

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

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Elizabeth A. Brown
Clerk of Supreme Court

CHARLES JOSEPH MAKI,

Petitioner,

vs.

WILLIAM GITERRE, acting Warden,

Respondent.

Sup. Ct. Case No. 78260

Case No. CR94-0345

Dept. 8

RECORD ON APPEAL

VOLUME 7 OF 10

DOCUMENTS

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3860
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DEFENDANT, In Propria Persona

2015 SEP 11 PM 3:52

JACQUELINE EVANS
CLERK DISTRICT COURT
BY [Signature]
DEPUTY

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

THE STATE OF NEVADA,

Plaintiff,

Vs.

Charles J. Maki,

Defendant,

CASE No. CR94-0345

DEPT. No. VIII

REQUEST FOR SUBMISSION OF MOTION

COMES NOW, Charles J. Maki, Defendant, in propria persona, and files this request for submission of motion for: DEFENDANT'S MOTION TO AMEND JUDGMENT OF CONVICTION,

In the above titled action, which was submitted/filed on or about the 25th day of AUGUST, 2015

Defendant respectfully request that this matter be submitted to the appropriate Honorable Court for review/decision. Thank You.

DATED this 9th day of SEPTEMBER, 2015.

RESPECTFULLY SUBMITTED,

Charles J. Maki
DEFENDANT, In Propria Persona
Charles J. Maki, #42820

CERTIFICATE OF SERVICE BY MAIL

I, CHARLES J. MAKI, hereby certify, pursuant to NRCP 5(b),
 that on this 9TH day of SEPTEMBER, 20 15, I mailed a
 true and correct copy of the foregoing "REQUEST FOR SUBMISSION OF
MOTION,"
 by placing it in the hands of the warm springs correctional center law library
 supervisor, First-class Postage, fully paid, and addressed as follows:

CHRISTOPHER J. HICKS, ESQ.
WASHINGTON COUNTY DISTRICT ATTORNEY
CRIMINAL DIVISION
1 SOUTH SIERRA STREET, 7TH FLOOR
RENO, NEVADA 89502

DATED THIS 9TH DAY OF SEPTEMBER, 20 15.

Charles J. Maki
CHARLES J. MAKI, #42820
 Warm Springs Correctional Center
 P.O. Box 7007
 Carson City, NV 89702

DEFENDANT, IN PROPER PERSON

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

STATE OF NEVADA,

Case No. CR94-0345

Plaintiff,

Dept. No. 8

vs.

CHARLES JOSEPH MAKI,

Defendant.

ORDER DENYING MOTION

Currently before the court is Defendant Charles Joseph Maki's *Motion to Amend Judgment of May 17, 1994 to Comport With NRS 176.105*. To the extent that Maki challenges the validity of the judgment of conviction and sentence, such claims must be raised in a post-conviction petition for a writ of habeas corpus. *See* NRS 34.724(2)(b). To the extent that Maki seeks to modify or correct his sentence, he has failed to demonstrate that his sentence was facially illegal, or that the sentence was based on mistaken assumptions about his criminal record that worked to his extreme detriment. *See Edwards v. State*, 112 Nev. 704, 707-708, 918 P.2d 321, 324 (1996).

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Accordingly, the court ORDERS Maki's *Motion to Amend* DENIED.
IT IS SO ORDERED.

DATED this 7th day of October, 2015.

Lidia S. Stiglich
LIDIA S. STIGLICH
District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 7th day of October, 2015, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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

Charles Joseph Maki
#42820
Warm Springs Correctional Center
PO Box 7007
Carson City, NV 89702


CHRISTINE KUHL
Judicial Assistant

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-07 15:51:24.642.

ROBERT STORY, ESQ. - Notification received on 2015-10-07 15:51:24.595.

ROBERT BELL, ESQ. - Notification received on 2015-10-07 15:51:24.689.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

10-07-2015:15:50:18

Clerk Accepted:

10-07-2015:15:50:53

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Denying Motion

Filed By:

Judicial Asst. CKuhl

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

FILED

OCT 19 2015

JACQUELINE BRYANT, CLERK
By [Signature]
DEPUTY CLERKCHARLES J. MAKI, # 42820Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada, 89702~~DEFENDANT~~
PLAINTIFF, In Propria PersonaIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN AND FOR THE COUNTY OF WASHOETHE STATE OF NEVADA,

Plaintiff,

Vs.

CHARLES J. MAKI,

Defendant.

CASE No. CR54-0345DEPT. No. 8Dkt. No. NOTICE OF APPEAL

Please take notice that CHARLES J. MAKI, ^{DEFENDANT} ~~Plaintiff~~, and in his proper person, hereby appeals to the Nevada Court of Appeals, the judgment(s) in the above-entitled action(s) entered in this Honorable Court on or about the 2TH day of OCTOBER, 2015. This notice of Appeal is timely filed pursuant to NRAP 4(b).

DATED this 16TH day of OCTOBER, 20 15.

RESPECTFULLY SUBMITTED,

Charles J. Maki
~~PLAINTIFF~~, In Propria Persona
~~DEFENDANT,~~

1.
ORDER DENYING DEFENDANT'S MOTION TO AMEND JUDGMENT OF CONVICTION.

CR94-0345
 STATE VS CHARLES JOSEPH MAKI 2 Pages
 District Court
 10/19/2015 02:37 PM
 2515
 WASHOE COUNTY

CERTIFICATE OF MAILING

I, CHARLES MAKI, certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

CHRISTOPHER J. HICKS, ESQ.
District Attorney
WASHINGTON COUNTY DISTRICT ATTORNEY
1 SOUTH SIERRA STREET, 7TH FLOOR
RENO, NEVADA 89502
(Copy to)

DATED this 16th day of OCTOBER, 20 15

BY: Charles Maki

Appellant, In Proper Person

DEFENDANT,

Code 1310

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

STATE OF NEVADA,

Plaintiff,

vs.

CHARLES JOSEPH MAKI,

Defendant.

Case No. CR94-0345
Dept. No. 8

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 Lidia Stiglich.
3. Appellant is representing himself in Proper Person on appeal. The Appellant's address is:

Charles J. Maki #42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:

Terrance McCarthy, Esq., SBN: 2745
P.O. Box 11130
Reno, Nevada 89520
5. Respondent's attorney is not licensed to practice law in Nevada: n/a

6. Appellant was represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed on January 7, 2014 in the District Court.
9. Proceeding commenced by the filing of an Information on February 10, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying Motion filed on October 7, 2015.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 63845, 66144, 67717 and 67800.
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 22nd day of October, 2015.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

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

STATE OF NEVADA,

Case No. CR94-0345

Dept. No. 8

Plaintiff,

vs.

CHARLES JOSEPH MAKI,

Defendant.

_____ /

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 22nd day of October, 2015, 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 22nd day of October, 2015

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-22 09:41:55.762.

ROBERT STORY, ESQ. - Notification received on 2015-10-22 09:41:55.731.

ROBERT BELL, ESQ. - Notification received on 2015-10-22 09:41:55.824.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

10-22-2015:09:40:43

Clerk Accepted:

10-22-2015:09:41:20

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69049
District Court Case No. CR940345

JB

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

10/26/2015 Appeal Filing Fee waived. Criminal.
10/26/2015 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day.

DATE: October 26, 2015

Tracie Lindeman, Clerk of Court
lh

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-10-28 14:26:03.651.

ROBERT STORY, ESQ. - Notification received on 2015-10-28 14:26:03.62.

ROBERT BELL, ESQ. - Notification received on 2015-10-28 14:26:04.712.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

10-28-2015:14:25:01

Clerk Accepted:

10-28-2015:14:25:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69049

FILED

DEC 01 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK*ORDER DIRECTING TRANSMISSION OF RECORD*

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 60 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28 (a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g).

It is so ORDERED.

[Signature], C.J.

cc: Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk /

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-12-10 15:09:38.681.

ROBERT STORY, ESQ. - Notification received on 2015-12-10 15:09:38.65.

ROBERT BELL, ESQ. - Notification received on 2015-12-10 15:09:38.743.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

12-10-2015:15:08:32

Clerk Accepted:

12-10-2015:15:09:07

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR94-0345

CHARLES JOSEPH MAKI,

Dept. No. 8

Defendant.

_____ /

CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON 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 30th day of December, 2015, I electronically filed Volumes 1 through 8 of the Record on Appeal in the above entitled matter to the Nevada Supreme Court and deposited Volume 9 containing sealed documents addressed to the Nevada Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701 in the Washoe County mailing system for postage and mailing in the United States Postal Service in Reno, Nevada.

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 in accordance NRAP 11(2)(b).

Dated this 30th day of December, 2015.

Jacqueline Bryant
Clerk of the Court

By /s/Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

TERRENCE MCCARTHY, ESQ. - Notification received on 2015-12-30 08:56:58.84.

ROBERT STORY, ESQ. - Notification received on 2015-12-30 08:56:58.778.

ROBERT BELL, ESQ. - Notification received on 2015-12-30 08:56:58.902.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

12-30-2015:08:55:48

Clerk Accepted:

12-30-2015:08:56:28

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR94-0345
No. 69049 D8

FILED

NOV 17 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from an order denying a motion to amend the judgment of conviction. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant Charles Maki argues that the judgment of conviction did not comply with NRS 176.105. The district court denied the motion because a postconviction petition for a writ of habeas corpus is the proper remedy to challenge the validity of the judgment of conviction and sentence and the claims raised fell outside the scope of a motion to modify or correct an illegal sentence. Based upon our review of the record on appeal, we conclude that the district court did not err in denying the motion.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

[Signature] C.J.
Parraguirre

[Signature] J.
Hardesty

[Signature] J.
Pickering

¹Appellant may challenge the alleged failure to conduct a timely parole hearing in a petition for a writ of mandamus filed in the district court in the first instance. See NRS 34.160.

cc: Hon. Lidia Stiglich, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-11-21 08:19:44.425.

ROBERT BELL, ESQ. - Notification received on 2016-11-21 08:19:44.55.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

11-21-2016:08:17:47

Clerk Accepted:

11-21-2016:08:19:12

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Order Affirming

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69049
District Court Case No. CR940345

D8

REMITTITUR

TO: Jacqueline Bryant, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: December 14, 2016

Elizabeth A. Brown, Clerk of Court

By: Dana Richards
Deputy Clerk

cc (without enclosures):
Hon. Lidia Stiglich, District Judge
Charles Joseph Maki
Washoe County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on December 15, 2016.



District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 69049
District Court Case No. CR940345

D8

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 17th day of November, 2016.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
December 14, 2016.

Elizabeth A. Brown, Supreme Court Clerk

By: Dana Richards
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR94-0345
No. 69049 08

FILED

NOV 17 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]* DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from an order denying a motion to amend the judgment of conviction. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant Charles Maki argues that the judgment of conviction did not comply with NRS 176.105. The district court denied the motion because a postconviction petition for a writ of habeas corpus is the proper remedy to challenge the validity of the judgment of conviction and sentence and the claims raised fell outside the scope of a motion to modify or correct an illegal sentence. Based upon our review of the record on appeal, we conclude that the district court did not err in denying the motion.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

[Signature] C.J.
Parraguirre

[Signature] J.
Hardesty

[Signature] J.
Pickering

¹Appellant may challenge the alleged failure to conduct a timely parole hearing in a petition for a writ of mandamus filed in the district court in the first instance. See NRS 34.160.

cc: Hon. Lidia Stiglich, District Judge
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: December 14, 2016

Supreme Court Clerk, State of Nevada

By Dana Richards Deputy

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2016-12-15 16:44:09.727.

