

FILED

THE NEVADA SUPREME COURT

FEB 28 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY J. Alvarado  
DEPUTY CLERK

JOEL BURKETT  
PETITIONER

SUPREME COURT NO:

39267

VS.

DISTRICT COURT, CE2190

DEPT NO: 11

THE STATE OF NEVADA

RESPONDENT

CERTIORARI

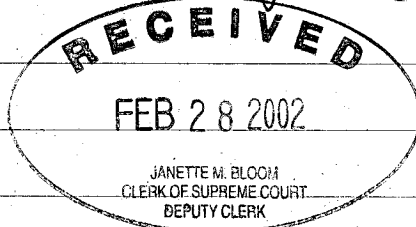
N.R.S. 34.020

COMES NOW, PETITIONER JOEL T. BURKETT  
PRO SE, AND RESPECTFULLY REQUEST  
THE COURT TO EXCISE JURISDICTION  
PURSUANT TO N.R.S. 34.020.

### REASON FOR REQUEST

PETITIONER FILED A PETITION FOR  
WRIT OF HABEAS CORPUS, POST CONVICTION  
ON NOVEMBER 19TH 2001

THE STATE CLAIMS TO HAVE FILED  
A RESPONSE ON JAN, 23RD 2002



LIKEWISE THEY CLAIM THE VERY NEXT DAY, JANUARY 24TH THE PETITION WAS DENIED.

FIRST OF ALL AT NO TIME HAS PETITIONER RECEIVED AN ORDER DENYING THE PETITION.

THE COURT ORDERED A HEARING ON THE PETITION JAN. 24 2002 IN WHICH THE COURT WOULD NOT ALLOW PETITIONER TO BE THERE.

PETITIONER RESPECTFULLY REQUEST THIS COURT TAKE JURISDICTION OF THIS CASE AT ONCE, BECAUSE IT IS CLEAR THE COURT HAS RULED AN OUT RIGHT MOVE INTENDED TO DENY THE PETITIONER DUE PROCESS.

I'VE INCLOSED HERECWITH MY COPY OF THE FILE. THE PRISON MAIL ROOM CAN SUPPORT MY STATEMENT AS LEGAL MAIL MUST BE SIGNED FOR

I RESPECTFULLY ASK THAT THE COURT APPOINT COUNSEL IF NEEDED.

PETITIONER RESPECTFULLY ASK THAT  
THE COURT EXCISE THIS AS A  
NOTICE OF APPEAL AND TAKE  
JURISDICTION OF HIS CASE.

PETITIONER HAS NEVER RECEIVED ANY  
ORDER FROM THE LOWER COURT,

WHAT HAS HAPPENED IS ON THE  
23rd OF JAN. 2002 THE STATES  
CLAIMS IN THE "ENCLOSED RESFOND"  
THEY MOVED TO DISMISS AND THE  
VERY NEXT DAY (JAN 24TH 2002  
THE COURT DISMISSED THE PETITION.  
FIRST OF ALL PETITIONER MUST BE  
ALLOWED TO REPLY.

MOREOVER, PETITIONER INFORMED THE  
LOWER COURT HE NEEDED TO FILE  
AS ANSWERED PETITION.

HAVING FILED THE ORIGINAL PETITION  
OUT OF STATE WITHOUT ACCESS TO  
SECURE LAW.

LIKEWISE PETITIONER INFORMED THE  
COURT HE HAD CONSTITUTIONAL  
ISSUES THAT NEEDED RAISED  
BUT HAD NO ACCESS TO HIS  
TRIAL TRANSCRIPTS

HAVING LOST THE TRANSCRIPTS  
TRANSFERING PETITIONER ALL OVER THE  
UNITED STATES,

ALL MOTIONS WILL BE IN THE LOWER  
COURT FILE, THE COURT NEVER ONCE  
RULED ON A MOTION BY PETITIONER  
IT WOULD APPEAR BECAUSE THE  
PETITION WAS DENIED ON DAY 24th 2002,  
PETITIONER WAS NEVER INFORMED  
OF SUCH ACTIONS,

ON FEB, 25 2002, THE ONLY REPLY  
PETITIONER RECEIVED IS ENCLOSED IN  
THE ENVELOPE FROM THE STATE  
DATED FEB 25, 2002"

I ASK THE COURT TO TREAT THIS  
AS A NOTICE OF APPEAL OR ALLOW  
ME TO FILE A NOTICE OF APPEAL,  
BECAUSE A MOVIE HAS BEEN FILMED IN  
THE LOWER COURT TO DEPRIVE PETITIONER  
DUE PROCESS,

DATED THIS 25<sup>TH</sup> DAY OF FEBRUARY 2002

Respectfully Submitted  
Paul Bunker  
Petitioner

| NO.  | FILED/REC CODE | REASON/DESCRIPTION                                                  | FOR       | OC | SCH/PER  | C |
|------|----------------|---------------------------------------------------------------------|-----------|----|----------|---|
| 0072 | 08/20/81       | NOAS/DESIGNATION OF RECORD ON APPEAL                                |           |    |          |   |
| 0073 | 08/20/81       | ORDR/ORDER FOR TRANSCRIPT                                           |           |    |          |   |
| 0074 | 09/23/81       | TRAN/REPORTER'S TRANSCRIPT OF JUNE 18, 1981                         |           |    | 06/18/81 |   |
| 0075 | 05/11/83       | NSCO/NEVADA SUPREME COURT JUDGMENT / ORDERED<br>APPEAL DISMISSED    |           |    | 05/10/83 |   |
| 0076 | 08/20/87       | PET /PETITION                                                       | 001       |    |          |   |
| 0077 | 08/20/87       | ORDR/ORDER                                                          |           |    |          |   |
| 0078 | 08/20/87       | CERT/CERTIFICATE OF DESTRUCTION                                     |           |    |          |   |
| 0079 | 09/01/87       | ROP /RECEIPT                                                        |           |    |          |   |
| 0080 | 07/10/01       | CSCL/CASE CLOSED                                                    | 001       |    | 07/10/01 |   |
| 0081 | 08/21/01       | JMNT/REMITTITUR JUDGMENT AFFIRMED                                   | 0001      |    | 08/22/01 |   |
| 0082 | 11/19/01       | ARGU/ARGUMENT IN SUPPORT OF PETITION FOR WRIT<br>OF HABEAS CORPUS   | 001       |    |          |   |
| 0083 | 11/19/01       | REQT/MOTION FOR LEAVE TO PROCEED IN FORMA<br>PAUPERIS               | 001       |    |          |   |
| 0084 | 11/19/01       | CRTF/FINANCIAL CERTIFICATE                                          | 001       |    |          |   |
| 0085 | 11/19/01       | AFFD/AFFIDAVIT IN SUPPORT OF MOTION TO<br>PROCEED IN FORMA PAUPERIS | 001       |    |          |   |
| 0086 | 11/19/01       | PET /PETITION FOR WRIT OF HABEAS CORPUS -<br>POST CONVICTION        | 001       |    |          |   |
| 0087 | 12/03/01       | ASSG/REASSIGNMENT OF JUDGE Gibbons TO JUDGE<br>Douglas              |           |    |          |   |
| 0088 | 12/03/01       | CASO/CASE (RE)ACTIVATED ON                                          |           |    |          |   |
| 0089 | 11/30/01       | PET /DEFT'S PRO PER PTN FOR WRIT OF HABEAS<br>CORPUS                | 001       |    | 01/24/02 |   |
| 0090 | 11/30/01       | MOT /DEFT'S PRO PER MOTION FOR TO PROCEED IN<br>FORMA PAUPERIS      | 001       |    | 01/24/02 |   |
| 0091 | 11/30/01       | ORDR/ORDER RE PETITION FOR WRIT OF HABEAS<br>CORPUS                 | 001       |    |          |   |
| 0092 | 12/24/01       | MOT /DEFT'S PRO PER MTN TO APPEAR/14                                | <u>AL</u> |    | 01/24/02 |   |

AS you CAN SEE NEVER ONCE HAVE  
I RECEIVED AN ORDER FROM THE COURT  
ON ANY MOTION I'VE FILED, OR A  
ORDER DENYING THE PETITION.

## CRIMINAL COURT MINUTES

81-C-052190-C STATE OF NEVADA

vs Burkett, Joel

CONTINUED FROM PAGE: 002

08/12/99 08:30 AM 00 ALL PENDING MOTIONS 8/12/99

HEARD BY: Joseph S. Pavlikowski; Dept. VJ30

OFFICERS: LINDA SKINNER, Court Clerk  
JAMES HELLESO, Reporter/Recorder

PARTIES: STATE OF NEVADA

Y

DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION  
FOR LEAVE TO PROCEED IN FORMA PAUPERISRene Hulse from the Attorney General's Office present. COURT ORDERED,  
Deft's Pro Per Petition for Writ of Habeas Corpus is DENIED; Deft's Pro Per  
Motion for Leave to Proceed in Forma Pauperis is GRANTED.

NDP

## CRIMINAL COURT MINUTES

81-C-052190-C STATE OF NEVADA vs Burkett, Joel

CONTINUED FROM PAGE: 001

08/03/94 09:00 AM 01 PROPER PERSON MOTION FOR ENLARGEMENT  
OF TIME

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk  
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA  
001648 Barker, David B.Y  
Y

Mr. Barker submitted the matter. COURT ORDERED, Motion is DENIED.

NDP

11/02/94 09:00 AM 00 DEFENDANT'S PRO PER MOTION TO CORRECT  
RECORD

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk  
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA  
003988 Langford, Robert L.Y  
Y

At request of Mr. Langford, COURT ORDERED, matter continued.

NDP

CONTINUED TO: 11/16/94 09:00 AM 01

11/16/94 09:00 AM 01 DEFENDANT'S PRO PER MOTION TO CORRECT  
RECORD

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk  
CONNIE MILLER, Reporter/RecorderPARTIES: STATE OF NEVADA  
001648 Barker, David B.Y  
YMr. Barker advised an Amended Judgment of Conviction has been sent to the  
deft. COURT ORDERED, matter TAKEN OFF CALENDAR.

