

FILED

2019 FEB 15 PM 4:45

TAMI RAE SPERD
Electronically Filed
Feb 20 2019 03:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

KARLA K. BUTKO, ESQ.
State Bar No. 3307
P. O. Box 1249
Verdi, NV 89439
(775) 786-7118
Attorney for Petitioner

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF HUMBOLDT

MELVIN LEROY GONZALES,

Petitioner/Appellant,

vs.

Case No. CV20,547

THE STATE OF NEVADA,

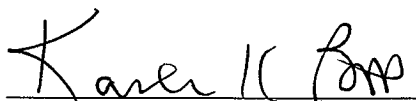
Dept. No. 2

Respondent.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that MELVIN LEROY GONZALES, the
Petitioner/Appellant above-named, by and through his counsel,
KARLA K. BUTKO, ESQ., hereby appeals to the Supreme Court of
Nevada, from the Order denying post-conviction relief dated
February 1, 2019, with Notice of Entry of Order dated February 1,
2019.

DATED this 14th day of February, 2019.



KARLA K. BUTKO
P. O. Box 1249
Verdi, NV 89439
(775) 786-7118
Attorney for Appellant
State Bar No. 3307

1
2 CERTIFICATE OF SERVICE

3 I, KARLA K. BUTKO, hereby certify that I am an employee of
4 KARLA K. BUTKO, LTD., and that on this date I deposited for
5 mailing, the foregoing document, addressed to the following:

6 MELVIN LEROY GONZALES
7 Inmate 1018769
8 Lovelock Correctional Center
9 1200 Prison Road
10 Lovelock, NV 89419

11 and that on this date I personally served the foregoing document
12 on the parties listed below by delivering a true and correct
13 copy, via Second Judicial District Court e-flex delivery:
14 addressed to the following:

15 Anthony Gordon, ESQ.
16 Humboldt County District Attorney's Office
17 P. O. Box 909
18 Winnemucca, NV 89446

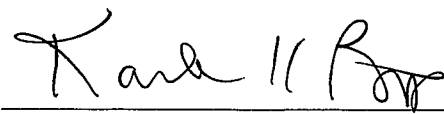
19 DATED this 14th day of February, 2019.

20 
21 KARLA K. BUTKO

22 **AFFIRMATION PURSUANT TO NRS 239B.030**

23 The undersigned does hereby affirm that the preceding
24 document DOES NOT CONTAIN the Social Security Number of any
25 person.

26 DATED this 14th day of February, 2019.

27 
KARLA K. BUTKO

1 Case No. CV 20,547

2 Dept No. 2

3 The undersigned hereby affirms
4 this document does not contain
5 a Social Security Number

[Signature]

FILED

2019 FEB 15 PM 4:45

TAMI RAE SPERO
DIST. COURT CLERK

[Signature]

6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF HUMBOLDT

9 MELVIN LEROY GONZALES,

10 Petitioner/Appellant,

CASE APPEAL STATEMENT

11 v.

12 THE STATE OF NEVADA,

13 Respondent

14 _____/
15 Case Appeal Statement:

16 1. Name of appellant filing this case appeal statement:

17 MELVIN LEROY GONZALES

18 2. Identify the judge issuing the decision, judgment, or
19 order appealed from: The Honorable MICHAEL MONTERO.

20 3. Identify all parties to the proceedings in the district
21 court (the use of et al. to denote parties is prohibited):

22 Michael MacDonald, Esq., Humboldt County District Attorney for
23 the State of Nevada, by Kevin Pasquale, Esq., and Anthony Gordon,
24 Esq., Deputy District Attorney; Steven Cochran, Public Defender
25 for Lovelock, court appointed counsel through Humboldt County at
26
27
28

1 the District Court proceedings for the trial stages and plea and
2 sentencing; and Steven Cochran, Esq., Public Defender for
3 Humboldt County on direct appeal from the judgment of conviction,
4 Karla K. Butko, Esq., Court-Appointed Counsel for purposes of the
5 post-conviction and appeal from denial of relief.
6

7 **4. Identify all parties involved in this appeal (the use of**
8 **et al. to denote parties is prohibited):** Michael MacDonald &
9 Anthony Gordon, Esq. Humboldt County Deputy District Attorney for
10 the State of Nevada; Karla K. Butko, Esq., for Appellant MELVIN
11 LEROY GONZALES.
12

13 **5. Set forth the name, law firm, address, and telephone**
14 **number of all counsel on appeal and identify the party or parties**
15 **whom they represent:** Anthony Gordon, Humboldt County Deputy
16 District Attorney for the State of Nevada, 501 Bridge Street, P.
17 O. Box 909. Winnemucca, NV 89446, (775) 623-6363 for
18 Respondent; Karla K. Butko, Esq., for Appellant MELVIN LEROY
19 GONZALES, P. O. Box 1249, Verdi, NV 89439, (775) 786-7118.
20


21 **6. Indicate whether appellant was represented by appointed**
22 **or retained counsel in the district court:** Appellant was
23 represented by court appointed counsel in the District Court.
24

25 **7. Indicate whether appellant is represented by appointed or**
26 **retained counsel on appeal:** Appellant is represented by court
27 appointed counsel on appeal.
28

1 8. Indicate whether appellant was granted leave to proceed
2 in forma pauperis, and the date of entry of the district court
3 order granting such leave: Counsel was appointed as counsel by
4 the District Court.
5

6 9. Indicate the date the proceedings commenced in the
7 district court (e.g., date complaint, indictment, information, or
8 petition was filed): The Petition for Writ of Habeas Corpus
9 (Post-Conviction) was filed November 16, 2015.
10

11 DATED this 14th day of February, 2019.
12

13
14 
15 KARLA K. BUTKO
16 P. O. Box 1249
17 Verdi, NV 89439
18 (775) 786-7118
19 Attorney for Defendant/Appellant
20 State Bar No. 3307
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRAP 25, I certify that I am an employee of
3 Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and
4 that on this date I caused the foregoing document to be delivered
to all parties to this action by

5 X placing a true copy thereof in a sealed, stamped
6 envelope with the United States Postal Service at
Reno, Nevada.

7 Anthony Gordon, ESQ.
8 Humboldt County District Attorney's Office
9 P. O. Box 909
Winnemucca, NV 89446

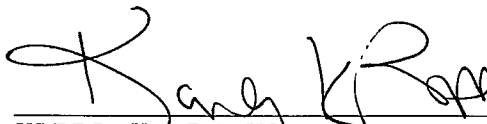
10
11 DATED this 14th day of February, 2019.

12
13 
14 KARLA K. BUTKO

15 **AFFIRMATION PURSUANT TO NRS 239B.030**

16
17 The undersigned does hereby affirm that the preceding
18 document DOES NOT CONTAIN the Social Security Number of any
person.

19 DATED this 14th day of February, 2019.

20
21 
22 KARLA K. BUTKO

Case #: CV-0020547

Judge: MONTERO, MICHAEL R.