ROBERT BELL, ESQ. - Notification received on 2016-12-15 16:44:09.774.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

12-15-2016:16:43:02

Clerk Accepted:

12-15-2016:16:43:38

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Remittitur
Supreme Ct Clk's Cert & Judg
Supreme Court Order Affirming

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

CHARLES MAKI

CR94-0345 DC-0900087152-218
STATE VS CHARLES JOSEPH MAKI 4 Pages
District Court 07/19/2018 01:00 PM
Washoe County 2490
maibnrv

Code 2490

FILED

2018 JUL 19 PM 1:00

JACQUELINE JNYANI
CLERK OF THE COURTBY *[Signature]*
DEPUTY

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

STATE OF NEVADA,

Plaintiff(s),

Case No. CR94-0345

vs.

Dept. No. 8

CHARLES JOSEPH MAKI,

Defendant(s).

MOTION FOR LEAVE TO PRESENT SECOND REQUEST FOR PETITION FOR WRIT
OF HABEAS CORPUS (POST CONVICTION)

SECOND JUDICIAL DISTRICT COURT
 WASHOE COUNTY NEVADA

Charles Joseph MAKI

PETITIONER

CASE NO: CR94-0345

VS

STATE OF NEVADA

Respondent

Motion For leave to present Second Request
 FOR Petition FOR WRIT of Habeas Corpus.

Now Comes the petitioner, Charles Joseph MAKI, in pro se, and Moves this Court For leave to present A Second petition FOR WRIT of Habeas Corpus.

The petitioner Asserts the grounds for this Second Appeal will be (1) Actual Innocence (2) Newly Discovered Evidence (3) Violation of Petitioners Constitutional Amendment Right to Equal protection As guaranteed under the 14th Amendment (4) Violation of his 5th and 14th Amendment Right to Due Process of law and (5) Violations of his 8th Amendment Right Against Cruel and unusual punishment.

We submit to the Court that the original petition FOR WRIT of Habeas Corpus WAS filed on May 3, 1996 and WAS done By A Man with No knowledge of the law, AS Such the petition WAS incomplete and did Not

Continuance Pg 2

Bring forth the Complete Elements of the Case. A Declaration is hereby Made By MR MAKI that he is Not Guilty of the Crime and if this Court will give him the Chance will Prove it Beyond A Reasonable Doubt. We Can Prove that gross ineffectiveness of Counsel Contributed to the PETITIONERS Conviction and All Constitutional Violations.

Since we Claim Newly Presented evidence this Court Must, in the interest of Justice, Grant Petitioner leave to Present Second Petition for Writ of Habeas Corpus.

Dated this 16th Day of July 2018

Respectfully Submitted,

C. CHARLES JOSEPH MAKI # 42820

Charles Joseph MAKI,
Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

I, Charles Joseph MAKI, NDOC# 42820,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Motion For leave to Present
Second Request For Petition For writ of Habeas Corpus
DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY

PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 16th DAY OF July, 2018.

SIGNATURE: Charles Joseph MAKI

INMATE PRINTED NAME: Charles Joseph MAKI

INMATE NDOC # - 42820 -

INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301

CR94-0345
STATE VS CHARLES JOSEPH MAKI 3 Pages
District Court 07/23/2019 10:08 AM
Washoe County
2456
mimi st

SECOND JUDICIAL COURT
Washoe County NEVADA

FILED

2018 JUL 23 AM 10:08

STATE OF NEVADA

Plaintiff
VS

CASE No: CR94-0345

BRYANT
COURTCharles MAKI
Defendant

Motion to produce transcripts At State Expense

Now Comes the Defendant, Charles MAKI, in
Pro Se and Requests this Court to Issue an
Order directing the Clerk of Courts to Prepare
and Send to MR MAKI All transcripts of all
Proceedings Beginning with Preliminary hearing
through Sentencing. These documents are
needed to effect an Adequate 28 USC § 2254
Petition for Writ of Habeas Corpus in United
States District Court District of NEVADA.

Authority

This Motion is Made and based upon
NRS 7.055 and NEVADA Supreme Court
Rules 166(4), 173, 176 and 203 and Rules
11 and 20 of the Rules of District Court
State of NEVADA NRS 7.055 (1)(3)(a).

ARGUMENT

NRS 7.055 provides that once an Attorney
has been dismissed from A Case by Client

CONTINUANCE pg 2

Termination or Conclusion of Case. All papers, documents, pleadings, and any items of tangible personal property must immediately be delivered to defendant. The Clerk of Courts shall facilitate this law. Also the NEVADA Supreme Court has Ruled in Nev. Sup. Ct Rule 166(4) that upon termination of Case steps shall be taken to protect a defendants interests by delivering all papers requested.

Conclusion

FOR the Above Reasons and in the interest of Justice, the Defendant has proven by Law and Statute his need and Right to obtain these Documents and Moves this Court to grant his Request.

DATED this 18th Day of July 2018

Respectfully Submitted,

Charles Maki #42820

CHARLES MAKI

Pro Se.

AFFIRMATION PURSUANT TO NRS 239B.030I, CHARLES MAKI, NDOC# #42820,CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED _____Motion to produce Transcripts AT STATE Expense

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY

PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 18th DAY OF July, 2018.SIGNATURE: Charles MakiINMATE PRINTED NAME: CHARLES MAKIINMATE NDOC # #42820INMATE ADDRESS: ELY STATE PRISON
P. O. BOX 1989
ELY, NV 89301



CR94-0345
STATE VS CHARLES JOSEPH MAKI 3 Pages
District Court 12/07/2018 09:12 AM
Washoe County 2383

Code 2383

FILED

2018 DEC -7 AM 9:12

JACQUELINE BRYAN
CLERK OF THE COURT

BY _____
DEPUTY

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

STATE OF NEVADA,

Plaintiff(s),

Case No. CR94-0345

vs.

Dept. No. 8

CHARLES MAKI,

Defendant(s).

MOTION FOR MODIFICATION OF SENTENCE

DISTRICT COURT
Washoe County Nevada

State of Nevada

Plaintiff

vs

CASE No: CR94-0345

Charles MAKI

Defendant

MOTION FOR MODIFICATION OF SENTENCE

Now Comes the defendant Charles MAKI, in pro se and respectfully moves this Court for A Modification of the Sentence entered in the Above Referenced Action. We first Assert that on June 17, 2018 the United States Supreme Court entered the following Ruling Concerning State District Courts, "The Supreme Court has Ruled for the Trump Administration in A Case Concerning Modification of Prison Terms which WAS presented by Deputy Attorney General Rod Rosenstein. The Justices Said in A 5-3 decision that JUDGES Need NOT provide Detailed Explanations when Modifying A Prison Sentence. This Ruling Must be Applied by this Court. IN Addition We Submit for this Courts Review the total transcripts of the trial with special attention being drawn to the Sentencing. MR MAKI WAS Sentenced to 3 Sentences of 10 yrs to life all Consecutive plus 5 Consecutive Sentences of 10 years

Continuance Pg 2

each for an Additional total which if MR MAKI were to receive All paroles he would be Well over 100 years old old Most Likely Dead MR MAKI has Already Served 24 years on this Case MR MAKI is at this time 64 years old He Suffers from the following Medical Issues Severe Thyroid problems, high blood pressure, history of hepatitis C, Severe pain from 16 Compound fractures, the result of a Accident he has Metal in both legs below the knees as well as Metal Ankles. He has 68% hearing loss in both ears, his spine has been fused. We Can provide, at this Courts Request, Medical Records to verify these Conditions. We ASK this Court to provide MR MAKI with a Sentence Modification for these Charges to Run Concurrent. As this Court Knows, in NEVADA, Many people who Commit Murder do Not Serve even the 24 years that MR MAKI has Already Served yet Alone 60-70 YEARS. We ASK that this Court Review the facts of this Case and Grant this Sentence Modification.

DATED this 29th Day of November 2018

Respectfully Submitted,

X Charles Mathis #42820

1 Code 3860

FILED

2018 DEC -7 AM 9:12

JACQUELINE BROWN
CLERK OF THE COURT

BY

DEPT

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 STATE OF NEVADA,

10 Plaintiff(s),

Case No. CR94-0345

11 vs.

Dept. No. 8

12 CHARLES MAKI,

13 Defendant(s).
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17 REQUEST FOR SUBMISSION
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copy

DISTRICT COURT
WASHOE County NEVADA

STATE OF NEVADA

Plaintiff
VS

Case No:

Charles MAKI
Defendant

CR94-0345

REQUEST TO Submit Motion

ON 6/17/18 MR MAKI Sent A Petition For Writ of Habeas Corpus to this Court. ON July 19, 2018 this Court filed the Motion and Sent MR MAKI A file Stamped Copy. Now 6 Months Since it WAS Submitted and 5 Months Since the filing this Court has Refused to Adjudicate this Important Matter. We ASK for this Matter to Be immediately Submitted for Decision. IF it IS Not immediately Submitted MR MAKI will be forced to file A Petition For Writ of Mandamus to the NEVADA Supreme Court to order that this Court fulfill the Duties they were elected to perform.

Dated this 29th Day of November 2018
Respectfully Submitted
X chael frank #142820

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR94-0345

12 CHARLES JOSEPH MAKI,

Dept. No. 8

13 Defendant.
14 _____/

15
16 **ORDER DIRECTING STATE TO RESPOND**

17 Before the Court is a *Motion to Modify Sentence* filed December 7, 2018 by Defendant,
18 CHARLES JOSEPH MAKI. Mr. Maki, a self-represented litigant, also submitted this motion for
19 decision that same day. The State of Nevada has not filed an Opposition.

20 Although Mr. Maki has improperly submitted the motion without allowing sufficient
21 time for the State to respond, the Court has overlooked the procedural deficiency and reviewed
22 the document.

23 On April 12, 1994, a jury convicted Mr. Maki of three (3) counts of Sexual Assault on a
24 Child Under the Age of Fourteen Years and five (5) counts of Lewdness with a Child Under the
25 Age of Fourteen Years. Mr. Maki now seeks modification of his sentence on the basis of his
26 ailing health.


27 //
28

1 Having reviewed the motion, the Court finds that a response from the State would be of
2 assistance in understanding the State's position on whether early release is warranted.

3 Accordingly, the State of Nevada is ORDERED to respond to Mr. Maki's motion within
4 thirty (30) calendar days of the date of this Order.

5 **IT IS SO ORDERED.**

6 **DATED** this 17 day of December, 2018.

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10 **BARRY L. BRESLOW**
11 District Judge
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 17 day of December, 2018, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Jennifer Noble, Esq.

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

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


CHRISTINE KUHLE
Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2018-12-17 11:17:30.19.

ROBERT BELL, ESQ. - Notification received on 2018-12-17 11:17:30.252.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

12-17-2018:11:15:54

Clerk Accepted:

12-17-2018:11:16:39

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord to File

Filed By:

Judicial Asst. CKuhl

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

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, Acting Warden,

Dept. No. 8

Respondent.

**ORDER DENYING REQUEST FOR LEAVE AND
DENYING MOTION FOR TRANSCRIPTS**

Before the Court are two motions filed by self-represented litigant, CHARLES JOSEPH MAKI:

- I. *Motion for Leave to Present Second Request for Petition for Writ of Habeas Corpus (Post Conviction)*, filed July 19, 2018; and
- II. *Motion to Produce Transcripts at State Expense*, filed July 23, 2018.