NDP

CONTINUED ON PAGE: 003

DATE: 01/23/02  
CASE NO. 81-C-052190-C

I N D E X

TIME 2:04 PM  
JUDGE: Douglas, Michael L

STATE OF NEVADA

[ ] vs Burkett, Joel

[ ]

001 D1 Joel Burkett  
P O Box 1059  
Santa Fe, NM 87504-1059

Pro Se

| NO.  | FILED/REC CODE | REASON/DESCRIPTION                                                         | FOR | OC | SCH/PER  | C |
|------|----------------|----------------------------------------------------------------------------|-----|----|----------|---|
| 0001 | 01/16/81       | COMP/CRIMINAL COMPLAINT                                                    | 001 |    |          |   |
| 0002 | 01/19/81       | INFO/INFORMATION                                                           | 001 |    | 01/19/81 |   |
| 0003 | 01/20/81       | ARRN/INITIAL ARRAIGNMENT                                                   | 001 |    | 01/20/81 |   |
| 0004 | 04/23/81       | JURY/TRIAL BY JURY                                                         | 001 |    | 04/29/81 |   |
| 0005 | 04/29/81       | SENT/SENTENCING                                                            | 001 |    | 06/02/81 |   |
| 0006 | 02/02/94       | CASO/CASE (RE)ACTIVATED ON                                                 |     |    |          |   |
| 0007 | 02/02/94       | PET /PROPER PERSON PETITION FOR WRIT OF<br>HABEAS CORPUS                   | 001 | GP | 02/28/94 |   |
| 0008 | 02/02/94       | PET /PROPER PERSON MOTION FOR LEAVE TO<br>PROCEED IN FORMA PAUPERIS        | 001 | GR | 02/28/94 |   |
| 0009 | 02/02/94       | CASO/CASE (RE)ACTIVATED ON                                                 |     |    |          |   |
| 0010 | 02/02/94       | BREF/BRIEF IN SUPPORT OF PETITION FOR WRIT OF<br>HABEAS CORPUS             |     |    |          |   |
| 0011 | 02/02/94       | CERT/ FINANCIAL CERTIFICATE                                                |     |    |          |   |
| 0012 | 03/01/94       | MOT /ALL PENDING MOTIONS (2-28-94)                                         | 001 |    | 02/28/94 |   |
| 0013 | 02/28/94       | ORDR/ORDER AND AMENDED JUDGMENT OF<br>CONVICTION (JURY TRIAL)              | 001 |    |          |   |
| 0014 | 06/10/94       | NOTC/JUDICIAL NOTICE TO THE COURT                                          | 001 |    |          |   |
| 0015 | 06/30/94       | ASSG/REASSIGNMENT OF JUDGE CHRISTENSEN TO<br>JUDGE MAUPIN                  |     |    |          |   |
| 0016 | 06/30/94       | PET /PROPER PERSON MOTION FOR ENLARGEMENT<br>OF TIME                       | 001 | DN | 08/03/94 |   |
| 0017 | 07/19/94       | RSPN/PLAINTIFF'S RESPONSE TO DEFENDANT'S<br>MOTION FOR ENLARGEMENT OF TIME | 001 |    |          |   |
| 0018 | 08/12/94       | ORDR/ORDER                                                                 | 001 |    |          |   |
| 0019 | 09/06/94       | NOTC/NOTICE OF APPEAL AND DESIGNATION OF<br>RECORDS                        | 001 | AP |          |   |
| 0020 | 10/21/94       | MOT /DEFENDANT'S PRO PER MOTION TO CORRECT<br>RECORD                       | 001 | OC | 11/16/94 |   |
| 0021 | 04/07/95       | NOTC/NOTICE TRIAL TRANS - ON SHELVES FILE<br>ROOM                          |     |    |          |   |
| 0022 | 01/03/97       | ASSG/Reassign Case From Judge MAUPIN TO<br>Judge GIBBONS                   |     |    |          |   |
| 0023 | 06/28/97       | ASSG/Reassign Case From Judge GIBBONS to<br>Judge PAVLIKOWSKI              |     |    |          |   |
| 0024 | 06/07/99       | NOTC/NOTICE                                                                | 001 |    |          |   |
| 0025 | 06/07/99       | CRTF/FINANCIAL CERTIFICATE                                                 | 001 |    |          |   |
| 0027 | 06/07/99       | AFFD/AFFIDAVIT IN SUPPORT OF MOTION TO<br>PROCEED IN FORMA PAUPERIS        | 001 |    |          |   |
| 0028 | 06/07/99       | NCA /ARGUMENT IN SUPPORT OF PETITION FOR WRIT<br>OF HABEAS CORPUS          | 001 |    |          |   |
| 0029 | 06/07/99       | PET /DEFT'S PRO PER PETITION FOR WRIT OF<br>HABEAS CORPUS                  | 001 | DN | 08/12/99 |   |
| 0030 | 06/07/99       | MOT /DEFT'S PRO PER MOTION FOR LEAVE TO<br>PROCEED IN FORMA PAUPERIS       | 001 | GR | 08/12/99 |   |
| 0031 | 06/09/99       | ORDR/ORDER RE PETITION FOR WRIT OF HABEAS<br>CORPUS                        | 001 |    |          |   |



| NO.  | FILED/REC CODE | REASON/DESCRIPTION                                                                     | FOR | OC | SCH/PER  | C |
|------|----------------|----------------------------------------------------------------------------------------|-----|----|----------|---|
| 0032 | 08/04/99       | ANSW/ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION                      | 001 |    |          |   |
| 0033 | 08/11/99       | OPPS/OPPOSITION                                                                        | 001 |    |          |   |
| 0034 | 08/13/99       | MOT /ALL PENDING MOTIONS 8/12/99                                                       | 001 |    | 08/12/99 |   |
| 0035 | 08/18/99       | JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER                                   | 001 |    | 08/18/99 |   |
| 0036 | 08/19/99       | NOTC/NOTICE OF ENTRY OF ORDER                                                          | 001 |    | 08/19/99 |   |
| 0037 | 08/31/99       | NOAS/NOTICE OF APPEAL                                                                  | 001 | AP |          |   |
| 0038 | 08/31/99       | STAT/CASE APPEAL STATEMENT                                                             | 001 |    |          |   |
| 0039 | 09/23/99       | ASSG/Reassign Case From Judge Pavlikowski TO Judge Gibbons                             |     |    |          |   |
| 0040 | 01/21/81       | STAT/SUPPLEMENTAL STATEMENT FOR WRIT OF HABEAS CORPUS, DATED 1/14/81                   | 001 |    | 02/05/81 |   |
| 0041 | 01/23/81       | REQT/MOTION TO DISMISS PRO PER PETITION FOR WRIT OF HABEAS CORPUS                      | 001 |    |          |   |
| 0042 | 01/26/81       | PTAT/POINTS AND AUTHORITIES IN SUPPORT OF WRIT OF HABEAS CORPUS                        | 001 |    |          |   |
| 0043 | 02/10/81       | ORDR/ORDER                                                                             | 001 |    |          |   |
| 0044 | 03/09/81       | TRAN/REPORTER'S TRANSCRIPT OF JAN 9, 1981 PRELIMINARY HEARING                          | 001 |    | 01/09/81 |   |
| 0045 | 03/10/81       | REQT/NOTICE OF MOTION AND MOTION FOR CONTINUANCE                                       | 001 |    | 03/12/81 |   |
| 0046 | 03/10/81       | SUBT/SUBSTITUTION OF ATTORNEY                                                          | 001 |    |          |   |
| 0047 | 04/20/81       | NOTC/NOTICE OF MOTION                                                                  | 001 |    |          |   |
| 0048 | 04/20/81       | REQT/MOTION TO COMPEL BLOOD SAMPLE FROM RAYMOND HAIRE AKA JOEL BURKETT, DEFT           | 001 |    |          |   |
| 0049 | 04/23/81       | ORDR/ORDER                                                                             | 001 |    |          |   |
| 0050 | 04/24/81       | SUBP/SUBPOENA                                                                          |     |    |          |   |
| 0051 | 04/28/81       | ORDR/ORDER                                                                             | 001 |    |          |   |
| 0052 | 04/29/81       | JURY/JURY                                                                              |     |    |          |   |
| 0053 | 04/30/81       | INFO/MOTION AND NOTICE OF MOTION TO ENDORSE NAMES OF INFORMATION                       |     |    | 04/30/81 |   |
| 0054 | 05/04/81       | SUBP/SUBPOENA                                                                          |     |    |          |   |
| 0055 | 05/04/81       | SUBP/SUBPOENA DUCES TECUM                                                              |     |    |          |   |
| 0056 | 05/04/81       | VER /VERDICT COUNT I                                                                   | 001 |    | 05/04/81 |   |
| 0057 | 05/04/81       | VER /VERDICT COUNT II                                                                  | 001 |    | 05/04/81 |   |
| 0058 | 05/04/81       | VER /VERDICT COUNT III                                                                 | 001 |    | 05/04/81 |   |
| 0059 | 05/04/81       | VER /VERDICT COUNT IV                                                                  | 001 |    | 05/04/81 |   |
| 0060 | 05/04/81       | INST/INSTRUCTIONS TO THE JURY                                                          | 001 |    |          |   |
| 0061 | 05/14/81       | ORDR/ORDER                                                                             |     |    |          |   |
| 0062 | 06/15/81       | PTAT/POINTS AND AUTHORITIES, NOTICE OF MOTION AND MOTION TO WITHDRAW AS ATT. OF RECORD |     |    |          |   |
| 0063 | 06/19/81       | NOAS/NOTICE OF APPEAL                                                                  | 001 |    |          |   |
| 0064 | 06/22/81       | ORDR/ORDER                                                                             | 001 |    |          |   |
| 0065 | 06/24/81       | CERT/CERTIFICATE OF MAILING                                                            |     |    |          |   |
| 0066 | 07/02/81       | TRAN/REPORTER'S TRANSCRIPT OF APRIL 23, 1981                                           |     |    | 04/23/81 |   |
| 0067 | 07/23/81       | TRAN/REPORTER'S TRANSCRIPT OF FEB 5, 1981                                              |     |    | 02/05/81 |   |
| 0068 | 07/24/81       | TRAN/REPORTER'S TRANSCRIPT OF JAN 20, 1981                                             |     |    | 01/20/81 |   |
| 0069 | 07/28/81       | TRAN/REPORTER'S TRANSCRIPT OF JUNE 2, 1981                                             |     |    | 06/02/81 |   |
| 0070 | 07/29/81       | JUDG/JUDGMENT OF CONVICTION                                                            |     |    | 07/28/81 |   |
| 0071 | 07/30/81       | REQT/MOTION FOR ORDER EXTENDING TIME FOR FILING DESIGNATION OF RECORD ON APPEAL        | 001 |    |          |   |

(Continued to page 3)

## CRIMINAL COURT MINUTES

81-C-052190-C      STATE OF NEVADA      vs Burkett, Joel

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02/28/94    09:00 AM    00    ALL PENDING MOTIONS (2-28-94)

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk  
          PATSY SMITH, Reporter/Recorder

PARTIES:                    STATE OF NEVADA  
          000981    Noxon, Arthur G.

