

P.O. Box 1489-4A13-ESP

Ely, Nevada 89301

Date: FEB-28-2019

FILED

2019 MAR -1 AM 11:07

JACQUELINE BRYANT  
CLERK OF THE COURT

Electronically Filed  
March 6 2019 11:06 a.m.

Elizabeth A. Brown

Information Pursuant to NRS 239B.030

undersigned affirms that there is no person or information  
anyone used in this action.

In the 2nd Judicial  
District Court of Nevada  
In and for the County  
of Washoe

Charles Maki #42820

vs

Warden of ESP

State of Nevada, et al

Case No. CR94-0345

Dept. No. 8

### Notice of Appeal

To the clerk and honorable Judge of said court,

The petitioner, Charles Maki #42820, hereby appeals the  
denial of Post-Conviction relief entered by the Court on

FEBRUARY 07 2019 and 2-05-2019, on

this 24 day of FEBRUARY, 2019 to the Nevada  
Supreme Court.

### Routing Statement

This action involves the destruction of exculpatory  
evidence by police under NRS 47.230 - 47.235 and

Pg 1 of 2

CR94-0345  
DC-090008022-066  
STATE VS CHARLES JOSEPH MAKI 2 Pages  
District Court 03/01/2019 11:07 AM  
Washoe County 2515  
YVILORIA

## Routing Statement Cont

Medical evidence concerning myself and concerning my alleged victim's available during and before trial and after trial that "various counsel" could have easily used to prove my actual innocence under 28 U.S.C. § 2254(d)(1). had they simply asked the right questions that no reasonable Jurist would find me guilty Based on. The lower court made an unreasonable determination of facts and erroneously misapplied and misconstrued U.S. Supreme Court law pursuant to the Anti-terrorism Effective Death Penalty Act (AEDPA) in denying relief. Therefore, the Nevada Supreme Court has exclusive jurisdiction to review, not the Nevada Supreme Court of Appeals.

Charles Malki  
NDOC # 42820  
P.O. Box 1989-4A13  
Ely, Nevada 8930,  
charles.malki  
Pro per Appellant.

### Affirmation

"I, Charles Malki # 42820, hereby attest under the penalties of perjury that the foregoing is true and correct and not for any improper purpose.

char malki  
NRS 208.165 & 171-171 Affiant

Hereby sworn this 24 day of FEBRUARY, 2019  
under the penalties of perjury as true and correct

### Quick Cert. of Service

A true and correct copy of "N.O.A..." was served on counsel of respondent below, at address below via logged out going legal Mail pursuant to NRCP rules 4 and 5 by Appellant

char malki  
Appellant  
Washoe County D.A.  
25 Court Street  
Reno, Nevada 89501

served this 24 day of FEBRUARY,  
2019 by Appellant.

Code 1310

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES JOSEPH MAKI,

Petitioner,

Case No. CR94-0345

vs.

Dept. No. 8

WILLIAM GITERRE, Acting Warden,

Respondent.

**CASE APPEAL STATEMENT**

This case appeal statement is filed pursuant to NRAP 3(f).

1. Appellant is Charles Joseph Maki.
2. This appeal is from an order entered by the Honorable Judge Barry Breslow.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:  
Charles J. Maki #42820  
Ely State Prison  
P.O. Box 1989 - 4A13  
Ely, Nevada 89301
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County  
District Attorney's Office:  
Jennifer P. Noble, Esq., SBN: 9446  
P.O. Box 11130  
Reno, Nevada 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellant is represented by appointed counsel in District Court.

7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information on February 10<sup>th</sup>, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying Motion to Modify Sentence filed February 4<sup>th</sup>, 2019 and the Order Dismissing Successive Petition for Writ of Habeas Corpus filed February 15<sup>th</sup>, 2019.
11. The case has been the subject of a previous appeal to the Supreme Court:  
Supreme Court No: 63845, 66144, 67717, 67800 and 69049
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 4th day of March, 2019.

Jacqueline Bryant  
Clerk of the Court

By: /s/ Yvonne Vilorio  
Yvonne Vilorio  
Deputy Clerk

**SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE**

**Case History - CR94-0345**

**DEPT. D8**

**HON. BARRY L. BRESLOW**

Report Date & Time

3/4/2019

10:39:42AM

**Case Description: STATE VS CHARLES JOSEPH MAKI (D8)**

<b>Case ID:</b>	<b>CR94-0345</b>	<b>Case Type:</b>	<b>CRIMINAL</b>	<b>Initial Filing Date:</b>	<b>2/10/1994</b>
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**Parties**

PATY	Robert C. Bell, Esq. - 1362
APPD	CHARLES MAKI - @395024
PLTF	STATE OF NEVADA - STATE
DA	Jennifer P. Noble, Esq. - 9446
DEFT	CHARLES MAKI - @395024
CAA	Robert Story, Esq. - 1268

**Charges**

<i>Charge No.</i>	<i>Charge Code</i>	<i>Charge Date</i>	<i>Charge Description</i>
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**Plea Information**

<i>Charge No.</i>	<i>Plea Code</i>	<i>Plea Date</i>	<i>Plea Description</i>
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**Release Information**

*Custody Status*

**Hearings**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
1	D8	Request for Submission	4/7/2014 14:35:00	4/17/2014

Event Extra Text: MOTION FOR ENLARGEMENT OF TIME IN WHICH TO PREPARE AND FILE THE SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (NO PAPER ORDER PROVIDED)

**Disposition:**  
S200 4/17/2014  
GRANTED

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
2	D8	Request for Submission	2/17/2015 09:28:00	3/18/2015

Event Extra Text: MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT IN SUPPORT OF THE MOTION FOR APPOINTMENT OF COUNSEL

**Disposition:**  
S200 3/18/2015

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
3	D8	Request for Submission	4/21/2015 08:34:00	4/21/2015

Event Extra Text: MOTION FOR APPOINTMENT OF COUNSEL (NO PAPER ORDER)

**Disposition:**  
S200 4/21/2015

**Case Description: STATE VS CHARLES JOSEPH MAKI (D8)**

**Case ID:** CR94-0345 **Case Type:** CRIMINAL **Initial Filing Date:** 2/10/1994

	<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
4	D8	Request for Submission	9/14/2015	08:00:00	10/7/2015
Event Extra Text: DEFTS MT TO AMEND JUDGMENT OF CONVICTION			<b>Disposition:</b> S200 10/7/2015		

	<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
5	D8	Request for Submission	12/7/2018	09:18:00	12/17/2018
Event Extra Text: REQUEST TO SUBMIT MOTION			<b>Disposition:</b> S200 12/17/2018		

	<i>Department</i>	<i>Event Description</i>	<i>Sched. Date &amp; Time</i>		<i>Disposed Date</i>
6	D8	Tickle Start Code	1/18/2019	07:00:00	1/17/2019
Event Extra Text: STATE RESPONSE?			<b>Disposition:</b> T200 1/17/2019		

**Agency Cross Reference**

<i>Code</i>	<i>Agency Description</i>	<i>Case Reference I.D.</i>
SC	Supreme Court	SCN 69049
SC	Supreme Court	SCN 67800
SC	Supreme Court	SCN 63845
SC	Supreme Court	SCN 66144
SC	Supreme Court	SCN 67717

**Actions**

<i>Action Entry Date</i>	<i>Code</i>	<i>Code Description</i>	<i>Text</i>
1/1/1994	1315	** Case Closed	
2/10/1994	1250	Application for Setting	
2/10/1994	1800	Information	
2/16/1994	MIN	***Minutes	
2/16/1994	MIN	***Minutes	CRIMINAL PROGRESS SHEET
2/18/1994	3700	Proceedings	
2/18/1994	1250	Application for Setting	
2/23/1994	4185	Transcript	
3/4/1994	2490	Motion ...	
3/4/1994	2490	Motion ...	
3/10/1994	2645	Opposition to Mtn ...	OPPOSITION TO STATE'S MOTION TO DETERMINE ADMISSIBILITY OF OUT OF COURT STATEMENTS OF
3/10/1994	2645	Opposition to Mtn ...	
3/11/1994	MIN	***Minutes	
3/18/1994	3980	Stip and Order...	
3/21/1994	2270	Mtn to Compel...	
3/25/1994	2480	Mtn to Suppress...	
3/25/1994	4185	Transcript	
3/31/1994	2645	Opposition to Mtn ...	

**Case Description: STATE VS CHARLES JOSEPH MAKI (D8)**

<b>Case ID:</b>	<b>CR94-0345</b>	<b>Case Type:</b>	<b>CRIMINAL</b>	<b>Initial Filing Date:</b>	<b>2/10/1994</b>
4/1/1994	MIN	***Minutes			
4/4/1994	2245	Mtn in Limine			
4/4/1994	2245	Mtn in Limine			
4/6/1994	4050	Stipulation ...			
4/11/1994	MIN	***Minutes			
4/11/1994	MIN	***Minutes			
4/11/1994	1930	Letters ...			
4/11/1994	MIN	***Minutes			
4/12/1994	4235	Unused Verdict Form(s)...			
4/12/1994	1890	Jury Question, Court Response			
4/12/1994	1880	Judgment			
4/12/1994	4245	Verdict(s)...			
4/12/1994	4245	Verdict(s)...			
4/12/1994	4245	Verdict(s)...			
4/12/1994	4245	Verdict(s)...			
4/12/1994	4245	Verdict(s)...			
4/12/1994	4245	Verdict(s)...			
4/12/1994	4245	Verdict(s)...			
4/12/1994	4245	Verdict(s)...			
4/12/1994	4245	Verdict(s)...			
4/12/1994	4235	Unused Verdict Form(s)...			
4/12/1994	1885	Jury Instructions			
5/2/1994	4500	PSI - Confidential	* SEALED *		
5/9/1994	4185	Transcript	SUPPRESSION HEARING		
5/12/1994	2610	Notice ...			
5/17/1994	MIN	***Minutes			
5/17/1994	1880	Judgment			
5/18/1994	3370	Order ...			
5/18/1994	3370	Order ...			
6/2/1994	4185	Transcript	SENTENCING		
6/3/1994	1600	Designation Record on Appeal			
6/3/1994	3870	Request			
6/3/1994	2515	Notice of Appeal Supreme Court			
6/9/1994	2230	Mtn Trial Trans. Public Exp			
6/13/1994	3370	Order ...			
7/11/1994	4050	Stipulation ...			
7/11/1994	3370	Order ...			
7/11/1994	1600	Designation Record on Appeal			
8/30/1994	4185	Transcript	APRIL 11 & 12, 1994		