The State has not filed any response.

Having reviewed both motions, the applicable authorities, and being fully-informed, the Court **DENIES** Mr. Maki's *Motion for Leave to Present Second Request for Petition for Writ of Habeas Corpus (Post Conviction)* and *Motion to Produce Transcripts at State Expense*. The Court addresses each as follows:

Motion for Leave

A petition that challenges a conviction or sentence must be filed within one (1) year after entry of the judgment of conviction or, if an appeal was taken from the judgment of conviction,

1 within one (1) year after the Nevada Supreme Court issues its remittitur. NRS 34.726(1). When
 2 a petition is untimely, it must be dismissed unless the petitioner (1) shows good cause for the
 3 delay, *State v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 121 Nev. 225, 231, 112 P.3d
 4 1070, 1074 (2005), or (2) that failure to consider the claims would result in a fundamental
 5 miscarriage of justice. *Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).¹ Good
 6 cause is shown when a petitioner demonstrates that his delay in bringing the claims was not his
 7 fault and that dismissal of the petition will unduly prejudice him. *Id.*; NRS 34.726(1).

8 Most recently, on October 19, 2015, Mr. Maki filed a Notice of Appeal to the Nevada
 9 Supreme Court. The Court affirmed his conviction and issued its remittitur on December 15,
 10 2016. Having filed his request for leave over a year after the Supreme Court's remittitur, Mr.
 11 Maki's motion is untimely and should be dismissed.

12 Moreover, Mr. Maki alleges five (5) grounds for his second petition generally, giving no
 13 specific detail. He then states, "A Declaration is hereby made by Mr. Maki that he is not guilty
 14 of the crime and if this Court will give him the chance will prove it beyond a reasonable doubt.
 15 (sic)" This does not demonstrate that delay in bringing his claims was without his fault and he
 16 has not alleged that dismissal will subject him to prejudice. Therefore, Mr. Maki has not
 17 presented good cause to excuse the untimeliness of his petition.

18 Accordingly, the *Motion for Leave to Present Second Request for Petition for Writ of*
 19 *Habeas Corpus (Post Conviction)* is **DENIED WITHOUT PREJUDICE**.²

20 ***Motion for Transcripts***

21 It is well established that an indigent defendant seeking to appeal has a right to access
 22 needed records like transcripts. *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("Destitute defendants
 23 must be afforded as adequate appellate review as defendants who have money enough to buy
 24 transcripts."); *See generally Ivery v. State*, 82 Nev. 488, 420 P.2d 853 (1966) (recognizing that
 25 on *habeas* a petitioner has a right to a hard copy of a Grand Jury transcript); *Logan v. Warden*,

26
 27 ¹ This is required because "[h]abeas corpus petitions that are filed many years after conviction are an unreasonable
 28 burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time
 when a criminal conviction is final." *Id.* (quoting *Groesbeck v. Warden*, 100 Nev. 259, 261, 679 P.2d 1268, 1269
 (1984)).

² Dismissal "without prejudice" means that the claim may be refiled at a later time.

1 86 Nev. 511, 513–14, 471 P.2d 249, 251 (1970) (finding that a defendant has a right to
 2 transcripts from Grand Jury and preliminary hearings). In Nevada, however, records and
 3 documents will not be furnished at state expense “upon the mere unsupported request of a
 4 [defendant] who is unable to pay for them.” *Peterson v. Warden*, 87 Nev. 134, 135-36, 483 P.2d
 5 204, 205 (1971) *superseded by statute on other grounds as stated in Reneteria-Novoa v. State*,
 6 113 Nev. Adv. Op. 11, 391 P.3d 760 (2017).³ Before a defendant may have records supplied at
 7 state expense, he must show his appeal or postconviction petition “ha[s] merit and such merit
 8 will tend to be supported by a review of the record” *Id.* at 136, 483 P.2d at 205. Put
 9 another way, “an indigent defendant must show how the requested papers would serve any useful
 10 purpose and how he would be prejudiced without them.” *Id.*

11 Because leave to file a second petition for *writ of habeas corpus* has been **DENIED**, it
 12 would logically follow that Mr. Maki now has no need for transcripts at the State expense.
 13 Additionally, and in the alternative, Mr. Maki has insufficiently alleged his need for the
 14 documents. He has not alleged how he will use the transcripts or how he will be prejudiced
 15 without them. Therefore, the request to transmit the transcripts at the State’s expense is
 16 **DENIED WITHOUT PREJUDICE.**^{4 5}

17 **IT IS SO ORDERED.**

18 **DATED** this 20 day of December, 2018.

19
 20 
 21 BARRY L. BRESLOW
 22 District Judge
 23

24 ³ Alternatively cited as: *Renteria-Novoa v. State*, 391 P.3d 760, 761 (Nev. 2017).

25 ⁴ In his request, Mr. Maki requests transcripts pursuant to NRS 7.055, which requires an attorney discharged from a
 26 case to “deliver to the client all papers, documents, pleadings and items of tangible personal property which belong
 27 to or were prepared for that client.” Mr. Maki’s former appellate counsel, Robert Story, Esq., has not filed any
 documents since May 2015. It would be procedurally irregular for Mr. Maki to not already have his papers,
 documents, etc. from Mr. Story. It appears that Mr. Maki’s motion mistakenly applies the wrong law to his request.

28 ⁵ Mr. Maki’s motion also requests transcripts so that he may pursue a federal appeal. The Court is unconvinced that
 it has authority to order transcripts for appeals outside the state system. For this additional reason, the request is also
DENIED.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 20 day of December, 2018, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Jennifer Noble, Esq.

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

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



CHRISTINE KUHL
Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2018-12-20 14:28:57.412.

ROBERT BELL, ESQ. - Notification received on 2018-12-20 14:28:57.459.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

12-20-2018:14:27:46

Clerk Accepted:

12-20-2018:14:28:21

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Denying

Filed By:

Judicial Asst. CKuhl

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

CR94-0345
DC-0900087698-010
STATE VS CHARLES JOSEPH MAKI 19 Pages
District Court 01/02/2019 03:54 PM

Case No. CR-94-0345Dept. No. 8

FILED

2019 JAN -2 PM 3: 54

JACQUELINE BRYANT
CLERK OF THE COURT
BY Smwof
DEPUTY

IN THE 2nd JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF Washoe

In re Matter
Charles Maki #42820

"Memorandum of Points and
Authorities; Exhibits attached"

Petitioner,

v.
Warden Gitterre of ESP
State of Nevada, et al.

Respondent.

1st Amendment Petition: Brady
Violation
PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION): NRS 34.726,
NRS 47.230 - 47.235
"Destruction of Exculpatory
Actual Innocence Evidence"

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: NDOC, Ely State Prison - White Pine County Nevada

2. Name and location of court which entered the judgment of conviction under attack: 2nd Judicial District Court of Nevada Department 8 Washoe County, Nevada City of Reno.

3. Date of judgment of conviction: _____

4. Case number: CR-94-0345

5. (a) Length of sentence: 2 x 10 to life 5 x 1 to 10 sexual assault and lewdness with a minor under 14

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No X

If "yes", list crime, case number and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged: sexual assault and lewdness with a minor under 14

8. What was your plea? (check one):

(a) Not guilty X (b) Guilty _____ (c) Nolo contendere _____

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

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

(a) Jury X (b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No X

12. Did you appeal from the judgment of conviction? Yes X No _____

13. If you did appeal, answer the following:

(a) Name of Court: Nevada Supreme Court

(b) Case number or citation: 26049

(c) Result: Affirmance

(d) Date of result: 10-4-1995
(Attach copy of order or decision, if available.)

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

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes X No

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

(a)(1) Name of court: 2nd Jud. Dist. Ct.

(2) Nature of proceeding: Motion to modify sentence.

(3) Grounds raised: Modification of sentence due to failing health

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No X

(5) Result: Pending

(6) Date of result: Pending

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

N/A

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

(1) Name of court: 2nd Judicial Dist. Ct.

(2) Nature of proceeding: Post-conviction writ of Habeas corpus

(3) Grounds raised: Violations of U.S.C.A. 5, 6, 14, and 8th Amendments

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes X No

(5) Result: Denied

(6) Date of result:

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: N/A

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

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

(1) First petition, application or motion? Yes X No

Citation or date of decision: Denied

(2) Second petition, application or motion? Yes X No

Citation or date of decision: Denied

(3) Third or subsequent petitions, applications or motions? Yes X No

Citation or date of decision: Denied

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

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify: ¹⁸

(a) Which of the grounds is the same: Ineffective Assistance of Counsel, Actual Innocence, due process violation.

(b) The proceedings in which these grounds were raised: Post-conviction writ of Habeas corpus

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

attached brief - Police destroyed evidence in violation of NRS 47-230-235

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

Evidence was not available at the time and of counsel refused to get it affecting outcome of trial

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

I had to go through 3 states to obtain relevant medical records.

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

If yes, state what court and case number:

Motion to Modify Sentence
CR-94-0395 pending.

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

Janet Schmuck Esq. Public Defender for sentencing and trial. Robin Wright Esq. Appeal counsel

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No X

If yes, specify where and when it is to be served, if you know:

N/A

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

Question 12(C)

The reason why I am raising my ineffective assistance of counsel claims again is because I have finally received medical records related to my disability injury that counsel at the time did not think was relevant. I did not have the resources to go through three states tracking down these records. Upon review of the preliminary hearing, the victim alleged opened the door to have these records considered. For example, in the preliminary hearing the victim alleged had stated she thought that I could not hear her. My medical records show I have lost hearing in both ears and need hearing aids. In fact, if I could not hear her I would be beyond ten feet from her. If I cannot hear her under these circumstances that means I did not touch her. It is therefore a lie.

There is a difference between impotence and sexual dysfunction. My medical rating supports sexual dysfunction. The medical records when used with the alleged victims testimony about my penis being flat would suggest I could not penetrate her with my penis due to injury and the enormous amount of opioids I had to take affecting normal sexual performance. It's a lie.

I am also raising this issue again due to new changes in law. Martinez vs. Ryan supra allows post-conviction counsel to be liable for ineffective assistance "if" that counsel does not

Question 17 (c). Continued

address merituous I.A.C. claims based on trial and direct appeal counsel error. The error in question is my counsel's failure to seek out a rape shield defense based on my alleged victim's ability to fabricate a charge under NRS 50.090 and counsel's failure to investigate possible testimony contamination of hearsay of a child named "John" who told his mother of the alleged victim's sexual abuse who then called the police. The alleged victim had the ability to fabricate a charge based on two things belied by the record in the preliminary: 1). she admits she heard and used the word "penis" in school, 2). she admits she showers naked with her biological father and has seen his penis. In addition to counsel's failure to file a jury instruction under NRS 50.090 and impeach both the alleged victim and her sister, counsel should have objected to the alleged victim's description of my sexual genitalia as hairy and pink because her father and I are the same race and complexion. It does not prove she actually saw mine for淫lover. Finally, as I am covered in tattoos, the alleged victim described color and hair but not my tattoos in my lower extremities. Again, it's a lie.

We have an issue of the destruction of exculpatory evidence that counsel has failed to use and secure during the procedural default on the record in the preliminary hearing, the D.A. and

Question 17 (c) continued

my counsel both admit that there is portions of the police interview of my alleged victim and her sister missing from the tape. Plus the detective admits on the record that he does repeat questions to make sure the alleged victims in the cases he investigates are telling the truth.