Y  
Y

DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS ... DEFT'S PRO PER MOTION  
FOR LEAVE TO PROCEED IN FORMA PAUPERIS

As to deft's Motion for Leave to Proceed in Forma Pauperis, COURT ORDERED,  
MOTION GRANTED. As to deft's Petition for Writ of Habeas Corpus, arguments  
by Mr. Noxon in support of his response. COURT ORDERED, PETITION IS GRANTED  
TO THE LIMITED EXTENT AS SET FORTH IN THE ORDER, FILED THIS DATE.

CUSTODY (NSP)

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07/13/94    09:00 AM    00    PROPER PERSON MOTION FOR ENLARGEMENT  
                                         OF TIME

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: JULIE HALL, Court Clerk  
          PATSY SMITH, Reporter/Recorder

PARTIES:                    STATE OF NEVADA  
          003988    Langford, Robert L.

Y  
Y

Mr. Langford requested a continuance to respond to the motion. COURT  
ORDERED, matter continued.

NDP

CONTINUED TO:    08/03/94    09:00 AM    01

NEVADA DISTRICT COURT

CLARK COUNTY

FILED

2001 NOV 19 PM 2:49

*Shirley B. Higgins*  
CLERK

JOEL T. BURKETT

PETITIONER,

VS.

DIRECTOR, NEV. DEP'T  
OF PRISONS, ET AL,  
RESPONDENT,

CASE NO:

052190

VII

ARGUMENT IN SUPPORT  
OF PETITION FOR WRIT  
OF HABEAS CORPUS

COMES NOW, PETITIONER, JOEL T. BURKETT, PRO SE  
IN THE ABOVE ENTITLED MATTER SUBMITTING  
ARGUMENT IN SUPPORT OF THE PETITION FOR  
WRIT OF HABEAS CORPUS.

JURISDICTION

PETITIONER IS LEGALLY A NEVADA STATE PRISONER  
SOLELY UNDER AUTHORITY OF NEVADA PURSUANT  
TO HIS CONVICTION, EVEN WHILE HOUSED IN  
THE MONTANA STATE PRISON SYSTEM UNDER  
THE INTERSTATE CORRECTION COMPACT,  
BOATWRIGHT V. DIRECTOR, 849 P.2d 274 (1993)  
AND, HABEAS CORPUS RELIEF IS AVAILABLE TO  
ALLOW THE PRESENTATION OF QUESTION OF

LAW THAT CANNOT OTHERWISE BE REVIEWED, OR THAT ARE SO IMPORTANT AS TO RENDER ORDINARY PROCEDURE INADEQUATE AND JUSTIFY THE EXTRAORDINARY REMEDY, DIRECTOR, DEPT. PRISONS V. ARNDT, 640 P.2d 1318 (1982); STATE EX REL OSBORN V. FOGLIANI, 417 P.2d 148, 149, BOATWRIGHT (SUPRA).

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### ARGUMENT

THE FACTS ARE UNDISPUTABLE, RESPONDENT TRANSFERRED PETITIONER OUT OF STATE PURSUANT TO THE INTERSTATE CORRECTIONS COMPACT IN 1995, INTO THE NEW MEXICO STATE PRISON SYSTEM, IN 1998 WHILE IN NEW MEXICO PETITIONER RECEIVED A PAROLE FROM COUNT ONE OF HIS JUDGEMENT OF CONVICTION OVER TO COUNTS TWO AND THREE, IN SEPTEMBER 2000 PETITIONER WAS RETURN TO NEVADA, FIVE MONTHS LATER, IN JANUARY 2001, PETITIONER WAS ONCE AGAIN TRANSFERRED, INTO THE MONTANA STATE PRISON SYSTEM THIS TIME. PURSUANT TO THE TERMS OF PETITIONER'S JUDGEMENT AND CONVICTION IN COUNTS TWO, THREE, AND FOUR, HE WAS SENTENCE TO

LIFE WITH THE POSSIBILITY OF PAROLE,

HOWEVER, PURSUANT TO N.R.S. 213, 1214, PETITIONER HAS NO POSSIBILITY OF PAROLE, UNLESS "A PHYSICIAN AUTHORIZED TO PRACTICE

MEDICINE IN NEVADA WHO IS ALSO A QUALIFIED PSYCHIATRIST CERTIFIES THAT THE PERSON SO CONVICTED WAS UNDER

OBSERVATION WHILE CONFINED IN A

INSTITUTION OF THE DEPARTMENT OF

PRISONS" N.R.S. 213, 1214, BECAUSE

RESPONDENT HAS HOUSED PETITIONER OUT OF

STATE DENYING HIM ACCESS TO A PSYCHOLOGIST LICENSED TO PRACTICE IN THE STATE OF

NEVADA, OR A PSYCHIATRIST, THE PANEL

PURSUANT TO N.R.S. 213, 1214, WAS WITHOUT

ANY AUTHORITY TO CERTIFY PETITIONER

ON SEPTEMBER 11<sup>TH</sup> 2001 WHEN HE WAS

GIVEN A HEARING BY THOSE BEFORE

THE PANEL IN NEVADA, AS SUCH, THE

POSSIBILITY OF PAROLE AS SET FORTH IN

PETITIONER'S JUDGEMENT AND CONVICTION

DID NOT EXIST AT THE TIME OF PETITIONER

PAROLE HEARING, PURSUANT TO N.R.S. 213, 1214,

AND N.R.S. 213, 1099 THE PAROLE BOARD

HAD NO AUTHORITY TO GRANT PAROLE.

THE NEVADA SUPREME COURT IN, BOATWRIGHT V. DIRECTOR, 849 P.2d 274 (1993) REALIZED, "THAT CONFINEMENT IN ARIZONA PRECLUDES THE POSSIBILITY OF PAROLE GRANTED IN HIS JUDGEMENT OF CONVICTION." THE SAME HOLDS TRUE, WHEREAS HERE, PETITIONER HAS BEEN HOUSED OUT OF STATE ALL BUT FIVE MONTHS OF HIS SENTENCE IN COUNT TWO AND THREE, THE PANEL PURSUANT TO N.R.S. 213.1214 HAS NO AUTHORITY TO CERTIFY PETITIONER, LIKEWISE, THE NEVADA PAROLE BOARD IS WITHOUT AUTHORITY TO GRANT PAROLE N.R.S. 213.1099. WHILE IT IS TRUE; "AS LONG AS THE DEGREE OF CONFINEMENT TO WHICH THE PRISONER IS SUBJECTED... IS WITHIN THE SENTENCE IMPOSED UPON H.M.... THE DUE PROCESS CLAUSE DOES NOT ITSELF SUBJECT AN INMATES TREATMENT BY PRISON AUTHORITIES TO JUDICIAL OVERSIGHT" KENTUCKY DEPT. OF CORRECTIONS V. THOMPSON, 109 S.Ct 1909 (1989). IT NECESSARILY FOLLOWS, WHEREAS HERE, THE DEGREE OF CONFINEMENT IS NOT WITHIN THE SENTENCE IMPOSED, IN THAT PETITIONER WAS NOT SENTENCED TO LIFE WITHOUT THE POSSIBILITY OF PAROLE,

DUE PROCESS ATTACHES, INDEED, "FREEDOM FROM BODILY RESTRAINT HAS ALWAYS BEEN AT THE CORE OF THE LIBERTY PROTECTED BY THE DUE PROCESS CLAUSE FROM ARBITRARY GOVERNMENTAL ACTION."

YOUNGBERG V. REMEO, 102 S.Ct. 2252 (1982);  
FOUCHA V. LOUISIANA, 112 S.Ct. 1780 (1992)

THE COURT IN VITEK V. JONES, 100 S.Ct. 1254 (1980) FOUND THAT THE DUE PROCESS CLAUSE ITSELF CONFERS A LIBERTY INTEREST IN CERTAIN SITUATIONS IRRESPECTIVE OF STATE REGULATIONS, AT THE HEART OF VITEK (SUPRA) THE COURT CONCLUDED THAT AN "INMATE CRIMINAL CONVICTION AND SENTENCE DO NOT AUTHORIZE THE STATE TO CLASSIFY HIM AS MENTALLY ILL" NEAL V. SHIMODA, 131 F.3d 828 (9TH CIR. 1997) LIKEWISE, PETITIONER'S CONVICTION AND SENTENCE DO NOT AUTHORIZE THE STATE TO DENY THE POSSIBILITY OF PAROLE.

THE UNITED STATES SUPREME COURT HAS MADE CLEAR THAT "PRISON OFFICIALS MAY NOT PUNISH AN INMATE BEYOND THE TERMS OF HIS CONFINEMENT SET BY THE COURT" HEWITT V. HELMS, 103 S.Ct. 864-869 (1983)

62  
MOREOVER, "THE DUE PROCESS CLAUSE PROTECTS AGAINST RESTRAINTS OR CONDITIONS OF CONFINEMENT THAT EXCEED THE SENTENCE IN AN UNEXPECTED MANNER" SANDIN V. CONNER, 115 S.C.T. 2300 (1995) HERE, PETITIONER'S SENTENCES HAVE BEEN EXCEEDED IN AN UNEXPECTED MANNER, IN THAT HOUSING PETITIONER OUT OF STATE HAS DENIED ANY POSSIBILITY OF PAROLE, INEFFECT, PETITIONER HAS SERVED THREE (3) YEARS SIX (6) MONTHS FOR NOTHING AS IT CANNOT APPLY TO ANY POSSIBILITY OF PAROLE AS SET FORTH WITHIN HIS JUDGMENT OF CONVICTION.

THE SENTENCES HAVING BEEN VIOLATED PETITIONER IS ENTITLED TO IMMEDIATE RELEASE FROM COUNTS TWO (2) AND THREE (3), WHEREAS HERE, THE COURT IS WITHOUT AUTHORITY TO ENFORCE THE POSSIBILITY OF PAROLE, IN LIGHT OF THE MANDATORY INTENT OF, N.R.S. 213, 1214; AND N.R.S. 213, 1099 WHICH STATES, "THE BOARD SHALL NOT RELEASE ON PAROLE A PRISONER CONVICTED OF AN OFFENSE LISTED IN SUBSECTION 5 UNLESS..." N.R.S. 213, 1214(1) LIKEWISE,



N.R.S. 213, 1099 STATES; "EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND N.R.S. 213, 1214 THE BOARD MAY RELEASE ON PAROLE".....