Date Filed: 11/16/15 Department: 02

Case Type: HABCOR WRIT OF HABEAS CORPUS

Title/Caption: Melvin LeRoy Gonzales,
 vs.
 Renee Baker, Warden, ESPN

Defendant(s)
 BAKER, RENEE, WARDEN ESP

Attorney(s)
 No "Attorney 1" Listed

Plaintiff(s)
 GONZALES, MELVIN LEROY

Attorney(s)
 BUTKO, KARLA

Disp/Judgment: OTHR Date: 02/01/19

Hearings:

Date	Time	Hearing	Reference
		SHOW CAUSE HEARING (1 HR)-VACATED PER TONY	ORD 3/6/17
		EVIDENTIARY HEARING (1/2 DAY) -STIP TO CONT	ORD 4/6/18
		CONT'D EVIDENTIARY HEARING-CONT'D PER JUDGE	
10/04/18	1:30	CONT'D EVIDENTIARY HEARING	K/K/DA7/10

Filings:

Date	Pty	Filing	Fees
11/16/15	P	PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	
11/16/15	P	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	
11/16/15	P	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS	
11/16/15	P	REQUEST FOR EVIDENTIARY HEARING	
11/16/15	P	MOTION FOR THE APPOINTMENT OF COUNSEL	
11/20/15	O	ORDER (MOTION/FORMA PAUPERIS - DENIED)	
11/23/15	P	FINANCIAL CERTIFICATE	
11/24/15	O	ORDER TO RESPOND	
11/24/15	O	ORDER	
4/06/16	O	NOTICE OF ENTRY OF DEFAULT	
4/27/16	P	RESPONDENT'S MOTION FOR EXT OF TIME & TO SET STRIKE PETITION	
5/12/16	P	STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS	
6/02/16	P	PETITIONER'S REPLY TO RESPONDENTS MAY 12, 2016 TRAVERSE	
9/19/16	P	MOTION FOR APPOINTMENT OF COUNSEL	
9/22/16	P	REQUEST FOR SUBMISSION	
10/14/16	P	ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL	
11/28/16	P	MOTION FOR RECONSIDER APPOINTMENT OF COUNSEL	
3/17/17	O	ORDER - APPOINTING COUNSEL(BUTKO, KARLA)	
5/15/17	D	SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONV)	
5/18/17	P	EX PARTE MOTION FOR ORDER RE:PAYMENT OF ATTORNEY FEES AND	
5/18/17	P	REQUEST FOR SUBMISSION: MOTION FOR PAYMENT OF ATTY FEES AND	
5/22/17	P	ORDER APPROVING FEES/COSTS OF COURT-APPOINTED ATTY (BUTKO)	
4/13/18	P	ORDER RE; PETITION FOR WRIT OF HABEAS CORPUS	
5/01/18	P	EX PARTE APPLICATION FOR ORDER TO PRODUCE	
5/03/18	P	ORDER TO PRODCUE PRISONER	
5/22/18	P	STIPULATION AND ORDER RE CONTINUANCE OF EVIDENTIARY HEARING	
10/04/18	P	STATE'S EVIDENTIARY HEARING BRIEF & RESPONSE TO PETITIONER'S	
10/04/18	O	MINUTES - CONTINUED EVIDENTIARY HEARING	

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16:52:54

Sixth Judicial District Court - Humboldt County
Case Summary

Page 2
DC2100

10/05/18 P AMENDED STATE'S EVIDENTIARY HEARING BRIEF & RESPONSE TO PET
10/18/18 P GROUND SEVEN TO SUPPLEMENTAL PETITION FOR WRIT OF HABEAS COR
11/16/18 O TRANSCRIPT OF PROCEEDINGS - EVIDENTIARY HEARING
11/16/18 R STATE'S RESPONSE TO GROUND SEVEN TO PET SUPPLEMENTAL PET WRI
11/27/18 P REPLY TO STATE'S RESPONSE TO GROUND SEVEN TO SUPPLEMENTAL PE
11/27/18 P REQUEST FOR SUBMISSION
2/01/19 O ORDER (WRITS/DENIED)
2/01/19 O NOTICE OF ENTRY OF ORDER
2/15/19 P NOTICE OF APPEAL
2/15/19 P CASE APPEAL STATEMENT
2/15/19 P EXPARTE REQUEST FOR TRANSCRIPTS AT TAXPAYERS EXPENSE

1 CASE NO. CV 20,547

2 DEPT. NO. II

FILED

2019 FEB -1 AM 8:24

TAMI RAE SPERO,
DIST. COURT CLERK

3
4
5 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF HUMBOLDT

-o0o-

7
8 MELVIN LEROY GONZALES,

9 Petitioner,

ORDER

10 vs.

11 THE STATE OF NEVADA,

12 Respondent.

13
14 **FINDINGS OF FACT**

15 This matter came before this Court for an Evidentiary Hearing on October 16, 2018,
16 to discuss the merits of Petitioner Melvin Leroy Gonzales's timely *Petition for Writ of Habeas*
17 *Corpus (Post-Conviction)*, filed November 16, 2015. Also discussed at the October 16, 2018,
18 Evidentiary Hearing was Petitioner's *Supplemental Petition for Writ of Habeas Corpus (Post-*
19 *Conviction)*, filed May 15, 2017.

20 The State filed *State's Evidentiary Hearing Brief and Response to Petitioner's Writ of*
21 *Habeas Corpus (Post Conviction)* on October 4, 2018. On October 5, 2018, the State filed its
22 *Amended State's Evidentiary Hearing Brief and Response to Petitioner's Supplemental*
23 *Petition for Writ of Habeas Corpus (Post Conviction)*.
24

On January 7, 2014, Petitioner entered Guilty pleas to three counts of Aggravated Stalking. The Trial Court accepted Petitioner's pleas and sentenced him as to all counts on April 15, 2014. At all relevant times, Petitioner was represented by Steven Cochran, Esq.

Petitioner raises a total of eight Grounds for relief in his *Petition for Writ of Habeas Corpus (Post-Conviction)*. Petitioner raises an additional seven Grounds for relief between his *Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)* and *Ground Seven to Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)*. This Court will consider each Ground for relief individually.

Petitioner alleges multiple grounds of Ineffective Assistance of Counsel under a single Ground for relief. This Court will consider each argument as a separate Ground and consider cumulative error at the end of this Section.

Petitioner alleges that Counsel lied to him and stated that if he did not plead guilty, he would spend life in prison under the habitual criminal statute. In sum, Petitioner alleges deceit

1 and coercion by Counsel, leading him to waive his preliminary hearing and enter a guilty plea.

2 As to Petitioner's arguments regarding waiving his preliminary hearing, this Court
3 must dismiss a petition if it determines that a petitioner plead guilty and the petition is not
4 based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was entered without
5 effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court will review a
6 defaulted claim if the failure to review the claim would cause a fundamental miscarriage of
7 justice. *Mazzan v. Whitley*, 112 Nev. 838, 843, 921 P.2d 920, 923 (1996).

8 Petitioner plead Guilty to all three counts of Aggravated Stalking. Issues regarding
9 Petitioner's preliminary hearing are outside the scope of NRS 34.810(1)(a). Petitioner has
10 failed to show that a miscarriage of justice has occurred. Therefore, as to that specific
11 argument, this Ground for relief is dismissed.

12 Petitioner alleges in his *Petition for Writ of Habeas Corpus (Post-Conviction)* that he
13 was promised concurrent sentences and treatment if he plead guilty. Counsel testified that he
14 made no such promises. Evidentiary Hearing Transcript at 46 [hereinafter EHT]. Most
15 importantly, Petitioner's assertion is directly contradicted by Petitioner's own testimony at
16 the Evidentiary Hearing. EHT at 77. Therefore, this Ground for relief lacks merit.

