**1310**  
ADAM PAUL LAXALT  
Attorney General  
KATHLEEN BRADY (Bar No. 11525)  
Deputy Attorney General  
State of Nevada  
Office of the Attorney General  
555 Wright Way  
Carson City, NV 89711  
(775) 684-4605 (phone)  
(775) 684-4601 (fax)  
[kbrady@ag.nv.gov](mailto:kbrady@ag.nv.gov)  
Attorneys for State of Nevada  
Board of Parole Commissioners

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Case No. C78-1052

Petitioner,

Dept. No. IV

vs.

MARLIN THOMPSON,

Respondent.

**CASE APPEAL STATEMENT**

1. Name of appellants filing this case appeal statement:

State of Nevada, Board of Parole Commissioners.

2. Identify the judge issuing the decision, judgment, or order appealed from:

Honorable Connie J. Steinheimer.

3. Identify each appellant and the name and address of counsel for each appellant:

a. The appellants are The State of Nevada, Board of Parole Commissioners (Parole Board).

b. The attorneys for The State of Nevada, Board of Parole Commissioners:

Adam Paul Laxalt, Attorney General  
Kathleen Brady, Deputy Attorney General  
Nevada Bar. No. 11525  
555 Wright Way  
Carson City, Nevada 89711  
Tel: (775) 684-4605  
Fax: (775) 684-4601

4. Identify each respondent and the name and address of appellate counsel, if known, for each:

a. Respondent is the State of Nevada.

b. Attorneys for the State of Nevada:

Terrence McCarthy, Esq.  
Deputy District Attorney  
P.O. Box 11130  
Reno NV 89520-0027  
Tel: (775) 328-3200

c. Respondent Marlin Thompson

d. Attorney for Marlin Thompson – none. Mr. Thompson’s address is:

Marlin Thompson  
194 Wye Street  
Yerington NV 89447

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

The attorneys identified above in response to questions 3 and 4 are licensed to practice law in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

The Parole Board was represented by the Office of the Attorney General before the district court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

The Parole Board is represented by the Office of the Attorney General on appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

The Parole Board did not seek in forma pauperis status and was not granted leave to proceed in forma pauperis.

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///

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

A Petition for Modification of Sentence was filed on September 11, 2017, by the Parole Board.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Pursuant to NRS 176.033(2), the Parole Board held a hearing and then petitioned for modification of sentence for Mr. Thompson, who was convicted of first-degree murder in 1978. The District Attorney opposed on the grounds that a sentence of life imprisonment with the possibility of parole after ten years cannot be reduced because it has no minimum sentence to reduce the conviction down to. The District Court agreed and declined to modify Mr. Thompson's sentence.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

Mr. Thompson has also filed an appeal in the Supreme Court.

12. Indicate whether this appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Based upon the nature of the appeal, this case does not involve the possibility of settlement.

DATED this 30th day of April, 2018.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Kathleen Brady  
Kathleen Brady (Bar. No. 11525)  
Deputy Attorney General

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DATED this 30th day of April, 2018.

By: /s/ Kathleen Brady  
Kathleen Brady (Bar. No. 11525)  
Deputy Attorney General

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that  
3 on April 30, 2018, I filed the foregoing document via this Court's electronic filing system. Parties that  
4 are registered with this Court's EFS will be served electronically as follows:

5 Terrence McCarthy, Esq.  
6 Deputy District Attorney  
7 P.O. Box 11130  
8 Reno NV 89520-0027

9 For those parties not registered, service was made by depositing a copy of the above-referenced  
10 document for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada to  
11 the following:

12 Marlin Thompson  
13 194 Wye Street  
14 Yerington NV 89447

15 /s/ B. Cozens  
16 B. Cozens, an employee of  
17 the office of the Nevada Attorney General  
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SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE

Case History - C78-1052

DEPT. D4

HON. CONNIE J. STEINHEIMER

Report Date & Time

4/30/2018

1:54:01PM

Case Description: STATE OF NEVADA VS. MARLIN THOMPSON (D4)			
Case ID:	C78-1052	Case Type:	CRIMINAL
		Initial Filing Date:	9/6/1978

Parties

PNP	Div. of Parole & Probation - DPNP
REAL	NEVADA STATE BOARD OF PAROLE COMMISSIONERS - @46866
PLTF	STATE OF NEVADA - STATE
DA	Terrence P. McCarthy, Esq. - 2745
AG	Kathleen M. Brady, Esq. - 11525
DEFT	MARLIN THOMPSON - @643050

Charges

Charge No.	Charge Code	Charge Date	Charge Description
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Plea Information

Charge No.	Plea Code	Plea Date	Plea Description
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Release Information

Custody Status

Hearings

Department		Event Description	Sched. Date & Time		Disposed Date
1	D4	Request for Submission	11/3/2017	10:23:00	11/3/2017
Event Extra Text: PETITION FOR MODIFICATION OF SENTENCE			Disposition: T200 11/3/2017		
Department		Event Description	Sched. Date & Time		Disposed Date
2	D4	Tickle Start Code	11/3/2017	07:00:00	11/3/2017
Event Extra Text: - HAS PETITION FOR MODIFICATION OF SENTENCE BEEN BRIEFED AND SUBMITTED?			Disposition: T200 11/3/2017		
Department		Event Description	Sched. Date & Time		Disposed Date
3	D4	ORAL ARGUMENTS	11/30/2017	15:00:00	11/30/2017
Event Extra Text: ON PETITION FOR MODIFICATION OF SENTENCE			Disposition: D435 11/30/2017 AFTER ORAL ARGUMENTS, COURT ALLOWED THE AG'S OFFICE 30 ADDITIONAL DAYS TO SUPPLEMENT WITH AUTHORITY - DA'S OFFICE HAS 30 DAYS THEREAFTER TO RESPOND		



**Case Description: STATE OF NEVADA VS. MARLIN THOMPSON (D4)**

**Case ID:** C78-1052      **Case Type:** CRIMINAL      **Initial Filing Date:** 9/6/1978

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
4 D4	Request for Submission	1/26/2018	16:13:00	3/7/2018
Event Extra Text: - PETITION FOR MODIFICATION OF SENTENCING TAKEN UNDER ADVISEMENT AFTER SUPPLEMENTAL BRIEFING		<b>Disposition:</b> S200 3/7/2018 - PETITION FOR MODIFICATION OF SENTENCE DENIED DURING TELEPHONIC DECISION		
<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
5 D4	Tickle Start Code	1/30/2018	07:00:00	1/26/2018
Event Extra Text: - HAS SUPPLEMENTAL BRIEFING OCCURRED? IF SO SUBMIT SUPPLEMENTAL BRIEFING TO THE COURT		<b>Disposition:</b> T200 1/26/2018		
<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
6 D4	DECISION	3/7/2018	11:45:00	3/7/2018
Event Extra Text: - PETITION FOR MODIFICATION OF SENTENCE (TELEPHONIC)		<b>Disposition:</b> D355 3/7/2018 - PETITION FOR MODIFICATION OF SENTENCE DENIED STATE TO PREPARE ORDER		
<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
7 D4	Tickle Start Code	3/30/2018	07:00:00	3/23/2018
Event Extra Text: - HAS ORDER DENYING PETITION FOR MODIFICATION OF SENTENCE BEEN RECEIVED?		<b>Disposition:</b> T200 3/23/2018		