PETITIONER IS MINDFUL THAT "IT IS BASIC CANON OF STATUTORY CONSTRUCTION THAT USE OF WORD "SHALL" INDICATES MANDATORY INTENT." SALAHUDDIN V. MEAD, 174 F.3D 271 (2ND CIR, 1999) LIKEWISE, THE NEVADA SUPREME COURT HAS STATED "WHEN THE INTENTION OF THE LEGISLATURE IS CLEAR, IT IS THE DUTY OF THIS COURT TO GIVE EFFECT TO SUCH INTENTION AND TO CONSTRUCT THE LANGUAGE OF THE STATUTE SO AS TO GIVE IT FORCE AND NOT NULLIFY ITS MANIFEST PURPOSE" NEVADA DEPT. OF PRISONS V. BOWEN, 745 P.2D AT 699 (NEV. 1987) THE PANEL CANNOT CERTIFY PETITIONER AS HE HAS NOT BEEN UNDER OBSERVATION WHILE CONFINED BY A PHYSICIAN AUTHORIZED TO PRACTICE MEDICINE IN NEVADA, N.R.S. 213, 1214, THEREFORE, THE PAROLE BOARD IS WITHOUT AUTHORITY TO GRANT PAROLE N.R.S. 213, 1099 PETITIONER IS ENTITLED TO RELEASE FROM

COUNTS TWO (2) AND THREE (3)  
WHEREAS HERE, THE COURT CAN NOT  
ORDER ANY POSSIBILITY OF PAROLE,  
AFTER HIS SENTENCES HAVE BEEN VIOLATED.

DATED THIS 10<sup>th</sup> DAY OF November, 2001

RESPECTFULLY SUBMITTED

Paul T. Burdell  
PRO SE PETITIONER

## VERIFICATION OF SERVICE

I, JOEL T. BURKEIT, DO HEREBY CERTIFY  
THAT I DID MAIL A TRUE AND CORRECT  
COPY OF THE ABOVE ARGUMENT IN  
SUPPORT OF THE PETITION FOR WRIT OF  
HABEAS CORPUS TO RESPONDENT ON  
THIS 10<sup>th</sup> DAY OF November 2001

Joel T. Burkett  
PRO SE PETITIONER

Case No. C52190

Dept. No. VII

FILED

2001 NOV 19 PM 2:48

*Shirley L. Hargis*  
CLERK

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

JOEL T. BURKEIT,

Petitioner,

v.

DIRECTOR, NEV. DEPT OF  
PRISON'S

Respondent.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POST-CONVICTION)

INSTRUCTIONS:

(1) This petition must be legibly handwritten or type-written, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence.

1 Failure to raise all grounds in this petition may preclude you  
2 from filing future petitions challenging your conviction and  
sentence.

3 (6) You must allege specific facts supporting the claims  
4 in the petition you file seeking relief from any conviction or  
sentence. Failure to allege specific facts rather than just  
5 conclusions may cause your petition to be dismissed. If your  
petition contains a claim of ineffective assistance of counsel,  
6 that claim will operate to waive the attorney-client privilege  
for the proceeding in which you claim your counsel was  
ineffective.

7  
8 (7) If your petition challenges the validity of your  
conviction or sentence, the original and one copy must be filed  
9 with the clerk of the district court for the county in which  
the conviction occurred. Petitions raising any other claims  
10 must be filed with the clerk of the district court for the  
county in which you are incarcerated. One copy must be mailed  
11 to the respondent, one copy to the attorney general's office,  
and one copy to the district attorney of the county in which  
12 you were convicted or to the original prosecutor if you are  
challenging your original conviction or sentence. Copies must  
13 conform in all particulars to the original submitted for  
filing.

14 PETITION

15 1. Name of institution and county in which you are  
16 presently imprisoned or where and how you are presently  
17 restrained of your liberty: HOUSED OUT OF STATE  
18 IN THE MONTANA STATE PRISON

19 2. Name and location of court which entered the judgment  
20 of conviction under attack: EIGHTH JUDICIAL DISTRICT  
21 COURT, CLARK COUNTY

22 3. Date of judgment of conviction: JAN 20 1981

23 4. Case number: 052190

24 5. (a) Length of sentence: STATEMENT OF CASE ATTACHED

25 (b) If sentence is death, state any date upon which  
26 execution is scheduled: \_\_\_\_\_

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

1 (c) Result: DEANED

2 (d) Date of Result: APRIL 21, 1983

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

4 14. If you did not appeal, explain briefly why you did  
5 not: N/A

6  
7 15. Other than a direct appeal from the judgment of  
8 conviction and sentence, have you previously filed any  
9 petitions, applications or motions with respect to this  
10 judgment in any court, state or federal? Yes ✓ No \_\_\_\_\_.

11 16. If your answer to No. 15 was "yes," give the  
12 following information:

13 (a) (1) Name of Court: FIRST JUDICIAL DISTRICT

14 (2) Nature of proceeding: WRIT OF

15 HABEAS CORPUS POST-CONVICTION

16  
17 (3) Grounds raised: INEFFECTIVE COUNSEL

18 BOTH AT TRIAL AND DIRECT APPEAL

19  
20 (4) Did you receive an evidentiary hearing on  
21 your petition, application or motion? Yes ✓ No \_\_\_\_\_

22 (5) Result: DEANED

23 (6) Date of Result: AUGUST 5, 1988

24 (7) If known, citations of any written opinion or  
25 date of orders entered pursuant to each result: 86-01306H

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

3 (1) Name of Court: EIGHTH JUDICIAL DISTRICT

4 (2) Nature of proceeding: HABEAS CORPUS

5 (3) Grounds raised: MISTAKE IN SENTENCING

6 (4) Did you receive an evidentiary hearing on  
7 your petition, application or motion? Yes \_\_\_\_\_ No ✓

8 (5) Result: GRANTED PETITION

9 (6) Date of Result: FEB 28 1994

10 (7) If known, citations or any written opinion or  
11 date of orders entered pursuant to each result: FEB 28  
12 1994

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

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

19 (1) First petition, application or motion?

20 Yes \_\_\_\_\_ No \_\_\_\_\_

21 Citation or date of decision: STATEMENT OF CASE

22 (2) Second petition, application or motion?

23 Yes \_\_\_\_\_ No \_\_\_\_\_

24 Citation or date of decision: STATEMENT OF CASE

25 (3) Third or subsequent petitions, applications  
26 or motions? Yes \_\_\_\_\_ No \_\_\_\_\_

27 Citation or date of decision: STATEMENT OF CASE

1 e. If you did not appeal from the adverse action on  
2 any petition, application or motion, explain briefly why you  
3 did not. (You must relate specific facts in response to this  
4 question. Your response may be included on paper which is  
5 8 1/2 x 11 inches attached to the petition. Your response may  
6 not exceed five handwritten or typewritten pages in length.)  
7 N/A  
8

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

13 a. Which of the grounds is the same: NONE  
14

15 b. The proceedings in which these grounds were raised:  
16 N/A  
17

18 c. Briefly explain why you are again raising these  
19 grounds. (You must relate specific facts in response to this  
20 question. Your response may be included on paper which is  
21 8 1/2 x 11 inches attached to the petition. Your response may  
22 not exceed five handwritten or typewritten pages in length.)  
23 N/A

24 18. If any of the grounds listed in Nos. 23(a), (b), (c)  
25 and (d), or listed on any additional pages you have attached,  
26 were not previously presented in any other court, state or  
27 federal, list briefly what grounds were not so presented, and  
28 give your reasons for not presenting them. (You must relate



1 specific facts in response to this question. Your response may  
2 be included on paper which is 8 1/2 by 11 inches attached to  
3 the petition. Your response may not exceed five handwritten or  
4 typewritten pages in length.)

5 SEE ATTACHED HERETO QUESTION 18: AT PAGE 11

6 19. Are you filing this petition more than 1 year  
7 following the filing of the judgment of conviction or the  
8 filing of a decision on direct appeal? If so, state briefly  
9 the reasons for the delay. (You must relate specific facts in  
10 response to this question. Your response may be included on  
11 paper which is 8 1/2 x 11 inches attached to the petition.

12 Your response may not exceed five handwritten or typewritten  
13 pages in length.)

14 THE ISSUE RAISED HEREIN COULD  
15 NOT BE RAISED UNTIL PETITIONER'S FIRST PAROLE DATE AT  
16 WHICH TIME THE VIOLATION BECAME RIPE.

17 20. Do you have any petition or appeal now pending in any  
18 court, either state or federal, as to the judgment under  
19 attack? Yes \_\_\_\_\_ No ✓.

20 If yes, state what court and the case number: \_\_\_\_\_

21 21. Give the name of each attorney who represented you in  
22 the proceeding resulting in your conviction and on direct  
23 appeal: DO NOT HAVE AT THIS TIME

24 22. Do you have any future sentences to serve after you  
25 complete the sentence imposed by the judgment under attack?

26 Yes \_\_\_\_\_ No ✓. If yes, specify where and  
27 when it is to be served, if you know: \_\_\_\_\_

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

(a) Ground one: DENIAL OF DUE PROCESS

## VIOLATION OF 14TH AMENDMENT U.S. CONSTITUTION

Supporting FACTS (Tell your story briefly without citing cases or law): SEE SUPPORTING FACTS ATTACHED  
HEREIN

(b) Ground two:

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

(c) Ground three:

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

(d) Ground four:

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

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

QUESTION 18:

PETITIONER CONTENTS THAT THE ISSUE RAISED HEREIN HAS NOT BEEN RAISED IN ANY OTHER COURT, STATE OR FEDERAL, LIKEWISE, PETITIONER CONTENTS THAT THE ISSUE COULD NOT BE RAISED UNTIL THE DATE OF HIS FIRST PAROLE HEARING, AT WHICH TIME THE SENTENCE WAS VIOLATED, AND THE ISSUE RIFE FOR COURT.

PETITIONER ALSO CLAIMS THAT HE HAS BEEN HOUSED OUT OF STATE ALL BUT FIVE (5) MONTHS OF THE SENTENCE AT ISSUE WITHOUT ACCESS TO ANY NEVADA LAW. AND DID NOT KNOW THAT A CONSTITUTIONAL VIOLATION WAS AT ISSUE UNTIL FOUR MONTHS PRIOR TO THE FILING OF THIS PETITION, AT WHICH TIME A FRIEND SENT HIM COPIES OF THE NEVADA STATUTES. AT ISSUE.

A MISTAKE IN HIS JUDGEMENT OF  
CONVICTION, THE COURT GRANTED THE  
PETITION ON FEBRUARY 28<sup>TH</sup> 1994.