Case Description: STATE VS CHARLES JOSEPH MAKI (D8)				
Case ID:	CR94-0345	Case Type:	CRIMINAL	Initial Filing Date: 2/10/1994
11/7/1994	3980	Stip and Order...		
11/7/1994	3735	Receipt		
12/7/1994	3735	Receipt		
9/13/1995	3932	Seizure Order ...		
10/27/1995	2855	Ord Dismiss Appeal/Remand		
10/27/1995	4145	Supreme Court Remittitur		
10/27/1995	1350	Certificate of Clerk		
4/10/1996	2490	Motion ...		
4/10/1996	2610	Notice ...		
4/18/1996	4300	Withdrawal of Counsel		
7/11/1997	MIN	***Minutes		
7/18/1997	MIN	***Minutes		
4/23/2012	PAYRC	**Payment Received	A Payment of -\$0.05 was made on receipt DCDC357287.	
4/23/2012	PAYVD	**Payment Voided	Receipt Number DCDC357265 has been voided.	
4/23/2012	PEND	**Pending Court Deposit		
6/13/2012	PAYRC	**Payment Received	A Payment of -\$0.21 was made on receipt DCDC363705.	
8/15/2012	PAYRC	**Payment Received	A Payment of -\$0.05 was made on receipt DCDC372409.	
9/19/2012	PAYRC	**Payment Received	A Payment of -\$0.15 was made on receipt DCDC377095.	
10/19/2012	PAYRC	**Payment Received	A Payment of -\$0.11 was made on receipt DCDC381431.	
12/13/2012	PAYRC	**Payment Received	A Payment of -\$1.61 was made on receipt DCDC388347.	
8/2/2013	1030	Affidavit in Support...	AFFIDAVIT IN SUPPORT OF MOTION FOR APPOINTMENT OF COUNSEL/WRIT OF PROHIBITION/WRIT OF	
8/2/2013	1215	Application Appoint Counsel	MOTION FOR APPOINTMENT OF COUNSEL	
8/2/2013	1600	Designation Record on Appeal		
8/2/2013	2515	Notice of Appeal Supreme Court		
8/2/2013	4330	Writ of Mandamus	WRIT OF PROHIBITION/WRIT OF MANDAMUS	
8/2/2013	3860	Request for Submission	NO S1 DONE - REFERRED TO BOB BELL	
8/20/2013	1310E	Case Appeal Statement	Transaction 3934711 - Approved By: NOREVIEW : 08-20-2013:09:30:45	
8/20/2013	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANMITTAL - NOTICE OF APPEAL - Transaction 3934711 - Approved By: NC	
8/20/2013	NEF	Proof of Electronic Service	Transaction 3934720 - Approved By: NOREVIEW : 08-20-2013:09:32:45	
8/26/2013	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 63845/RECEIPT FOR DOCUMENTS - Transaction 3949041 - Approved By: NOREVIEW	
8/26/2013	NEF	Proof of Electronic Service	Transaction 3949155 - Approved By: NOREVIEW : 08-26-2013:09:41:15	
10/1/2013	4127	Supreme Ct Ord Dismiss Appeal	SUPREME COURT NO. 63845/ORDER DISMISSING APPEAL - Transaction 4035340 - Approved By: NOREVIEW	
10/1/2013	NEF	Proof of Electronic Service	Transaction 4035364 - Approved By: NOREVIEW : 10-01-2013:15:43:31	
11/5/2013	4145	Supreme Court Remittitur	SUPREME COURT NO. 63845/REMITTITUR - Transaction 4115061 - Approved By: NOREVIEW : 11-05-2013:1	
11/5/2013	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT NO. 63845/CLERKS CERTIFICATE AND JUDGMENT - Transaction 4115061 - Approved By	
11/5/2013	4127	Supreme Ct Ord Dismiss Appeal	SUPREME COURT CASE NO 63845/ORDER DISMISSING APPEAL - Transaction 4115061 - Approved By: NO	
11/5/2013	NEF	Proof of Electronic Service	Transaction 4115085 - Approved By: NOREVIEW : 11-05-2013:11:52:16	
12/30/2013	2385	Mtn Proceed Forma Pauperis	* SEALED *	
12/30/2013	1215	Application Appoint Counsel	MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO NRS 34.750	



Case Description: STATE VS CHARLES JOSEPH MAKI (D8)				
Case ID:	CR94-0345	Case Type:	CRIMINAL	Initial Filing Date: 2/10/1994
12/30/2013	3862	**Criminal Submit	DOCUMENT TITLE: MOTION FOR LEAVE TO PROCEED IN FORMA PAUERIS and MOTION FOR APPOINTM	
12/30/2013	3565	Pet Post-Conviction Relief	PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION	
1/7/2014	3335	Ord Proceed Forma Pauperis	ORDER GRANTING IN FORMA PAUPERIS - Transaction 4240986 - Approved By: NOREVIEW : 01-07-2014:16	
1/7/2014	2715	Ord Appointing Counsel	ORDER GRANTING APPOINTMENT OF COUNSEL - Transaction 4240992 - Approved By: NOREVIEW : 01-07	
1/7/2014	NEF	Proof of Electronic Service	Transaction 4240994 - Approved By: NOREVIEW : 01-07-2014:16:58:44	
1/7/2014	NEF	Proof of Electronic Service	Transaction 4241000 - Approved By: NOREVIEW : 01-07-2014:17:00:11	
1/29/2014	2715	Ord Appointing Counsel	RECOMMENDATION AND ORDER FOR APPOINTMENT OF COUNSEL - Transaction 4279970 - Approved By:	
1/29/2014	NEF	Proof of Electronic Service	Transaction 4279994 - Approved By: NOREVIEW : 01-29-2014:10:52:21	
3/10/2014	1665	Ex-Parte Application...	* SEALED * EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES - Transaction 4335512 - Approved By:	
3/10/2014	NEF	Proof of Electronic Service	Transaction 4335832 - Approved By: NOREVIEW : 03-10-2014:12:43:57	
3/26/2014	S3370	Sealed Order	* SEALED * RECOMMENDATION AND ORDER FOR PAYMENT OF ATTORNEY'S FEES - Transaction 435985	
3/26/2014	NEF	Proof of Electronic Service	Transaction 4359861 - Approved By: NOREVIEW : 03-26-2014:08:30:23	
3/31/2014	2075	Mtn for Extension of Time	MOTION FOR ENLARGEMENT OF TIME IN WHICH TO PREPARE AND FILE THE SUPPLEMENTAL PETITIOI	
3/31/2014	NEF	Proof of Electronic Service	Transaction 4366116 - Approved By: NOREVIEW : 03-31-2014:12:15:55	
4/7/2014	3860	Request for Submission	MOTION FOR ENLARGEMENT OF TIME IN WHICH TO PREPARE AND FILE THE SUPPLEMENTAL PETITIOI	
4/7/2014	NEF	Proof of Electronic Service	Transaction 4376237 - Approved By: NOREVIEW : 04-07-2014:14:27:58	
4/14/2014	1665	Ex-Parte Application...	* SEALED * EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES - Transaction 4385116 - Approved By:	
4/14/2014	NEF	Proof of Electronic Service	Transaction 4385230 - Approved By: NOREVIEW : 04-14-2014:11:49:54	
4/17/2014	S200	Request for Submission Complet	GRANTED	
4/17/2014	3060	Ord Granting Mtn ...	ORDER GRANTING MOTION FOR ENLARGEMENT OF TIME IN WHICH TO PREPARE AND FILE THE SUPP	
4/17/2014	NEF	Proof of Electronic Service	Transaction 4392049 - Approved By: NOREVIEW : 04-17-2014:16:29:32	
4/29/2014	S3370	Sealed Order	* SEALED * RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES - Transactio	
4/29/2014	NEF	Proof of Electronic Service	Transaction 4407082 - Approved By: NOREVIEW : 04-29-2014:10:04:30	
6/30/2014	2610	Notice ...	NOTICE TO COURT OF NO SUPPLEMENT - Transaction 4497448 - Approved By: SHAMBRIG : 06-30-2014:12	
6/30/2014	NEF	Proof of Electronic Service	Transaction 4497542 - Approved By: NOREVIEW : 06-30-2014:12:14:32	
7/7/2014	2922	Ord Dismiss Post Conviction	Transaction 4505983 - Approved By: NOREVIEW : 07-07-2014:15:27:34	
7/7/2014	NEF	Proof of Electronic Service	Transaction 4505988 - Approved By: NOREVIEW : 07-07-2014:15:28:35	
7/18/2014	2515	Notice of Appeal Supreme Court		
7/18/2014	1600	Designation Record on Appeal		
7/18/2014	2610	Notice ...	NOTICE TO COURT	
7/21/2014	1665	Ex-Parte Application...	* SEALED * EX PARTE APPLICION FOR INTERIM CLAIM FOR FEES - Transaction 4526360 - Approved By: I	
7/22/2014	NEF	Proof of Electronic Service	Transaction 4526813 - Approved By: NOREVIEW : 07-22-2014:08:12:05	
7/24/2014	1310E	Case Appeal Statement	Transaction 4530955 - Approved By: NOREVIEW : 07-24-2014:08:39:10	
7/24/2014	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 4530955 - Approved By: N	
7/24/2014	NEF	Proof of Electronic Service	Transaction 4530958 - Approved By: NOREVIEW : 07-24-2014:08:40:10	
8/6/2014	1600	Designation Record on Appeal	DESIGNATION OF RECORD ON APPEAL SUPPLEMENTAL - BRIEF	
8/14/2014	S3370	Sealed Order	* SEALED * RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES - Transactio	
8/14/2014	NEF	Proof of Electronic Service	Transaction 4562530 - Approved By: NOREVIEW : 08-14-2014:15:57:08	
8/20/2014	4126	Supreme Ct Order Directing...	SUPREME COURT NO. 66144/ORDER DIRECTING TRANSMISSION OF RECORD - Transaction 4569172 - Apr	