17 **Ground 2. Ineffective Assistance of Counsel: Counsel's Failure to Request Permission**
18 **of the Court to Retain Certain Expert Witnesses**

19 Petitioner alleges that Counsel was ineffective when he failed to request a new
20 evaluation of Petitioner to determine if he was competent to accept a plea, waive his
21 preliminary hearing, form the requisite intent for the crimes he was charged with, and to
22 mitigate his sentence. This Court must dismiss a petition if it determines that a petitioner plead
23 guilty and the petition is not based on 1) an involuntarily or unknowingly entered plea, or 2)
24

1 the plea was entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a).
2 This Court will review a defaulted claim if the failure to review the claim would cause a
3 fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

4 As stated above, Petitioner plead guilty to three counts of Aggravated Stalking.
5 Therefore, this Court dismisses Petitioner's arguments regarding his preliminary hearing,
6 competency as to whether he formed the requisite intent for the crimes charged, and mitigation
7 at sentencing. All three are outside the scope of NRS 34.810(1)(a). Further, Petitioner has
8 failed to show that a miscarriage of justice has occurred.

9 This Court also finds no merit in Petitioner's allegation that Counsel was ineffective
10 when he failed to request a second evaluation of Petitioner. Petitioner alleges that Counsel
11 should have been able to tell that Petitioner was not "lucid."

12 Claims alleging specific instances of a trial counsel's deficiencies, as opposed to a
13 complete failure by a trial counsel to try the case, are governed by *Strickland v. Washington*
14 466 U.S. 668 (1984). *See Bell v. Cone*, 535 U.S. 685, 697-98, 122 S.Ct. 1843, 152 L.Ed.2d
15 914 (2002) (referencing *Strickland v. Washington*, 466 U.S. 668 (1984)).

16 *Strickland* sets forth a two-prong test requiring a petitioner to show that his counsel's
17 performance fell below an objective standard of reasonableness and that his counsel's
18 deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687-88.

19 Under the first prong, "[j]udicial scrutiny of a counsel's performance must be highly
20 deferential." *Id.* at 689. Further, a counsel's challenged conduct must be evaluated from his
21 perspective at the time. *Id.* Importantly, "the defendant must overcome the presumption that,
22 under the circumstances, the challenged action 'might be considered sound trial strategy.'"

1 *Strickland*, 466 U.S. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158, 100
2 L.Ed. 83 (1955)); *see also Dawson v. State*, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992)
3 (holding “[s]trategic choices made by counsel after thoroughly investigating the plausible
4 options are almost unchallengeable”). A trial counsel’s failure to make futile efforts cannot
5 be deemed ineffective assistance of counsel. *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d
6 708, 711 (1978).

7 Under the second prong, “the defendant must show a reasonable probability that, but
8 for counsel’s errors, the result of the trial would have been different.” *Kirksey v. State*, 112
9 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). An insufficient showing as to either *Strickland*
10 prong is fatal to a claim of ineffective assistance of counsel. *Strickland*, 466 U.S. at 697. The
11 petitioner must prove disputed factual allegations underlying his ineffective assistance of
12 counsel claim by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103
13 P.3d 25, 33 (2004).

14 Here, Counsel was aware of an evaluation of Petitioner finding him competent. EHT
15 at 65. In addition, Counsel testified that he did not see any signs that Petitioner was having
16 difficulty understanding him. EHT at 45. Further, Counsel certified in the *Guilty Plea*
17 *Agreement* that to the best of his knowledge and belief, Petitioner was competent and
18 understood the charges and consequences of the guilty pleas. *State v. Gonzales*, Case No. CR
19 13-6257, *Guilty Plea Agreement* at 9-10 (filed Jan. 7, 2014).

20 Importantly, other than his own testimony, Petitioner failed to provide this Court with
21 any evidence, scientific or otherwise, that Petitioner was in a mental state inhibiting him from
22 knowingly and voluntarily entering his pleas.

1 Finally, Petitioner was thoroughly canvassed by the Trial Court as to his ability to
2 understand the consequences of pleading guilty and his ability to do so. Arraignment
3 Transcript at 12-14 [hereinafter AT]. Petitioner had the chance to explain his alleged inability
4 to understand his pleas at his arraignment. He also could have expressed these alleged issues
5 to his attorney at any time. This Court finds that Petitioner failed to do so. His testimony to
6 the contrary is self-serving and unreliable.¹

7 There is no indication that Counsel fell below an objective standard of reasonableness
8 and no evidence that Petitioner was actually prejudiced. Therefore, this Court finds this
9 Ground for relief meritless.

10 **Ground 3. Ineffective Assistance of Counsel: Counsel's Failure to Interview Witnesses**

11 Petitioner argues that Counsel was ineffective for failing to interview witnesses. This
12 Court must dismiss a petition if it determines that a petitioner plead guilty and the petition is
13 not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was entered
14 without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court will
15 review a defaulted claim if the failure to review the claim would cause a fundamental
16 miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

17 Petitioner plead Guilty to all three counts of Aggravated Stalking. Whether Counsel
18 was ineffective for failing to interview witnesses is outside the scope of NRS 34.810(1)(a).
19 Further, Petitioner has failed to show that a miscarriage of justice occurred. Therefore, this
20 Ground for relief is dismissed.

21
22
23 ¹ Petitioner appears to have an excellent memory of the proceedings despite his alleged inability to enter his
24 pleas knowingly and voluntarily at that time. *See* EHT at 75-90.

**Ground 4. Ineffective Assistance of Counsel: Counsel Threateningly Induced
Petitioner into Signing the Plea Agreement**

Petitioner alleges that Counsel lied to him and threatened that Petitioner would spend the rest of life in prison if he failed to take the plea deal. This assertion is directly at odds with the record. Petitioner testified at the Evidentiary Hearing that Counsel explained to him that the plea agreement contained everything that was being promised. EHT at 77. There is no indication that Counsel promised him any other terms outside what was contained in the plea agreement or that Counsel lied to Petitioner in any way. *See* EHT at 45-46.

As to Petitioner's allegation of threats, Petitioner clearly stated at the Evidentiary Hearing that Counsel told him: "best thing for you to do is sign this plea so you don't get the habitual." EHT at 89. Even Petitioner's rendition of Counsel's statements fail to show that Counsel threatened or lied to Petitioner regarding the possible outcomes of the case. Counsel merely stated his opinion. EHT at 40-41. There is no indication that Counsel's actions fell below an objective standard or reasonableness or that Petitioner was prejudiced. Therefore, this Ground for relief is without merit.

**Ground 5. Ineffective Assistance of Counsel: Counsel's Failure/Refusal to File a
Motion to Withdraw Guilty Plea**

Again, Petitioner alleges that Counsel lied to him regarding the plea agreement. As noted above, this assertion is without merit and not supported by the record. Petitioner also renews his argument that he was not able to understand the plea agreement because of the "psychotropic medications" he was taking. Petitioner, in relying on these arguments, asserts that he instructed Counsel to withdraw his guilty plea after receiving a sentence he did not expect.