**Agency Cross Reference**

*Code*      *Agency Description*      *Case Reference I.D.*

<b>Actions</b>				
<i>Action Entry Date</i>	<i>Code</i>	<i>Code Description</i>	<i>Text</i>	
9/6/1978	1250	Application for Setting		
9/6/1978	1795	Indictment		
9/6/1978	3370	Order ...		
9/6/1978	2600	Notice/Intent/Seek Death Pnty		
9/6/1978	MIN	***Minutes	CRIMINAL PROGRESS SHEET	
9/12/1978	1250	Application for Setting		
9/15/1978	4189	Grand Jury Transcript	PROCEEDINGS	
9/18/1978	3735	Receipt	GRAND JURY TRANSCRIPT - DA	
9/21/1978	3892	Return of Service B/W	ISSUED 9/6/78 - SERVED ON 9/6/78	
9/22/1978	3735	Receipt	GRAND JURY TRANSCRIPT - DONALD POPE, ESQ.	
11/30/1978	4055	Subpoena	ELLIOT AQUILAR	
11/30/1978	4055	Subpoena	BARBARA SHIPLEY	
11/30/1978	4055	Subpoena	ALDA CLARK	
11/30/1978	4055	Subpoena	RENISE JIM AKA CLARK	
12/4/1978	4055	Subpoena	MAX LIEF	

Case Description: STATE OF NEVADA VS. MARLIN THOMPSON (D4)				
Case ID:	C78-1052	Case Type:	CRIMINAL	Initial Filing Date: 9/6/1978
12/4/1978	EXHB	Exhibit List	STATE'S EXHIBITS	
12/6/1978	EXHB	Exhibit List	DEFENDANT'S EXHIBITS	
12/7/1978	2650	Opposition to ...	OPPOSITION TO STATE PROPOSED INSTRUCTION ON ATTEMPTED MURDER	
12/7/1978	3755	Refused Instructions-Deft		
12/8/1978	4245	Verdict(s)...	GUILTY OF FIRST DEGREE MURDER	
12/8/1978	4245	Verdict(s)...	GUILTY OF ATTEMPTED FIRST DEGREE MURDER	
12/8/1978	4235	Unused Verdict Form(s)...		
12/8/1978	1885	Jury Instructions		
12/11/1978	4245	Verdict(s)...	GUILTY OF MURDER IN THE FIRST DEGREE, SET THE PENALTY TO BE IMPOSED AT LIFE IN PRISON WI'	
12/11/1978	1885	Jury Instructions		
12/14/1978	1250	Application for Setting		
12/28/1978	1250	Application for Setting		
12/28/1978	3897	Return		
1/2/1979	3355	Ord to Show Cause		
1/4/1979	3355	Ord to Show Cause		
1/4/1979	4500	PSI - Confidential		
1/11/1979	3735	Receipt	FINE AS PER ORDER, \$25.00 - RECEIVED FROM LINDA NESBITT	
1/30/1979	1865	Judgment on Verdict		
2/13/1979	3735	Receipt	FINE AS PER ORDER, \$25.00 RECEIVED FROM ALEX COON, CLERK OF COURT	
2/14/1979	4185	Transcript	ARRAIGNMENT SEPTEMBER 12, 1978	
2/28/1979	MIN	***Minutes	MINUTE ORDER	
3/9/1979	1930	Letters ...	LETTER FROM DEFENDANT	
4/6/1979	4185	Transcript	SENTENCING JANUARY 16, 1979	
5/15/1979	MIN	***Minutes	MINUTE ORDER	
5/15/1979	MIN	***Minutes	MINUTE ORDER	
5/15/1979	MIN	***Minutes	MINUTE ORDER	
5/15/1979	MIN	***Minutes	MINUTE ORDER	
5/15/1979	MIN	***Minutes	MINUTE ORDER	
5/15/1979	MIN	***Minutes	MINUTE ORDER	
5/15/1979	MIN	***Minutes	MINUTE ORDER	
12/20/1979	1030	Affidavit in Support...	AFFIDAVIT IN SUPPORT OF MOTION FOR PRODUCTION OF TRANSCRIPTS	
12/20/1979	2490	Motion ...	MOTION FOR PRODUCTION OF TRANSCRIPTS	
12/20/1979	3665	Points&Authorities Support...	POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR TRANSCRIPTS	
12/20/1979	2385	Mtn Proceed Forma Pauperis		
1/23/1980	1930	Letters ...	LETTER FROM DEFENDANT	
4/9/1980	1930	Letters ...	LETTER FROM DEFENDANT	
4/21/1980	3880	Response...	RESPONSE TO A MOTION FOR PRODUCTION OF TRANSCRIPTS	
4/22/1980	3370	Order ...		
4/22/1980	1316	**Closed-Filing Office Process		