Case Description: STATE VS CHARLES JOSEPH MAKI (D8)				
Case ID:	CR94-0345	Case Type:	CRIMINAL	Initial Filing Date: 2/10/1994
8/20/2014	NEF	Proof of Electronic Service	Transaction 4569174 - Approved By: NOREVIEW : 08-20-2014:09:25:48	
9/10/2014	2545	Notice of Entry ...	Transaction 4600031 - Approved By: NOREVIEW : 09-10-2014:12:18:37	
9/10/2014	NEF	Proof of Electronic Service	Transaction 4600036 - Approved By: NOREVIEW : 09-10-2014:12:19:26	
9/22/2014	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - RECORD ON APPEAL - Transaction 4617873 - Approved By:	
9/22/2014	NEF	Proof of Electronic Service	Transaction 4617882 - Approved By: NOREVIEW : 09-22-2014:14:03:39	
12/18/2014	4134	Supreme Court Order Affirming	SUPREME COURT NO. 66144/ORDER OF AFFIRMANCE - Transaction 4742172 - Approved By: NOREVIEW :	
12/18/2014	NEF	Proof of Electronic Service	Transaction 4742199 - Approved By: NOREVIEW : 12-18-2014:10:03:21	
1/12/2015	4145	Supreme Court Remittitur	SUPREME COURT NO. 66144/REMITTUTUR - Transaction 4768575 - Approved By: NOREVIEW : 01-12-2015	
1/12/2015	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT NO. 66144/CLERK'S CERTIFICATE AND JUDGMENT - Transaction 4768575 - Approved B	
1/12/2015	4134	Supreme Court Order Affirming	SUPREME COURT NO. 66144/ORDER OF AFFIRMANCE - Transaction 4768575 - Approved By: NOREVIEW :	
1/12/2015	NEF	Proof of Electronic Service	Transaction 4768579 - Approved By: NOREVIEW : 01-12-2015:09:28:00	
2/17/2015	1030	Affidavit in Support...	AFFIDAVIT IN SUPPORT OF MOTION FOR THE APPOINTMENT OF COUNSEL / WRIT OF PROHIBITION / W	
2/17/2015	2490	Motion ...	MOTION FOR APPOINTMENT OF COUNSEL	
2/17/2015	4330	Writ of Mandamus	WRIT OF PROBIBITION / WRIT MANDAMUS	
2/17/2015	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT IN SUPPORT OF THE MOTIO	
3/18/2015	S200	Request for Submission Complet		
3/18/2015	F230	Other Manner of Disposition		
3/18/2015	2840	Ord Denying ...	PETITION AND MOTION FOR APPOINTMENT OF COUNSEL - Transaction 4867385 - Approved By: NOREVIE	
3/18/2015	NEF	Proof of Electronic Service	Transaction 4867396 - Approved By: NOREVIEW : 03-18-2015:16:11:38	
3/27/2015	2515	Notice of Appeal Supreme Court		
4/2/2015	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 4889258 - Approved By: N	
4/2/2015	1310E	Case Appeal Statement	Transaction 4889258 - Approved By: NOREVIEW : 04-02-2015:09:40:06	
4/2/2015	NEF	Proof of Electronic Service	Transaction 4889267 - Approved By: NOREVIEW : 04-02-2015:09:41:09	
4/2/2015	2490	Motion ...	MOTION TO THE COURT (A STATE CREATED INMPEDEMENT - DENING (sic) ACCESS TO THE COURT, IN	
4/9/2015	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 67717 / RECEIPT FOR DOCUMENTS - Transaction 4899041 - Approved By: NOREVII	
4/9/2015	NEF	Proof of Electronic Service	Transaction 4899046 - Approved By: NOREVIEW : 04-09-2015:09:06:47	
4/17/2015	2515	Notice of Appeal Supreme Court	APPELLANT CHARLES MAKI, REC'D DOCUMENTS FROM SUPREME COURT 4/17/15	
4/17/2015	1600	Designation Record on Appeal		
4/17/2015	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR APPOINTMENT OF COUNSEL (NO PAPER ORDER)	
4/20/2015	1310E	Case Appeal Statement	Transaction 4913697 - Approved By: NOREVIEW : 04-20-2015:09:14:39	
4/20/2015	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 4913697 - Approved By: N	
4/20/2015	NEF	Proof of Electronic Service	Transaction 4913704 - Approved By: NOREVIEW : 04-20-2015:09:15:37	
4/21/2015	S200	Request for Submission Complet		
4/21/2015	2515	Notice of Appeal Supreme Court	Appellant, Charles Maki	
4/21/2015	1600	Designation Record on Appeal		
4/23/2015	1310E	Case Appeal Statement	Transaction 4920552 - Approved By: NOREVIEW : 04-23-2015:12:23:28	
4/23/2015	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 4920552 - Approved By: N	
4/23/2015	NEF	Proof of Electronic Service	Transaction 4920554 - Approved By: NOREVIEW : 04-23-2015:12:24:29	
4/24/2015	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 67800 / RECEIPT FOR DOCUMENTS - Transaction 4921868 - Approved By: NOREVII	

Case Description: STATE VS CHARLES JOSEPH MAKI (D8)				
Case ID:	CR94-0345	Case Type:	CRIMINAL	Initial Filing Date: 2/10/1994
4/24/2015	NEF	Proof of Electronic Service	Transaction 4921874 - Approved By: NOREVIEW : 04-24-2015:08:32:52	
4/30/2015	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 67717/RECEIPT FOR DOCUMENTS - Transaction 4932202 - Approved By: NOREVIEW	
4/30/2015	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 67717/RECEIPT FOR DOCUMENTS - Transaction 4932202 - Approved By: NOREVIEW	
4/30/2015	NEF	Proof of Electronic Service	Transaction 4932206 - Approved By: NOREVIEW : 04-30-2015:16:17:28	
5/5/2015	4126	Supreme Ct Order Directing...	SUPREME COURT NO. 67717/ORDER DIRECTING TRANSMISSION OF RECORD - Transaction 4938558 - A	
5/5/2015	NEF	Proof of Electronic Service	Transaction 4938561 - Approved By: NOREVIEW : 05-05-2015:14:12:14	
5/8/2015	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - RECORD ON APPEAL - Transaction 4944612 - Approved By:	
5/8/2015	NEF	Proof of Electronic Service	Transaction 4944616 - Approved By: NOREVIEW : 05-08-2015:10:44:47	
5/8/2015	NEF	Proof of Electronic Service	Transaction 4945273 - Approved By: NOREVIEW : 05-08-2015:14:30:56	
5/8/2015	1350	Certificate of Clerk	AMENDED CERTIFICATE OF CLERK AND TRANSMITTAL - RECORD ON APPEAL - Transaction 4945269 - A	
5/28/2015	1230	Application for Fees	(SEALED) APPLICATION FOR INTERIM CLAIM FOR FEES - Transaction 4972878 - Approved By: YLLOYD : C	
5/28/2015	NEF	Proof of Electronic Service	Transaction 4972926 - Approved By: NOREVIEW : 05-28-2015:10:53:34	
6/19/2015	2777	Ord Approving ...	*SEALED* ORDER FOR PYAMENT OF INTERIM ATTORNEY'S FEES - Transaction 5009346 - Approved By: N	
6/19/2015	NEF	Proof of Electronic Service	Transaction 5009352 - Approved By: NOREVIEW : 06-19-2015:15:05:19	
7/24/2015	4134	Supreme Court Order Affirming	SUPREME COURT NO. 67717/ORDER OF AFFIRMANCE - Transaction 5060670 - Approved By: NOREVIEW :	
7/24/2015	4128	Supreme Court Order Denying	SUPREME COURT NO. 67800/ORDER DENYING PETITION - Transaction 5060670 - Approved By: NOREVIEW	
7/24/2015	NEF	Proof of Electronic Service	Transaction 5060671 - Approved By: NOREVIEW : 07-24-2015:08:54:00	
8/19/2015	4131	Supreme Ct Not/Lieu/Remittitur	SUPREME COURT NO. 67800 / NOTICE IN LIEU OF REMITTITUR - Transaction 5101958 - Approved By: NO	
8/19/2015	4145	Supreme Court Remittitur	SUPREME COURT NO. 67717 / REMITTITUR - Transaction 5101958 - Approved By: NOREVIEW : 08-19-2015	
8/19/2015	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT NO. 67717 / CLERK'S CERTIFICATE & JUDGMENT - Transaction 5101958 - Approved By:	
8/19/2015	4134	Supreme Court Order Affirming	SUPREME COURT NO. 67717 / ORDER OF AFFIRMANCE - Transaction 5101958 - Approved By: NOREVIEW	
8/19/2015	NEF	Proof of Electronic Service	Transaction 5101961 - Approved By: NOREVIEW : 08-19-2015:15:13:05	
8/25/2015	2490	Motion ...	DEFENDANTS' MOTION TO AMEND JUDGMENT OF 5/17/1994 TO COMPORT WITH NRS 176.105	
9/11/2015	3860	Request for Submission	DOCUMENT TITLE: DEFENDANT'S MOTION TO AMEND JUDGMENT OF CONVICTION (PAPER ORDER NC	
10/7/2015	S200	Request for Submission Complet		
10/7/2015	2842	Ord Denying Motion	Transaction 5177498 - Approved By: NOREVIEW : 10-07-2015:15:50:53	
10/7/2015	NEF	Proof of Electronic Service	Transaction 5177502 - Approved By: NOREVIEW : 10-07-2015:15:51:46	
10/19/2015	2515	Notice of Appeal Supreme Court	Appellant, CHARLES J MAKI, proper	
10/22/2015	1310E	Case Appeal Statement	Transaction 5200988 - Approved By: NOREVIEW : 10-22-2015:09:41:20	
10/22/2015	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 5200988 - Approved By: N	
10/22/2015	NEF	Proof of Electronic Service	Transaction 5200993 - Approved By: NOREVIEW : 10-22-2015:09:42:23	
10/28/2015	NEF	Proof of Electronic Service	Transaction 5210611 - Approved By: NOREVIEW : 10-28-2015:14:26:34	
10/28/2015	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 69049/RECEIPT FOR DOCUMENTS - Transaction 5210600 - Approved By: NOREVIEW	
12/10/2015	4126	Supreme Ct Order Directing...	SUPREME COURT NO. 69049 / ORDER DIRECTING TRANSMISSION OF RECORD - Transaction 5273663 - J	
12/10/2015	NEF	Proof of Electronic Service	Transaction 5273668 - Approved By: NOREVIEW : 12-10-2015:15:10:11	
12/30/2015	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - RECORD ON APPEAL - Transaction 5298090 - Approved By:	
12/30/2015	NEF	Proof of Electronic Service	Transaction 5298094 - Approved By: NOREVIEW : 12-30-2015:08:57:28	
11/21/2016	4134	Supreme Court Order Affirming	SUPREME COURT NO. 69049 / ORDER OF AFFIRMANCE - Transaction 5815231 - Approved By: NOREVIEW	
11/21/2016	NEF	Proof of Electronic Service	Transaction 5815233 - Approved By: NOREVIEW : 11-21-2016:08:21:02	