"Now", it is a well known fact, and the practice is illegal, for police and CPS to use coercive and repetitive interrogation techniques (see NRS 200.366 NRS 201.230 Greco vs. State, Barbayan vs. State, and Sarkissian vs. State.) Plus we got tampered with video with footage (A lot of it) missing. It was not relevant at the time but I actually saw transcripts where my alleged victim and her sister actually said, "No. Nothing happened." and I was denied access to copy as such by counsel who was operating under conflict. Time has destroyed the video and pursuant to NRS 47.230-47.235 the court must resolve the ambiguity in my favor even if the video is destroyed as a matter of policy. Counsel did not do competent and reasonable investigation and research to even see if the video was tampered with to deny access to exculpatory testimony that could have thrown out the case at preliminary stages. The hearsay testimony of the alleged victims sister and "John" could have been suppressed and stricken from the record under NRS 48.015 to .035 in a Petrochelli hearing. I was denied

Question 12(c) continued

a highly probable different outcome on trial and sentencing based on my counsel's conduct due to conflict of interest unaddressed and unresolved on the record. My counsel was so deficient, she legally could not be considered counsel who also accused me of being guilty on the record!

The wrong questions were asked, I am re-litigating the issue of ineffective assistance of counsel based on some of the same facts but in a different light. For example I will briefly discuss the testimony of the alleged victim's sister Summer.

In the preliminary hearing, Summer said I allegedly told her to go and get a glass of warm milk. Counsel never thought to ask me if I had milk in the house and why did I not make my own? Secondly, Summer is not old enough to pour milk in a pot and heat it up and bring it back to me being much younger than her sister Desiree. The truth was, I drink a gallon of milk a week "cold" not warm, I had milk in the house. It is therefore a lie. Her sister says I got up off of her when I heard the screen door slam in the preliminary hearing. If I did the crime, why not simply lock the door and make Summer knock to give me time to get dressed and threaten Desiree into silence? That did not happen. NRS 171.085-095 In secret does not apply. It is a lie. No one asked Summer

* sexually active girls can do their not virgins!

Question 17 (c) continued

reasonable questions like, "Where did you get the milk from?" "How did you warm it up? stove or microwave?" (They had no microwave stove only), and "How long did it take?" I use milk to settle my stomach from the opiods.

To close, here's another issue. *Is it or is it not unusual for a scared 8 year old girl to know exactly how much penetration she took? This is on characteristic of a young child sex abuse victim. Another thing that is unusual about this case is her clothing. What parent would send their child to be baby sat by a neighbor in nothing but a long T-shirt and underwear at eight years old? she did not describe being ordered to come out her appropriate clothes and this occurred "all of a sudden" after months of visitation.

Witness coaching and vouching by the D.A. is illegal and reversible error. No one picked up on that and due to destroyed video and Detective Staogmeier's background for being a corrupt cop (Being forced at least twice, once I heard in California and in Reno). What is there to say the finger depth thing as she was found medically a "virgin" was not a by product of witness tampering by the detective and then ADA Greco? Per NRS 34.740, I am entitled to a new evidentiary hearing because everything in this part of the writ is true.

Question 19: Post-Conviction Writ of Habeas Corpus.

I have attacked my sentence and J.O.C. timely within the procedural default without all the evidence needed to support the innocence I have always maintained. I have met due diligence. This attack is more than (1) one year since my sentence and J.O.C. because I did not and could not get all my medical records in a timely manner relying on counsel who thought my medical issues were not relevant and I have now shown it is. I assert "cause" under NRS 34.726 citing U.S. vs. Coleman supra. Pursuant to Meyers vs. State 95 Nev. 888, ineffective assistance of counsel is manifest injustice. Counsel's strategy, not even believing in my innocence and ignoring my advice and instructions to help me, help them, was not reasonable at the time and everyone under a conflict of interest wanted me to take a "deal". I have had absolutely no real legal help guaranteed by U.S.C.A. 6 guaranteed by constitutional law.

If this court misconstrues the application of a U.S. Supreme Court mandate in an unreasonable application of fact and or law it will trip review under the Anti-terrorism Effective Death Penalty Act (AEDPA 28 U.S.C. § 2254). I am relying on my actual innocence and the destruction of the video tape with missing footage and inept conflict ridden counsel to get the relief I seek.

Question 19 continued

I have relied on counsel provided for by the court in good faith and no one has bothered to investigate my medical issues, preserved and analyze the police video tape, or even reasonably cross-examine and impeach two little girls who under medical definitions are still virgins at the time. Furthermore, there are no discovery and police reports and files in my case where they should be. This also has hurt my ability to research my claims and get them to court in a timely fashion. The court and D.A. is well aware that sensitive cases like mine take decades to get justice and for defendants to find out the truth. I had to patiently wait and pay for my medical files which have been moved from state to state over the years to put this action together. Had counsel listened to me in the first place in 1994 it would have been easier to get this new evidence while it was easily available in Reno, Nevada during the procedural default. Furthermore, based on a medical treatise concerning things mistaken for sexual abuse in children recently available to me, there is now good cause to review the court's decision not to allow me a medical expert at the time of the procedural default: "Hymens on sexually abused girls do not grow back." But the state expert told the jury this lie.

(a) **Ground One:** Denial of equal protection and due process of law pursuant to U.S.C.A.S and NRS 125 in violation of U.S. v. Brady and Mazzan vs. State, connected to ineffective assistance of counsel citing Strickland vs. Washington 104 S.Ct. 2052.

Supporting FACTS (Tell your story briefly without citing cases or law.): Counsel was told during the procedural default to investigate and analyze the police video tape since it was missing footage, I discovered exculpatory statements of excusal by the alleged victims on a transcripts post-conviction counsel would not give me which may be why the video tape is missing footage. I was denied dismissal/acquittal citing Babayan vs. State and Greco vs. State.

(b) **Ground Two:** Denial of Effective assistance of counsel in violation of Strickland vs. Washington 104 S.Ct. 2052 and Nev. Const. Art. 188 citing Buffalo vs. State - Failure to investigate and issue jury instructions for NRS 50.090.

Supporting FACTS (Tell your story briefly without citing cases or law.): Counsel rendered ineffective assistance by not getting my medical records recently obtained to corroborate and impeach my alleged victims based on their testimony in the preliminary hearing opening the door for it. They hurt the ability to technique a charge and I was entitled to a jury instruction based on it which could have resulted in an acquittal or dismissal.

(c) **Ground Three:** Denial of Effective assistance of counsel in violation of Strickland vs. Washington 104 S.Ct. 2052 and Kimmelman vs. Morrison 106 S.Ct. 2576 and Nev. Const. Art. 188 citing Buffalo vs. State - Failure to object's witness vouching.

Supporting FACTS (Tell your story briefly without citing cases or law.): Trial counsel rendered ineffective assistance by failing to object to witness vouching by the D.A. in connection to the alleged victim showing the jury depth of penetration. Appeal counsel should have brought this up too. The video missing footage may have contained coaching and coercive questioning technique in relation to this issue and NRS 50.090 issues.

(d) **Ground Four:** Denial of Effective assistance of counsel pursuant to Strickland vs. Washington 104 S.Ct. 2052 and Martinez vs. Ryan 1 U.S. 566 2011 in Post-Conviction proceedings during procedural default.

Supporting FACTS (Tell your story briefly without citing cases or law.): Counsel rendered ineffective assistance denying me the probability of a different result ~~from~~ relief for I.A.C. issues on Appeal and trial counsel. He had the ability to get my medical disability records and use them in context to the alleged victims testimony to get a new trial forcing me to find and get those records under my own resources falling outside the 1 year procedural default.

(e) Ground five: Denial of effective assistance of counsel pursuant to Strickland vs. Washington 104 S.Ct. 2052 and Nev. Const. Art. 188 citing Meyers vs. State 98 Nev. 880 and Buffalo vs. State - Denial of conflict free counsel.

Supporting facts

The district court committed structural error and denied me a right to a fair trial when they refused to at least investigate possible conflict of interest between counsel and myself which involved an bias opinion of guilt and trial strategy. There was no statutory conflict of interest hearing on the record.

The recently obtain. Disability records when combined with the victim's preliminary and trial testimony shows and proves impeachment was possible pursuant to Silva vs. Brown 9th Cir. This conduct denied me a high probability of a different result which could have been prevented had I been given counsel during this crucial stage of the proceedings in "replacement" not choice. It is manifest injustice.

(F) Ground six: Denial of effective assistance of counsel pursuant to Strickland vs. Washington 104 S.Ct. 2052 and Nevada Const. Art. 188 citing Buffalo vs. State - refusal to call witnesses.

Supporting facts

Trial counsel abused discretion in strategy and refused to put witnesses on the stand to support my character one witness would have testified that I had looked after an

Ground six continued

underaged girl and protected her from potential rape and sexual abuse from a teenage boy.

I have an affidavit from Paul Grubbs that counsel during post-conviction that counsel failed to consider with the medical records, this claim looked at in an different light shows that this conduct is not harmless.

Trial counsel also rendered ineffective assistance by not interviewing "John" who is a minor who told his mother who called the police in the first place

1). Hear say or rumors need to be checked and verified. John could have misconstrued some events out of context. The girls were virgins.

2). This testimony which is usually contaminated is grounds for exclusion and dismissal under Greco vs. State and Babayan vs. State.

Competant counsel would have investigated how it all came about which they did not at all. It could have exposed lies and misconceptions and weakened the D.A.'s case (see Idaho vs. Wright 9th Cir. & U.S. Sup. Ct. on Hear say testimony).

6) Ground seven: Denial of right to a fair trial pursuant to U.S.C.A. 14 equal protection and due process of law citing NRS 47 "Right to Expert witnesses"

Supporting facts

The court denied my counsel a request for a sex abuse expert on the physical condition of the alleged victim. This affected tier of fact and the

Ground 7 Continued

outcome of the trial because a neutral expert would have impeached the state's witness based on these facts.

- 1). If the alleged victim shows how much penetration to a jury or Judge, defense expert could have impeached the state's expert by informing the jury that hymens, once penetrated does "not" grow back. Scarring heals on unpenetrated hymens depending on the type. There are seven types of hymen.
- 2). Absence of scarring or penetration or other types of sexual contact/abuse is a sign of consensual sexual conduct.
- 3). The state may "not" allege full penetration then instruct on digital penetration. This instruction confused the jury and resulted in conviction.
- 4). Counsel "period" has refused over the years to give me access to the alleged victim's medical exams. None of the D.A.'s discovery is in the file I been requesting.

(H) Grand eight: Denial of equal protection and due process of law citing U.S.C.A. 14 and Nev. Const. Art. 1§8 citing cumulative error.

Supporting facts

Failure to investigate, Failure to call witnesses, failure to issue proper jury instructions, failure to get

Ground 8 continued

preserve evidence is cumulative error. The standard is that one or two errors may be harmless but a collection of errors may violate one's constitutional rights. Grounds 1-7 are not harmless.

NRS 42.230-235: Demand for an Evidentiary Hearing.

NRS 42.230-235 states that evidence destroyed as a matter of policy that the police and D.A. know is exculpatory to a defendant must be construed as detrimental to the state's case. The disability records and reasonable questions counsel failed to ask that could have impeached the main witnesses along with suspicious missing video with post-conviction counsel refusal to hand over transcripts of the interview that exposes what portions of the video "is" missing warrants an evidentiary hearing. It's an actual innocence issue and it's outrageous government misconduct. Pursuant to U.S. vs. Cuellar cert. denied the remedy for this conduct is dismissal of indictment / information. The nature of the crimes are irrelevant. There may also be evidence of corruption in the detective's history and also under D.A. Greco's history subject to NRS 34.290. The claims are brightly colored with facts and it's not a fishing expedition. (See Question 17(c) on writ of Habeas Corpus.)