Case Description: STATE OF NEVADA VS. MARLIN THOMPSON (D4)				
Case ID:	C78-1052	Case Type:	CRIMINAL	Initial Filing Date: 9/6/1978
6/12/1981	1930	Letters ...	LETTER FROM DEFENDANT	
6/26/1981	1930	Letters ...	LETTER FROM DEFENDANT	
8/24/1992	2610	Notice ...	NOTIFICATION OF INMATE RELEASE	
9/11/2017	COC	Evidence Chain of Custody Form		
9/11/2017	NEF	Proof of Electronic Service	Transaction 6293250 - Approved By: NOREVIEW : 09-11-2017:15:58:20	
9/11/2017	1695	** Exhibit(s) ...	exhibit 4 to Petition for Modification of Sentence filed on 9/11/17, in evidence room	
9/11/2017	2383	Mtn to Modify/Correct Sentence	PETITION FOR MODIFICATION OF SENTENCE - Transaction 6293238 - Approved By: MCHOLICO : 09-11-20	
9/19/2017	2650	Opposition to ...	OPPOSITION TO "PETITION FOR MODIFICATION OF SENTENCE" - Transaction 6307830 - Approved By: SW	
9/19/2017	NEF	Proof of Electronic Service	Transaction 6307912 - Approved By: NOREVIEW : 09-19-2017:16:49:52	
10/25/2017	1120	Amended ...	AMENDED CERTIFICATE OF SERVICE - Transaction 6365206 - Approved By: CSULEZIC : 10-25-2017:15:57:	
10/25/2017	NEF	Proof of Electronic Service	Transaction 6365407 - Approved By: NOREVIEW : 10-25-2017:15:59:10	
11/2/2017	3795	Reply...	Reply in Support of Petition for Modification of Sentence - Transaction 6377298 - Approved By: CSULEZIC : 11-4	
11/2/2017	3860	Request for Submission	- Transaction 6377560 - Approved By: SWILLIAM : 11-03-2017:10:22:02	
11/2/2017	2520	Notice of Appearance	KATHLEEN BRADY AG - Transaction 6377298 - Approved By: CSULEZIC : 11-03-2017:08:35:28	
11/3/2017	T200	Tickle End Code		
11/3/2017	NEF	Proof of Electronic Service	Transaction 6377922 - Approved By: NOREVIEW : 11-03-2017:08:36:27	
11/3/2017	NEF	Proof of Electronic Service	Transaction 6378331 - Approved By: NOREVIEW : 11-03-2017:10:23:02	
11/3/2017	T200	Tickle End Code		
11/17/2017	NEF	Proof of Electronic Service	Transaction 6399945 - Approved By: NOREVIEW : 11-17-2017:09:16:09	
11/17/2017	3242	Ord Setting Hearing	ON PETITION FOR MODIFICATION OF SENTENCE SET FOR 11/30/17 AT 3:00 P.M. - Transaction 6399942 -	
12/4/2017	NEF	Proof of Electronic Service	Transaction 6422187 - Approved By: NOREVIEW : 12-04-2017:16:13:52	
12/4/2017	MIN	***Minutes	ORAL ARGUMENTS ON THE PAROLE BOARD'S PETITION FOR MODIFICATION OF SENTENCING - 11/30/1	
1/2/2018	4105	Supplemental ...	Supplemental Briefing in Support of Petition for Modification of Sentence - Transaction 6461454 - Approved By: :	
1/2/2018	NEF	Proof of Electronic Service	Transaction 6461917 - Approved By: NOREVIEW : 01-02-2018:15:51:37	
1/26/2018	T200	Tickle End Code		
1/26/2018	NEF	Proof of Electronic Service	Transaction 6502221 - Approved By: NOREVIEW : 01-26-2018:16:40:26	
1/26/2018	3880	Response...	STATE'S RESPONSE TO "SUPPLEMENTAL BRIEFING IN SUPPORT OF PETITION FOR MODIFICATION OF	
2/20/2018	1250E	Application for Setting eFile	- TELEPHONIC DECISION ON PETITION FOR MODIFICATION OF SENTENCE - 3/7/18 AT 11:45 A.M. - Trans	
2/20/2018	NEF	Proof of Electronic Service	Transaction 6539721 - Approved By: NOREVIEW : 02-20-2018:13:26:12	
3/7/2018	S200	Request for Submission Complet	- PETITION FOR MODIFICATION OF SENTENCE DENIED DURING TELEPHONIC DECISION	
3/23/2018	T200	Tickle End Code		
3/23/2018	2840	Ord Denying ...	PETITION FOR MODIFICATION OF SENTENCE - Transaction 6593558 - Approved By: NOREVIEW : 03-23-20	
3/23/2018	NEF	Proof of Electronic Service	Transaction 6593566 - Approved By: NOREVIEW : 03-23-2018:13:57:36	
3/26/2018	NEF	Proof of Electronic Service	Transaction 6595908 - Approved By: NOREVIEW : 03-26-2018:13:38:21	
3/26/2018	2540	Notice of Entry of Ord	Transaction 6595902 - Approved By: NOREVIEW : 03-26-2018:13:37:20	
4/25/2018	2515	Notice of Appeal Supreme Court		
4/25/2018	NEF	Proof of Electronic Service	Transaction 6648265 - Approved By: NOREVIEW : 04-25-2018:16:00:27	
4/25/2018	1310E	Case Appeal Statement	Transaction 6648256 - Approved By: NOREVIEW : 04-25-2018:15:59:25	
4/25/2018	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 6648256 - Approved By: N	

**Case Description: STATE OF NEVADA VS. MARLIN THOMPSON (D4)****Case ID: C78-1052****Case Type: CRIMINAL****Initial Filing Date: 9/6/1978**

4/30/2018	1310	Case Appeal Statement	Transaction 6653346 - Approved By: YVILORIA : 04-30-2018:08:41:20
4/30/2018	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 6654429 - Approved By: N
4/30/2018	NEF	Proof of Electronic Service	Transaction 6653375 - Approved By: NOREVIEW : 04-30-2018:08:43:33
4/30/2018	2515	Notice of Appeal Supreme Court	Transaction 6653346 - Approved By: YVILORIA : 04-30-2018:08:41:20

1 CODE No.  
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
6  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

Case No. C78-1052

12 MARLIN THOMPSON,

Dept. No. 4

13 Defendant.  
14 \_\_\_\_\_/

15 ORDER DENYING PETITION

16 Currently before this court is a "Petition for Modification of Sentence" filed by the State  
17 Board of Parole Commissioners, seeking an order from this court to modify the sentence of  
18 Defendant Marlin Thompson.

19 Thompson was convicted of murder and attempted murder in 1979. He has expired the  
20 sentence for the attempted murder. For the murder, he was sentenced to a term of life  
21 imprisonment, with the opportunity for parole after ten years. He was paroled from that life  
22 sentence in 1992.

23 Now, on September 11, 2017, the Board of Parole Commissioners has petitioned this  
24 court to modify the sentence. NRS 176.033(2) does indeed allow for such a petition, and  
25 provides this court with authority to modify certain sentences. However, the final line of that  
26 statute provides that the maximum term may not be reduced below the minimum allowed by

1 statute for that crime. The relevant sentencing statute is the statute in force at the time of the  
2 crime. *State v. District Court (Pullin)*, 124 Nev. 564, 188 P.3d 1079 (2008). The statute in  
3 effect at the time of the crime, NRS 200.030, allowed for only two sentences for first-degree  
4 murder. See 1977 Statutes of Nevada at 864, 1541, 1627. Those were life without parole and  
5 life with the possibility of parole after ten years. That is, the only available sentence was life  
6 imprisonment. As NRS 196.033(2) prohibits reducing the maximum term to less than life  
7 imprisonment, the petition must be denied. The court voices no opinion on the merits of the  
8 petition, or on the merits of some future petition for clemency from the Pardons Board. The  
9 court merely holds that the remedy sought by the State Board of Parole Commissioners is not  
10 available through this court and so the petition is denied.

11  
12 DATED this 22 day of March, 2018.