1 This Court must dismiss a petition if it determines that a petitioner plead guilty and the
2 petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was
3 entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court
4 will review a defaulted claim if the failure to review the claim would cause a fundamental
5 miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

6 Again, Petitioner alleges that his plea was entered involuntarily. This Court found no
7 merit in those arguments. As to Petitioner's alleged request to withdraw his guilty plea, this
8 claim likely falls outside the scope of permissible post-conviction grounds for relief because
9 it deals with withdrawing a plea as opposed to entering the plea.

10 Setting aside the question of the possible dismissal of this argument on procedural
11 grounds. This Court finds that other than Petitioner's self-serving statement that he made the
12 request to withdraw his pleas, there is no other indication that such a request was actually
13 made. EHT at 78. Further, the underlying arguments leading up to Petitioner allegedly
14 requesting to withdraw his pleas are refuted by the record. Therefore, this Ground for relief is
15 meritless.

16 **Ground 6. Petitioner was Unaware as to the True Nature and Consequences of his**
17 **Pleas**

18 Once again, Petitioner argues that he did not enter his pleas knowingly, voluntarily,
19 and was unable to understand the true nature and consequences of his pleas. Petitioner once
20 again blames the medication he was on at the time of entering his plea. As discussed above,
21 the record does not support Petitioner's assertions. Further, Petitioner failed to present any
22 additional evidence beyond his own testimony supporting his allegations. This Court finds
23 Petitioner's arguments without merit. Therefore, this Ground for relief is dismissed.
24

Ground 7. Cruel and Unusual Punishment Inflicted During Sentencing Procedure

Petitioner re-alleges multiple arguments regarding his inability to enter his guilty plea due to his alleged mental instability. This Court will not address those arguments again. As to those arguments, this Ground for relief lacks merit.

Petitioner takes issue with the sentence imposed upon him. This Court must dismiss a petition if it determines that a petitioner plead guilty and the petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court will review a defaulted claim if the failure to review the claim would cause a fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

Petitioner plead Guilty to all three counts of Aggravated Stalking. Issues regarding his sentence are outside the scope of NRS 34.810(1)(a). Further, Petitioner has failed to show that any miscarriage of justice took place. Even if he had made a sufficient showing, Petitioner was well aware that the Trial Court was not bound by the plea agreement at sentencing. AT at 4-5; EHT at 85. Therefore, this Ground for relief is dismissed in its entirety.

Ground 8. Cumulative Error

Petitioner argues that the culmination of error by Counsel entitles him to relief. Given that Petitioner has failed to demonstrate error in any nature, or prejudice from the alleged error, an argument of cumulative error lacks meritless. This Ground for relief is dismissed.

II. Petitioner's *Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)* and *Ground Seven to Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)*.

Petitioner alleges an additional seven Grounds for relief in his *Supplemental Petition*

1 *for Writ of Habeas Corpus (Post-Conviction) and Ground Seven to Supplemental Petition for*
2 *Writ of Habeas Corpus (Post-Conviction).* These Grounds are discussed individually.

3 **Ground 1. Ineffective Assistance of Counsel: Failed to Litigate Fourth Amendment**
4 **Issue**

5 Petitioner alleges that Counsel was ineffective when he failed to litigate Fourth
6 Amendment issues regarding a warrantless search. This Court must dismiss a petition if it
7 determines that a petitioner plead guilty and the petition is not based on 1) an involuntarily or
8 unknowingly entered plea, or 2) the plea was entered without effective assistance of counsel.
9 NEV. REV. STAT. § 34.810(1)(a). This Court will review a defaulted claim if the failure to
10 review the claim would cause a fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843,
11 921 P.2d at 923.

12 Petitioner plead Guilty to all three counts of Aggravated Stalking. This issue is outside
13 the scope of NRS 34.810(1)(a). Further, Petitioner has failed to show that any miscarriage of
14 justice took place. Therefore, this Ground for relief is dismissed.

15 **Ground 2. Ineffective Assistance of Counsel: Inadequate Investigation/Mental Health**
16 **Issues; Inability to Formulate Criminal Intent**

17 Petitioner alleges that Counsel was ineffective when he failed to investigate. Petitioner
18 reasons that had Counsel properly investigated, he would have discovered that Petitioner did
19 not have the requisite intent to commit the crimes charged. Petitioner raised a similar
20 argument in his *Petition for Writ of Habeas Corpus (Post-Conviction)*.

21 This Court must dismiss a petition if it determines that a petitioner plead guilty and the
22 petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was
23 entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court
24

1 will review a defaulted claim if the failure to review the claim would cause a fundamental
2 miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

3 Petitioner plead Guilty to all three counts of Aggravated Stalking. This issue is outside
4 the scope of NRS 34.810(1)(a). To the extent, if any, that this Ground for relief pertains to
5 Petitioner's ability to enter his guilty plea, those issues have been thoroughly discussed above.
6 Petitioner has failed to show the existence of a miscarriage of justice. Therefore, this Ground
7 for relief is dismissed.

8 **Ground 3. The Guilty Plea was Coerced by Counsel, Thus the Pleas Were**
9 **Involuntarily Made**

10 Petitioner argues that absent Counsel's advice regarding the possibility of receiving
11 habitual criminal status, he would not have entered into the plea agreement. As stated multiple
12 times throughout this **ORDER**, this Court has found no evidence of coercion or threats in the
13 record. Petitioner entered his plea knowingly, voluntarily, and with a complete understanding
14 of nature of the offense and the related consequences. AT at 14. Therefore, this Ground for
15 relief is meritless.

16 **Ground 4. Ineffective Assistance of Counsel: Counsel Should Have Filed a Motion for**
17 **Severance of the Charges**

18 Petitioner argues that Counsel was ineffective when he failed to request a separation
19 of the charges resulting in prejudice to Petitioner. As noted previously, this Court must
20 dismiss a petition if it determines that a petitioner plead guilty and the petition is not based on
21 1) an involuntarily or unknowingly entered plea, or 2) the plea was entered without effective
22 assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court will review a defaulted
23 claim if the failure to review the claim would cause a fundamental miscarriage of justice.
24

1 *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

2 Petitioner plead Guilty to all three counts of Aggravated Stalking. This issue is outside
3 the scope of NRS 34.810(1)(a). There is no indication in the record that a miscarriage of
4 justice took place. Therefore, this Ground for relief is dismissed.

5 **Ground 5. Ineffective Assistance of Counsel: Failing Litigate the Proper Charge**

6 Petitioner alleges that Counsel was ineffective for failing to file pre-trial motions to
7 attack the charging document in an effort to get the proper charge brought against Petitioner.
8 In making this argument, Petitioner once again argues that he could not form the requisite
9 intent to commit the crime. Petitioner failed to provide this Court with adequate supporting
10 evidence for this assertion.

11 Regardless, this Court must dismiss a petition if it determines that a petitioner plead
12 guilty and the petition is not based on 1) an involuntarily or unknowingly entered plea, or 2)
13 the plea was entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a).
14 This Court will review a defaulted claim if the failure to review the claim would cause a
15 fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

16 Petitioner plead Guilty to all three counts of Aggravated Stalking. Arguments
17 regarding Petitioner's past ability to form the requisite intent of the crimes charged are outside
18 the scope of NRS 34.810(1)(a). There is no indication that a miscarriage of justice occurred.
19 Therefore, this Ground for relief is dismissed.