(I) Ground 9- Violation of U.S.C.A. 5 citing NRS 34.224
 (b)(2) denial of equal protection and due process in
 sentencing citing Townsend vs. Burke citing NRS 48.045

Supporting Facts

NRS 48.045 deals with prior bad act evidence in context to trial not sentencing. This is why the last habeas court rejected the argument about admitting the testimony of Joslyn Coombs. Townsend vs. Burke Supra has mandated that None is to be sentenced based on evidence of a "constitutional magnitude". The state has denied equal protection and due process of its law in violation of U.S.C.A. 14 and U.S.C.A. 5 by allowing Joslyn Coombs to testify at sentencing in favor of the state. Consider NRS 202.010 "habitual criminal" the state of Nevada has barred the consideration of crimes that are irrelevant or stale over 10 years old. This incestuous allegation the court considered is inflammatory. No police report was even filed, and it was over 20 years old. The issue is not even relevant, and if it was, why not offer Mrs. Coombs to testify at trial and bring her in under Petrochelli? That would have been the proper thing to do. Why? A smart D.A. would have presented the issue under the hearsay rule and screened for trust worthiness. Being that this is sentencing the D.A. was relieved of that obligation of procedural due process denied.

The allegation of Incest is inflammatory and without proof or conviction amounts to libel and slander prohibited under Nev Const. Art. 1 § 9 and was the just

Ground 9 Continued

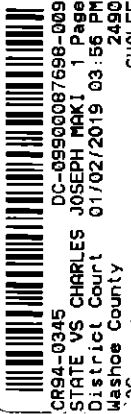
duty and obligation to decide the facts of the matter. Consider also this: "The D.A. brought the girls into court with pure white dresses and teddy bears in hand. They were dressed up like pure virginal upscale little girls in a magazine." This was done for effect to get the jury emotionally involved. Is it right? No. But it is perfectly "legal". But based on review of a medical treatise these girls are not the image D.A. Greco painted them to be.

There was not even a threat on Coombs not to even tell over the past 20 years under NRS 126.085-095. Then we have a jurisdictional issue. The allegations are under the Jurisdiction of the State of Colorado. Why did not Coombs report it there and involve the state's "In secret" or "coercion" clause? The state of Nevada had absolutely "zero" (0) jurisdiction to even consider the matter. Finally, why did not D.A. Greco send a referral back to Colorado where the petitioner could have challenged the incestuous charges? Coombs, like Desiree and Summer, is a liar or has some other motive to lie. And at the very least under NRS 200.366 (1-3) under Nevadan standards she did not resist within the means of a girl her age could do when you consider Desiree's and Summer's effort! (Note! John reported the incident to an adult not Desiree or Summer. So, we still have a problem under NRS 200.366 (1-3).)

We do not know for a fact that the Coombs testimony is in fact harmless. The Coombs testimony qualifies

Ground 9 continued

under NRS 34.224(b) 2 as "constitutionally" invalid.
This is pursuant to two U.S. Supreme Court Mandates.
The case and sentencing is affected by two non-
victims: Summer and Joryln Coombes, and there is
nothing wrong with the "coached" Desiree at all. This
also includes Summer as well.

COURT'S
COPY

TO:

COURT CLERK

2nd JUDICIAL DIST. CT.

RENO, NV. 89501

FILED

2019 JAN -2 PM 3:56

JACQUELINE BRYANT
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

FROM:

DATE: 12-24-2018

CHARLES MAKI - #42820

DIST. CT. NO. 8

E.S.P. PO Box 1989

CASE NO. CR94-0345

ELY NV. 89301

RE: INCORPORATE TRANSCRIPTS

INTO RECORD OF HE'BEUS CORPUS, (ACTUAL-INNOCECE) CLAIM

(AND SEND BACK FILLED-STAMP COPY), OF MEDICAL REC., EXHIBITS AND
OF FILED HE'BEUS CORPUS TO DEFENDANT.

MOTION: TO INCORPORATE ALL

(THE) TRIAL - PRELIM - SENTENCING - POST.
CONVICTION INTO HE'BEUS CORPUS RECORD.

DEAR CLERK,

I WOULD ASK THE HONORABLE COURT(S) TO INCORPORATE ALL
THE PRELIMINARY, TRIAL, SENTENCING AND POST-CONVICTION
TRANSCRIPTS INTO THE RECORD ~~AND RETURN TO ME~~ SO AS TO
PROVE ALL MY CLAIMS, SUBMITTED IN THIS HE'BEUS CORPUS
POST CONVICTION, ACTUAL INNOCENCE EVID. CLAIM. (DATED ABOVE.)

ALSO I'D LIKE A (FILED STAMP COPY RETURN) OF SAID HE'BEUS
CORPUS, ^{AND} MEDICAL RECORDS, AND ALL EXHIBITS TOGETHER - COMBINED!
TOTAL PAGES, (42) HE'BEUS, (45) MEDICAL FILES (8) EXHIBITS. V7.1197

THANX

CR94-0345
DC-09900087698-011
STATE VS CHARLES JOSEPH MARK 10 Pages
District Court 01/02/2019 06:16 PM

Charles Mark #42480

FILED

P.O. Box 1489-4AB-ESP

2019 JAN -2 PM 5:16

Ely, Nevada 89301

Date

JACQUELINE BRYANT
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

Affirmation under NRS 239B.030

The undersigned affirms that there is no personal information
of anyone used in this action/Document.

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

In re matter of

Case No. CR-94-0345

Charles Mark #42480

Dept. No. 8

vs.

Warden Gitterre of ESP
State of Nevada, et al

Memorandum of Points and Authorities in Support of Post-
Conviction writ of Habeas Corpus in support
of actual innocence and/or resentencing & exhibits

To the honorable Judge of said Court

I.

Memorandum of Points and Authorities and Exhibits.

I. Continued.

"Cause and Prejudice: NRS 34.726 and U.S. vs. Coleman Spru
and the Strickland v. Washington 104 S.Ct. 2052
Standard"

The petitioner has cause for this second state habeas corpus attack. First he is actually innocent of his child sex charges that no juror of reason would convict him of based on a medical opinion the 1994 court denied him of. The medical treatise concerning hymens and pubescent girls inability to gauge penetration as Desiree Menees did is almost as old as the case itself. Its from a real medical doctor, not a glorified untrained nurse from Canada (see Exhibit: A) Secondly, due to the prong of prejudice and the destruction of an exculpatory video tape, time has destroyed the original police interview video where footage is missing in context to Desiree and Summer Menees. The petitioner attest that he did see the original police transcripts of the alleged victim excusing him and it is a matter of record that there was missing video footage. This issue is over 24 years old and the tape is destroyed. Post-conviction counsel who rendered ineffective assistance had refused to allow his access to his own discovery. The state court under NRS 42.730-.735 must construe the tape as detrimental to the states case. Also, counsel poorly investigated that case by asking the wrong common sense questions that when backed by the petitioner's medical records (see Exhibit: B) would have impeached Desiree and Summer Menees and exposed ability to fabricate a charge under NRS 50.090.

Strickland vs. Washington two prong test

Pursuant to Nev. Const. Art. 1 § 8 citing NRS 126 Meyers vs. State 98 Nev. 880 and Buffalo vs. State Ineffective assistance of counsel is "Manifest injustice" (see Mann vs. Richardson supra). Strickland vs. Washington obligates the petitioner to meet two prongs to establish Post-Conviction relief:

- 1). Counsel assistance must fall below reasonable and established competent and professional standards, or counsel has a conflict of interest so great that they cannot be considered counsel for the defense. (e.g. failure to investigate, failure to object, failure to secure evidence, failure to secure or request expert or investigator)
- 2). The defendant was denied the highly likely possibility of a different result due to counsel's inept performance. This usually translates into conviction that could have been avoided.

The defense to an I.A.C. post-conviction attack is usually counsel strategy. Counsel strategy is based on what counsel deemed reasonable at the time. Due to the preliminary hearing where the alleged victim Desiree showed the Judge "fingers" to gauge penetration depth, and due to D.A. Greco telling the jury that Desiree will show how much she was penetrated, combined with the denial of the court to allow the defense an medical expert and the attached medical treatise from a Medical doctor. The petitioner will make his case for relief under Strickland Court due to counsel's inept performance.

A). What counsel failed to simply do to Impeach and discredit the Testimony of Summer Meneers.

Out of the (24) twenty-four years since conviction. No one thought to simply ask the petitioner on the record if he had milk in his own home, You see the pain of disability and opioids caused the petitioner to have chronic upset stomach and he needed milk to take with the pain killers. (See attached Medical examine (file)). The record belies the fact that summer told the court she was told by the petitioner to go get a glass of warm milk. (See Prelim. hearing)

- 1). If the petitioner already had milk in his home why would he tell summer to go get a glass of warm milk from a neighbor? Had counsel inquired of this this could have been proven a lie. It was a lie.
- 2). The petitioner kept a gallon of milk in his home drunken cold for this purpose.
- 3). Counsel could have simply asked summer, "Where did you get the milk from?", "How did you heat the milk?" In a microwave or on the stove?", "Did you need help warming the milk?" "Did you give Mr. Malik what he requested?"

Based on her answers a seven year^{old} does not know how to warm milk unless she was taught. And it's usually for a baby sibling. There were no baby siblings she being the youngest. The only way she could heat milk is on a stove. (Hence why their father sent them next door so they would not have to cook because they cannot watch themselves. If they could cook why use a baby sitter?)

Now a nine or ten year old could do it. The Petitioner could have sent Desiree, assuming he had no milk on the day in question. That leaves motive to be alone with Desiree. But since Desiree is completely normal and she described depth of penetration, we will analyze this lie based on an doctors opinion. Furthermore, Desiree had stated that she and her sister went next door in a long T-shirt with nothing but panties underneath. * Query: "What parent would send their child to a baby sitter inappropriately dressed as such?"

The crime would have been more sinister if they came over properly dressed and was forcefully robbed. This was not the case and that's why this case "stinks" * (see Prelim. hearing).

B). What counsel failed to do to simply
Impeach Desiree and discredit
her on the stand.

Even if the Judge said No expert. Counsel should have gone online and opened a book or made an independent inquiry about Desiree and summer hymenal conditions.

Exhibit: A was available to trial counsel and post conviction counsel. It is a fact that D.A. Greco had Desiree showed the Judge in the Preliminary hearing how much she was penetrated (with finger and the petitioner's penis). However, Dr. Shapiro of the world renowned Children's Medical center had stated that such girls cannot determine or gauge penetration being virginal. This conduct occurred also in trial. The Judges and Jury did not know any better. This is not only "coaching"

but "witness vouching" which is constitutionally prohibited and is "prosecutorial misconduct", Trial counsel and direct appeal counsel and post-conviction counsel rendered ineffective assistance for not picking it up. Had they properly attacked and addressed this the petitioner would not be in prison "today".