Case Description: STATE VS CHARLES JOSEPH MAKI (D8)			
Case ID:	CR94-0345	Case Type:	CRIMINAL
		Initial Filing Date:	2/10/1994
12/15/2016	4134	Supreme Court Order Affirming	SUPREME COURT NO. 69049 / ORDER OF AFFIRMANCE - Transaction 5857486 - Approved By: NOREVIEW
12/15/2016	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT NO. 69049 / CLERK'S CERTIFICATE & JUDGMENT - Transaction 5857486 - Approved By:
12/15/2016	NEF	Proof of Electronic Service	Transaction 5857494 - Approved By: NOREVIEW : 12-15-2016:16:44:30
12/15/2016	4145	Supreme Court Remittitur	SUPREME COURT NO. 69049 / REMITTITUR - Transaction 5857486 - Approved By: NOREVIEW : 12-15-2016
7/19/2018	2490	Motion ...	MOTION FOR LEAVE TO PRESENT SECOND RFEQUEST FOR PETITION FOR WRIT OF HABEAS CORPUS
7/23/2018	2490	Motion ...	ON TO PRODUCE TRANSCRIPTS AT STATE EXPENSE
12/7/2018	2383	Mtn to Modify/Correct Sentence	
12/7/2018	3860	Request for Submission	DOCUMENT TITLE: REQUEST TO SUBMIT MOTION (NO ORDER PROVIDED)
12/17/2018	3320	Ord to File ...	ORDER DIRECTING STATE TO RESPOND - Transaction 7026816 - Approved By: NOREVIEW : 12-17-2018:11
12/17/2018	NEF	Proof of Electronic Service	Transaction 7026827 - Approved By: NOREVIEW : 12-17-2018:11:18:08
12/17/2018	S200	Request for Submission Complet	
12/20/2018	2840	Ord Denying ...	REQUEST FOR LEAVE AND DENYING MOTION FOR TRANSCRIPTS - Transaction 7034696 - Approved By: N
12/20/2018	NEF	Proof of Electronic Service	Transaction 7034704 - Approved By: NOREVIEW : 12-20-2018:14:29:30
1/2/2019	2490	Motion ...	MOTION TO INCORPORATE ALL (THE) TRIAL - PRELIM - SENTENCING - POST CONVICTION INTO HEABA
1/2/2019	3585	Pet Writ Habeas Corpus	1ST AMENDMENT PETITION: BRADY VIOLATION
1/2/2019	1955	Memorandum Points&Authorities	DFX: EXHIBITS ALPHABETIC AND NO EXHIBIT COVERS OR INDEX
1/2/2019	3373	Other ...	DFX: EXHIBITS ALPHABETIC AND NO EXHIBIT COVER SHEETS OR INDEX
1/16/2019	2645	Opposition to Mtn ...	OPPOSITION TO MOTION TO MODIFY SENTENCE - Transaction 7069816 - Approved By: CVERA : 01-16-201
1/16/2019	NEF	Proof of Electronic Service	Transaction 7069948 - Approved By: NOREVIEW : 01-16-2019:09:06:33
1/17/2019	T200	Tickle End Code	
1/24/2019	3790	Reply to/in Opposition	PETITIONER'S RESPONSE TO OPPOSITION TO MOTION TO MODIFY SENTENCE; " MOTION TO STRIKE F
2/4/2019	2842	Ord Denying Motion	Transaction 7099905 - Approved By: NOREVIEW : 02-04-2019:10:26:01
2/4/2019	F230	Other Manner of Disposition	
2/4/2019	NEF	Proof of Electronic Service	Transaction 7099910 - Approved By: NOREVIEW : 02-04-2019:10:27:08
2/11/2019	2540	Notice of Entry of Ord	Transaction 7112174 - Approved By: NOREVIEW : 02-11-2019:11:43:57
2/11/2019	NEF	Proof of Electronic Service	Transaction 7112175 - Approved By: NOREVIEW : 02-11-2019:11:44:47
2/15/2019	2922	Ord Dismiss Post Conviction	ORDER DISMISSING SUCCESSIVE PETITION FOR WRIT OF HABES CORPUS - Transaction 7120897 - Appi
2/15/2019	NEF	Proof of Electronic Service	Transaction 7120900 - Approved By: NOREVIEW : 02-15-2019:10:59:56
2/15/2019	2540	Notice of Entry of Ord	Transaction 7121827 - Approved By: NOREVIEW : 02-15-2019:14:15:03
2/15/2019	NEF	Proof of Electronic Service	Transaction 7121831 - Approved By: NOREVIEW : 02-15-2019:14:16:01
2/28/2019	2515	Notice of Appeal Supreme Court	NOTICE OF APPEAL - 2-4-19 AND 2-15-19
3/1/2019	1310E	Case Appeal Statement	CASE APPEAL STATEMENT - Transaction 7142523 - Approved By: NOREVIEW : 03-01-2019:08:53:43
3/1/2019	2515	Notice of Appeal Supreme Court	NOTICE OF APPEAL - ORDERS 2/4/19 AND 2/15/19
3/1/2019	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 7142523 - Approved By: N
3/1/2019	NEF	Proof of Electronic Service	Transaction 7142529 - Approved By: NOREVIEW : 03-01-2019:08:54:41
3/4/2019	1310E	Case Appeal Statement	CASE APPEAL STATEMENT - Transaction 7145320 - Approved By: NOREVIEW : 03-04-2019:10:38:55
3/4/2019	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 7145320 - Approved By: N

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE

Case History - CR94P0345

DEPT. D8

HON. BARRY L. BRESLOW

Report Date & Time

3/4/2019

10:40:08AM

Case Description: POST: CHARLES JOSEPH MAKI (D8)

Case ID: CR94P0345 Case Type: POST CONVICTION Initial Filing Date: 5/9/1996

Parties

PETR CHARLES MAKI - @395024  
RESP E. (WARDEN) MCDANIEL - @420191  
DA Jennifer P. Noble, Esq. - 9446  
CAA Robert Story, Esq. - 1268

Charges

Charge No. Charge Code Charge Date Charge Description

Plea Information

Charge No. Plea Code Plea Date Plea Description

Release Information

Custody Status

Hearings

Department	Event Description	Sched. Date & Time	Disposed Date
1			
Event Extra Text:		Disposition:	

Agency Cross Reference

Code Agency Description Case Reference I.D.

Actions

Action Entry Date	Code	Code Description	Text
1/1/1994	1315	** Case Closed	
5/9/1996	2385	Mtn Proceed Forma Pauperis	
5/9/1996	3565	Pet Post-Conviction Relief	PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)
5/9/1996	1368	Certificate ...	FINANCIAL CERTIFICATE
5/9/1996	1030	Affidavit in Support...	
5/29/1996	3370	Order ...	
8/5/1996	3980	Stip and Order...	
8/20/1996	4105	Supplemental ...	SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Case Description: POST: CHARLES JOSEPH MAKI (D8)				
Case ID:	CR94P0345	Case Type:	POST CONVICTION	Initial Filing Date: 5/9/1996
8/23/1996	1130	Answer ...	ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	
9/30/1996	1400	Claim...	* SEALED * INTERIM CLAIM FOR COMPENSATION AND REQUEST FOR ORDER GRANTING ATTORNEY'S	
10/8/1996	3370	Order ...		
11/25/1996	2490	Motion ...	MOTION TO WITHDRAW AS COUNSEL	
12/4/1996	2490	Motion ...	MOTION FOR THE APPOINTMENT OF COUNSEL	
12/5/1996	3860	Request for Submission		
12/11/1996	3860	Request for Submission		
1/16/1997	3370	Order ...		
1/29/1997	3370	Order ...		
5/20/1997	1250	Application for Setting		
6/3/1997	3340	Ord to Produce Prisoner		
6/3/1997	1260	Application Produce Prisoner		
7/15/1997	1260	Application Produce Prisoner		
7/16/1997	3340	Ord to Produce Prisoner		
7/24/1997	1750	Findings, Conclusions & Judg		
7/28/1997	2540	Notice of Entry of Ord		
8/4/1997	3370	Order ...	* SEALED * ORDER GRANTING ATTORNEY FEES	
8/18/1997	2515	Notice of Appeal Supreme Court		
8/18/1997	2515	Notice of Appeal Supreme Court		
8/19/1997	1310	Case Appeal Statement		
8/19/1997	1350	Certificate of Clerk		
8/19/1997	1365	Certificate of Transmittal		
8/26/1997	2515	Notice of Appeal Supreme Court		
2/10/1998	4185	Transcript		
6/17/1998	3370	Order ...	* SEALED *	
6/27/2000	1670	Ex-Parte Mtn...	* SEALED * EX PARTE MOTION FOR ORDER ALLOWING INTERIM PAYMENT OF ATTORNEY'S FEES AND I	
7/14/2000	2777	Ord Approving ...	(SEALED) ORDER APPROVING FEES AND COSTS OF COURT-APPOINTED ATTORNEY	
11/9/2000	4134	Supreme Court Order Affirming		
11/9/2000	1350	Certificate of Clerk		
11/9/2000	4145	Supreme Court Remittitur		
12/3/2008	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR TRIAL COURT RECORDS	
12/3/2008	2490	Motion ...	MOTION FOR TRIAL COURT RECORDS: CHARLES MAKI	
1/30/2009	2840	Ord Denying ...	ORDER DENYING MOTION FOR TRIAL COURT RECORDS	

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

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

WILLIAM GITERRE, Acting Warden,

Dept. No. 8

Respondent.

**ORDER DENYING MOTION TO MODIFY SENTENCE**

The Court is in receipt of a *Motion for Modification of Sentence* filed December 7, 2018 by Petitioner, CHARLES JOSEPH MAKI. On December 17, 2018, this Court directed the STATE OF NEVADA, on behalf of Warden WILLIAM GITERRE, to respond to the request. The State complied with the Court's order on January 16, 2019, filing an opposition to the *Motion*. Mr. Maki then replied on January 24, 2019.<sup>1</sup>

On April 12, 1994, a jury convicted Mr. Maki of three (3) counts of Sexual Assault on a Child Under the Age of Fourteen years and five (5) counts of Lewdness with a Child Under the Age of Fourteen Years. Mr. Maki now asks this Court to modify his sentence based on his ailing health.

A motion to correct a sentence is limited to a challenge of the facial legality of the sentence, meaning, "... to sentences based on mistaken assumptions about a defendant's criminal

<sup>1</sup> Mr. Maki originally submitted this matter to the Court on December 7, 2018, the same day he filed the instant motion. The Court appreciates Mr. Maki's position as a *pro per* litigant and, with briefing now complete, construes the matter as submitted based on the previous request for submission (filed December 7, 2018).