20 **Ground 6. Ineffective Assistance of Counsel: Failed to Present Mental Health Records**
21 **at Sentencing**

22 Petitioner argues that his sentence was excessive in light of society's interests. Further,
23 Petitioner alleges that the sentencing analysis was not "reasoned." Petitioner alleges that
24

1 Counsel was ineffective at sentencing when he failed to provide the Trial Court with accurate
2 sentencing information.

3 Again, this Court must dismiss a petition if it determines that a petitioner plead guilty
4 and the petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea
5 was entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This
6 Court will review a defaulted claim if the failure to review the claim would cause a
7 fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

8 Petitioner plead Guilty to all three counts of Aggravated Stalking. Sentencing is outside
9 the scope of NRS 34.810(1)(a). Petitioner has failed to show a miscarriage of justice.
10 Therefore, this Ground for relief is dismissed.

11 **Ground 7. Ineffective Assistance of Counsel: Failed to object to State's Breach of the**
12 **Plea Bargain**

13 In this Ground for relief, Petitioner argues two forms of ineffective assistance of
14 counsel. First, Petitioner argues that Counsel was ineffective at sentencing when he failed
15 to object to the prosecutor's concurrence "with the recommendation contained in the
16 presentence investigation." Sentencing Transcript at 9. Petitioner also argues that Counsel
17 was ineffective for failing to raise this claim on appeal.

18 This Court must dismiss a petition if it determines that a petitioner plead guilty and the
19 petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was
20 entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court
21 will review a defaulted claim if the failure to review the claim would cause a fundamental
22 miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

23 Petitioner plead Guilty to all three counts of Aggravated Stalking. These arguments
24

1 fall outside the scope of NRS 34.810(1)(a) because they concern issues arising at sentencing,
2 not issues concerning entering a plea. Petitioner has failed to show a miscarriage of justice
3 because the Trial Court was not bound by the *Guilty Plea Agreement* or argument from the
4 prosecutor. Therefore, this Ground for relief is dismissed.

5 **CONCLUSION**

6 This Court finds no merit in any of Petitioner's alleged Grounds for relief. Therefore,
7 Petitioner's *Petition for Writ of Habeas Corpus (Post-conviction)*, his *Supplemental Petition*
8 *for Writ of Habeas Corpus (Post-Conviction)*, and his *Ground Seven to Supplemental Petition*
9 *for Writ of Habeas Corpus (Post-Conviction)* are **DENIED**.

10 IT IS SO ORDERED

11 DATED: January 31, 2019.

12
13 
14 HONORABLE MICHAEL R. MONTERO
15 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Honorable Michael R. Montero, District Court Judge, Sixth Judicial District Court and am not a party to, nor interested in, this action; and that on February 1st, 2019, I caused to be served a true and correct copy of the enclosed **ORDER** upon the following parties:

Karla K. Butko, Esq.
1030 Holcomb Ave.
Reno, NV 89502
Via U.S. Mail

Michael Macdonald
Humboldt County District Attorney
P.O. Box 909
Winnemucca, NV 89446
Hand-delivered to Humboldt County Courthouse, DCT Box

Aaron Ford
Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701
Via U.S. Mail



Shane M. Bell
Law Clerk

1 Case No. CV 20,547

2 Dept. No. 2

FILED
2019 FEB-1 AM 9:12
Spéro
TAMI RAE SPERO
DIST. COURT CLERK

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6 IN THE SIXTH JUDICIAL DISTRICT COURT OF
7 STATE OF NEVADA IN AND FOR THE COUNTY OF HUMBOLDT

8
9 Melvin Leroy Gonzales,
10 Petitioner,

11 vs.

NOTICE OF ENTRY OF ORDER

12 The State of Nevada,
13 Respondent./

14 PLEASE TAKE NOTICE that on February 1, 2019, the Court entered a decision or order in
15 this matter, a true and correct copy of which is attached to this notice.

16 You may appeal to the Supreme Court from the decision or order of this Court. If you wish
17 to appeal, you must file a Notice of Appeal with the Clerk of this Court within 33 days after the date
18 this notice is mailed to you. This notice was mailed on February 1, 2019.

19
20 DATED February 1, 2019

21 TAMI RAE SPERO, CLERK OF THE COURT

22 (SEAL)

23 By

Tami Rae Spero
Clerk

24

25

26

27

28



1 CASE NO. CV 20,547

2 DEPT. NO. II

FILED

2019 FEB -1 AM 8:24

TAMI RAE SPERO,
DIST. COURT CLERK

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4
5 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF HUMBOLDT

-000-

7
8 MELVIN LEROY GONZALES,

9 Petitioner,

ORDER

10 vs.

11 THE STATE OF NEVADA,

12 Respondent.

13
14 FINDINGS OF FACT

15 This matter came before this Court for an Evidentiary Hearing on October 16, 2018,
16 to discuss the merits of Petitioner Melvin Leroy Gonzales's timely *Petition for Writ of Habeas*
17 *Corpus (Post-Conviction)*, filed November 16, 2015. Also discussed at the October 16, 2018,
18 Evidentiary Hearing was Petitioner's *Supplemental Petition for Writ of Habeas Corpus (Post-*
19 *Conviction)*, filed May 15, 2017.

20 The State filed *State's Evidentiary Hearing Brief and Response to Petitioner's Writ of*
21 *Habeas Corpus (Post Conviction)* on October 4, 2018. On October 5, 2018, the State filed its
22 *Amended State's Evidentiary Hearing Brief and Response to Petitioner's Supplemental*
23 *Petition for Writ of Habeas Corpus (Post Conviction)*.
24

1 and coercion by Counsel, leading him to waive his preliminary hearing and enter a guilty plea.

2 As to Petitioner's arguments regarding waiving his preliminary hearing, this Court
3 must dismiss a petition if it determines that a petitioner plead guilty and the petition is not
4 based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was entered without
5 effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court will review a
6 defaulted claim if the failure to review the claim would cause a fundamental miscarriage of
7 justice. *Mazzan v. Whitley*, 112 Nev. 838, 843, 921 P.2d 920, 923 (1996).

8 Petitioner plead Guilty to all three counts of Aggravated Stalking. Issues regarding
9 Petitioner's preliminary hearing are outside the scope of NRS 34.810(1)(a). Petitioner has
10 failed to show that a miscarriage of justice has occurred. Therefore, as to that specific
11 argument, this Ground for relief is dismissed.

12 Petitioner alleges in his *Petition for Writ of Habeas Corpus (Post-Conviction)* that he
13 was promised concurrent sentences and treatment if he plead guilty. Counsel testified that he
14 made no such promises. Evidentiary Hearing Transcript at 46 [hereinafter EHT]. Most
15 importantly, Petitioner's assertion is directly contradicted by Petitioner's own testimony at
16 the Evidentiary Hearing. EHT at 77. Therefore, this Ground for relief lacks merit.

17 **Ground 2. Ineffective Assistance of Counsel: Counsel's Failure to Request Permission**
18 **of the Court to Retain Certain Expert Witnesses**

19 Petitioner alleges that Counsel was ineffective when he failed to request a new
20 evaluation of Petitioner to determine if he was competent to accept a plea, waive his
21 preliminary hearing, form the requisite intent for the crimes he was charged with, and to
22 mitigate his sentence. This Court must dismiss a petition if it determines that a petitioner plead
23 guilty and the petition is not based on 1) an involuntarily or unknowingly entered plea, or 2)
24

1 the plea was entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a).
2 This Court will review a defaulted claim if the failure to review the claim would cause a
3 fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

4 As stated above, Petitioner plead guilty to three counts of Aggravated Stalking.
5 Therefore, this Court dismisses Petitioner's arguments regarding his preliminary hearing,
6 competency as to whether he formed the requisite intent for the crimes charged, and mitigation
7 at sentencing. All three are outside the scope of NRS 34.810(1)(a). Further, Petitioner has
8 failed to show that a miscarriage of justice has occurred.