D.A. Greco during the trial on redirect (See Trial transcripts pg. 147 Lns 1-21) tried to rehabilitate their expert Mrs. Peele by inquiring if it could have penetrated an "inch". You cannot have a child victim based on Dr. Shapiro's online treatise describe inches of penetration then rehabilitate the star witness by down playing what she described knowing that even digital penetration (simple contact) is enough to convict. It's abuse of the rule on penetration. You see trial counsel tried to inquire about this matter during questioning. (See trial transcripts pg. ^{140-141 Lns 12-15} 144 Lns 3-12). While it may be true that some contact or penetration does heal, there should have been some reliable penetration evidence left if Desiree was telling the truth about the penetration she could not even describe based on Dr. Shapiro's opinion. They went to the doctor or Mrs. Peele within a month of the incident. The question that trial counsel should have asked Peele is what kind of penetration perpetrated on a child sex abuse victim vaginally does "not" allow the hymen to heal and repair itself? (which, by the way, is the deep finger and penile penetration that Desiree scandalously and illegally described!)

Trial Counsel and direct appeal counsel and Post-Conviction Counsel rendered ineffective assistance for not properly using, researching, and investigating a defense under NRS 50.090

"Ability to fabricate a charge." Desiree's testimony under NRS.

47 and 48 could have been stricken as unreliable and untrustworthy. 1). In the preliminary hearing she described the color of the alleged perpetrators penis. Okay, she did admit she showers naked with her father. Her father and the petitioner are of the same identical race. That means nothing. (Why is a child that old showering naked with her father anyway? Why not a bath? She cannot drown if supervised in low water!) Then we got possible unreliable hearsay from the child "John." These counsels failed to pull that child up and interview him and ~~his~~ mother to see if the allegation made by Desiree to him was simply taken out of context. "That" is why hearsay has to be checked for reliability. Had counsel done this, the case probably would not have survived the preliminary hearing. 2). The alleged victim Desiree admitted she heard and used the word "penis" (And worse probably) in school. All the above is completely relevant to a child's ability to fabricate and make up a charge. Add the coaching by D.A. Greco and Detective Staigmier (?) and you have an unreliable child witness. Greco vs. State and Babayan vs. State at the 2nd Judicial District is the control for such dismissals. Counsel simply dropped the ball on the petitioner.

Finally, Desiree had not even described an erected penis and no phallometric test was done. We also have the tattoo issue. Desiree and Summer did not describe any of the tattoos found on the petitioners lower regions if he did get naked, nor did they describe the possibility he only undid his pants partially where they could not see the tattoos. A jurist of reason based on all the above would logically conclude that Desiree was not sexually assaulted or even penetrated. Her exam was normal.

C).

The district court abused discretion in not allowing an expert for Defense based on Exhibit: A which could have discredited Peele and explained Summer's Hymenal condition more reliably as she was not a victim.

Dr. Shapiro in the Medical treatise had stated that all examiners are not equal and some have different skill levels. The most important part of the treatise are things that "mimick" sexual abuse. Peele's trial testimony had revealed the fact that she did not study hymens too much (see trial transcript pg. 139 lns 3-7) Hymens are "everything" in diagnosing sex abuse in young girls like Desiree and Summer. An expert might have given the defense an edge. She did a history on Summer and noted poor hygiene well. According to Dr. Shapiro, poor hygiene can mimick sexual abuse particularly on the vagina and anus of children.

For example, the medical treatise provided states that a hymen may have very little (thin) or thick skin covering all or very little of it. It can be redundant (folded) or estrogenized (thickened). Peele stated that Sommers alleged penetration had healed while the main victim alleged (Desiree) had no evidence it had healed at all! (see trial transcripts pg. 150 lns 1-24 all). Sommers hymen based on that treatise could have very well been normal as she was going through puberty changes and she was actually bigger than Desiree even though Desiree was in fact older! * Peele had also stated on the record she did not do an internal exam of either girl. Dr. Shapiro stated that penetrating injury from hymenal injury often occurs in the introitus (The vaginal opening itself). Indeed, a septate hymen naturally has two openings in it and the jury believed it's penetrating injury. The petitioner states this to show the court the ^{NECESSITY} ~~NECESSITY~~ of an expert. Based on the treatise offered, Peele's findings should have been declared non-conclusive. Why? on the trial transcripts page 115 lns 1-21 Peele had actually described what Dr. Shapiro defined as clefts, interruptions of the normally smoother hymenal edge. These are found at the mid-horizontal plane of the hymen at 3 and 9 o'clock positions. Shapiro states when found below the horizontal line it may indicate injury. Peele did not determine this on the record and the original exam needs a second look. (Note! : Sommer did not have an enlarged vaginal opening or introitus. So, the finding is tr-
conclusive. There is no proof she was penetrated by a penis at all!)

Conclusion

The Petitioner will not address other issues of testimony until the D.A. answers the writ. The warm milk issue and Desiree's description of finger penetration while she did not even have healed penetration shows the girls have been coached/coerced by D.A. Greco and Det. Staegmire (?) and have lied on record. The treatise by Dr. Shapiro alone supports the court's error in the denial of ~~an~~^a medical expert. Redundant, folded hymens in physically mature girls like Summer are and can be normal. It can be also mistaken for healed sexual abuse as well. This also proves, after 24 years, that Charles Maki did not get a fair trial, he did not have competent effective counsel in trial, direct appeal, and post-conviction pursuant to Martinez vs. Ryan 2011 because that counsel did not append the record, the girls were coached and coerced into testifying, the police molested and now destroyed the video tape of the girls interview, and due to cumulative error and police and prosecutorial misconduct should be free.

Affirmation

"I, Charles Maki #42480, hereby affirm under the penalties that the foregoing is true and correct and not for any improper purpose."

NRS 208.165 & 121.121 Affiant

Hereby sworn this 24th day of December, 2018 under the penalties of perjury.

Charles Maki

NDC #42480

P.O. Box 1984-4A13-ESP

Ely, Nevada 89301

Pro per Petitioner

Robert Shapiro, MD
Children's Hospital Medical Center

Exhibit A

GENERAL PRINCIPLES

- **Normal examinations are common after sexual abuse.** Most children who have been sexually abused will have normal physical examinations, including children who report vaginal or anal penetration. The finding of a normal examination does not eliminate the likelihood or potential that the child was abused.
- **Facts about the hymen:**
 - ✓ Every girl is born with a hymen.
 - ✓ Hymens vary in shape and size among individual females.
 - ✓ The hymen changes significantly during puberty.
 - ✓ After puberty, bleeding from hymenal injury may or may not occur during first time intercourse.
- **The examiner is looking for physical changes that may be the result of sexual abuse.** Injuries to the genitalia and anus may occur during sexual abuse. Chronic (old) sexual abuse may cause changes different from acute (recent) abuse. Sexual abuse may transmit STDs (see Chapter 41).
- **Puberty changes the appearance and size of the genitalia as well as the examiner's ability to diagnose injury.** Enlargement of the vaginal opening and redundancy (folds) of the hymen can prevent injuries from vaginal penetration or make them more difficult to recognize. **Superficial genital and anal injuries often heal quickly.** If there is a delay between the time of the abuse and the examination, minor trauma that may have resulted from the abuse will no longer be present. The amount of time needed for an injury to heal varies. Deeper injuries require more time to heal, as do injuries that are not able to heal because of re-injury.
- **Tanner staging:** The stages of puberty can be described with the Tanner Scale. Tanner Stage I describes the genitalia prior to the onset of puberty. Tanner Stage V describes the genitalia after puberty is complete. Stages II, III and IV are intermediate stages.
- **Clock references in the sexual abuse reports.** Many examiners refer to locations about the genitalia and anus using a "clock face" analogy. Therefore, the top-center location is referred to as "12 o'clock", and "3 o'clock" refers to the area 90 degrees to the right of 12 o'clock, etc.

ANATOMY: Familiarity with certain anatomical structures and terms is helpful when interpreting reports of medical examinations. The section below provides a brief overview of the more commonly encountered terminology.

Female genitalia

- **Labia:** the lips surrounding the vaginal opening. There are two sets of labia, one is the labia major (outer set) and the other is the labia minor (inner set). After puberty, the labia enlarge and more completely cover the opening of the vagina.
- **Urethral meatus:** the opening of the urethra from the bladder to the exterior through which urine passes.
- **Hymen:** a membrane that partially covers the opening of the vagina. The hymen may be thin or thick, may cover most of the vaginal opening or very little of it, and varies in shape. Terms used to describe the appearance of a normal hymen include crescentic (crescent shaped), annular (round), redundant (folded), estrogenized (thickened) and septate (two openings). **Introitus (hymenal opening):** the opening in the middle of the hymen. Objects entering the vagina first pass through the introitus. Hymenal injury from vaginal penetration often occurs at the introitus.
- **Vagina:** a tubular structure inside the body, bordered by the hymen at the outer end and by the cervix internally.

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2

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District Court 01/02/2019 05:16 PM
CR94-0345



- *Posterior fourchette*: the area of mucosal skin where the labia minora meet (opposite end to the clitoris).
- *Fossa navicularis*: the area of mucosal skin between the posterior fourchette and the hymen.

Male genitalia

- *Glans*: the tip of the penis surrounding the urethral opening
- *Prepuce* (foreskin): tissue that covers the glans in uncircumcised males. The prepuce is removed during circumcision.
- *Phimosis*: adhesion of the prepuce to the glans.

The anus

- *Anus*: the opening of the rectum between the buttocks
- *Sphincter*: the muscles that surround the anus
- *Anal verge*: the area between the external and internal anal skins
- *Rugae*: folds of skin which radiate outward from the anus

INTERPRETATION OF NORMAL AND NON-SPECIFIC EXAMINATIONS: Most children who have been sexually abused will have normal or non-specific physical examinations. Some of these normal and non-specific findings are described below. These findings on their own are clearly not proof of sexual abuse, but may be present in children who have been abused.

Normal or non-specific pre-pubertal female genital findings

- *Bumps/tags/mounds*: small protrusions on the hymenal edge
- *Clefts*: interruptions of the normally smooth hymenal edge. They are most commonly found along the mid-horizontal plane of the hymen, at the 3 o'clock and 9 o'clock positions. When present below this horizontal line, they may indicate healed injury.
- *Redness/vaginitis/discharge*: can be due to poor hygiene, infection, bubble bath, and other causes.
- *Intra-vaginal ridges/columns*: normal folds of the vaginal wall
- *Peri-urethral bands*: support-like bands of tissue radiating from the urethral meatus
- *Increased vascularity of vestibule or hymen*: more than the usual number of blood vessels within these tissues
- *Posterior fourchette friability*: the tendency of the posterior fourchette mucosa to bleed easily. This finding seems to occur more often in children who have been abused but can also be seen in non-abused children.
- *Labial adhesions*: joining of the labia minora. In some children, chronic labial irritation from sexual abuse may be the cause of the adhesions, but this finding is very non-specific.
- *Large hymenal opening*: A large introital opening is suggestive of vaginal penetration, but one cannot conclude that vaginal penetration has occurred unless specific signs of hymenal trauma are also present. No conclusion regarding sexual abuse should be made based upon the size of the vaginal opening alone.

Normal or non-specific pubertal female genital findings

- *Redundant, fimbriated hymen*: During puberty, the hymenal tissue becomes thicker and redundant (folded), the opening into the vagina becomes larger, and the hymenal tissue becomes more elastic and less sensitive to touch. The mucous covering the vaginal walls becomes less prone to injury from abrasion. Folds in the hymen make examination difficult and distinguishing folds from injury can be challenging
- *Vaginal discharge*: although discharge can be normal, it may also indicate infection

Normal or non-specific anal findings

- *Fissures, excoriation, redness*: may be seen after sexual abuse but there are other causes
- *Anal tags*: protrusion of tissue at the 6 o'clock or 12 o'clock midline positions
- *Diastasis ani*: smooth anal skin at the 6 o'clock or 12 o'clock midline positions
- *Increased skin pigmentation and thickened anal skin folds*
- *Varicose congestion*: pooling of blood in the veins around the anus
- *Gaping (wide open) anus*: only normal if stool is present in the distal (end) anus

Interpret results of a child sexual abuse examination and conditions may be mistaken for sexual abuse.