1 record which work to the defendant's extreme detriment." *Edwards v. State*, 112 Nev. 704, 708,  
2 918 P.2d 321, 324 (1996); *Conners v. State*, 413 P.3d 837 (Nev. 2018).<sup>2</sup> The Court must actually  
3 rely on the false assumption and the mistake at issue must be of the type that would rise to a  
4 violation of due process. *Passanisi v. State*, 108 Nev. 318, 322-323, 831 P.2d 1371, 1373-74. A  
5 motion to correct a sentence cannot challenge errors occurring before or at trial or other errors  
6 occurring at sentencing because it presupposes a valid judgment exists. *Edwards*, 112 Nev. at  
7 708, 918 P.2d at 324. When a motion to correct a sentence raises claims that fall outside the  
8 proper scope, the district court should summarily deny it. *Edwards*, 112 Nev. at 708-09 n. 2, 918  
9 P.2d at 325 n. 2.<sup>3</sup>

10 Mr. Maki's deteriorating health is not an appropriate ground for modification by this  
11 Court because it is simply unrelated to a mistaken assumption about his criminal history.  
12 Compassion releases, as Mr. Maki requests here, are outside the scope of *Edwards*.  
13 Accordingly, the request warrants summary denial.

14 Based on the foregoing, and good cause appearing, Mr. Maki's *Motion to Modify*  
15 *Sentence* is **DENIED**.

16 **IT IS SO ORDERED.**

17 **DATED** this 2 day of February, 2019.

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20 **BARRY L. BRESLOW**  
21 District Judge

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27 <sup>2</sup> Pursuant to NRAP 36(c), *Conners* is not strictly cited as legal authority, but to demonstrate the current relevance of  
the principles outlined in *Edwards*.

28 <sup>3</sup> Issues outside the scope of a motion to modify a sentence must be raised through *habeas* proceedings. *Id.* at 708  
(citing NRS 34.724(2)(b); *State v. Meier*, 440 N.W.2d 700m 703 (N.D. 1989)).



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**Jennifer Noble, Esq.**

Charles J. Maki, #42820  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

*[Signature]*  
Official Assistant

1 **CODE 2540**

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

7  
8 **STATE OF NEVADA,**

9 **Plaintiff,**

**Case No: CR94-0345**

10 **vs.**

**Dept. No: 8**

11  
12 **CHARLES JOSEPH MAKI,**

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

15 **NOTICE OF ENTRY OF ORDER**

16  
17 PLEASE TAKE NOTICE that on February 4, 2019 the Court entered a decision or  
18 order in this matter, a true and correct copy of which is attached hereto.

19 You may appeal to the Supreme Court from the decision or Order of the Court. If  
20 you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within  
21 thirty-three (33) days after the date this notice is mailed to you.

22  
23 Dated February 11, 2019.

24  
25 JACQUELINE BRYANT  
26 Clerk of the Court

27 /s/N. Mason  
28 N. Mason-Deputy Clerk

1 **CERTIFICATE OF SERVICE**

2 Case No. CR94-0345

3 Pursuant to NRCP 5 (b), I certify that I am an employee of the Second  
4 Judicial District Court; that on February 11, 2019, I electronically filed the Notice of Entry of  
5 Order with the Court System which will send a notice of electronic filing to the following:

6  
7 DIV. OF PAROLE & PROBATION

8 JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

9 ROBERT C. BELL, ESQ.

10 I further certify that on February 11, 2019, I deposited in the Washoe  
11 County mailing system for postage and mailing with the U.S. Postal Service in Reno,  
12 Nevada, a true copy of the attached document, addressed to:

13  
14 Attorney General's Office  
15 100 N. Carson Street  
16 Carson City, NV 89701-4717

17 Charles J. Maki #42820  
18 Ely State Prison  
19 P. O. Box 1989  
20 Ely, NV 89301

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

23  
24 Dated February 11, 2019.

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\_\_\_\_\_  
/s/N. Mason  
N. Mason- Deputy Clerk

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

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

WILLIAM GITERRE, Acting Warden,

Dept. No. 8

Respondent.

**ORDER DENYING MOTION TO MODIFY SENTENCE**

The Court is in receipt of a *Motion for Modification of Sentence* filed December 7, 2018 by Petitioner, CHARLES JOSEPH MAKI. On December 17, 2018, this Court directed the STATE OF NEVADA, on behalf of Warden WILLIAM GITERRE, to respond to the request. The State complied with the Court's order on January 16, 2019, filing an opposition to the *Motion*. Mr. Maki then replied on January 24, 2019.<sup>1</sup>

On April 12, 1994, a jury convicted Mr. Maki of three (3) counts of Sexual Assault on a Child Under the Age of Fourteen years and five (5) counts of Lewdness with a Child Under the Age of Fourteen Years. Mr. Maki now asks this Court to modify his sentence based on his ailing health.

A motion to correct a sentence is limited to a challenge of the facial legality of the sentence, meaning, "... to sentences based on mistaken assumptions about a defendant's criminal

<sup>1</sup> Mr. Maki originally submitted this matter to the Court on December 7, 2018, the same day he filed the instant motion. The Court appreciates Mr. Maki's position as a *pro per* litigant and, with briefing now complete, construes the matter as submitted based on the previous request for submission (filed December 7, 2018).

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2 918 P.2d 321, 324 (1996); *Conners v. State*, 413 P.3d 837 (Nev. 2018).<sup>2</sup> The Court must actually  
3 rely on the false assumption and the mistake at issue must be of the type that would rise to a  
4 violation of due process. *Passanisi v. State*, 108 Nev. 318, 322-323, 831 P.2d 1371, 1373-74. A  
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6 occurring at sentencing because it presupposes a valid judgment exists. *Edwards*, 112 Nev. at  
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12 Compassion releases, as Mr. Maki requests here, are outside the scope of *Edwards*.  
13 Accordingly, the request warrants summary denial.

14 Based on the foregoing, and good cause appearing, Mr. Maki's *Motion to Modify*  
15 *Sentence* is **DENIED**.

16 **IT IS SO ORDERED.**

17 **DATED** this 2 day of February, 2019.

18  
19 

20 **BARRY L. BRESLOW**  
21 District Judge

22  
23  
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**Jennifer Noble, Esq.**

Charles J. Maki, #42820  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

*[Signature]*  
Official Assistant

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

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

WILLIAM GITTERE, Warden,

Dept. No. 8

Defendant.

**ORDER DISMISSING SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS**

Before the Court is a successive *Petition for* Writ of Habeas Corpus filed January 2, 2019 by CHARLES JOSEPH MAKI. Previously, on July 19, 2018, Mr. Maki filed a *Motion for Leave to Present Second Request for Petition for* Writ of Habeas Corpus whereby Mr. Maki asked for leave to present a second petition for *writ of habeas corpus*. This Court denied that request on December 20, 2018. Nonetheless, Mr. Maki brings the instant *Petition*, which this Court now **DISMISSES**.

**BRIEF BACKGROUND**

On April 12, 1994, a jury convicted Mr. Maki of three (3) counts of Sexual Assault on a Child Under the Age of Fourteen years and five (5) counts of Lewdness with a Child Under the Age of Fourteen Years. On July 18, 1997, the Court heard Mr. Maki's initial petition for post-conviction relief and denied it. On July 7, 2014, the Court denied Mr. Maki's second, successive petition for post-conviction relief.

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Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed **within 1 year after entry of the judgment of conviction** *or*, if an appeal has been taken from the judgment, **within 1 year after [...] remittitur**.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. “Denial of Equal Protection and Due Process of Law Pursuant to USCAS and RNS 175 in Violation of US vs. Brady and Mazzan v. State Connected to Ineffective Assistance of Counsel Citing Strickland vs. Washington 104 S.Ct. 2002.”
2. “Denial of Effective Assistance of Counsel in Violation of Strickland vs. Washington 104 S.Ct. and Nev. Const. Art. 1 § 8 Citing to Buffalo vs. State – Failure to Investigate and Issue Jury Instructions for NRS 50.090.”
3. “Denial of Effective Assistance of Counsel in Violation of Strickland vs. Washington 104 S.Ct. 2002 and Kimmelman vs. Morrison 106 S.Ct. 2526 and Nev. Const. Art. 188 Citing Buffalo vs. State – Failure to Object & Witness Vouching.”



- 1 4. “Denial of Effective Assistance of Counsel Pursuant to Strickland vs.  
2 Washington 104 S.Ct. 2002 and Martinez v. Ryan 1 U.S. 566. 2011 in Post-  
3 Conviction Proceedings During Procedural Default.”
- 4 5. “Denial of Effective Assistance of Counsel Pursuant to Strickland vs.  
5 Washington 104 S.Ct. 2002 and Nev. Const. Art. 1 § 8 Citing Meyers v. State  
6 95 Nev. 885 and Buffalo v. State – Denial of Conflict Free Counsel.”
- 7 6. “Denial of Effective Assistance of Counsel Pursuant to Strickland v.  
8 Washington 104 S.Ct. 2002 and Nevada Const. Art. 1 § 8 Citing Buffalo vs.  
9 State – Refusal to Call Witnesses.”
- 10 7. “Denial of Right to a Fair Trial Pursuant to USCA 14 Equal Protection and Due  
11 Process of Law Citing NRS 47 ‘Right to Expert Witnesses’”
- 12 8. “Denial of Equal Protection and Due Process of Law Citing USCA 14 and Nev.  
13 Const. Art. 1 § 8 Citing Cumulative Error.”
- 14 9. “Violation of USCA 5 Citing NRS 34.224(b)(2) Denial of Equal Protection and  
15 Due Process in Sentencing Citing Townsend vs. Burke Citing NRS 48.045.”

16 Mr. Maki also demands an evidentiary hearing pursuant to NRS 42.230-235.

17 Having filed the instant *Petition* over twenty-four years after the Judgment of Conviction  
18 was entered and over twenty-three years after the Supreme Court issued its first remittitur  
19 following appeal, Mr. Maki’s *Petition* is untimely. In considering Mr. Maki’s subsequent  
20 appeals from his conviction, the most recent remittitur was issued in 2016. The *Petition* is,  
21 again, untimely.

22 Mr. Maki’s claims can be categorized as addressing violations of due process, equal  
23 protection, and/or ineffective assistance of counsel. The Court finds that each and every one of  
24 these claims were reasonably available during the one (1) year period following judgment and/or  
25 remittitur and that Mr. Maki has inadequately explained his good cause for delay. Therefore, the  
26 *Petition* is summarily **DISMISSED** as procedurally barred.