9 This Court also finds no merit in Petitioner's allegation that Counsel was ineffective
10 when he failed to request a second evaluation of Petitioner. Petitioner alleges that Counsel
11 should have been able to tell that Petitioner was not "lucid."

12 Claims alleging specific instances of a trial counsel's deficiencies, as opposed to a
13 complete failure by a trial counsel to try the case, are governed by *Strickland v. Washington*
14 466 U.S. 668 (1984). *See Bell v. Cone*, 535 U.S. 685, 697-98, 122 S.Ct. 1843, 152 L.Ed.2d
15 914 (2002) (referencing *Strickland v. Washington*, 466 U.S. 668 (1984)).

16 *Strickland* sets forth a two-prong test requiring a petitioner to show that his counsel's
17 performance fell below an objective standard of reasonableness and that his counsel's
18 deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687-88.

19 Under the first prong, "[j]udicial scrutiny of a counsel's performance must be highly
20 deferential." *Id.* at 689. Further, a counsel's challenged conduct must be evaluated from his
21 perspective at the time. *Id.* Importantly, "the defendant must overcome the presumption that,
22 under the circumstances, the challenged action 'might be considered sound trial strategy.'"

1 *Strickland*, 466 U.S. at 689 (quoting *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158, 100
2 L.Ed. 83 (1955)); *see also Dawson v. State*, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992)
3 (holding “[s]trategic choices made by counsel after thoroughly investigating the plausible
4 options are almost unchallengeable”). A trial counsel’s failure to make futile efforts cannot
5 be deemed ineffective assistance of counsel. *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d
6 708, 711 (1978).

7 Under the second prong, “the defendant must show a reasonable probability that, but
8 for counsel’s errors, the result of the trial would have been different.” *Kirksey v. State*, 112
9 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). An insufficient showing as to either *Strickland*
10 prong is fatal to a claim of ineffective assistance of counsel. *Strickland*, 466 U.S. at 697. The
11 petitioner must prove disputed factual allegations underlying his ineffective assistance of
12 counsel claim by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103
13 P.3d 25, 33 (2004).

14 Here, Counsel was aware of an evaluation of Petitioner finding him competent. EHT
15 at 65. In addition, Counsel testified that he did not see any signs that Petitioner was having
16 difficulty understanding him. EHT at 45. Further, Counsel certified in the *Guilty Plea*
17 *Agreement* that to the best of his knowledge and belief, Petitioner was competent and
18 understood the charges and consequences of the guilty pleas. *State v. Gonzales*, Case No. CR
19 13-6257, *Guilty Plea Agreement* at 9-10 (filed Jan. 7, 2014).

20 Importantly, other than his own testimony, Petitioner failed to provide this Court with
21 any evidence, scientific or otherwise, that Petitioner was in a mental state inhibiting him from
22 knowingly and voluntarily entering his pleas.

1 Finally, Petitioner was thoroughly canvassed by the Trial Court as to his ability to
2 understand the consequences of pleading guilty and his ability to do so. Arraignment
3 Transcript at 12-14 [hereinafter AT]. Petitioner had the chance to explain his alleged inability
4 to understand his pleas at his arraignment. He also could have expressed these alleged issues
5 to his attorney at any time. This Court finds that Petitioner failed to do so. His testimony to
6 the contrary is self-serving and unreliable.¹

7 There is no indication that Counsel fell below an objective standard of reasonableness
8 and no evidence that Petitioner was actually prejudiced. Therefore, this Court finds this
9 Ground for relief meritless.

10 **Ground 3. Ineffective Assistance of Counsel: Counsel's Failure to Interview Witnesses**

11 Petitioner argues that Counsel was ineffective for failing to interview witnesses. This
12 Court must dismiss a petition if it determines that a petitioner plead guilty and the petition is
13 not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was entered
14 without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court will
15 review a defaulted claim if the failure to review the claim would cause a fundamental
16 miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

17 Petitioner plead Guilty to all three counts of Aggravated Stalking. Whether Counsel
18 was ineffective for failing to interview witnesses is outside the scope of NRS 34.810(1)(a).
19 Further, Petitioner has failed to show that a miscarriage of justice occurred. Therefore, this
20 Ground for relief is dismissed.

21
22
23 ¹ Petitioner appears to have an excellent memory of the proceedings despite his alleged inability to enter his
24 pleas knowingly and voluntarily at that time. See EHT at 75-90.

**Ground 4. Ineffective Assistance of Counsel: Counsel Threateningly Induced
Petitioner into Signing the Plea Agreement**

Petitioner alleges that Counsel lied to him and threatened that Petitioner would spend the rest of life in prison if he failed to take the plea deal. This assertion is directly at odds with the record. Petitioner testified at the Evidentiary Hearing that Counsel explained to him that the plea agreement contained everything that was being promised. EHT at 77. There is no indication that Counsel promised him any other terms outside what was contained in the plea agreement or that Counsel lied to Petitioner in any way. *See* EHT at 45-46.

As to Petitioner's allegation of threats, Petitioner clearly stated at the Evidentiary Hearing that Counsel told him: "best thing for you to do is sign this plea so you don't get the habitual." EHT at 89. Even Petitioner's rendition of Counsel's statements fail to show that Counsel threatened or lied to Petitioner regarding the possible outcomes of the case. Counsel merely stated his opinion. EHT at 40-41. There is no indication that Counsel's actions fell below an objective standard or reasonableness or that Petitioner was prejudiced. Therefore, this Ground for relief is without merit.

**Ground 5. Ineffective Assistance of Counsel: Counsel's Failure/Refusal to File a
Motion to Withdraw Guilty Plea**

Again, Petitioner alleges that Counsel lied to him regarding the plea agreement. As noted above, this assertion is without merit and not supported by the record. Petitioner also renews his argument that he was not able to understand the plea agreement because of the "psychotropic medications" he was taking. Petitioner, in relying on these arguments, asserts that he instructed Counsel to withdraw his guilty plea after receiving a sentence he did not expect.

1 This Court must dismiss a petition if it determines that a petitioner plead guilty and the
2 petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was
3 entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court
4 will review a defaulted claim if the failure to review the claim would cause a fundamental
5 miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

6 Again, Petitioner alleges that his plea was entered involuntarily. This Court found no
7 merit in those arguments. As to Petitioner's alleged request to withdraw his guilty plea, this
8 claim likely falls outside the scope of permissible post-conviction grounds for relief because
9 it deals with withdrawing a plea as opposed to entering the plea.

10 Setting aside the question of the possible dismissal of this argument on procedural
11 grounds. This Court finds that other than Petitioner's self-serving statement that he made the
12 request to withdraw his pleas, there is no other indication that such a request was actually
13 made. EHT at 78. Further, the underlying arguments leading up to Petitioner allegedly
14 requesting to withdraw his pleas are refuted by the record. Therefore, this Ground for relief is
15 meritless.