IN 1999, PETITIONER FILED A WRIT  
OF HABEAS CORPUS IN THE EIGHTH  
JUDICIAL DISTRICT COURT, THE  
PETITION WAS DENIED, PETITIONER  
APPEALED TO THE NEVADA SUPREME  
COURT IN CASE NO: 34767, THE  
APPEAL WAS DENIED IN JULY  
OF 2001.

---

## "SUPPORTING FACTS"

GROUND: 1, PETITIONER WAS TRANSFERRED OUT OF STATE PURSUANT TO THE INTERSTATE CORRECTIONS COMPACT IN 1995, INTO THE NEW MEXICO STATE PRISON SYSTEM, IN 1998 WHILE IN NEW MEXICO PETITIONER WAS GRANTED A PAROLE FROM COUNT ONE OF HIS JUDGEMENT OF CONVICTION OVER TO COUNTS (2) TWO AND (3) THREE. PURSUANT TO THE TERMS OF PETITIONERS JUDGEMENT OF CONVICTION IN COUNTS TWO (2) AND THREE (3), HE WAS SENTENCED TO "LIFE WITH THE POSSIBILITY OF PAROLE". PETITIONER WAS RETURN TO NEVADA FROM NEW MEXICO IN SEPTEMBER 2000. IN JANUARY 2001, PETITIONER WAS ONCE MORE TRANSFERRED OUT OF STATE TO THE MONTANA STATE PRISON SYSTEM. ON SEPTEMBER 11TH 2001 PETITIONER WAS CONTACTED BY A PAROLE PURSUANT TO NEVADA STATUTE; N.R.S. 213.1214 THE PETITIONER

HAS NO POSSIBILITY OF PAROLE UNLESS"  
A PHYSICIAN AUTHORIZED TO  
PRACTICE MEDICINE IN NEVADA WHO  
IS ALSO A QUALIFIED PSYCHIATRIST  
CERTIFIES THAT THE PERSON SO  
CONVICTED WAS UNDER OBSERVATION  
WHILE CONFINED IN AN INSTITUTION  
OF THE DEPARTMENT OF PRISONS.  
BECAUSE PETITIONER HAS BEEN HOUSED  
OUT OF STATE ALL BUT FIVE MONTHS  
OF HIS SENTENCE, THE PANEL  
HAD NO AUTHORITY TO CERTIFY  
HIM. LIKEWISE, PURSUANT TO  
NEVADA STATUTE THE PAROLE BOARD  
HAS NO AUTHORITY TO GRANT  
PETITIONER A PAROLE BECAUSE HE  
COULD NOT BE CERTIFIED. THEREFORE,  
IT IS PETITIONER'S CONTENTION  
THAT COUNT TWO AND THREE OF  
HIS JUDGEMENT OF CONVICTION,  
"LIFE WITH THE POSSIBILITY OF PAROLE"  
HAVE BEEN VIOLATED, IN VIOLATION  
OF THE FOURTEENTH AMENDMENT  
OF THE UNITED STATES CONSTITUTION  
DUE PROCESS OF LAW, AS WELL  
AS NEVADA LAWS.

AT THE TIME OF PETITIONER'S  
HARVEY HEARING THE POSSIBILITY OF  
HARVEY DID NOT EXIST.  
IT IS PETITIONER'S CONTENTION THAT  
THE SENTENCE, HAVING BEEN  
VIOLATED, IT CAN NOT BE CORRECTED,  
IN THAT THE COURT CAN NOT  
ORDER A HARVEY HEARING WITH THE  
POSSIBILITY OF HARVEY BECAUSE  
PURSUANT TO NEVADA STATUTE  
THE HARVEY BOARD HAS NO  
AUTHORITY TO GRANT HARVEY, NOR  
CAN PETITIONER BE CERTIFIED  
PURSUANT TO NEVADA STATUTE,  
AT THIS TIME.

## RELIEF Sought

WHEREFORE, PETITIONER, JOEL T. BURKETT  
RESPECTFULLY REQUESTS THAT THE COURT  
GRANT THE FOLLOWING RELIEF;

(1) ISSUE AN ORDER GRANTING  
THE PETITION FOR WRIT OF HABEAS  
CORPUS;

(2) ISSUE AN ORDER DISMISSING  
THE SENTENCES IN COUNT ~~ONE~~  
TWO AND THREE OF PETITIONER'S  
JUDGEMENT OF CONVICTION;

(3) GRANT PETITIONER THE JUST  
RELIEF TO WHICH HE IS ENTITLED IN  
THESE PROCEEDINGS.

DATED THIS 10<sup>th</sup> OF November, 2001,

RESPECTFULLY SUBMITTED,

Joel Burkett  
PRO SE PETITIONER



FILED

2001 DEC 24 PM 3:58

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Shirley B. Loring*  
CLERK

JOEL BURKETT

PETITIONER,

VS.

THE STATE OF NEVADA

RESPONDENT,

CASE NO: C52190

DEPT NO: 711

MOTION TO APPEAR

1-24-02

COMES NOW JOEL BURKETT, PRO SE, IN THE  
ABOVE ENTITLED MATTER RESPECTFULLY REQUESTING  
THAT HE BE PRESENT IN COURT FOR  
THE JAN. 24TH 2002 HEARING.

THIS COURT ISSUED A ORDER IN THE ABOVE  
ENTITLED MATTER ON NOVEMBER 29TH 2001,  
INWHICH IT ORDERED RESPONDENT TO  
RESPOND TO THE PETITION WITHIN 45 DAYS.

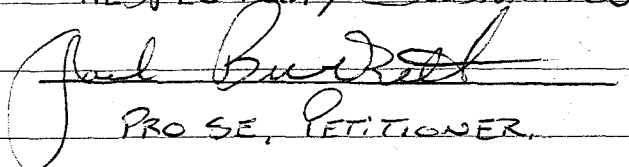
IT WAS FURTHER ORDERED THAT THE  
CASE BE PLACED ON THE COURTS

CALENDAR FOR JAN 24TH 2002. FOR  
FUTHER PROCEEDINGS.

PETITIONER RESPECTFULLY REQUESTS THAT  
THE COURT ISSUE AN ORDER DIRECTING  
RESPONDENT TO BRING PETITIONER TO  
THE JAN 24TH 2002 HEARING. PETITIONER  
CONTENDS THAT HE HIS ENTITLED TO BE  
PRESENT AND THAT PURSUANT TO  
WHITE V. STATE, 771 P.2D 152 (WEN 1989)  
THE COURT HELD THAT "THE DISTRICT COURT  
ABUSED ITS DISCRETION WHEN IT  
CONDUCTED A HEARING ON THE WRIT OF  
HABEAS CORPUS WITHOUT PETITIONER  
BEING PRESENT".

IN LIGHT OF THE ABOVE CASE, PETITIONER  
RESPECTFULLY REQUESTS THAT HE BE  
PRESENT FOR ANY HEARING IN THIS MATTER.

DATED THIS 20<sup>th</sup> DAY OF DECEMBER, 2001

RESPECTFULLY SUBMITTED,  
  
PRO SE, PETITIONER.

PROOF OF SERVICE

I, JOEL BURKETT, DO HEREDY CERTIFY  
THAT I DID MAIL A COPY OF THE  
ABOVE MOTION TO APPEAR TO THE  
RESPONDENT ON THIS 20<sup>th</sup> DAY OF December 2001.

Joel Burkett  
PRO SE PETITIONER

1 **ORDR**

2 **District Court** **FILED**  
3 **Clark County, Nevada**

Nov 30 8 19 PM '01

4 **JOEL BURKETT,**

5 **Petitioner,**

*Shirley B. Longoria*  
CLERK

6  
7 **vs**

Case No: C52190

8 Dept No: 7

9 **THE STATE OF NEVADA,**

10 **Respondent.**

**ORDER RE PETITION FOR  
WRIT OF HABEAS CORPUS**

11  
12 Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on  
13 NOVEMBER 19, 2001. The Court has reviewed the petition and has determined that a  
14 response would assist the Court in determining whether Petitioner is illegally imprisoned and  
15 restrained of his/her liberty, and good cause appearing therefor,

16 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of  
17 this Order, answer or otherwise respond to the petition and file a return in accordance with  
18 the provisions of NRS 34.360 to 34.830, inclusive.

19 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's  
20 calendar on the 24 day of Jan, 2002, at the hour of  
21 9 o'clock A. M. for further proceedings.

22 **DATED** this 29 day of Nov, 2001.

23  
24 **MICHAEL L. DOUGLAS**

25  
26 **DISTRICT COURT JUDGE**

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

JAN 23 5 00 PM '02

Shirley B. Pangione  
CLERK

JOEL BURKETT,  
PETITIONER

CASE NO: C52190

VS.

DEPT NO: 11

THE STATE OF NEVADA  
RESPONDENT

"NOTICE"

JOEL BURKETT PRO SE PETITIONER IN  
THE ABOVE ENTITLED MATTER DOES  
HEREBY GIVE NOTICE THAT HE HAS  
BEEN TRANSFERRED BACK TO NEVADA  
ON JAN 16TH 2002 AND IS HOUSED  
AT;

JOEL BURKETT 16111

P.O. BOX 1989

ELY, NEVADA, 89301

PETITIONER ALSO WISHES TO INFORM  
THE COURT THAT HE HAS NOT  
RECEIVED AN ANSWER FROM  
RESPONDENTS, WHICH MAY BE DUE  
TO THE MOVE BACK TO NEVADA.

CLERK

JAN 23 2002

RECEIVED

PETITIONER IS UNABLE TO FILE A  
REPLY IF AN ANSWER HAS BEEN  
FILED, AS HE HASNT RECEIVED A COPY.

LIKEWISE, PETITIONER WAS UNABLE TO  
SERVE RESPONDENT WITH A COPY  
OF THIS NOTICE AS HE HASNT  
ACCESS TO A PHOTO COPIER AT  
THIS TIME.

DATED THIS 20TH DAY OF JAN,  
2002,

RESPECTFULLY

Joel Buckett

FILED

NEVADA DISTRICT COURT FEB 19 10 58 AM '02

CLARK COUNTY

CLERK

JOEL T. BURKETT

CASE NO: 052190

PETITIONER,

DEPT NO: 11

VS.

2-26-07

THE STATE OF NEVADA

MOTION FOR LEAVE OF

RESPONDENT,

THE COURT TO AMEND

PETITION FOR WRIT OF

HABEAS CORPUS

COMES NOW, JOEL T. BURKETT, PRO SE IN  
THE ABOVE ENTITLED MATTER RESPECTFULLY  
SEEKING LEAVE OF THE COURT TO FILE  
A AMEND PETITION FOR WRIT OF  
HABEAS CORPUS SUBMITTED HERE WITH,  
THIS MOTION IS MADE AND BASED  
UPON THE FOLLOWING FACT.