13  
14 Connie I. Steinheimer  
15 DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the  
STATE OF NEVADA, COUNTY OF WASHOE; that on the 23<sup>rd</sup> day of  
March, 2018, I filed the attached document with  
the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document  
by the method(s) noted below:

       Personal delivery to the following: [NONE]

X Electronically filed with the Clerk of the Court, using the eFlex system which  
constitutes effective service for all eFiled documents pursuant to the efile User  
Agreement:

Terrence McCarthy, Esq.  
Deputy District Attorney

Kathleen Brady, Esq.  
Deputy Attorney General

       Transmitted document to the Second Judicial District Court mailing system  
in a sealed envelope for postage and certified mailing with the United States Postal  
Service in Reno, Nevada: [NONE]

       Placed a true copy in a sealed envelope for service via:

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service – [NONE]

       Inter-Office Mail – [NONE]

DATED this 23<sup>rd</sup> day of March, 2018.

Mandy Stone

1 **CODE 2540**

2  
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4  
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
6 **IN AND FOR THE COUNTY OF WASHOE**  
7

8 **THE STATE OF NEVADA,**

9 **Petitioner,**

**Case No: C78-1052**

10 **vs.**

11 **MARLIN THOMPSON,**

**Dept. No: 4**

12 **Respondent.**  
13 \_\_\_\_\_/

14 **NOTICE OF ENTRY OF ORDER**  
15

16 PLEASE TAKE NOTICE that on March 23, 2018, the Court entered a decision or  
17 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  
20 thirty-three (33) days after the date this notice is mailed to you.  
21

22 Dated March 26, 2018.  
23

24 JACQUELINE BRYANT

25 Clerk of the Court

26 /s/ SM Wolfe

27 Deputy Clerk  
28



1 **CERTIFICATE OF SERVICE**

2 Case No. **C78-1052**

3 Pursuant to NRCP 5 (b), I certify that I am an employee of the Second  
4 Judicial District Court; that on March 26, 2018, I electronically filed the Notice of Entry of  
5 Order with the Court System which will send a notice of electronic filing to the following:  
6

7 DIV. OF PAROLE & PROBATION

8 TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

9 KATHLEEN BRADY, ESQ. for NEVADA STATE BOARD OF PAROLE COMMISSIONERS  
10 et al  
11

12 I further certify that on March 26, 2018, 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 copy of the attached document, addressed to:  
15

16 Attorney General's Office  
17 100 N. Carson Street  
18 Carson City, NV 89701-4717

19 MARLIN THOMPSON  
20 194 WYE STREET  
YERINGTON, NV 89447

21 The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the preceding  
22 document does not contain the personal information of any person.

23 Dated March 26, 2018.

24  
25 /s/ SM Wolfe  
26 Deputy Clerk  
27  
28

1 CODE No.  
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
6  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

Case No. C78-1052

12 MARLIN THOMPSON,

Dept. No. 4

13 Defendant.  
14 \_\_\_\_\_/

15 ORDER DENYING PETITION

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7 imprisonment, the petition must be denied. The court voices no opinion on the merits of the  
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9 court merely holds that the remedy sought by the State Board of Parole Commissioners is not  
10 available through this court and so the petition is denied.

11  
12 DATED this 22 day of March, 2018.

13  
14 Connie I. Steinheimer  
15 DISTRICT JUDGE  
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March, 2018, I filed the attached document with  
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I further certify that I transmitted a true and correct copy of the foregoing document  
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       Personal delivery to the following: [NONE]

X Electronically filed with the Clerk of the Court, using the eFlex system which  
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Agreement:

Terrence McCarthy, Esq.  
Deputy District Attorney

Kathleen Brady, Esq.  
Deputy Attorney General

       Transmitted document to the Second Judicial District Court mailing system  
in a sealed envelope for postage and certified mailing with the United States Postal  
Service in Reno, Nevada: [NONE]

       Placed a true copy in a sealed envelope for service via:

       Reno/Carson Messenger Service – [NONE]

       Federal Express or other overnight delivery service – [NONE]

       Inter-Office Mail – [NONE]

DATED this 23<sup>rd</sup> day of March, 2018.

Mandy Stone



SECOND JUDICIAL DISTRICT COURT  
PROGRESS SHEET

CASE NO. C78-1052

STATUS: Custody  
RAIL CUSTODY OR D.R.

INFORMATION ☐ FILED ☒ 9-6-78

AMEND. INFO. FILED

ARRAIGNMENT: 9-10-78

Dept. 7 Judge Breex Clerk Stallack Reporter Caughron

Dist. Atty. Jane Def's Atty. Page Public Defender ☐  
Court Appointed ☐

True Name same Info. read waived Handed copy yes

Time to plead: \_\_\_\_\_ Continued to \_\_\_\_\_

Entered plea of Not Guilty C I + II Date 9-12-78

Continued to 12/4/78 at 10:00 For Dial

TRIAL 12-4-78 Judge T. Williams Dept. 4

Clerk V. Salinas Reporter Ismael Briceño

Dist. Atty. M. B. Love Def's Atty. Frank P. Le Public Defender ☐  
Court Appointed ☐

Verdict Murder 1st attempting first Time for Sentencing 1-16-79 9:00

Notice of Appeal \_\_\_\_\_ Disposition: \_\_\_\_\_  
BAIL - CUSTODY

MOTIONS Penalty Hearing 12-11-78: Life in Prison with Possibility  
of Parole P 45 1-16-79  
1-11-79 Lester Nesbitt failure to appear for jury duty  
Fined \$95 for Contempt of Court

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SENTENCING Report hearing 1-16-79

Sentence: 1-16-79 (DATE) 41 (DEPT NO.)

NSP Life with Possibility of Parole ~~15~~ in crime of First Degree Murder  
+ 15 years on crime of attempted First Degree Murder of  
Renee Chabot + given credit for 151 days time served

Probation Terms \_\_\_\_\_



SEPTEMBER 12, 1978

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

PETER I. BREEN  
DISTRICT JUDGE

NO. C78-1052

Reported by Ron Caughron

79 FEB 28 A 8:35

FILED

ALEX COON, CLERK

BY *[Signature]*  
DEPUTY

DC-05900055223-038  
STATE OF NEVADA VS. MARLIN THOMPSON  
District Court 02/28/1979 08:35 AM  
Washoe County

STATE OF NEVADA  
VS.  
MARLIN THOMPSON

Arraignment on the charges of Count I: Murder and Count II:  
Attempted Murder: Dep. D. A. Lane represented the State. Def. present  
with counsel, D. Pope.

TRUE NAME: Marlin Thompson.

Copy of Indictment handed; reading waived.

Def. waived time to plead, entered pleas of Not Guilty to Counts  
I and II.

Trial by jury set for Mon. 12/4/78 at 10:00 A. M.

Def. remanded to the custody of the Sheriff.