16 **Ground 6. Petitioner was Unaware as to the True Nature and Consequences of his**
17 **Pleas**

18 Once again, Petitioner argues that he did not enter his pleas knowingly, voluntarily,
19 and was unable to understand the true nature and consequences of his pleas. Petitioner once
20 again blames the medication he was on at the time of entering his plea. As discussed above,
21 the record does not support Petitioner's assertions. Further, Petitioner failed to present any
22 additional evidence beyond his own testimony supporting his allegations. This Court finds
23 Petitioner's arguments without merit. Therefore, this Ground for relief is dismissed.
24

Ground 7. Cruel and Unusual Punishment Inflicted During Sentencing Procedure

Petitioner re-alleges multiple arguments regarding his inability to enter his guilty plea due to his alleged mental instability. This Court will not address those arguments again. As to those arguments, this Ground for relief lacks merit.

Petitioner takes issue with the sentence imposed upon him. This Court must dismiss a petition if it determines that a petitioner plead guilty and the petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court will review a defaulted claim if the failure to review the claim would cause a fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

Petitioner plead Guilty to all three counts of Aggravated Stalking. Issues regarding his sentence are outside the scope of NRS 34.810(1)(a). Further, Petitioner has failed to show that any miscarriage of justice took place. Even if he had made a sufficient showing, Petitioner was well aware that the Trial Court was not bound by the plea agreement at sentencing. AT at 4-5; EHT at 85. Therefore, this Ground for relief is dismissed in its entirety.

Ground 8. Cumulative Error

Petitioner argues that the culmination of error by Counsel entitles him to relief. Given that Petitioner has failed to demonstrate error in any nature, or prejudice from the alleged error, an argument of cumulative error lacks meritless. This Ground for relief is dismissed.

II. Petitioner's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) and Ground Seven to Supplemental Petition for Writ of Habeas Corpus (Post-Conviction).

Petitioner alleges an additional seven Grounds for relief in his *Supplemental Petition*

1 *for Writ of Habeas Corpus (Post-Conviction)* and *Ground Seven to Supplemental Petition for*
2 *Writ of Habeas Corpus (Post-Conviction)*. These Grounds are discussed individually.

3 **Ground 1. Ineffective Assistance of Counsel: Failed to Litigate Fourth Amendment**
4 **Issue**

5 Petitioner alleges that Counsel was ineffective when he failed to litigate Fourth
6 Amendment issues regarding a warrantless search. This Court must dismiss a petition if it
7 determines that a petitioner plead guilty and the petition is not based on 1) an involuntarily or
8 unknowingly entered plea, or 2) the plea was entered without effective assistance of counsel.
9 NEV. REV. STAT. § 34.810(1)(a). This Court will review a defaulted claim if the failure to
10 review the claim would cause a fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843,
11 921 P.2d at 923.

12 Petitioner plead Guilty to all three counts of Aggravated Stalking. This issue is outside
13 the scope of NRS 34.810(1)(a). Further, Petitioner has failed to show that any miscarriage of
14 justice took place. Therefore, this Ground for relief is dismissed.

15 **Ground 2. Ineffective Assistance of Counsel: Inadequate Investigation/Mental Health**
16 **Issues; Inability to Formulate Criminal Intent**

17 Petitioner alleges that Counsel was ineffective when he failed to investigate. Petitioner
18 reasons that had Counsel properly investigated, he would have discovered that Petitioner did
19 not have the requisite intent to commit the crimes charged. Petitioner raised a similar
20 argument in his *Petition for Writ of Habeas Corpus (Post-Conviction)*.

21 This Court must dismiss a petition if it determines that a petitioner plead guilty and the
22 petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was
23 entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court
24

1 will review a defaulted claim if the failure to review the claim would cause a fundamental
2 miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

3 Petitioner plead Guilty to all three counts of Aggravated Stalking. This issue is outside
4 the scope of NRS 34.810(1)(a). To the extent, if any, that this Ground for relief pertains to
5 Petitioner's ability to enter his guilty plea, those issues have been thoroughly discussed above.
6 Petitioner has failed to show the existence of a miscarriage of justice. Therefore, this Ground
7 for relief is dismissed.

8 **Ground 3. The Guilty Plea was Coerced by Counsel, Thus the Pleas Were**
9 **Involuntarily Made**

10 Petitioner argues that absent Counsel's advice regarding the possibility of receiving
11 habitual criminal status, he would not have entered into the plea agreement. As stated multiple
12 times throughout this **ORDER**, this Court has found no evidence of coercion or threats in the
13 record. Petitioner entered his plea knowingly, voluntarily, and with a complete understanding
14 of nature of the offense and the related consequences. AT at 14. Therefore, this Ground for
15 relief is meritless.

16 **Ground 4. Ineffective Assistance of Counsel: Counsel Should Have Filed a Motion for**
17 **Severance of the Charges**

18 Petitioner argues that Counsel was ineffective when he failed to request a separation
19 of the charges resulting in prejudice to Petitioner. As noted previously, this Court must
20 dismiss a petition if it determines that a petitioner plead guilty and the petition is not based on
21 1) an involuntarily or unknowingly entered plea, or 2) the plea was entered without effective
22 assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court will review a defaulted
23 claim if the failure to review the claim would cause a fundamental miscarriage of justice.
24

1 *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

2 Petitioner plead Guilty to all three counts of Aggravated Stalking. This issue is outside
3 the scope of NRS 34.810(1)(a). There is no indication in the record that a miscarriage of
4 justice took place. Therefore, this Ground for relief is dismissed.

5 **Ground 5. Ineffective Assistance of Counsel: Failing Litigate the Proper Charge**

6 Petitioner alleges that Counsel was ineffective for failing to file pre-trial motions to
7 attack the charging document in an effort to get the proper charge brought against Petitioner.
8 In making this argument, Petitioner once again argues that he could not form the requisite
9 intent to commit the crime. Petitioner failed to provide this Court with adequate supporting
10 evidence for this assertion.

11 Regardless, this Court must dismiss a petition if it determines that a petitioner plead
12 guilty and the petition is not based on 1) an involuntarily or unknowingly entered plea, or 2)
13 the plea was entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a).
14 This Court will review a defaulted claim if the failure to review the claim would cause a
15 fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

16 Petitioner plead Guilty to all three counts of Aggravated Stalking. Arguments
17 regarding Petitioner's past ability to form the requisite intent of the crimes charged are outside
18 the scope of NRS 34.810(1)(a). There is no indication that a miscarriage of justice occurred.
19 Therefore, this Ground for relief is dismissed.

20 **Ground 6. Ineffective Assistance of Counsel: Failed to Present Mental Health Records
21 at Sentencing**

22 Petitioner argues that his sentence was excessive in light of society's interests. Further,
23 Petitioner alleges that the sentencing analysis was not "reasoned." Petitioner alleges that
24

1 Counsel was ineffective at sentencing when he failed to provide the Trial Court with accurate
2 sentencing information.

3 Again, this Court must dismiss a petition if it determines that a petitioner plead guilty
4 and the petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea
5 was entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This
6 Court will review a defaulted claim if the failure to review the claim would cause a
7 fundamental miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

8 Petitioner plead Guilty to all three counts of Aggravated Stalking. Sentencing is outside
9 the scope of NRS 34.810(1)(a). Petitioner has failed to show a miscarriage of justice.
10 Therefore, this Ground for relief is dismissed.