PETITIONER CAUSED TO BE FILED THE ABOVE ENTITLED PETITION FOR WRIT OF HABEAS CORPUS ON NOVEMBER 19TH 2001, AT WHICH TIME PETITIONER WAS HOUSED OUT OF STATE PURSUANT TO THE INTERSTATE CORRECTION COMPACT. IN THE PETITION AT QUESTION 18, THE COURT WAS INFORMED THAT PETITIONER HAD NO ACCESS TO NEVADA LAW. AS SUCH PETITIONER HAS FAILED TO RAISE A CONSTITUTIONAL ISSUE OF DOUBLE JEOPARDY ON HIS SENTENCE ALTHOUGH IT IS AT THE DISCRETION OF THE COURT TO GRANT OR DENY A MOTION FOR LEAVE OF THE COURT TO AMEND A PETITION FOR WRIT OF HABEAS CORPUS, THE COURT SHOULD ALLOW PETITIONER TO DO SO WHEREAS HERE HE HAD NO ACCESS TO NEVADA LAW AT THE TIME THE FIRST PETITION WAS FILED.

DATED THIS 10TH DAY OF  
FEBRUARY 2002

RESPECTFULLY SUBMITTED

Jack T. Brerett  
PRO SE PETITION



PROSE OF SERVICE

I, JOEL T. BURKETT DO HEREBY  
CERTIFY THAT I DID MAIL A TRUE  
AND CORRECT COPY OF THE ABOVE  
MOTION FOR LEAVE TO AMEND THE  
PETITION FOR WRIT OF HABEAS CORPUS  
TO RESPONDENT ON THIS 10TH DAY OF  
FEBRUARY 2002

Joel T. Burkett  
PROSE PETITIONER

FILED

NEVADA DISTRICT COURT

CLARK COUNTY

FEB 13 10 56 AM '02

*Shirley L. Higgins*  
CLERK

JOEL T. BURKETT | CASE NO: C52190

PETITIONER, | DEPT. NO: 11

VS.

2-26-02

SUPPLEMENTAL ARGUMENT  
THE STATE OF NEVADA | IN SUPPORT OF AMENDED  
RESPONDENT, PETITION FOR WRIT OF  
HABEAS CORPUS

COMES NOW, JOEL T. BURKETT, PRO SE  
PETITIONER IN THE ABOVE ENTITLED MATTER  
RESPECTFULLY SUBMITTING A SUPPLEMENTAL  
ARGUMENT IN SUPPORT OF THE AMENDED  
PETITION FOR WRIT OF HABEAS CORPUS.

ARGUMENT

GROUND ONE: IN THE INTEREST OF BRIEFNESS  
PETITIONER INCORPORATES HEREIN BY  
REFERING THERETO THE ORIGINAL "ARGUMENT  
IN SUPPORT OF THE PETITION FOR WRIT  
OF HABEAS CORPUS FILED NOV 19TH 2001.  
IN SUPPORT OF GROUND ONE OF THE  
PETITION.

Ground THREE:

Ground TWO: IN COUNT ONE PETITIONER WAS FOUND GUILTY AND SENTENCE TO (15) FIFTEEN YEARS FOR THE USE OF A DEADLY WEAPON IN THE COMMISSION OF A ROBBERY PURSUANT TO N.R.S. 193.165 LIKEWISE, PETITIONER WAS FOUND GUILTY AND SENTENCE TO LIFE WITH THE POSSIBILITY OF PAROLE IN COUNT TWO FOR THE USE OF A DEADLY WEAPON IN THE COMMISSION OF FIRST DEGREE KIDNAPPING.

AT TRIAL IT WAS THE STATES CONTENTION THAT THE VICTIM WAS KIDNAPED AT KNIFE POINT BY A CODEFENDENT AND HELD IN A CAR WHILE PETITIONER STAYED BACK IN THE STORE ALONE TO TAKE THE MONEY, SEE (TRIAL TRANSCRIPT) T.T. Pg 440. IN 28-32; T.T. Pg 441 IN. 1-12. THUS THE

STATE ARGUED THE USE OF THE WEAPON WAS AT THE SAME TIME AND PLACE FOR BOTH THE ROBBERY, AND KIDNAPPING.

THE NEVADA SUPREME COURT IN, RABY V. STATE 544 P.2D 895 (1976) HELD THAT, "THE USE OF A DEADLY

WEAPON IN THE COMMISSION OF A CRIME IS NOT A SEPARATE CRIMINAL OFFENCE" THE COURT WENT ON TO ANNUL FIVE OF RABY'S CONVICTIONS FOR THE USE OF A FIREARM. THE COURT IN, NEVADA DEPT. OF PRISONS V. BOWEN, 745 P.2d 697 (NEV 1987) REAFFIRMED ITS HOLDING IN, RABY (SUPRA)

THERE IS NO QUESTION THAT BY FINDING PETITIONER GUILTY AND SENTENCING HIM FOR THE USE OF A DEADLY WEAPON IN BOTH COUNT ONE, ROBBERY, AND COUNT TWO KIDNAPPING, PETITIONER HAS BEEN TWICE PUT IN JEOPARDY FOR THE SAME OFFENSE. RABY (SUPRA)

THE UNITED STATES SUPREME COURT IN, JONES V. THOMAS, 491 U.S. 371 (1989) ADDRESS THE CONSTITUTIONAL QUESTION AS TO WHAT REMEDY IS REQUIRED TO CURE THE ADMITTED DOUBLE JEOPARDY VIOLATION IN THE MULTIPLE PUNISHMENTS CONTEXT. AS IN, THOMAS (SUPRA) PETITIONER WAS SENTENCE TO (15) FIFTEEN YEARS, AND A LIFE TERM.

THE COURT IN THOMAS (SUPRA) DISMISSED THE (15) FIFTEEN YEAR TERM CREDITING THE TIME ALREADY SERVED AGAINST THE LIFE SENTENCE LEFT STANDING.

PETITIONER SEEKS THE SAME HERE, AND CONTENTS THAT TO DO OTHERWISE WOULD AMOUNT TO A DENIAL OF DUE PROCESS IN VIOLATION OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION. WHERE AS HERE, PETITIONER WAS DENIED A CHANCE TO EVERY PAROLE FROM THE 15 YEAR TERM FOR THE USE OF THE WEAPON IN COUNT ONE DUE TO A MISTAKE IN PETITIONER'S JUDGEMENT OF CONVICTION, THE NEVADA DEPT. OF PRISON'S RAN ALL OF PETITIONER'S SENTENCES TOGETHER. AND IN 1985 PETITIONER WAS TRANSFERRED INTO THE CALIFORNIA STATE PRISON, FOLSOM, IN 1986 PETITIONER WAS RETURN TO NEVADA, IN 1987 PETITIONER WAS AGAIN TRANSFERRED, THIS TIME INTO THE FEDERAL PRISON SYSTEM, THAT SAME YEAR A PAROLE HEARING WAS HELD FOR PETITIONER WHILE HE WAS IN THE FEDERAL SYSTEM,

BECAUSE PETITIONER WAS OUT OF STATE PAROLE COULD NOT BE GRANTED PURSUANT TO N.R.S. 213.1214, AGAIN IN 1991, WHILE STILL IN THE FEDERAL SYSTEM A PAROLE HEARING WAS HELD, AND AGAIN PAROLE COULD NOT BE GRANTED PURSUANT TO N.R.S. 213.1214.

IN 1993, PETITIONER WAS RETURN TO NEVADA, A FEW MONTHS LATER PETITIONER WAS FOR THE FIRST TIME TAKEN BEFORE THE PANEL PURSUANT TO N.R.S. 213.1214 AND THE PANEL INFORMED HIM THAT THEY COULD NOT PASS HIM, AS HE HAD BEEN OUT OF STATE AND JUST RETURN. PAROLE WAS AGAIN DENIED PURSUANT TO N.R.S. 213.1099 AND N.R.S. 213.1214.

---

FOR (15) YEARS PETITIONER WAS DENIED A CHANCE TO PAROLE, CLEARLY PURSUANT TO SANDIN V. CONNER, 115 S.C.T. 2300 (1995) "THE DUE PROCESS CLAUSE PROTECTS AGAINST RESTRAINTS OR CONDITIONS OF CONFINEMENT THAT EXCEED THE SENTENCE IN

AN UNEXPECTED MANNER" PETITIONER  
CONTENDS, THAT BECAUSE HE WAS  
DENIED ANY CHANCE TO PAROLE FROM  
COUNT ONE FOR 15 YEARS THE ONLY  
JUST COURSE TO PROCEED IS TO  
CREDIT THAT TIME OVER TO COUNTS  
TWO (2) AND FOUR (4) AS THE COURT  
DID IN JONES V. THOMAS, 491 U.S. 371  
(1989).

PETITIONER RESPECTFULLY SUBMITS THAT  
DUE TO THE DENIAL OF ANY FORM OF  
DUE PROCESS HE HAS BEEN DENIED  
A CHANCE TO PAROLE FOR (22) YEARS  
AND IS ENTITLED TO RELIEF.

DATED THIS 10TH DAY OF FEBRUARY 2002

---

RESPECTFULLY SUBMITTED

Paul Beckett  
PRO SE PETITIONER

## PROOF OF SERVICE

I, JOEL T. BURKETT, do HEREBY CERTIFY  
THAT I DID MAIL A TRUE AND  
CORRECT COPY OF THE ABOVE  
MOTION TO RESPONDENT ON THIS 10TH  
DAY OF FEBRUARY 2002

Joel Burkett  
PROSE PETITIONER



1 Case No. C.52190

2 Dept. No. 11

3  
4  
5  
6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF CLARK

8  
9 JOEL T. BURKEIT,

10 Petitioner,

11 v.

12 E.K. Mc DANIEL,

13 Respondent.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POST-CONVICTION)

14 INSTRUCTIONS:

15 (1) This petition must be legibly handwritten or type-  
16 written, signed by the petitioner and verified.

17 (2) Additional pages are not permitted except where noted  
18 or with respect to the facts which you rely upon to support  
19 your grounds for relief. No citation of authorities need be  
20 furnished. If briefs or arguments are submitted, they should  
21 be submitted in the form of a separate memorandum.

22 (3) If you want an attorney appointed, you must complete  
the Affidavit in Support of Request to Proceed in Forma  
Pauperis. You must have an authorized officer at the prison  
complete the certificate as to the amount of money and  
securities on deposit to your credit in any account in the  
institution.