ALEX COON, CLERK

By *A. Matlack*  
Deputy Clerk

*Peter I. Breen*

DISTRICT JUDGE

C78-1052  
DC-088-008323-040  
STATE OF NEVADA VS. MARLIN T. THOMPSON  
101st Dist Court  
Washoe County, NV  
05/15/1979 08:53 AM  
MIA

DEC 4, 1978

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

L. TORVINEN  
STRICT JUDGE

NO. C78-1052  
Reported by Ivonna Burstad

STATE OF NEVADA  
VS.  
MARLIN THOMPSON

FILED  
MAY 15 3 53 AM '79  
CLERK OF DISTRICT COURT  
WASHOE COUNTY, NV

Trial by jury on a charge of Count I: Murder and Count II:  
Attempted Murder, Dep D A Lane was present for State, *M. Lane* was present  
with counsel D. Pope.

Roll of jurors called and all answered to their names except  
William E. Sperry and two who had been excused, Marie F. McKinney and  
Wesley W. Weichmann. Counsel stipulated to proceed in the absence of  
Mr. Sperry.

Jurors were sworn to answer questions touching upon their qualifica-  
tions to serve as trial jurors.

Ordered twelve names be drawn. The following names were drawn  
and seated:

Raymond F. Foster	Robert C. Whitt, Jr.	Ronald L. Sutton
Lucille Sumrall	Nina B. Boanini	Besse S. Thompson
Frederick M. Hart	Anthony P. Gardella	Donald G. Yoscovitch
Carl C. Shanks	Verne F. Blackburn	Frank H. Herndon

Counsel stipulated that Robert C. Whitt, Jr. may be excused for  
cause.

Mary J. Wessel was drawn and seated.

Counsel stipulated that Donald G. Yoscovitch may be excused for  
cause.

Dorothy R. Paschong drawn and seated.

Court made a few introductory remarks and counsel for State stated  
nature of the case; counsel and deft were introduced to jury.

Above named jurors were generally examined by the Court. Mary J.  
Wessel was examined by counsel for State; counsel for deft.

Verne F. Blackburn excused for cause upon stipulation of counsel.

Catherine A. Silva drawn and seated.

11:10 A. M. William E. Sperry reported for jury duty.

Besse S. Thompson examined by the Court, by counsel for State.

Jurors generally examined by counsel for State.

Raymond F. Foster challenged for cause; examined by counsel for deft; excused.

Ronald L. Sutton excused for cause.

Anthony P. Gardella excused for cause.

Donald R. Tiffany, Josephine P. Ramm and George E. Alston were called and seated.

Josephine P. Ramm was excused for cause, upon stipulation of counsel.

Edward R. Pitts was called, seated, examined by the Court.

Donald R. Tiffany challenged by counsel for deft, examined by counsel for State; excused for cause upon stipulation of counsel.

James H. Smith, Jr. was drawn, seated, examined by the Court.

Panel was further generally examined by counsel Lane; by counsel for deft.

Jurors were specifically examined by counsel for State; by counsel for deft.

Edward R. Pitts was challenged for cause by counsel for deft; examined by counsel for State; traversed; examined by the Court; challenge renewed; denied.

12:05 Noon recess. Jurors were admonished by the Court. Deft remanded to custody of the Sheriff.

2:15 P. M. Court reconvened with all parties present as above. Deft was present. Prospective jurors were present.

Further specific examination of jurors by counsel for deft.

Panel passed for cause.

State's first peremptory challenge: Besse S. Thompson.

Catherine L. DuBuc drawn, seated, examined by the Court; excused for cause upon stipulation of counsel.

William E. Sperry was drawn, seated, examined by the Court; counsel for State; counsel for deft; passed for cause.

12-4-78



Deft's first peremptory challenge: Mary J. Wessel excused.

James W. Blaine drawn, seated, examined by the Court, by counsel for State, by counsel for deft; passed for cause.

State's second peremptory challenge: George E. Alston excused.

Michael G. Laughlin drawn, seated, examined by the Court, by counsel for deft, by counsel for State; passed for cause.

Deft's second peremptory challenge: Edward R. Pitts excused.

Patsy Card drawn, seated, examined by the Court, by counsel for State; passed for cause.

State's third peremptory challenge: Waived.

Deft's third peremptory challenge: James W. Blaine excused.

Harvey J. Schuermann drawn, seated, examined by the Court, by counsel for State, by counsel for deft; passed for cause.

State's fourth peremptory challenge: Waived.

Deft's fourth peremptory challenge: Waived.

Court ordered two alternate jurors be impaneled. Robert R. Walton and Clair F. Worthen were drawn, seated, examined by the Court, by counsel for State, by counsel for deft. Clair F. Worthen challenged for cause; excused by stipulation of counsel.

Kevin E. Reilly drawn, seated, examined by the Court, by counsel for State; excused for cause.

Bruce P. Malone drawn, seated, examined by the Court; passed for cause.

State waived peremptory challenge to alternate.

Counsel for Deft exercised his peremptory challenge to alternate and excused Robert R. Walton.

Linda Nesbitt drawn, seated, examined by the Court, by counsel for State, by counsel for deft; passed for cause.

The following 12 jurors and two alternates were sworn to try this case:

James H. Smith, Jr.	Harvey J. Schuermann	Michael G. Laughlin
Lucille Sumrall	Nina B. Boanini	William E. Sperry
Frederick M. Hart	Patsy Card	Dorothy R. Paschong
Carol C. Shanks	Catherine A. Silva	Frank H. Herndon
Linda Nesbitt, Alternate	Bruce P. Malone, Alternate	

12-4-78

Special admonishment was given to the jurors by the Court.

Remaining jurors were thanked and excused.

At 3:08 P. M. recess. Jurors admonished by the Court. Deft remanded to custody of the Sheriff.

3:35 P. M. Court reconvened with all parties present as above. Deft was present. Jurors and alternates were present.

Court informed juror No. 10, William E. Sperry, that he had not been sworn to answer questions touching upon his qualifications in that he was late; he was so sworn and questioned by the Court; thereafter was again sworn to try the case. Counsel stipulated to this procedure and had no objection thereto.

Indictment was read aloud by the clerk and jurors informed of deft's plea of Not Guilty of the offenses charged.

Opening statement was presented by counsel for State.

Opening statement was presented by counsel for deft.

Upon request of counsel for deft rule of exclusion was invoked.

David Larson, detective, called by counsel for State, sworn and testified.

Counsel for State offered for ident a large diagram drawn on white paper (of the scene); marked State's Ex A for Ident.

Counsel for State offered for ident eight photos in color 8 x 10 on cardboard taken at scene; marked State's Ex B 1 through 8 for Ident.

Witness cross-examined; re-direct examined.

Counsel for State offered in evidence A and B 1 through 8 for Ident; obj to B-2; offer withdrawn. Ex A and B 1, 3, 4, 5, 6, 7, and 8 were admitted and marked.

4:25 P. M. recess. Jurors admonished by the Court. Deft remanded to custody of the Sheriff.