27 Although the Court **DISMISSES** the *Petition* in its entirety, the Court is compelled to  
28 individually address some of the claims presented by Mr. Maki for the purposes of clarification.

1 ***Claim One & Claim Two:***

2 In Claim One: “Denial of Equal Protection and Due Process of Law Pursuant to USCAS  
3 and RNS 175 in Violation of US vs. Brady and Mazzan v. State Connected to Ineffective  
4 Assistance of Counsel Citing Strickland vs. Washington 104 S.Ct. 2002.,” Mr. Maki raises an  
5 ineffective assistance of counsel claim against his post-conviction counsel for failure to provide  
6 him with transcripts relating to a police interview video-tape.

7 Mr. Maki was represented by post-conviction counsel, Mr. Robert Story, Esq., in 2013,  
8 when Mr. Maki filed his second *Petition for Writ of Habeas Corpus (Post-Conviction)*. Mr.  
9 Maki then appealed the decision of the Honorable Lidia S. Stiglich, then presiding Judge of this  
10 Department, to deny said *Petition*. The Supreme Court of Nevada affirmed Judge Stiglich and  
11 issued remittitur on January 12, 2015.

12 Mr. Maki files the instant *Petition*, now challenging Mr. Story’s representation, nearly  
13 four (4) years after remittitur, making the claim plainly untimely. Mr. Maki does not explain  
14 good cause for delay. Moreover, the Nevada Supreme Court has previously held that counsel’s  
15 failure to send a petitioner his or her file is not good cause for delay. *Hood v. State*, 111 Nev.  
16 335, 890 P.2d 797 (1995). Mr. Maki could have timely brought the claims with the information  
17 that he had. The transcripts were not necessary to *assert* the claims. It is common practice for  
18 the Court to first receive a petition and then make determinations whether counsel or transcripts  
19 should be furnished to a petitioner upon his or her motion.

20 Claim Two: “Denial of Effective Assistance of Counsel in Violation of Strickland vs.  
21 Washington 104 S.Ct. and Nev. Const. Art. 1 § 8 Citing to Buffalo vs. State – Failure to  
22 Investigate and Issue Jury Instructions for NRS 50.090.” is **DISMISSED** for the same reasons.  
23 Mr. Maki’s claims could have been raised even without his medical records. For clarification,  
24 the Court acknowledges Mr. Maki’s reference to NRS 50.090, which reads:

25 Factors for determining whether to permit alternative  
26 method. If the presiding officer determines that a standard  
27 pursuant to NRS 50.580 has been met, the presiding officer shall  
28 determine whether to allow a child witness to testify by an  
alternative method. In making this determination, the presiding  
officer shall consider:

1. Alternative methods reasonably available;
2. Available means for protecting the interests of or reducing emotional trauma to the child without resorting to an alternative method;
3. The nature of the case;
4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and
7. Any other relevant factor.

Mr. Maki's use of this statute appears misplaced. NRS 50.090 applies to a presiding officer's decision to allow a child witness to testify by means alternative to at trial (or hearing) and in person. The Court does not see how Mr. Maki's argument regarding a jury instruction on this statute fits into his claim.

Accordingly, Claim One and Claim Two are **DISMISSED** as untimely with the above clarification provided.

***Claim Six:***

In his Claim Six: "Denial of Effective Assistance of Counsel Pursuant to Strickland v. Washington 104 S.Ct. 2002 and Nevada Const. Art. 1 § 8 Citing Buffalo vs. State – Refusal to Call Witnesses,," Mr. Maki argues that his counsel should have called character to witness to testify that he would have looked after an underage girl and protected her. The Court **DISMISSES** this Claim as it does with all other claims – on the basis of untimeliness. However, the Court takes this opportunity to clarify the misunderstanding of the law and trial advocacy in Mr. Maki's argument.

Evidence of a person's character or a trait of his or her character is generally not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion. NRS 48.045(1). A narrow exception applies to allow an accused to present character evidence on his or her own behalf. NRS 48.045(1)(a). However, if an accused does present such evidence, the prosecution may rebut. This is more colloquially known as "opening the door."

//

1 Had Mr. Maki's attorney presented evidence of his "good character," the State would  
2 have had the opportunity to present evidence in rebuttal, i.e., that of Mr. Maki's "bad character."  
3 For this reason, evidence of character is generally disfavored and avoided by trial counsel.

4 In any event, Claim Six is ultimately **DISMISSED** as untimely.

5 **CONCLUSION**


6 Based on the foregoing, and good cause appearing, Mr. Maki's successive *Petition for*  
7 Writ of Habeas Corpus is **DISMISSED**. Accordingly, the request for a hearing is **DENIED**.

8 **IT IS SO ORDERED.**

9 **DATED** this 15 day of February, 2019.

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12 BARRY L. BRESLOW  
13 District Judge  
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Judicial Assistant

1 **CODE 2540**

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

8 **STATE OF NEVADA,**

9 **Plaintiff,**

**Case No: CR94-0345**

10 **vs.**

**Dept. No: 8**

11  
12 **CHARLES JOSEPH MAKI,**

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

15 **NOTICE OF ENTRY OF ORDER**  
16

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

19 You may appeal to the Supreme Court from the decision or Order of the Court. If  
20 you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within  
21 thirty-three (33) days after the date this notice is mailed to you.  
22

23 Dated February 15, 2019.  
24

25 JACQUELINE BRYANT  
26 Clerk of the Court

27 /s/N. Mason  
28 N. Mason-Deputy Clerk

1 **CERTIFICATE OF SERVICE**

2 Case No. CR94-0345

3 Pursuant to NRCP 5 (b), I certify that I am an employee of the Second  
4 Judicial District Court; that on February 15, 2019, I electronically filed the Notice of Entry of  
5 Order with the Court System which will send a notice of electronic filing to the following:

6  
7 JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

8 ROBERT C. BELL, ESQ.

9 I further certify that on February 15, 2019, I deposited in the Washoe  
10 County mailing system for postage and mailing with the U.S. Postal Service in Reno,  
11 Nevada, a true copy of the attached document, addressed to:

12  
13 Attorney General's Office  
14 100 N. Carson Street  
Carson City, NV 89701-4717

15 Charles J. Maki (#42820)  
16 Ely State Prison  
17 P.O. Box 1989  
Ely, NV 89301

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

20 Dated February 15, 2019.

21  
22 /s/N. Mason  
23 N. Mason- Deputy Clerk  
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28

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

CHARLES JOSEPH MAKI,

Petitioner,

vs.

Case No. CR94-0345

WILLIAM GITTERE, Warden,

Dept. No. 8

Defendant.

**ORDER DISMISSING SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS**

Before the Court is a successive *Petition for* Writ of Habeas Corpus filed January 2, 2019 by CHARLES JOSEPH MAKI. Previously, on July 19, 2018, Mr. Maki filed a *Motion for Leave to Present Second Request for Petition for* Writ of Habeas Corpus whereby Mr. Maki asked for leave to present a second petition for *writ of habeas corpus*. This Court denied that request on December 20, 2018. Nonetheless, Mr. Maki brings the instant *Petition*, which this Court now **DISMISSES**.

**BRIEF BACKGROUND**

On April 12, 1994, a jury convicted Mr. Maki of three (3) counts of Sexual Assault on a Child Under the Age of Fourteen years and five (5) counts of Lewdness with a Child Under the Age of Fourteen Years. On July 18, 1997, the Court heard Mr. Maki's initial petition for post-conviction relief and denied it. On July 7, 2014, the Court denied Mr. Maki's second, successive petition for post-conviction relief.

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Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed **within 1 year after entry of the judgment of conviction** *or*, if an appeal has been taken from the judgment, **within 1 year after [...] remittitur**.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. “Denial of Equal Protection and Due Process of Law Pursuant to USCAS and RNS 175 in Violation of US vs. Brady and Mazzan v. State Connected to Ineffective Assistance of Counsel Citing Strickland vs. Washington 104 S.Ct. 2002.”
2. “Denial of Effective Assistance of Counsel in Violation of Strickland vs. Washington 104 S.Ct. and Nev. Const. Art. 1 § 8 Citing to Buffalo vs. State – Failure to Investigate and Issue Jury Instructions for NRS 50.090.”
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16 Mr. Maki also demands an evidentiary hearing pursuant to NRS 42.230-235.

17 Having filed the instant *Petition* over twenty-four years after the Judgment of Conviction  
18 was entered and over twenty-three years after the Supreme Court issued its first remittitur  
19 following appeal, Mr. Maki’s *Petition* is untimely. In considering Mr. Maki’s subsequent  
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26 *Petition* is summarily **DISMISSED** as procedurally barred.

27 Although the Court **DISMISSES** the *Petition* in its entirety, the Court is compelled to  
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1 ***Claim One & Claim Two:***

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20 Claim Two: “Denial of Effective Assistance of Counsel in Violation of Strickland vs.  
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23 Mr. Maki’s claims could have been raised even without his medical records. For clarification,  
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26 method. If the presiding officer determines that a standard  
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4. The relative rights of the parties;
5. The importance of the proposed testimony of the child;
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Mr. Maki's use of this statute appears misplaced. NRS 50.090 applies to a presiding officer's decision to allow a child witness to testify by means alternative to at trial (or hearing) and in person. The Court does not see how Mr. Maki's argument regarding a jury instruction on this statute fits into his claim.

Accordingly, Claim One and Claim Two are **DISMISSED** as untimely with the above clarification provided.

***Claim Six:***

In his Claim Six: "Denial of Effective Assistance of Counsel Pursuant to Strickland v. Washington 104 S.Ct. 2002 and Nevada Const. Art. 1 § 8 Citing Buffalo vs. State – Refusal to Call Witnesses,," Mr. Maki argues that his counsel should have called character to witness to testify that he would have looked after an underage girl and protected her. The Court **DISMISSES** this Claim as it does with all other claims – on the basis of untimeliness. However, the Court takes this opportunity to clarify the misunderstanding of the law and trial advocacy in Mr. Maki's argument.

Evidence of a person's character or a trait of his or her character is generally not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion. NRS 48.045(1). A narrow exception applies to allow an accused to present character evidence on his or her own behalf. NRS 48.045(1)(a). However, if an accused does present such evidence, the prosecution may rebut. This is more colloquially known as "opening the door."

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3 For this reason, evidence of character is generally disfavored and avoided by trial counsel.