23 (4) You must name as respondent the person by whom you are  
24 confined or restrained. If you are in a specific institution  
25 of the department of prisons, name the warden or head of the  
26 institution. If you are not in a specific institution of the  
department but within its custody, name the director of the  
department of prisons.

27 (5) You must include all grounds or claims for relief  
28 which you may have regarding your conviction or sentence.

1 Failure to raise all grounds in this petition may preclude you  
2 from filing future petitions challenging your conviction and  
sentence.

3 (6) You must allege specific facts supporting the claims  
4 in the petition you file seeking relief from any conviction or  
sentence. Failure to allege specific facts rather than just  
5 conclusions may cause your petition to be dismissed. If your  
petition contains a claim of ineffective assistance of counsel,  
6 that claim will operate to waive the attorney-client privilege  
for the proceeding in which you claim your counsel was  
ineffective.

7  
8 (7) If your petition challenges the validity of your  
conviction or sentence, the original and one copy must be filed  
9 with the clerk of the district court for the county in which  
the conviction occurred. Petitions raising any other claims  
10 must be filed with the clerk of the district court for the  
county in which you are incarcerated. One copy must be mailed  
11 to the respondent, one copy to the attorney general's office,  
and one copy to the district attorney of the county in which  
12 you were convicted or to the original prosecutor if you are  
challenging your original conviction or sentence. Copies must  
13 conform in all particulars to the original submitted for  
filing.

14 PETITION

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

18 ELY STATE PRISON

19 2. Name and location of court which entered the judgment  
20 of conviction under attack: EIGHTH JUDICIAL

21 DISTRICT COURT CLARK COUNTY

22 3. Date of judgment of conviction: JAN. 20, 1981

23 4. Case number: C52190

24 5. (a) Length of sentence: SEE ORIGINAL PETITION

25 (b) If sentence is death, state any date upon which  
26 execution is scheduled: \_\_\_\_\_

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

Yes \_\_\_\_\_ No ✓. If "yes," list crime, case number and sentence being served at this time: \_\_\_\_\_

7. Nature of offense involved in conviction being challenged: SEE ORIGINAL PETITION FILED

Nov 1974 2001

8. What was your plea? (check one)

(a) Not guilty ✓

(b) Guilty \_\_\_\_\_

(c) Nolo contendere \_\_\_\_\_

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

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

(a) Jury ✓

(b) Judge without a jury: \_\_\_\_\_

11. Did you testify at the trial? Yes ✓ No \_\_\_\_\_

12. Did you appeal from the judgment of conviction?

Yes ✓ No \_\_\_\_\_

13. If you did appeal, answer the following:

(a) Name of court: SEE ORIGINAL PETITION

(b) Case number or citation: 13600

(c) Result:

denied

(d) Date of Result:

APR. 21 1983

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

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

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

16. If your answer to No. 15 was "yes," give the following information:

(a) (1) Name of Court: SEE ORIGINAL PETITION

(2) Nature of proceeding: SEE ORIGINAL PETITION

(3) Grounds raised: SEE ORIGINAL PETITION

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

(5) Result:

denied

(6) Date of Result:

AUG. 5 1988

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: 76-01306H

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

3 (1) Name of Court: EIGHTH JUDICIAL DISTRICT

4 (2) Nature of proceeding: HABEAS CORPUS

5 (3) Grounds raised: MISTAKE IN SENTENCING

6 (4) Did you receive an evidentiary hearing on  
7 your petition, application or motion? Yes \_\_\_\_\_ No ✓

8 (5) Result: GRANTED

9 (6) Date of Result: FEB 28, 1994

10 (7) If known, citations or any written opinion or  
11 date of orders entered pursuant to each result: FEB 28  
12 1994

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

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

19 (1) First petition, application or motion?

20 Yes \_\_\_\_\_ No \_\_\_\_\_

21 Citation or date of decision: SEE ORIGINAL PETITION

22 (2) Second petition, application or motion?

23 Yes \_\_\_\_\_ No \_\_\_\_\_

24 Citation or date of decision: SEE ORIGINAL PETITION

25 (3) Third or subsequent petitions, applications .  
26 or motions? Yes \_\_\_\_\_ No \_\_\_\_\_

27 Citation or date of decision: SEE ORIGINAL PETITION

1 e. If you did not appeal from the adverse action on  
2 any petition, application or motion, explain briefly why you  
3 did not. (You must relate specific facts in response to this  
4 question. Your response may be included on paper which is  
5 8 1/2 x 11 inches attached to the petition. Your response may  
6 not exceed five handwritten or typewritten pages in length.)

7 N/A

8  
9 17. Has any ground being raised in this petition been  
10 previously presented to this or any other court by way of  
11 petition for habeas corpus, motion or application or any other  
12 post-conviction proceeding? If so, identify: identify:

13 a. Which of the grounds is the same: \_\_\_\_\_

14 NONE

15 b. The proceedings in which these grounds were raised:

16 N/A

17 c. Briefly explain why you are again raising these  
18 grounds. (You must relate specific facts in response to this  
19 question. Your response may be included on paper which is  
20 8 1/2 x 11 inches attached to the petition. Your response may  
21 not exceed five handwritten or typewritten pages in length.)

22 N/A

23 18. If any of the grounds listed in Nos. 23(a), (b), (c)  
24 and (d), or listed on any additional pages you have attached,  
25 were not previously presented in any other court, state or  
26 federal, list briefly what grounds were not so presented, and  
27 give your reasons for not presenting them. (You must relate

specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

SEE ATTACHED HERETO QUESTION # 18

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

SEE ATTACHED HERETO QUESTION # 19

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

If yes, state what court and the case number: \_\_\_\_\_

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: DO NOT HAVE AT THIS TIME

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes \_\_\_\_\_ No ✓. If yes, specify where and when it is to be served, if you know: \_\_\_\_\_

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

(a) Ground one: DEFICIENCY OF DUE PROCESS

14TH AMENDMENT U.S. CONSTITUTION

Supporting FACTS (Tell your story briefly without citing cases or law): SEE ORIGINAL PETITION FILED HEREIN  
ON NOV 19TH 2001 SUPPORTING FACTS

(b) Ground two: double jeopardy

## 5th AMENDMENT U.S. CONSTITUTION

Supporting FACTS (Tell your story briefly without citing cases or law): SEE SUPPORTING FACTS ATTACHED  
HERE

(c) Ground three: DENIAL OF DUE PROCESS

14TH AMENDMENT U.S. CONSTITUTION

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

(d) Ground four:

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

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



1 EXECUTED at Ely State Prison on the 10<sup>th</sup> day  
2 of FEBRUARY, 2002.

3  
4 James T. Brudett  
Signature of Petitioner

# 1611

5 P.O. Box 1989  
Address

6  
7 Ely, NEV. 89301

8  
9 Signature of Attorney (if any)

10 Attorney for Petitioner

11 Address

12  
13  
14 VERIFICATION

15 Under penalty of perjury, the undersigned declares that he  
16 is the petitioner named in the foregoing petition and knows the  
17 contents thereof; that the pleading is true of his own  
18 knowledge, except as to those matters stated on information and  
19 belief, and as to such matters he believes them to be true.

20  
21 James T. Brudett  
Signature of Petitioner

22 Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, JOEL T. BURKETT, hereby certify pursuant  
to N.R.C.P. 5(b), that on the 10TH day of FEBRUARY,  
2002, I mailed a true and correct copy of the foregoing  
PETITION FOR WRIT OF HABEAS CORPUS addressed to:

E.K. McDaniel  
Respondent prison or jail official

P.O. Box 1979  
Address

ELY, NEV. 89301

Nevada Attorney General  
100 N Carson St  
Carson City NV 89701-4717

REX BELL  
District Attorney of County of Conviction

200 SOUTH 3RD ST / AS VEGAS NEV  
Address 89101

JOEL T. BURKETT  
Signature of Petitioner

PETITIONER CONTENDS THE SAME REASONS AS UNDER GROUND TWO.

### GROUND THREE:

RESIDENT.

BEING TRANSFERRED ALL OVER BY

LIKewise MOST OF PETITIONERS LEGAL AFFAIRS HAVE BEEN LOST DUE TO

MOST OF HIS SENTENCE.

HAS BEEN HOUSED OUT OF STATE

ACCESS TO NEVADA LAW AS PETITIONER

THIS WAS DUE TO THE DENIAL OF

RAISED IN ANY OTHER PROCEEDINGS AND

RAISED IN GROUND TWO WAS NEVER

PETITIONER CONTENDS THAT THE ISSUE

### GROUND TWO, QUESTION 18.

QUESTION 18.

PETITION FOR WRIT OF HABEAS CORPUS

INCORPORATES HEREIN THE ORIGINAL

QUESTION 18: AS TO GROUND ONE, PETITIONER

### QUESTION 18

QUESTION # 19

GROUND ONE:

AS TO GROUND ONE PETITIONER  
INCORPORATES THE ORIGINAL PETITION  
FOR WRIT OF HABEAS CORPUS FOR  
QUESTION 19.

---

GROUND TWO: QUESTION 19;

PETITIONER CONTENTS THE LOSS OF  
HIS LEGAL PAPERS AND THE DENIAL  
OF ACCESS TO NEVADA LAW FOR  
ANY DELAY IN FILING ANY SOONER.  
LIKEWISE, PETITIONER WILL CLAIM  
A FUNDAMENTAL MISCARRIAGE OF  
JUSTICE SHOULD THE DELAY  
BECOME AN ISSUE.

---

GROUND THREE:

PETITIONER CONTENTS THE SAME REASONS  
UNDER GROUND TWO APPLY TO  
GROUND THREE.

---

## SUPPORTING FACTS

GROUND ONE: IN THE INTEREST OF BRIEFNESS PETITIONER INCORPORATES HEREIN BY REFERRING TO THE ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS AND ITS SUPPORTING FACTS TO SUPPORT GROUND ONE.

---

GROUND TWO: IN COUNT ONE PETITIONER WAS FOUND GUILTY FOR THE USE OF A DEADLY WEAPON IN THE COMMISSION OF A ROBBERY, AND SENTENCE TO (15) FIFTEEN YEARS.

IN COUNT TWO (2) PETITIONER WAS AGAIN FOUND GUILTY OF THE USE OF A DEADLY WEAPON IN THE COMMISSION OF FIRST DEGREE KIDNAPPING AND SENTENCED TO LIFE WITH THE POSSIBILITY OF PAROLE.