11 **Ground 7. Ineffective Assistance of Counsel: Failed to object to State's Breach of the**
12 **Plea Bargain**

13 In this Ground for relief, Petitioner argues two forms of ineffective assistance of
14 counsel. First, Petitioner argues that Counsel was ineffective at sentencing when he failed
15 to object to the prosecutor's concurrence "with the recommendation contained in the
16 presentence investigation." Sentencing Transcript at 9. Petitioner also argues that Counsel
17 was ineffective for failing to raise this claim on appeal.

18 This Court must dismiss a petition if it determines that a petitioner plead guilty and the
19 petition is not based on 1) an involuntarily or unknowingly entered plea, or 2) the plea was
20 entered without effective assistance of counsel. NEV. REV. STAT. § 34.810(1)(a). This Court
21 will review a defaulted claim if the failure to review the claim would cause a fundamental
22 miscarriage of justice. *Mazzan*, 112 Nev. at 843, 921 P.2d at 923.

23 Petitioner plead Guilty to all three counts of Aggravated Stalking. These arguments
24

1 fall outside the scope of NRS 34.810(1)(a) because they concern issues arising at sentencing,
2 not issues concerning entering a plea. Petitioner has failed to show a miscarriage of justice
3 because the Trial Court was not bound by the *Guilty Plea Agreement* or argument from the
4 prosecutor. Therefore, this Ground for relief is dismissed.

5 CONCLUSION

6 This Court finds no merit in any of Petitioner's alleged Grounds for relief. Therefore,
7 Petitioner's *Petition for Writ of Habeas Corpus (Post-conviction)*, his *Supplemental Petition*
8 *for Writ of Habeas Corpus (Post-Conviction)*, and his *Ground Seven to Supplemental Petition*
9 *for Writ of Habeas Corpus (Post-Conviction)* are **DENIED**.

10 IT IS SO ORDERED

11 DATED: January 31, 2019.

12
13 
14 HONORABLE MICHAEL R. MONTERO
15 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Honorable Michael R. Montero, District Court Judge, Sixth Judicial District Court and am not a party to, nor interested in, this action; and that on February 1st, 2019, I caused to be served a true and correct copy of the enclosed

ORDER upon the following parties:

Karla K. Butko, Esq.
1030 Holcomb Ave.
Reno, NV 89502
Via U.S. Mail

Michael Macdonald
Humboldt County District Attorney
P.O. Box 909
Winnemucca, NV 89446
Hand-delivered to Humboldt County Courthouse, DCT Box

Aaron Ford
Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701
Via U.S. Mail

Shane M. Bell
Law Clerk

1 Melvin Leroy Gonzales, Petitioner, vs. The State of Nevada, Respondent.
2 Sixth Judicial District Court of Nevada, Case No. CV 21547

3

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DECLARATION OF SERVICE

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I am a citizen of the United States, over the age of 18 years, and not a party to or interested in this action. I am an employee of the Humboldt County Clerk's Office, and my business address is 50 W 5th Street, Winnemucca, NV 89445. On this day I caused to be served the following document(s):

NOTICE OF ENTRY OF ORDER

 X By placing in a sealed envelope, with postage fully prepaid, in the United States Post Office, Winnemucca, Nevada, persons addressed as set forth below. I am familiar with this office's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in the designated area for pick up by the United States Postal Service.

 x By personal delivery of a true copy to the person(s) set forth below by placement in the designated area in the Humboldt County Clerk's Office for pick up by the person(s) or representative of said person(s) set forth below.


Karla K. Butko, Esq.
1030 Holcomb Ave.
Reno, NV 89502
Via U.S. Mail

Michael Macdonald
Humboldt County District Attorney
PO Box 909
Personal Delivery

Aaron Ford
Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701
Via US Mail

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on February 2, 2019 at Winnemucca, Nevada.


County Clerk

CV 20,547

Melvin LeRoy Gonzales vs. Renee Baker

Judge: Michael R. Montero

Clerk: Jody Clark

OCTOBER 4, 2018

CONTINUED EVIDENTIARY HEARING

PRESENT: Petitioner, Melvin LeRoy Gonzales (Custody), present with counsel, Karla Butko. Anthony Gordon, Humboldt County Deputy District Attorney, present on behalf of the State, Respondent.

The record reflected that this matter comes before the Court on a Petition For Writ of Habeas Corpus filed on November 16, 2015. The record further stated that counsel has talked the Court in chambers and they would not like to place the conversation on the record.

Butko motioned the Court to amend ground 7. Butko argued that the Defendant's previous counsel was ineffective as well as Plaintiff's counsel.

Gordon had no objections to the motion to amend as long as he would have the ability to brief the matter.

The Court granted the oral motion to amend the post-conviction writ of habeas corpus. The Court asked that it be a written supplement.

Butko invoked the rule of exclusion.

The Court granted and cleared the courtroom.

Officer, Elizabeth Hill, duly sworn, testified under the direct examination of Butko. Cross by Gordon. Redirect by Butko. Recross by Gordon.

Detective, Dave Walls, duly sworn, testified under the direct examination of Butko. Cross by Gordon. Redirect by Butko. Recross by Gordon.

Attorney, Steven Cochran, duly sworn, testified under the direct examination of Butko. Petitioner's Exhibit "1," Guilty Plea Agreement, offered and admitted. Petitioner's Exhibit "2," Fast Track Statement, offered and admitted. Cross by Gordon. Redirect by Butko.

Melvin Leroy Gonzales, Jr., duly sworn, testified under the direct examination of Butko. Cross by Gordon.

The Court directed counsel to file their closing arguments with the Court. The Court would also like a briefing schedule. The Court continued to address counsel regarding previous filings. The Court further informed counsel that should documents not be filed in a timely manner the Court would not consider.

The Court asked the Defendant for his understanding.

The Defendant stated his understanding.

Melvin LeRoy Gonzales

vs. Renee Baker

PETITIONER'S EXHIBITS: CASE NUMBER: CV 20,547

Hearing Date: 10/4/18

	I.D.	MARKED	OFFERED	ADMITTED
1 <u>Guilty Plea Agreement</u>	<u>1</u>	<u>10/04/18</u>	<u>10/04/18</u>	<u>10/04/18</u>
2 <u>Fast Track Statement</u>	<u>2</u>	<u>10/04/18</u>	<u>10/04/18</u>	<u>10/04/18</u>
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CERTIFICATION OF COPY

STATE OF NEVADA,
COUNTY OF HUMBOLDT,

I, TAMIRAE SPERO, the duly elected, qualifying and acting Clerk of Humboldt County, in the State of Nevada,
and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true , full and correct copy
of the original: Notice of Appeal; Case Appeal Statement; Request for Rough Draft Transcript; District Court
Docket Entries; Order; Notice of Entry of Order; District Court Minutes; and Exhibit Lists;.

Melvin Leroy Gonzales,
Petitioner,
vs.
The State of Nevada,
Respondent.

CASE NO. CV 20,547

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto set
my hand and affixed
the seal of the Court at my office,
Winnemucca, Nevada, this 19th
day of February, 2019, A.D.


JESSICA KOEPKE, DEPUTY CLERK