4 In any event, Claim Six is ultimately **DISMISSED** as untimely.

5 **CONCLUSION**

6 Based on the foregoing, and good cause appearing, Mr. Maki's successive *Petition for*  
7 Writ of Habeas Corpus is **DISMISSED**. Accordingly, the request for a hearing is **DENIED**.

8 **IT IS SO ORDERED.**

9 **DATED** this 15 day of February, 2019.

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12 BARRY L. BRESLOW  
13 District Judge  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the Second Judicial District Court of the State  
3 of Nevada, County of Washoe; that on this 15 day of February, 2019, I electronically filed  
4 the following with the Clerk of the Court by using the ECF system which will send a notice of  
5 electronic filing to the following:

6  
7 Jennifer Noble, Esq.

8  
9 I deposited in the Washoe County mailing system for postage and mailing with the  
10 United States Postal Service in Reno, Nevada, a true copy of the attached document addressed  
11 to:

12 Charles J. Maki, #42820  
13 Ely State Prison  
14 P.O. Box 1989  
15 Ely, NV 89301

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19 Judicial Assistant  
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DATE, JUDGE  
OFFICERS OF

## COURT PRESENT

## APPEARANCES - HEARING

## CONT'D TO

2/16/94

ARRAIGNMENT

HONORABLE

STEVEN R.

KOSACH

DEPT. NO. 8

L. Romero

(Clerk)

I. Zihn

(Reporter)

Deputy District Attorney Dan Greco was present for the State. Defendant present with counsel, Deputy Public Defender, Janet Schmuck.

TRUE NAME: CHARLES JOSEPH MAKI.

Copy of Information handed to the Defendant; reading waived. Defendant waived time in which to enter a plea; entered a plea of Not Guilty to the offenses charged in the Information. Defendant did waive the 60-day rule.

COURT ORDERED: Matter continued for trial by jury; Defendant was remanded to the custody of the sheriff.

4/1/94

9:00 a.m.

Motion to

Confirm

4/11/94

Jury

Trial

CR94-0345  
STATE VS CHARLES  
District Court  
Washoe County  
MIN  
DC-9900039406-057  
JOSEPH MAKI  
02/16/1994 02 12 PM  
MIN

DC-9900039406-064  
CR94-0345  
STATE VS CHARLES JOSEPH MAKI 2 Pages  
02/16/1994 02 21 PM  
District Court  
Washoe County  
1406

CRIMINAL PROGRESS SHEET

CR94-0345

CHARLES JOSEPH MAKI

Arrest Date: 2/16/94

STATUS: Custody ☒ NIC ☐  
Bail ☐ OR ☐

Bail Amount: \_\_\_\_\_

Date Inf/Ind filed: 2/10/94

Amended Inf. filed: \_\_\_\_\_

Dept. No: 8 Reporter: I. Zahn

True Name: ☒ \_\_\_\_\_

Not Guilty ☒ By: Info

Guilty ☐ Nolo ☐ To: \_\_\_\_\_

Juv. Ref. \_\_\_\_\_ P & P Ref. \_\_\_\_\_ Date \_\_\_\_\_

Continued To: \_\_\_\_\_

4/1/94 @ 9:00am For: Mtn to confirm  
4/1/94 @ 10:00am For: Trial - Confirmed  
7/18/94 @ 10:00 For: Post-Conviction  
For: \_\_\_\_\_  
For: \_\_\_\_\_

Sentencing Date: 5/17/94 Dept. No. 8 Reporter: I. Zahn

Disposition: NSP Life w/ the possibility of parole on Count III; NSP Life w/ the possibility of parole to be served consecutive to Count III; Count V. NSP Life w/ the possibility of parole to be served consecutive to Count III; Count VI: NSP 10 yrs to be served consecutive to Count III; Count VII: NSP 10 yrs to be served consecutive to Count III; (over ->) Time Served: 118 days Bail Exonerated ☐

Motions: \_\_\_\_\_



SENTENCING - DISPO CONT'D: COUNT VIII: NSP 10 yrs to be served consecutive to Count III; ~~and~~ Count IX: NSP 10 yrs to be served consecutive to Count III; and, Count X: NSP 10 yrs to be served consecutive to Count III. It is further ordered that Defendant effect restitution in the amount of \$ 526<sup>00</sup>. \$ 25<sup>00</sup> AAF.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES - HEARING

CONT'D TO

03/11/94  
HONORABLE  
STEVEN R.  
KOSACH  
DEPT. NO. 8  
S. Hopper  
(Clerk)  
I. Zihn  
(Reporter)

EVIDENTIARY MOTIONS

Deputy District Attorney Dan Greco was present for the State. Defendant present with counsel, Deputy Public Defender Janet Cobb Schmuck. Counsel Greco addressed the Court and reviewed the contents of the video tape for the evidentiary motion.

Detective James Stegmaire was called by Counsel Greco, sworn and testified.

State's Exhibit A was marked for identification; offered and ordered admitted.

The video tape was played for the Court.

Witness was further direct examined; cross examined; re-direct examined.

Counsel Greco presented arguments for the allowance of the video tape.

Counsel Schmuck presented arguments to not allow the video tape.

COURT ORDERED: Motion to allow the video tape into evidence during trial is granted.

Counsel Greco moved to release State's Exhibit A to the District Attorney's office; no objections; SO ORDERED.

Counsel Schmuck addressed the Court regarding discovery of the Saint's examination; COURT ORDERED GRANTED. Defendant was remanded to the custody of the Sheriff.

04/01/94  
9:00 a.m.  
Motion to  
confirm

04/11/94  
10:00 a.m.  
Jury Trial

CR94-0345  
STATE VS CHARLES JOSEPH MAKI 1 Page  
District Court 03/11/1994 02 12 PM  
Washoe County MTN  
DC-9900039406-056  
ivnc.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES - HEARING

## CONT'D TO

4/1/94  
HONORABLE  
STEVEN R.  
KOSACH  
DEPT. NO. 8  
L. Romero  
(Clerk)  
I. Zihn  
(Reporter)MOTION TO CONFIRM TRIAL DATE/MOTION TO SUPPRESS

Deputy District Attorney Dan Greco was present for the State. Defendant present with counsel, Deputy Public Defender, Janet Schmuck. James Roundtree was present for the State Division of Parole and Probation.

Respective counsel addressed the Court.

Counsel for the defendant addressed the Court and moved to withdraw the defendant's former plea of Not Guilty to Sexual Assault On A Child Under The Age of Fourteen Years and Lewdness With A Child Under the Age of Fourteen Years as charged in Counts I, V, VI, & IX of the Information and enter pleas of Guilty. Counsel for the defendant stated the negotiations.

The defendant addressed the Court and stated that he was innocent. The Court interrogated the Defendant and did not accept his pleas of guilty.

COURT ORDERED: Trial date of 4/11/94 confirmed.

At 9:50 a.m. Court ordered recess.

At 10:15 a.m. Court reconvened with all parties present.

Counsel for the defendant presented argument for her motion to suppress.

Counsel for the State presented arguments against the defendant's motion.

Tape of the defendant's confession played for the Court.

COURT ORDERED: Motion to suppress denied.

Defendant was remanded to the custody of the sheriff.

4/11/94  
Jury  
Trial

CR94-0345  
STATE VS CHARLES JOSEPH MAKI  
District Court  
Washoe County  
MIN  
DC-9900039406-058  
Page 1  
04/01/1994 02:13 PM  
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CR94-0345  
STATE VS CHARLES JOSEPH MAKI  
District Court  
Washoe County  
MTN  
DC-9900039406-063  
1 Page  
04/11/1994 02 13 PM  
JYQ57

CASE NO. CR94-0345

STATE OF NEVADA

-VS-

CHARLES JOSEPH MAKI

TRIAL DATE April 11, 1994

JUDGE Steven Kosach

DEPT. NO. 8

CLERK L. Romero

REPORTER I. Zihn

D..A. Dan Greco

DEFT'S ATTY. Janet Schmuck

Court Appointed  
Public Defender XX

VERDICTS Count I: Not Guilty; Count II: Hung; Counts III-X; Guilty

SENTENCING DATE May 13, 1994

PAGE 1

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

4/11/94  
HONORABLE  
STEVEN R.  
KOSACH  
DEPT. NO. 8  
L. Romero  
(Clerk)  
I. Zihn  
(Reporter)JURY TRIAL

Plaintiff, State of Nevada, was being represented by Deputy District Attorney, Dan Greco. The defendant, Charles Joseph Maki, was present with counsel, Deputy Public Defender, Janet Cobb Schmuck.

Counsel Schmuck presented her motions in limine to exclude any evidence as to the defendant's prior convictions and/or bad acts. COURT ORDERED: Motions granted.

Counsel Schmuck addressed the Court as to the pictures from the SAINTS exam. Counsel Schmuck moved for a continuance or in the alternative, that the pictures not be admitted.

Opposition and argument by counsel Greco.

COURT ORDERED: Motion for continuance denied. Motion for the admittance of the pictures taken under advisement.

At 10:45 a.m. the prospective jurors were brought into the courtroom. Court addressed the prospective jurors. Roll of the prospective jurors was called. Court explained the elements to the prospective jurors. Prospective jurors were sworn to answer questions touching upon their qualifications to serve as trial jurors in this case.

The Information was read by the Clerk.

Jurors were polled and questioned by the Court.

At 12:00 Court ordered recess. Prospective jurors admonished.

At 12:10 p.m. Court reconvened with all parties and prospective jurors present.

Following the process of jury selection, the persons listed below were sworn to try this case:

Marianne Dortch	Jill Young
Terry Bradley	Randall Reed
Merrilee Soileau	Vincent Cordi
Joe Sambrano	James Roets
Loretta McNabb	Patricia Hedges-Johnson
Leann Morgan	Sharon Suarez
Nancy Fritz-Alternate	

At 12:50 p.m. Court ordered recess. Jurors were admonished and excused.

At 2:20 p.m. Court reconvened with all parties present. Court noted that the Jury was present.

State's exhibits 1, 2 & 3 were marked for identification.

Defendant's exhibits A-F were marked for identification.

Counsel Greco presented opening statements.

Counsel Schmuck presented opening statements.

At 2:42 p.m. the jurors were admonished and excused. Outside the presence of the jury. Desiree Menees was called by counsel Greco; sworn and testified. Counsel Greco moved for competency; no objections; SO ORDERED.

At 2:45 p.m. the jury was brought back into the courtroom.

Desiree Menees, heretofore sworn, resumed the stand. Counsel

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JURY TRIAL CONTINUED

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Greco continued with direct examination. Cross examination by counsel Schmuck. Redirect examination; recross examination and excused.