AT TRIAL THE STATE CONTENDED THAT THE VICTIM WAS KIDNAPED AT KNIFE POINT BY A CODEFENDANT AND HELD IN A CAR WHILE PETITIONER REMAINED IN THE STORE

ALONE TAKING THE MONEY, (TRIAL  
TRANSCRIPT) T.T. Pg 440, IN 28-32;  
T.T. Pg 441 IN. 1-12,  
THE STATE ARGUED THE USE OF  
THE WEAPON WAS AT THE SAME  
TIME AND PLACE FOR BOTH THE  
ROBBERY, AND KIDNAPPING.  
PETITIONER CONTENTS THAT BY SENTENCING  
HIM TO (15) YEARS FOR THE WEAPON  
IN THE ROBBERY, AND AGAIN TO  
LIFE WITH THE POSSIBILITY OF PAROLE  
FOR ITS USES IN THE KIDNAPPING  
VIOLATES STATE LAW, AND THE  
FIFTH AMENDMENT TO THE U.S.  
CONSTITUTION DOUBLE JEOPARDY.

---

### GROUND THREE:

---

PETITIONER CONTENTS THAT HIS  
SENTENCE UNDER ~~GROUND ONE~~ COUNT ONE  
WAS VIOLATED PURSUANT TO THE  
FOURTEENTH AMENDMENT OF THE  
UNITED STATES CONSTITUTION,  
"DUE PROCESS".

BECAUSE OF A MISTAKE IN PETITIONERS  
JUDGMENT OF CONVICTION COUNT ONE  
TWO, AND THREE, FOUR WHERE  
RAN TOGETHER BY THE NEVADA  
DEPARTMENT OF PRISONS. THIS  
MISTAKE WAS NOT CORRECTED UNTIL  
1994. FOR 15 YEARS PETITIONER  
WAS DENIED A CHANCE TO PAROLE  
LIKE ALL OTHER NEVADA PRISONERS  
BECAUSE PETITIONER WAS HOUSED OUT  
OF STATE AND COULD NOT BE  
PAROLE PURSUANT TO N.R.S. 213.1099,  
N.R.S. 213.1214.

---

DATED THIS 10TH DAY OF FEBRUARY 2002

RESPECTFULLY SUBMITTED

Paul Barrett

## RELIEF Sought

PETITIONER, JOEL T. BURKETT RESPECTFULLY  
REQUEST THE COURT TO GRANT THE  
FOLLOWING RELIEF;

(1) ISSUE AN ORDER DISMISSING THE  
SENTENCES IN COUNT TWO (2) AND  
COUNT THREE (3);

(2) ISSUE AN ORDER DISMISSING THE  
(15) YEAR TERM IN COUNT ONE FOR  
THE USE OF A DEADLY WEAPON, AND  
GRANT THE 15 YEARS SERVED, CREDITING  
IT TO COUNT TWO AND (4) FOUR

(3) GRANT PETITIONER THE JUST RELIEF  
TO WHICH HE IS ENTITLED IN THESE  
PROCEEDINGS.

DATED THIS 10TH DAY OF FEBRUARY 2002

Joel T. Burkett  
PRO SE PETITIONER



1 Case No. C52190  
2 Dept. No. VII

FILED

2001 NOV 19 PM 2:48

*Shirley S. Ramirez*  
CLERK

3  
4  
5  
6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF CLARK

8  
9 JOEL T. BURKETT,

10 Petitioner,

11 -vs-

12 DIRECTOR, NEV. DEPT.

13 OF PRISONS,

14 Respondent.  
15 \_\_\_\_\_/

AFFIDAVIT IN SUPPORT  
OF MOTION TO PROCEED  
IN FORMA PAUPERIS

16 I, JOEL BURKETT, hereby declare and state  
17 that I am the Petitioner in the above entitled case; that in support  
18 of my Motion to proceed without being required to prepay fees, cost  
19 or give security therefor; I state that because of my poverty I am  
20 unable to pay the costs of said proceeding or to give security  
21 therefor; that I am entitled to relief.

22 I do ☒ do not ☐ request an attorney be appointed to  
23 represent me.

24 I further swear that the responses which I have made to  
25 questions and instructions below are true.

26 1. Are you presently employed: Yes ☐ No ☒

27 a. If the answer is Yes, state the amount of your salary  
28 or wages per month, and give the name and address of your employer:

1 N/A

2

3

4

b. If the answer is No, state the date of last employment and the amount of salary and wages per month which you received:

5

N/A

6

7

2. Have you received within the past twelve months any money from any of the following sources?

8

a. Business, profession or form of self-employment?

9

Yes      No ✓

10

b. Rent payments, interest or dividends?

11

Yes      No ✓

12

c. Pensions, annuities or life insurance payments?

13

Yes      No ✓

14

d. Gifts or inheritances?

15

Yes ✓ No     

16

e. Any other sources?

17

Yes      No ✓

18

19

20

21

22

If the answer to any of the above is "Yes" describe each source of money and state the amount received from each during the past twelve months:

MY WIFE AND MOTHER

ABOUT \$100.00 A MONTH

23

24

25

26

27

28

3. Do you own cash or equivalent prison currency, or do you have money in a checking or savings account?

Yes ✓ No     

If the answer is "Yes", state the total value of the items owned:

ABOUT \$5000 IN MY

PRISON ACCOUNT

1 4. Do you own any real estate, stocks, bonds, notes,  
2 automobiles, or other valuable property (excluding ordinary house-  
3 hold furnishings and clothing)? Yes \_\_\_\_\_ No ✓

4 If your answer is "Yes", describe the property and state  
5 its approximate value: N/A

6  
7 5. List the persons who are dependent upon you for  
8 support, state your relationship to those persons, and indicate  
9 how much you contribute towards their support: N/A

10

11

12

13

14

UNDER THE PENALTY OF PERJURY, pursuant to N.R.S. §208.165,  
the above affidavit is true and correct to the best of affiants  
personal knowledge.

15

DATED this 10<sup>th</sup> day of November, 2001.

16

17

18

19

20

21

22

23

24

25

26

27

28

Joel Burkett  
Sign your name

JOEL BURKETT 2002346  
Print your name DOP#

1 Case No. C52190

2 Dept. No. VII

FILED

2001 NOV 19 PM 2:48

*Spencer*  
CLERK

3  
4  
5  
6 IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 FOR THE COUNTY OF CLARK

8  
9 JOEL T. BURKETT,

10 Petitioner,

11 -vs-

MOTION FOR LEAVE TO  
PROCEED IN FORMA PAUPERIS

12 DIRECTOR, NEV. DEPT.,

13 OF PRISONS,

14 Respondent.  
15 \_\_\_\_\_/

16 COMES NOW the Petitioner, in propria persona, pursuant  
17 to N.R.S. §12.015, and respectfully moves this Honorable Court for  
18 an Order granting Petitioner leave to proceed in the above-entitled  
19 action in forma pauperis, without requiring Petitioner to pay or  
20 provide security for the payment of costs of prosecuting this  
21 action.

22 This motion is made and based upon the attached affidavit  
23 and certificate.

24 DATED this 10<sup>th</sup> day of November, 2001.

25 Respectfully submitted,

26

27

28

Joel Burkett

FILED

2001 NOV 19 PM 2:48

*Shirley L. Hargis*  
CLERK

CASE NO: C52190

DEPT NO: VII

IN THE Eighth JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

IN THE MATTER OF

FINANCIAL  
CERTIFICATE

JOEL T. BURKETT # 2002346  
NAME

ON MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

I hereby certify that the Petitioner herein has the sum  
of \$            on account to his credit at the institution  
where he is confined. I further certify that Petitioner likewise  
has the following securities to his credit according to the records  
of said institution: SEE ATTACHED HERETO

INMATE ACCOUNT PRINT OUT

DATED this 10<sup>th</sup> day of November, 2001

BY: \_\_\_\_\_

Nevada Department of Prisons  
Inmate services Accountant  
Authorized Officer of Institution

/// NOTE: ACCOUNTANT would not do THE

/// FINANCIAL CERTIFICATE BUT GAVE ME

/// THE ATTACHED INMATE PRINT OUT DO TO IT  
... BEING A NEVADA DOCUMENT.

**Offender Information**

|                                |                          |                            |                        |
|--------------------------------|--------------------------|----------------------------|------------------------|
| Offender Number: 2002346       | Account Status: Open     | Beginning Balance: \$13.10 |                        |
| Offender Name: BURKETT, JOEL T |                          | Deposits: \$137.50         |                        |
| Living Unit: CU3               | Primary Balance: \$67.70 | Expenditures: (\$53.09)    | Mandatory Savings: Yes |
| Cell: LA                       | Savings Balance: \$0.00  | Commissary: (\$29.81)      |                        |
| Bed: 061                       | Hold Balance: \$0.00     | Ending Balance: \$67.70    |                        |

**Deposits**

| Date       | Payer                           | Account | Paid To | Amount   |
|------------|---------------------------------|---------|---------|----------|
| 10/16/2001 | Burkett/Vivian Pinkham          | Primary |         | \$100.00 |
| 10/03/2001 | Inmate Payroll - September 2001 | Primary |         | \$37.50  |

**Expenditures**

| Date       | Category                 | Recipient                   | Check Number | Amount    | Taxes  | S&H/Other | Total     |
|------------|--------------------------|-----------------------------|--------------|-----------|--------|-----------|-----------|
| 10/30/2001 | Canteen Special Purchase | Canteen - Special Purchases |              | (\$39.14) | \$0.00 | \$0.00    | (\$39.14) |
| 10/16/2001 | United Parcel Service    | United Parcel Service       |              | (\$13.95) | \$0.00 | \$0.00    | (\$13.95) |

Expenditures Note: Check numbers refer to non-voided checks. Check numbers that were voided prior to the printing of this report will not appear.

**Commissary**

| Date       | Amount | Taxes  | Surcharges | Total     |
|------------|--------|--------|------------|-----------|
| 10/19/2001 | \$0.00 | \$0.00 | \$0.00     | (\$10.08) |
| 10/17/2001 | \$0.00 | \$0.00 | \$0.00     | (\$17.01) |
| 10/11/2001 | \$0.00 | \$0.00 | \$0.00     | (\$2.72)  |

**Remaining Obligations - Current as of Date and Time of Report**

| Description              | Paid To | Period To Curr | Max per Period | Ordered | Pct Ordered | Transferred | Paid To Curr | Outside Source | Total Paid | Total Remaining |
|--------------------------|---------|----------------|----------------|---------|-------------|-------------|--------------|----------------|------------|-----------------|
| No Remaining Obligations |         |                |                |         |             |             |              |                |            |                 |