4:38 P. M. Court reconvened with all parties present as above. Deft was present. Counsel stipulated to presence of the jury.

Glenn Thomas Sewell, pathologist, called by counsel for State, sworn and testified. (Qualified as an expert).

Counsel for State offered for ident an 8 x 10 photo in color of the victim; marked State's Ex C-1 for Ident.

Counsel for state offered for ident a drawing on large white paper made by Dr. Dewell during his testimony; marked State's Ex D for Ident.

Counsel for State offered for ident a hunting knife, marked State's Ex E for Ident.

Witness cross-examined; redirect examined; recross-examined; further redirect examined.

Counsel for State offered in evidence C-1 and D; obj to C-1. State's D admitted and marked.

4:55 P. M. recess. Trial continued to Tue, Dec. 5, 1978 at 10:00 A.M. Jurors admonished and excused. Deft remanded to custody of the Sheriff.

ALEX COON, CLERK

By

*[Signature]*  
Deputy

*Roy L. Townen*

DISTRICT JUDGE

TUE DEC 5, 1978

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

JY L. TORVINEN  
DISTRICT JUDGE

NO. C78-1052  
Reported by Ivonna Burstad

THE STATE OF NEVADA  
VS.  
MARLIN THOMPSON

Jury trial continued, Dep D. A. Lane was present for State. Deft was present with counsel D. Pope. Counsel stipulated to presence of the jury.

Robert Penegor, Police Officer, City of Reno, called by counsel for State, sworn and testified.

Counsel for State offered for Ident twelve photos, 8 by 10", in color, taken in Yerington, automobile, clothing, etc.; marked State's Ex F-1 through 12 for Ident.

Witness cross-examined.

Counsel for State offered in evidence F-1 through 12 for Ident; no obj; admitted and marked.

Nevada J. Wise, Reno Police Dept, called by counsel for State, sworn and testified.

Counsel for State offered in evidence E for Ident; admitted and marked.

Counsel for State offered for Ident a medium size cardboard box and contents; marked State's Ex G for Ident. Contents marked State's G-1 for Ident: Overalls - blood stained - Fretchiel Frank. State's G-2 for Ident: Shirt - blood stained - Fretchiel Frank. State's Ex G-3 for Ident: Small manila envelope containing a vial of blood - Fretchiel Frank.

G-1 and G-2 offered in evidence; admitted and marked.

Counsel for State offered for Ident a large cardboard box and contents; marked State's Ex H for Ident.

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MAY 15 8 53 AM '79  
ALFRED J. COON, CLERK  
M. K. Kline, DEPUTY

Contents of the box H for Ident were marked as follows:

State's Ex H-1 for Ident: Manila envelope containing 7 packages of blood scrapings and knife sheath. Also small vial and contents.

State's Ex H-2 for Ident: Manila envelope containing blue and white t-shirt.

State's Ex H-3 for Ident: Manila envelope containing yellow, white and red tank top.

State's Ex 4 for Ident: Blue jean trousers

State's Ex 5 for Ident: Brown paper bag containing 1 pr tan and brown shoes.

State's Ex 6 for Ident: Brown paper bag containing fringed leather vest.

Witness cross-examined; redirect examined.

Denise Johnson was called by counsel for State, sworn and testified. Witness cross-examined.

12:02 P. M. noon recess. Jurors admonished by the Court. Deft remanded to custody of the Sheriff.

2:20 P. M. Court reconvened with all parties present as above. Deft was present. Counsel stipulated to presence of the jury.

Denise Johnson resumed the stand and testified further on cross-examination; redirect examination; recross-examination.

Lester Williams was called by counsel for State, sworn and testified.

Counsel for State offered in evidence C-1 for Ident; no obj; admitted and marked.

3:30 P. M. recess. Jurors admonished by the Court. Deft remanded to custody of the Sheriff.

3:50 P. M. Court reconvened with all parties present as above. Deft was present. Counsel stipulated to presence of the jury.

Lester Williams resumed the stand and testified further on direct examination; cross-examination; redirect examination; recross-examination; further redirect examination.

4:40 P. M. Trial continued to 9:30 on Wed Dec 6, 1978.

Jurors admonished by the Court. Deft remanded to custody of the Sheriff.

ALEX COON, CLERK

By *Alex Coon*

Deputy

*Roy L. Joubert*

DISTRICT JUDGE

MILLERS FALLS  
RECEIVED  
JUL 5 1978

12-5-78



WED DEC 6, 1978

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

Y L. TORVINEN  
DISTRICT JUDGE

NO. C78-1052  
Reported by Ivonna Burslad

THE STATE OF NEVADA  
VS.  
MARLIN THOMPSON

FILED  
MAY 15 8 53 AM '79

ALEX BOON, CLERK

*M. K. Kline* DEPUTY

Jury trial continued, Dep D A Lane was present for State. Deft was present with counsel D. Pope. Counsel stipulated to presence of the jury.

Merle Badbear was called by counsel for State, sworn and testified; cross-examined.

Jeffrey Frank was called by counsel for State, sworn and testified.

Counsel for State offered for ident a medium size cardboard box and contents (blood stained clothes of Jeffrey Frank); marked State's Ex I for Ident; a small manila envelope and contents (blood of victim Jeffrey Frank) marked State's Ex J for Ident.

Ordered I for Ident admitted in evidence (not necessary to mark pieces of clothing separately).

Witness cross-examined; redirect examined; recross-examined.

Robert Rodriguez was called by counsel for State, sworn and testified.

10:25 A. M. Recess. Jurors admonished by the Court. Deft remanded to custody of the Sheriff.

During the recess a small envelope and contents (Blood of suspect Marlin Thompson) was marked State's Ex K for Ident.

At 10:35 A. M. Court reconvened with all parties present as above. Deft was present. Counsel stipulated to the presence of the jury.

Gretchen Bettler, Washoe County Sheriff's office, was called by counsel for State, sworn and testified. (Qualified as an expert).

Counsel for State offered in evidence State's Ex G-3, J and K for Ident; admitted and marked.

Counsel for State offered in evidence State's Ex H-5 for Ident; obj; offer withdrawn; offered in evidence H-1 for Ident; admitted and marked. offered in evidence State's Ex I for Ident (shirt, levis and shoes); admitted and marked pursuant to stipulation.

Witness cross-examined; redirect examined.

State rested.

Marlin Thompson was called by counsel for deft, sworn and testified; cross-examined.

Counsel for State offered in evidence H-5 for Ident; ordered admitted and marked; H-3 for Ident; admitted and marked; H-4 for ident; admitted and marked.

Counsel for State offered for ident a photo of deft (booking photo); marked State's Ex L for Ident; offered in evidence; admitted and marked.

11:57 A. M. noon recess. Jurors admonished. Deft remanded to custody of the Sheriff.