Robert Shapiro

INTERPRETATION OF ABNORMAL EXAMINATIONS THAT REVEAL TRAUMA: Trauma may or may not indicate sexual abuse. Some types of trauma are non-specific while others indicate that sexual abuse has most likely occurred.

Pre-pubertal female genital trauma

- Acute injuries to the genitalia cause bruising, lacerations (tears), abrasions (scrapes) and swelling. Most of these injuries heal quickly without leaving any lasting signs to be found on later examination. Acute genital injuries are always suspicious for sexual abuse, particularly when the trauma includes the hymen. Accidental trauma usually involves the labia and/or the mons pubis.
- Findings that indicate healed vaginal penetration
(Note: the legal definition of "penetration" may include contact with the external genital structures, such as the labia, posterior fourchette and fossa navicularis. "Vaginal penetration" in this Chapter refers to internal, vaginal penetration.)
 - ✓ Absent or significant defect of the posterior hymen (should be confirmed by examining the child in knee-chest position)
 - ✓ Hymenal laceration or scar
- Findings that may indicate vaginal penetration
 - ✓ Enlarged hymenal opening: "enlarged" can be difficult to define
 - ✓ Decreased amount of hymenal tissue
 - ✓ Irregularities, notches, and clefts of the posterior hymen

* Female pubertal genital trauma

Signs of vaginal penetration can be more difficult to recognize, or may be absent, in the adolescent. New hymenal tears and signs of acute injury are indications of recent vaginal penetration. Transections (complete interruptions/breaks) in the hymen are present in some virginal adolescents, but are more commonly seen in sexually active and sexually abused girls.

* Consensual sexual activity does not typically cause genital bruising, abrasions or swelling.

Male genital trauma

Findings that indicate recent injury: swelling, abrasions, bruises, lacerations, bites. Acute injury is always suspicious for sexual abuse.

Anal trauma

- Findings of acute anal injury include bruising, lacerations, abrasions and swelling. Most of these injuries heal without leaving any lasting signs. Acute injury is always suspicious for sexual abuse. Scars may result from deep lacerations after sexual abuse and will be visible long after the abuse occurred. Skin tags away from the midline of the anus may indicate healed injuries.
- Chronic sexual abuse may result in funneling (loss of subcutaneous fat around the anus), changes in the anal skin, and decreased sphincter muscle tone. Decreased tone is defined as > 15 mm of anal dilation with no stool in the distal anus.

Trauma outside the genital and anal areas

Injuries to a child's breasts, throat, mouth, or other areas, may occur following sexual abuse. Specific injuries from oral gags or binding of the extremities may be found.

COMMON QUESTIONS WITH ANSWERS

- What types of sexual abuse are consistent with normal examinations?
Oral contact, digital fondling, genital rubbing, vaginal penetration after puberty, rectal penetration, partial or attempted vaginal penetration, and penetration that has had time to heal.
- The child describes penetration but the exam is normal. How can this occur?
1. The pre-pubertal child who describes vaginal penetration may have experienced the pain of partial or attempted penetration, but may not have been penetrated past the hymen. Although the child describes penetration, since she could not "see" the extent of penetration, and has no experience to be able to differentiate between full vaginal penetration and attempted or partial penetration, her impression may be that she was penetrated. If pressure is exerted against the hymen, most girls will experience pain. Keep in mind that, in many states, the legal definition of penetration does not require vaginal penetration.

* This proves Desiree was coached!

Interpret results of a child sexual abuse examination and conditions may be mistaken for sexual abuse.

Robert Shapiro

2. ~~The prepubertal adolescent~~ may show no physical indications of vaginal penetration after sexual intercourse. In many adolescents, the hymenal opening is large enough, and has sufficient elasticity, to accommodate an erect male penis without tearing.
 3. Rectal penetration often results in no signs of injury. The rectum of many children can accommodate an erect male penis without injury, particularly if lubricated.
 4. In general, trauma after penetration is more likely if the victim was young, physical force was used, the penetration was deep, the victim was uncooperative, and/or the perpetrator used no lubrication. Penetration with larger objects is more likely to result in injury than penetration with smaller objects. Repeated penetration is more likely to result in injury than single penetration.
- Can the number of abuse episodes be determined by exam?
Not usually. If evidence of chronic anal abuse is present, multiple episodes of abuse occurred. Vaginal injuries do not reliably differentiate between single episodes of abuse and multiple episodes.
 - When did the injury occur?
If the injuries are acute (redness, swelling, tenderness, fresh abrasions or tears), the examiner may reliably identify the injury as relatively recent, most likely having occurred within a few days of the examination. Dating injuries within hours or to specific days is usually not possible.
 - Why does one examiner's report differ from another's?
Examination findings may differ when:
 - acute injuries heal between examinations
 - one of the examinations was not optimal because the child was uncooperative
 - the skill levels of the examiners differ. Examiners with expert training will provide a more accurate and informative examination.

CONDITIONS THAT MIMIC SEXUAL ABUSE

- Non-specific vaginitis: many causes, including poor hygiene, bubble bath, antibiotics, nylon underwear, and bed wetting.
- Vaginitis: many causes, including pinworms, streptococcal infection, and fungus infection.
- Vaginal foreign bodies: may cause bloody, foul smelling discharge. This is often caused by residual toilet paper in the vagina.
- Peri-anal strep infection: presents with anal bleeding and redness
- Lichen sclerosus: hourglass shaped area of hypo-pigmented skin surrounding the anus and genitalia, often with blood blister and other skin changes. Bleeding is common.
- Straddle injuries (accidental trauma): abrasions, bruising, swelling of the labia. Occasionally may involve the introitus.
- Urethral prolapse: the urethra protrudes past the urethral opening and presents with a bloody, or blood-tinged, swollen lesion around the top of the introitus. Often, the urethral origin of this mass cannot be easily recognized and it may be mistaken for trauma.

References:

- Hymel, Kent P, Jenny, Carole. Child Sexual Abuse. *Pediatrics in Review* Vol. 17: no 7; p 236 - 249. 1996
- Botash, Ann S. Examination for Sexual Abuse in Prepubertal Children: An Update. *Pediatric Annals* 26:5 May 1997 pp312-320/

CODE No. 2645
CHRISTOPHER J. HICKS
#7747
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200
Attorney for Plaintiff

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

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR94-0345

CHARLES JOSEPH MAKI,

Dept. No. 8

Defendant.

_____/

OPPOSITION TO MOTION TO MODIFY SENTENCE

COMES NOW, the State of Nevada, by and through Jennifer P. Noble, Chief Appellate Deputy, and opposes this "Motion to Modify Sentence." This Opposition is based on the pleadings and papers on file with this Court, and the following points and authorities.

POINTS AND AUTHORITIES

In 1994, Maki sexually assaulted two little girls, aged seven and ten. He licked the ten-year-old's breasts, digitally penetrated her, and penetrated her with his penis at least three separate times. *See* PSI. He also tried to get that child to fellate him, but she refused. Maki also fondled the seven-year-old, and penetrated her with his penis and his fingers. *Id.* He also took a shower with the seven-year-old, and had her wash his

genitals. *Id.* As this Court noted in its order, a jury of his peers convicted him of three counts of Sexual Assault on a Child Under the Age of Fourteen Years, and five counts of Lewdness With a Child Under the Age of Fourteen Years. *Id.*

Maki now seeks modification of his sentence based upon health problems. A motion to modify a sentence must be based on very narrow grounds. It is limited to sentences based on a mistaken assumption about the defendant's criminal record which worked to the defendant's such extreme detriment as to rise to the level of a due process violation. *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (1996). The State notes that on October 7, 2015, Judge Lidia Stiglich declined to modify Maki's sentence, citing the limitations in *Edwards, supra*. It appears that in his latest motion, Maki appears to reference *Chavez-Meza v. United States*, ___ U.S. ___, 138 S. Ct. 1959 (2018). Maki's reliance is misplaced. In *Chavez-Meza*, the United States Supreme Court reviewed a federal court's reduction of a sentence based upon amendments to the federal sentencing guidelines. A federal statute, 18 U.S.C.A. §3582 (c), provided for the type of reduction ordered by the federal judge. Nevada has no such statute, and there is no procedural vehicle Maki may properly use to obtain a sentence reduction or "early release" from this Court.

The State notes that over the last two decades, Maki has sought post-conviction relief in various forms. This Court has declined to grant relief, and the Nevada Supreme Court has affirmed those decisions. It is no longer within the purview of this Court to decide whether or not Maki should be afforded "early release." Should Maki wish to pursue some sort of compassionate release, he can seek relief with the Pardons Board.

///

///

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///

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: January 16, 2019.

CHRISTOPHER J. HICKS
District Attorney

By /s/ JENNIFER P. NOBLE
JENNIFER P. NOBLE
Chief Appellate Deputy

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on January 16, 2019, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

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

/s/ Margaret Ford
MARGARET FORD

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-01-16 09:05:44.354.

ROBERT BELL, ESQ. - Notification received on 2019-01-16 09:05:44.4.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

01-16-2019:08:17:20

Clerk Accepted:

01-16-2019:09:05:15

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Opposition to Mtn

Filed By:

Jennifer Patricia Noble

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

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The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

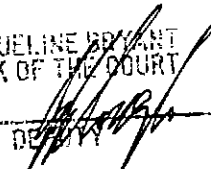
ROBERT STORY, ESQ. for CHARLES MAKI

CR94-0345 DC-0990087784-026
STATE VS CHARLES JOSEPH MAKI 4 Pages
District Court 01/24/2019 02:13 PM
Washoe County 3790

Code 3790

FILED

2019 JAN 24 PM 2:13

JACQUELINE BRYANT
CLERK OF THE COURTBY 
DEPUTY

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

STATE OF NEVADA,

Plaintiff(s),

Case No. ^{CR94}~~CR94~~-0345

vs.

Dept. No. 8

CHARLES MAKI,

Defendant(s).

PETITIONER'S RESPONSE TO OPPOSITION TO MOTION TO MODIFY SENTENCE:

"MOTION TO STRIKE PURSUANT TO NRCP RULE 12 WITH DEMAND FOR
EVIDENTIARY HEARING IN SUPPORT OF POST CONVICTION WRIT OF HABEAS
CORPUS AND ACTUAL INNOCENCE PER NRS 34.790"

CR 94-0345

Dept. No. 8

Charles Maki #42820

P.O. Box 1489-4413-ESP

Ely, Nevada 89301

Date: 1-21-2019

Affirmation pursuant to NRS 239B090

The undersigned affirms that there
is no personal data of anyone
used in this action

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

Charles Maki #42820

vs.

Warden of ESP

State of Nevada

Case No. CR-94-0345

Dept. No. 8

Petitioner's response to Opp. to Motion to Modify Sentence:
"Motion to Strike pursuant to NRCP Rule 12 w/ Demand for
Evidentiary Hearing in Support of Post-Conviction Writ of
Habeas Corpus $\hat{=}$ Actual Innocence per NRS 39.290."