At 2:20 p.m. the jurors were admonished and excused. Outside the presence of the jury, Summer Menees was called by counsel Greco; sworn and testified. Counsel Greco moved for competency; no objections; SO ORDERED.

The jury was brought back into the courtroom. Summer Menees, heretofore sworn, resumed the stand. Counsel Greco continued with direct examination; cross examination.

Gary Menees was called by counsel Greco; sworn and testified; cross examined; redirect examined and excused.

At 4:20 p.m. Jurors were admonished and excused. Court ordered recess.

At 4:30 p.m. Court reconvened with all parties present.

Kathy Peele was called by counsel Greco; sworn and testified; cross examination; redirect examination; recross examination and excused.

State's exhibits 4 & 5 were marked for identification; offered into evidence; objections; overruled; ordered admitted and so marked.

At 5:30 p.m. Jurors were admonished and excused. Court ordered recess.

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DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

PAGE 3

APPEARANCES-HEARING

4/12/94  
HONORABLE  
STEVEN R.  
KOSACH  
DEPT. NO. 8  
L. Romero  
(Clerk)  
I. Zihn  
(Reporter)

JURY TRIAL CONTINUED

At 10:00 a.m. Plaintiff, State of Nevada, was being represented by counsel, Deputy District Attorney, Dan Greco. Defendant, Charles Joseph Maki, was present with counsel, Deputy Public Defender, Janet Cobb Schmuck.

Court noted that the jury was present.

Detective Jim Stegmaier was called by counsel Greco; sworn and testified.

State's exhibit 2 previously marked for identification was offered into evidence; no objections; ordered admitted and so marked. State's exhibit 2 was played for the jury.

State's exhibit 3 previously marked for identification was offered into evidence; objections; overruled; ordered admitted and so marked, State's exhibit 3 was played for the jury.

Cross examination by counsel Schmuck. Redirect examination. State rested.

At 11:30 a.m. Jurors were admonished and excused. Court ordered recess.

At 1:30 p.m. Court reconvened with all parties present. Court noted that the jury was present.

Michael O'Brien called by counsel Schmuck; sworn and testified. Defendant's exhibits A-F previously marked for identification were offered into evidence; no objections; ordered admitted and so marked.

Danielle Johnson was called by counsel Schmuck; sworn and testified; cross examined.

Defense rested.

Summer Menees, heretofore sworn, was called to the stand as a rebuttal witness by counsel Greco. Counsel Greco began direct examination.

Desiree Menees, heretofore sworn, was called to the stand as a rebuttal witness by counsel Greco. Counsel Greco began direct examination.

At 1:52 p.m. Jurors were admonished and excused. Outside the presence of the jury, Counsel Greco addressed the Court stating that he had hearsay evidence that he wanted to present through the witness, Gary Menees. Opposition and argument by counsel Schmuck. Counsel Greco withdrew his request.

At 1:55 p.m. the jury entered the courtroom. Court noted that the jury was present.

State rested.

At 2:00 p.m. Jurors were admonished and excused. Court and counsel met in chambers to discuss and settle jury instructions.

At 2:45 p.m. in chambers, Court and counsel settled on jury instructions 1-33.

At 3:00 p.m. All parties were present. Court noted that the jury was present.

Court read instructions 1-33.

4/12/94

JURY TRIAL CONTINUED

Cont'd  
HONORABLE  
STEVEN R.  
KOSACH  
DEPT. NO. 8  
L. Romero  
(Clerk)  
I. Zihn  
(Reporter)

Counsel Greco presented closing arguments.  
Counsel Schmuck presented closing arguments.  
Counsel Greco presented rebuttal arguments.  
At 4:05 p.m. the Bailiff was sworn to take the jury into deliberation.  
At 11:30 p.m. All parties were present. The jury entered the courtroom. Court noted that the jury was present.  
The following verdicts were read by the Clerk:

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, not guilty of Count I: Sexual Assault On a Child Under The Age of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi  
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count III: Sexual Assault On A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi  
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count IV: Sexual Assault On A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi  
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count V: Sexual Assault On A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi  
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count VI: Lewdness With A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi  
Foreman



4/12/94

JURY TRIAL CONTINUED

Cont'd  
HONORABLE  
STEVEN R.  
KOSACH  
DEPT. NO. 8  
L. Romero  
(Clerk)  
I. Zihn  
(Reporter)

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count VII: Lewdness With A Child Under The Age of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi  
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count VIII: Lewdness With A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi  
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count IX: Lewdness With A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi  
Foreman

We, the jury in the above entitled matter, find the defendant, Charles Joseph Maki, guilty of Count X: Lewdness With A Child Under The Age Of Fourteen Years.

Dated this 12th day of April, 1994.

Vincent Cordi  
Foreman

At 11:36 p.m. the Jury was thanked and excused. Sentencing was set for May 13, 1994 at 9:00 a.m.

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

## APPEARANCES-HEARING

CONT'D TO

05/17/94  
HONORABLE  
STEVEN R.  
KOSACH  
DEPT. NO. 8  
S. Hopper  
(Clerk)  
I. Zihn  
ReporterENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

Deputy District Attorney Dan Greco was present for the State. Defendant present with counsel, Deputy Public Defender Janet Cobb Schmuck. Officer Robert Tucker was present for the State Dept of Parole and Probation.

Counsel Greco addressed the Court and reviewed motion for other bad acts evidence to be admitted. Counsel Schmuck addressed the Court regarding motion as entered and presented objections with arguments thereto; Counsel Greco presented response.

COURT ORDERED: Motion for other bad acts evidence to be admitted granted.

Joslyn Coombs was called by Counsel Greco, sworn and testified.

During testimony under direct examination, court took recess and ordered Defendant's mouth taped shut.

Witness was further direct examined.

State's Exhibit 1 was marked for identification and offered; objections and arguments presented thereto;

COURT ORDERED ADMITTED.

Witness was further direct examined; cross examined; re-direct examined and excused.

Counsel Schmuck addressed the Court regarding P.S.I. corrections and presented arguments regarding sentencing; presented letters from the Defendant to the Court.

Counsel Greco presented arguments for sentencing.

Officer Tucker addressed the Court.

Defendant addressed the Court after tape was removed.

COURT ORDERED: Judgment entered. The Defendant is sentenced to Life with the possibility of Parole in the Nevada State Prison for Sexual Assault On A Child Under The Age Of Fourteen Years as charged in Count III of the Information; sentenced to Life with the Possibility of Parole in the Nevada State Prison to run consecutive to Count III for Sexual Assault On A Child Under The Age Of Fourteen Years as charged in Count IV of the Information; sentenced to Life with the Possibility of Parole in the Nevada State Prison to run consecutive to Count III for Sexual Assault On A Child Under The Age Of Fourteen Years as charged in Count V of the Information; sentenced to ten (10) years in the Nevada State Prison to run consecutive to Count III for Lewdness With A Child Under The Age Of Fourteen Years as

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CASE NO. CR94-0345

STATE OF NEVADA -VS- CHARLES MAKI

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

05/17/94

Cont'd.

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE -

CONTINUED

charged in Count VI of the Information; sentenced to ten (10) years in the Nevada State Prison to run consecutive to Count III for Lewdness With A Child Under The Age Of Fourteen Years as charged in Count VII of the Information; sentenced to ten (10) years in the Nevada State Prison to run consecutive to Count III for Lewdness With A Child Under The Age Of Fourteen Years as charged in Count IX of the Information; and, sentenced to two (10) years in the Nevada State Prison to run consecutive to Count III for Lewdness With A Child Under The Age Of Fourteen Years as charged in Count X of the Information. Defendant is hereby given credit for one hundred eighteen (118) days time served. The Defendant is to pay the Twenty-Five Dollar (\$25.00) administrative assessment fee. Defendant was remanded to the custody of the Sheriff.

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DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES - HEARING

CONT'D TO

7/11/97

HONORABLE

STEVEN R.

KOSACH

DEPT. NO. 8

L. Romero

(Clerk)

D. Phipps

(Reporter)

POST CONVICTION HEARING

Deputy District Attorney Terry McCarthy was present for the State. Defendant was present with counsel, Joe Plater.

Counsel Plater addressed the Court as to the matter of the continuance previously granted by the Court. Counsel Plater further asked leave of the Court to have the defendant housed at the Washoe County Jail until Friday, July 18. Response by the State.

COURT ORDERED: Matter to be heard on July 18, 1997. Defendant to be housed at the Washoe County Jail. Defendant was remanded to the custody of the sheriff.

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MTN

**DATE, JUDGE  
OFFICERS OF****COURT PRESENT**

7/18/97

HONORABLE  
STEVEN R.

KOSACH

DEPT. NO. 8

L. Romero  
(Clerk)S. Koetting  
(Reporter)**APPEARANCES-HEARING****POST CONVICTION HEARING**

Petitioner, Charles J. Maki, was present with counsel, Joe Plater. Respondent, E.K. McDaniel, Warden of a Nevada State Prison, was not present being represented by counsel, Deputy District Attorney, Terry McCarthy.

Counsel Plater moved for the rule of exclusion; SO ORDERED.

Charles J. Maki was called by counsel Plater; sworn and testified; cross examined; redirect examined; recross examined.

State's A, B.1 and B.2 were marked for identification; exhibits B.1 & B.2 were offered into evidence; no objections; ordered admitted and so marked.

At 11:15 a.m. Court ordered recess.

At 11:30 a.m. Court reconvened with all parties present.

Michael Ray Freed was called by counsel Plater; sworn and testified; cross examined.

Janet Cobb Schmuck was called by counsel Plater; sworn and testified.

At 12:00 Court ordered recess.

At 2:00 p.m. Court reconvened with all parties present.

Janet Cobb Schmuck, previously sworn, resumed the stand. Counsel Plater continued with direct examination; cross examination; redirect examination..

State's exhibit A, previously marked for identification, was offered into evidence; ordered admitted and so marked.

At 3:10 p.m. Court ordered recess.

At 3:25 p.m. Court reconvened with all parties present.

Counsel McCarthy placed two stipulations on the record.

Exhibits 1-4 were marked for identification; stipulated into evidence.

Closing arguments presented by respective counsel.

COURT ORDERED: Petition for post conviction relief denied.

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

CHARLES JOSEPH MAKI,

Case No. CR94-0345

Petitioner,

Dept. No. 8

vs.

WILLIAM GITERRE, Acting Warden,

Respondent.

**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 4th day of March, 2019, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

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

Dated this 4th day of March, 2019

Jacqueline Bryant  
Clerk of the Court

By /s/ Yvonne Vilorio  
Yvonne Vilorio  
Deputy Clerk