2:35 P. M. Court reconvened with all parties present as above. Deft was present. Counsel stipulated to presence of the jury.

Marlin Thompson resumed the stand and testified further on cross-examination.

Counsel for State offered for ident the following documents which were marked:

State's Exhibit M-1 for Ident: Booking sheet - arrest and property record of Marlin Thompson.

State's Ex M-2 for Ident: Certified copy criminal complaint Justice's Court, Marlin Thompson.

State's Ex M-3 for Ident: Certified copy of Transcript of Proceedings, Judge Barrett, re Marlin Thompson.

M-1, 2, and 3 offered in evidence; admitted and marked.

Witness cross-examined; redirect examined; recross-examined; further redirect examined.

Stanford Max Leef was called by counsel for deft, sworn and



Testified; cross-examined; redirect examined.

Mary Thomas was called by counsel for deft, sworn and testified.

Counsel for deft offered for ident five photos, 8 x 10", black and white; marked Deft's Ex 1 (A through E) for Ident.

Witness cross-examined. Counsel for State offered in evidence Deft's Ex 1 (A through E) for Ident; admitted and marked.

Alda Clark was called by counsel for deft, sworn and testified; cross-examined.

James D. Bedmark was called by counsel for deft, sworn and testified.

3:30 P. M. recess. Jurors admonished. Deft remanded to custody of Sheriff.

4:20 P. M. Court reconvened with all parties present as above. Deft was present. Counsel stipulated to presence of the jury.

Court informed the jury that we were waiting for a witness who will not arrive before 5:00 P. M. and therefore we would recess until tomorrow morning. Jurors admonished by the Court. Trial continued to Thurs Dec 7, 1978. Deft remanded to custody of the Sheriff.

ALEX COON, CLERK

By

*[Signature]*  
Deputy

*Roy L. Jowinen*

DISTRICT JUDGE

THUR DEC 7, 1978

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

JOY L. TORVINEN  
DISTRICT JUDGE

NO. C78-1052  
Reported by Ivonna Burstad

THE STATE OF NEVADA  
VS.

MARLIN THOMPSON

Jury trial continued, Dep D A Lane was present for State Deft was present with counsel D. Pope. Counsel stipulated to presence of the jury.

Terry Thompson was called by counsel for deft, sworn and testified; cross-examined; redirect examined.

Elliott Aguilar was called by counsel for deft, sworn and testified; cross-examined; redirect examined.

Defendant rested.

Ray Tidwell, Records Officer, Nev State Prison, called by counsel for State, sworn and testified in rebuttal; cross-examined; redirect examined; excused.

Jack Hutcheson, Truck Driver, called by counsel for State, sworn and testified in rebuttal; cross-examined; excused.

Jerry Aaron, Manke Truck Lines, called by counsel for State, sworn and testified in rebuttal; excused.

John Jackson, Manke Truck Lines, was called by counsel for State, sworn and testified in rebuttal; cross-examined; excused.

William Manke, owner Manke Truck Lines, called by counsel for State, sworn and testified in rebuttal; cross-examined; excused.

State rested case in rebuttal.

10:30 A. M. jurors admonished by the Court and excused until 1:00 P. M. this date. Counsel to meet with Court in chambers to settle instructions. Deft remanded to custody of the Sheriff.

11:30 A. M. Counsel met with the Court in chambers and stipulated this is time for settling of instructions and that they are being settled as in open court out of presence of deft. Court indicated 42 instructions would be given, together with 9 forms of verdict. Counsel for deft objected to Instruction 30; overruled; objected to some of the forms of verdict; overruled. Counsel for deft had one additional instruction to offer, which was marked Defts Offer 1, rejected, and filed by the clerk.

11:45 A. M. recess.

1:30 P. M. Court reconvened with all parties present as above. Deft was present. Counsel stipulated to presence of the jury.

Court read instructions to the jury.

1:45 P. M. jurors admonished by the Court and excused to jury room while Court does the arraignments. Deft remanded to custody of Sheriff.

2:15 P. M. Court reconvened with all parties present as above. Deft was present. Counsel stipulated to presence of the jury.

Opening argument was presented by counsel for State.

Answering argument was presented by counsel for deft.

3:25 P. M. recess. Jurors admonished by the Court. Deft remanded to custody of Sheriff.

3:35 P. M. Court reconvened with all parties present as above. Deft was present. Counsel stipulated to presence of the jury.

Closing argument was presented by counsel for State.

Oath of officers was administered to Bailiffs Michael Pro and Gudrun Stevenson.

At 4:03 P. M. jurors were placed in charge of sworn officers and retired to deliberate. Alternates were also placed in charge of sworn officers.

The case was continued to await the return of the jury. Deft remanded to custody of the Sheriff.

FRIDAY, DEC. 8, 1978 1:00 A. M.

Jurors returned into court. Dep D A Lane was present for State; Deft was present with counsel D. Pope. Twelve jurors and two alternates were present.

The foreman stated the jury had agreed upon verdicts, which Verdicts read in words and figures as follows:

No. C78-1052

Dept No \_\_\_\_\_

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

--00--

THE STATE OF NEVADA,

Plaintiff,

v.

MARLIN THOMPSON,

Defendant

F I L E D

12-8-78 1:02 A. M.

ALEX COON, Clerk

By V. Sopher  
Deputy Clerk

V E R D I C T

We, the jury in the above-entitled matter, find the defendant, MARLIN THOMPSON, GUILTY of FIRST DEGREE MURDER.

DATED this 8 day of Dec, 1978.

/s/ James H. Smith, Jr.  
FOREMAN

V E R D I C T

We, the jury in the above-entitled matter, find the defendant, MARLIN THOMPSON, GUILTY of ATTEMPTED FIRST DEGREE MURDER.

DATED this 8 day of Dec, 1978.

/s/ James H. Smith, Jr.  
FOREMAN

Upon request of counsel for deft the jury was ordered polled, and in response to the question "Are these your verdicts as read?", each juror for himself and not one for the other replied "Yes".

The Court ordered the Verdicts be recorded. Instructions were filed.

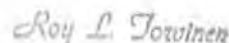
Court ordered the penalty hearing be set for Monday, December 11, 1978 at 10:00 A. M.

Jurors and alternates were thanked by the Court and excused until said time. Deft was remanded to custody of the Sheriff.

ALEX COON, CLERK

By 

Deputy

  
Roy L. Townen

DISTRICT JUDGE

12-8-78

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MON DEC 11, 1978

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

OY L. TORVINEN  
DISTRICT JUDGE

NO. C78-1052  
Reported by Liza Chapen

THE STATE OF NEVADA  
VS.  
MARLIN THOMPSON

FILED

MAY 15 3 53 AM '79

ALICE DOON CLERK  
RECEIVED  
*M. Glynn*

Penalty hearing, Dep D A Lane was present for State. Deft was present with counsel D. Pope.