To the honorable Judge of said court,

I. Memorandum of Points & Authorities.

NRCP Rule 12 allows the court to strike anything from the
record that is scandalous and impertinent. The D.A.'s
allegation that the petitioner requested oral sex and demanded
the alleged victims to "wash his nuts in the shower" was
not a part of the original allegations petitioner plead not

guilty to in the trial. In fact, and it's belied by the record Desiree Menees and Summer Menees admitted to, as old as they were, to their father showering with them. "That" is where they got the sexual knowledge to fabricate that charge if the petitioner even said it. (Which, he did not) And there lies the problem.

II. Demand for Evidentiary

Hearing under NRS 34-790.

The petitioner has "all" his original discovery from 1994 except the SAINT and Police interview which Post-conviction counsel failed to surrender to him. The allegation was never brought up in trial at all. Therefore, an evidentiary hearing under NRS 34-790 is required to investigate the merits of the allegations and why trial, direct appeal, and at least two-three post-conviction counsels never surrendered this valued discovery contrary to their duties. Based on the writ before the court, the petitioner has already exposed two critical lies the girls told or were forced to tell: A). The issue of the warm milk and B). Desiree's inability to engage and determine depth of penetration based on Dr. Shapiro's medical treatise. The D.A. has "opened the door" or "pandora's box" and now he must deal with it in an evidentiary hearing.

Prayer for Relief

There is a Post-Conviction writ of Habeas corpus based on destroyed video evidence before the court. If there is no grounds for a sentence modification, there is now definitely one for the Habeas pending.

why?: The missing video footage belied by the record and the conflicting police and SAINT interview with this "ghost" allegation is a conflict of evidence showing the video destruction and the withholding of the ~~inter~~ views is deliberate. It is presumptive prejudice, prosecutorial misconduct, and outrageous government misconduct with civil rights "conspiracy" to boot. (It's an ugly lawsuit)

Affirmation

"I, Charles Maki #42820, author of 'Petitioner's Response...' hereby attest under the penalties of perjury that the foregoing is true and correct and not for any improper purpose."

NRS 208.165 & 121.121 Charles Maki #42820

Affiant

Hereby sworn this 21st day of January under the penalties of perjury as true and correct.

Quick Cert. of Service

A true and correct copy of "Petitioner's Response..." was served on counsel of respondent of record at address below via logged outgoing legal mail pursuant to NACV rules 4 & 5 by petitioner. Charles Maki #42820

Petitioner

Hereby served this 21st day of January, 2019 by petitioner.

Charles Maki #42820

P.O. Box 1489-4A26-ESP

Ely, NV. 89301

Charles Maki #42820

Pro per litigant V7. 1221

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, 2019.¹

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

¹ 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).² 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. 2.³

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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21 BARRY L. BRESLOW
22 District Judge
23
24
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26

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

³ 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)).

CERTIFICATE OF SERVICE

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

Jennifer Noble, Esq.

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

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



Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-02-04 10:26:30.714.

ROBERT BELL, ESQ. - Notification received on 2019-02-04 10:26:31.041.

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A filing has been submitted to the court RE: CR94-0345

Judge:

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02-04-2019:10:25:16

Clerk Accepted:

02-04-2019:10:26:01

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Denying Motion

Filed By:

Judicial Asst. CKuhl

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NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

CODE 2540

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

STATE OF NEVADA,

Plaintiff,

Case No: CR94-0345

vs.

Dept. No: 8

CHARLES JOSEPH MAKI,

Defendant.

_____ /

NOTICE OF ENTRY OF ORDER

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

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

Dated February 11, 2019.

JACQUELINE BRYANT

Clerk of the Court

/s/N. Mason

N. Mason-Deputy Clerk

CERTIFICATE OF SERVICE

Case No. CR94-0345

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

DIV. OF PAROLE & PROBATION

JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

ROBERT C. BELL, ESQ.

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

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

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

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

Dated February 11, 2019.

/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, 2019.¹

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

¹ 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).² 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. 2.³

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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21 BARRY L. BRESLOW
22 District Judge
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27 ² Pursuant to NRAP 36(c), *Conners* is not strictly cited as legal authority, but to demonstrate the current relevance of
28 the principles outlined in *Edwards*.

³ 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)).

CERTIFICATE OF SERVICE

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

Jennifer Noble, Esq.

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

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



Judicial Assistant

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-02-11 11:44:29.372.

ROBERT BELL, ESQ. - Notification received on 2019-02-11 11:44:29.419.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

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02-11-2019:11:43:57

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

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Deputy Clerk NMason

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NEVADA

ROBERT C. BELL, ESQ.

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ROBERT STORY, ESQ. for CHARLES MAKI

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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STANDARD OF REVIEW

All petitions for *writ of habeas corpus* must be timely filed, including those that are second or successive. *Pellegrini v. State*, 117 Nev. 860, 874, 34 P.3d 519, 529 (2001). NRS 34.726 governs the limitations on time to file, stating in pertinent part:

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**.

(emphasis added). The district court *must* dismiss an untimely petition under NRS 34.726 unless the petitioner sufficiently demonstrates good cause for delay. *See State v. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). Good cause exists when: (1) the delay was not the petitioner's fault and dismissal of the otherwise untimely petition would unduly prejudice the petition, NRS 34.726(1)(a)-(b); or (2) failure to consider the claims would result in a fundamental miscarriage of justice. *Pellegrini*, 112 Nev. at 860, 34 P.3d at 537. However, all claims reasonably available must be made within the one (1) year period. *Hathaway v. State*, 119 Nev. 248 252-53, 71 P.3d 503, 506 (2003).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Maki's *Petition* presents nine (9) grounds for relief:

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."
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- 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."

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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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CERTIFICATE OF SERVICE

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

Jennifer Noble, Esq.

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

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



Judicial Assistant

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-02-15 10:59:35.99.

ROBERT BELL, ESQ. - Notification received on 2019-02-15 10:59:36.037.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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02-15-2019:10:59:08

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Dismiss Post Conviction

Filed By:

Judicial Asst. CKuhl

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JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

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ROBERT STORY, ESQ. for CHARLES MAKI

CODE 2540

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

STATE OF NEVADA,

Plaintiff,

Case No: CR94-0345

vs.

Dept. No: 8

CHARLES JOSEPH MAKI,

Defendant.

_____ /

NOTICE OF ENTRY OF ORDER

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

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

Dated February 15, 2019.

JACQUELINE BRYANT

Clerk of the Court

/s/N. Mason

N. Mason-Deputy Clerk

CERTIFICATE OF SERVICE

Case No. CR94-0345

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

JENNIFER P. NOBLE, ESQ. for STATE OF NEVADA

ROBERT C. BELL, ESQ.

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

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

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

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

Dated February 15, 2019.

/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

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Petitioner,

vs.

Case No. CR94-0345

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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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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.

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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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CERTIFICATE OF SERVICE

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

Jennifer Noble, Esq.

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

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



Judicial Assistant

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-02-15 14:15:32.819.

ROBERT BELL, ESQ. - Notification received on 2019-02-15 14:15:32.881.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

02-15-2019:14:14:33

Clerk Accepted:

02-15-2019:14:15:03

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Notice of Entry of Ord

Filed By:

Deputy Clerk NMason

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

Charles Maki # 42820
P.O. Box 1489-4A13-ESP
Ely, Nevada 89301

Dated: FEB-28-2019

FILED

2019 FEB 28 PM 1:21

SECOND JUDGE
CLERK OF DISTRICT COURT
[Signature]
DEPUTY

Information Pursuant to NRS 239B.030

undersigned affirms that there is no personal 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. CR 94-0345
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 2-15-2019, 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

V7. 1254

CR94-0345
STATE VS CHARLES
DISTRICT COURT
WASHOE COUNTY
NOC
DC-0990008022-065
JOSEPH MAKI 2 Pages
02/28/2019 01:21 PM
2515
WILORIA

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.

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.

Charles Malki
NRS 208.165 § 171-121 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

Washoe County D.A.
75 Court Street
Reno, Nevada 89501

Charles Malki
Appellant

served this 24 day of FEBRUARY,
2019 by Appellant.

Charles Malki
NDOC # 42820
P.O. Box 1989-4A13
Ely, Nevada 89301
Charles Malki
Pro per 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 10th, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying Motion to Modify Sentence filed February 4th, 2019 and the Order Dismissing Successive Petition for Writ of Habeas Corpus filed February 15th, 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 1st day of March, 2019.

Jacqueline Bryant
Clerk of the Court

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Code 1350

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 1st 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 1st day of March, 2019

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-03-01 08:54:14.664.

ROBERT BELL, ESQ. - Notification received on 2019-03-01 08:54:14.711.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

03-01-2019:08:53:09

Clerk Accepted:

03-01-2019:08:53:43

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

P.0V7B1261989-4A13-ESP

Ely, Nevada 89301

Date: FEB-28-2019

FILED

2019 MAR -1 AM 11:07

JACQUELINE BRYANT
CLERK OF THE COURT

[Signature]
DEPUTY

Information Pursuant to NRS 239B.030

undersigned affirms that there is no personal 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

V7.1261

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.

Affirmation

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

char maki
NRS 208.165 & 171.121 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 maki
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 10th, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order Denying Motion to Modify Sentence filed February 4th, 2019 and the Order Dismissing Successive Petition for Writ of Habeas Corpus filed February 15th, 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

Code 1350

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

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-03-04 10:39:23.76.

ROBERT BELL, ESQ. - Notification received on 2019-03-04 10:39:23.807.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

03-04-2019:10:38:19

Clerk Accepted:

03-04-2019:10:38:55

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

Supreme Court No. 78260
District Court Case No. CR940345

D8

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney \ Jennifer P. Noble
Jacqueline Bryant, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/06/2019 Appeal Filing Fee waived. Criminal. (SC)
03/06/2019 Filed Notice of Appeal/Proper Person. Appeal docketed in the
Supreme Court this day. (SC)
03/06/2019 Filed Notice of Appeal/Proper Person. (Second NOA). (SC)

DATE: March 06, 2019

Elizabeth A. Brown, Clerk of Court
lh

Return Of NEF

Recipients

JENNIFER NOBLE, ESQ. - Notification received on 2019-03-07 14:11:39.681.

ROBERT BELL, ESQ. - Notification received on 2019-03-07 14:11:40.648.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

03-07-2019:14:09:07

Clerk Accepted:

03-07-2019:14:10:43

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI

IN THE SUPREME COURT OF THE STATE OF NEVADA

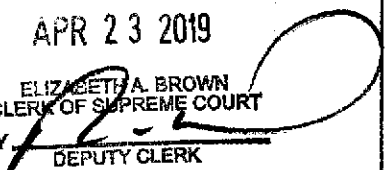
CR94-0345

CHARLES JOSEPH MAKI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

08 No. 78260

FILED

APR 23 2019

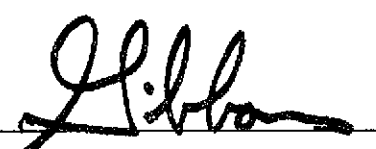
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DIRECTING TRANSMISSION OF RECORD

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g).

It is so ORDERED.

 C.J.

cc: Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

Return Of NEF**Recipients**

JENNIFER NOBLE, ESQ. - Notification received on 2019-04-24 14:01:53.067.

ROBERT BELL, ESQ. - Notification received on 2019-04-24 14:01:53.113.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE BARRY L. BRESLOW

Official File Stamp:

04-24-2019:14:00:30

Clerk Accepted:

04-24-2019:14:01:18

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Supreme Ct Order Directing

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

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JENNIFER P. NOBLE, ESQ. for STATE OF
NEVADA

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

ROBERT STORY, ESQ. for CHARLES MAKI