Counsel met with the Court in chambers; stipulated instructions are being settled as in open court. Court indicated 8 instructions would be given, together with 3 forms of Verdict. Counsel for deft objected to Instruction No. 6; overruled. There were no offered instructions by either counsel.

10:20 A. M. Court convened with all parties present as above. Counsel stipulated to presence of the jury and alternate Malone. Alternate Nesbitt was absent.

Counsel for State presented evidence on aggravated circumstances.

Counsel for State offered for Ident a certified copy of Judgment, Mineral County, Filed Dec. 6, 1973; objection to photo, which was removed and handed back to Mr. Lane; ordered marked State's Ex N for Ident; offered in evidence; admitted and marked.

State rested.

Marlin Thompson was called by counsel for deft and testified; cross-examined.

Both rested.

Court read instructions to the jury.

Opening argument was presented by counsel for State.

Answering argument was presented by counsel for deft.

Closing argument was presented by counsel for State.

Oath of officers was administered to Michael Pro.

At 11:00 A. M. jury and alternate Malone were placed in charge of sworn officer and jury retired to deliberate.

The case was continued to await the return of the jury. Deft - was remanded to custody of the Sheriff.

At 1:55 P. M. jury returned into Court. Dep D A Lane was present for State. Deft was present with counsel D. Pope. All 12 jurors and one alternate were present.

The Foreman stated the jury had agreed upon a verdict, which Verdict read in words and figures as follows:

No. C78-1052

Dept. No. \_\_\_\_\_

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE,

--00--

THE STATE OF NEVADA,

Plaintiff,

v.

MARLIN THOMPSON,

Defendant

FILED  
12-11-78 1:56 P. M.  
ALEX COON, Clerk  
By V. Sopher  
Deputy Clerk

# V E R D I C T

We, the jury in the above-entitled matter, having previously found the defendant, MARLIN THOMPSON, guilty of murder in the first degree, set the penalty to be imposed at LIFE IN PRISON WITH THE POSSIBILITY OF PAROLE.

DATED this 11 day of Dec, 1978 /

/s/ James H. Smith, Jr.  
FOREMAN

Court ordered the Verdict be recorded; Instructions were filed.

The Court set time for sentencing on January 16, 1979 at 9:00 A.M. Jurors were thanked by the Court and directed to report to Jury Commissioner. Deft remanded to custody of the Sheriff.

ALEX COON, CLERK

By [Signature]  
Deputy

Roy L. Thompson  
DISTRICT JUDGE

12-11-78

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DC-05000095223-045  
STATE OF NEVADA VS. MARLIN THOMPSON  
District Court  
Washoe County, NV  
C78-1052

JAN 16, 1979

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

ROY L. TORVINEN  
DISTRICT JUDGE

NO. C78-1052  
Reported by Terry Thompson

THE STATE OF NEVADA  
VS.  
MARLIN THOMPSON

FILED  
MAY 15 8 53 AM '79

ALEX COON, CLERK

Consideration of probation report and for sentencing, Dep D A Lane was present for State. Deft was present with counsel D. Pope. Probation Officer Gene Smith was present.

Deft acknowledged having read probation report dated 1-4-79; corrections were noted.

Statements were made to the Court by counsel for deft; by counsel for State.

No sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows: That Marlin Thompson is guilty of the crime of First Degree Murder and Attempted First Degree Murder and that he be punished by imprisonment in the Nevada State Prison for the term of Life With Possibility of Parole on the crime of First Degree Murder and that he be punished by imprisonment in the Nevada State Prison for the term of fifteen (15) years on the crime of Attempted First Degree Murder, to run consecutive with the Life With Possibility term, and that he be given credit for one hundred fifth-one (151) days time served.

Deft remanded to the custody of the Sheriff.

ALEX COON, CLERK

By *[Signature]*  
Deputy

*Roy L. Torvinen*  
DISTRICT JUDGE



THUR JAN 11, 1979

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

JY L. TORVINEN  
DISTRICT JUDGE

NO. C78-1052  
Reported by --

IN THE MATTER OF THE  
JURY DUTY OF LINDA NESBITT

Order to Show Cause for failure to appear for jury duty. Juror  
Linda Nesbitt was present.

In response to the Court deft made a statement as to her failure  
to appear.

The Court found her in contempt for failure to appear for jury  
duty and ordered she be fined in the sum of \$25.00, to be paid to  
the Cashier in Clerk's Office today or tomorrow.

ALEX COON, CLERK

By *[Signature]*

Deputy

*Kay L. Torvinen*

DISTRICT COURT

FILED

MAY 15 8 53 AM '79

ALEX COON, CLERK  
BY *[Signature]*

C78-1052  
STATE OF NEVADA VS. JY L. TORVINEN  
District Court  
Washoe County  
05/15/1979 08:53 AM  
FILED

CASE NO. C78-1052

**TITLE: THE STATE OF NEVADA VS. MARLIN THOMPSON**

**DATE, JUDGE  
OFFICERS OF**

**COURT PRESENT**

**APPEARANCES-HEARING**

**CONT'D TO**

11/30/17

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

J. Schonlau

(Reporter)

**ORAL ARGUMENTS ON THE PAROLE BOARD'S PETITION FOR  
MODIFICATION OF SENTENCING**

Chief Deputy District Attorney Terrence McCarthy represented the State.

Deputy Attorney General Kathleen Brady represented the interested party,

Nevada State Board of Parole Commission.

Petition for Modification of Sentence by counsel Brady; presented argument;

objection and argument by counsel McCarthy; reply argument by counsel

Brady.

**COURT ENTERED ORDER** allowing for supplemental briefing. Counsel  
Brady must file a supplement brief within 30 days of the date of this hearing  
and Counsel McCarthy must respond within 30 days thereafter.

Court recessed.

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1 **Code 1350**

2  
3  
4 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
5 **IN AND FOR THE COUNTY OF WASHOE**

6 **THE STATE OF NEVADA,**

**Case No. C78-1052**

7  
8 **Plaintiff,**

**Dept. No. 4**

9 **vs.**

10 **MARLIN THOMPSON,**

11 **Defendant.**

12 \_\_\_\_\_ /  
13 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

14 I certify that I am an employee of the Second Judicial District Court of the State of Nevada,  
15 County of Washoe; that on the 30th day of April, 2018, I electronically filed the Notice of Appeal in  
16 the above entitled matter to the Nevada Supreme Court.

17 I further certify that the transmitted record is a true and correct copy of the original  
18 pleadings on file with the Second Judicial District Court.

19 Dated this 30th day of April, 2018

20 Jacqueline Bryant  
21 Clerk of the Court

22 By /s/ Yvonne Vilorio  
23 Yvonne Vilorio  
24 Deputy Clerk  
25  
26  
27  
28