IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68968

FILED

OCT 26 2015

TRACIE K. LINDEMAN
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 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.

_____, C.J.

SUPREME COURT
OF
NEVADA

(O) 1947A

15-32554

cc: Frank Hearring, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
WILLIAM ROWLES
Deputy District Attorney
Nevada Bar #013577
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

ORDER DENYING DEFENDANT'S REQUEST FOR RECORDS/COURT CASE DOCUMENTS

DATE OF HEARING: FEBRUARY 23, 2016
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 23rd day of February, 2016, the Defendant not being present, in proper person, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through WILLIAM ROWLES, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Request for Records/Court Case Documents, shall be, and it is DENIED.

DATED this 1 day of ~~February~~ March, 2016.

DISTRICT JUDGE
ERIC JOHNSON

KM

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
WILLIAM ROWLES
Deputy District Attorney
Nevada Bar #013577

CERTIFICATE OF SERVICE

I certify that on the 3rd day of March, 2016, I mailed a copy of the foregoing Order to:

FRANK HEARRING #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301

BY _____
M. CRAWFORD
Secretary for the District Attorney's Office

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CLERK OF THE COURT

MC
PP
DA
[redacted]

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Clark

Frank Hearring
Petitioner/Plaintiff,

vi.

State of Nevada
Respondent/Defendant.

Case No. C-13-291159-1

Dept. No. XX

Docket No.

Hearing Date: 3-29-16

Time: 8:30AM

MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE ALTERNATIVE, REQUEST FOR RECORDS/COURT CASE DOCUMENTS

COMES NOW, Petitioner/Plaintiff, FRANK Hearring, pro per, and respectfully moves this Honorable Court for it's Order withdrawing Carl Arnold, Esq., as the Attorney of Record in the above-entitled matter.

This Motion is made and based upon Nev. Rev. Stat. 7.055, and Nev. Sup. Ct. Rules 166(4), 173, 176, and 203, and Rules 11 and 20 of the Rules of the District Courts of the State of Nevada.

POINTS AND AUTHORITIES

Nev. Rev. Stat. 7.055, provides that:

> An attorney who has been discharged by his client shall, upon demand...immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.

See also Nev. Sup. Ct. Rule 166(4):

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as ...surrendering papers and property to which the client is entitled...".

Petitioner/Plaintiff would respectfully point out to this Court and the attorney of record that there

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is controlling law on this issue. This citation of authority is precautionary only. In the cases of **In Re Yount**, 93 Ariz. 322, 380 P.2d 780 (1963), and **State v. Alvey**, 215 Kan. 460, 524 P.2d 747 (1974), both cases dealt with a factual situation involving a withdrawn attorney refusing to deliver to a former client his documents after being requested to do so by the client. The Court in **Yount**, supra, ordered the attorney disbarred, while in **Alvey**, supra, the Court had the attorney censored.

In most situations it is obviously not necessary to notify the parties when the attorney withdraws from a case, but when the client wishes to remove his attorney and represent himself in person, it is required by these Statutes and Rules that the client request the Court of action to issue a certificate releasing the attorney of record. Under such statutes it is necessary for the party to present his request for the change in order for the court in making an order withdrawing the attorney of record, and to make formal demand to the Attorney for the return of all papers and property.

Therefore, let this Court be so notified that this is the desire of the Petitioner/Plaintiff herein that the aforementioned attorney of record be withdrawn and the same shall be for any other attorney(s) which could possibly be subscribed and documented as attorney(s) of record in this case, so that further actions in the above-entitled cause can be conducted by the Petitioner/Plaintiff in proper person.

Further, Petitioner/Plaintiff hereby makes formal demand upon Carl Arnold, Esq., for the return of his entire file, including, but not limited to all papers, documents, pleadings and items of tangible personal property which belong to or were prepared on my behalf to me at the address set forth in this pleading.

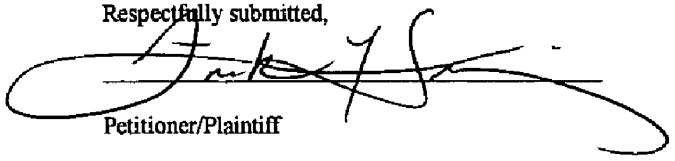
Further, it is requested of this Court that it issue an Order directing the named attorney of record that he turn over to the Petitioner/Plaintiff the entire case file, without costs, including, but not limited to, the trial transcripts or guilty plea transcript, all briefs on appeal, and all other papers and police reports relating to this matter, so that Petitioner/Plaintiff may prosecute an appeal/post-conviction with a minimum amount of delay.

CONCLUSION

WHEREFORE, all of the above stated reasons, Petitioner/Plaintiff respectfully requests this Honorable Court to grant his Motion for Withdrawal of Attorney of Record in accordance with this Court's fair and just consideration of the facts of the case.

DATED this 3rd day of March, 2016.

Respectfully submitted,



Petitioner/Plaintiff

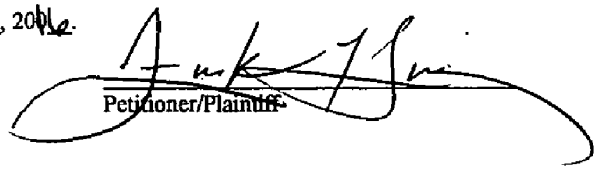
CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner/Plaintiff in the foregoing Notice of Motion and Motion for Withdrawal of Attorney of Record or in the Alternative, Request for Records/Court Case Documents on this 3rd day of March, 2016, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

Carl Arnold
1148 S. Maryland Pkwy
Las Vegas, NV 89104

Steven B. Wolfson
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155

DATED this 3rd day of March, 2016.



Petitioner/Plaintiff

AFFIRMATION PURSUANT TO NRS 239B.030

I, Frank Hearring, NDOC# 1001645,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE ATTACHED DOCUMENT ENTITLED Motion For Withdrawal Of Attorney Of Record,

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 3rd DAY OF March, 2016.

SIGNATURE: [signature]

INMATE PRINTED NAME: Frank Hearring

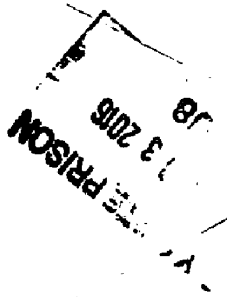
INMATE NDOC # 1001645

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

FRANK Hearring #1006645
Ely State Prison
P.O. Box 1989
Ely, NV 89301

Steven D. Grierson
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155

89101$6300 C075



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CLERK OF THE COURT

MC
PP
DA

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Clark

FRANK Hearring
Petitioner/Plaintiff,

v.

State of Nevada
Respondent/Defendant.

Case No. C-13-291159-1

Dept. No. XX

Docket No.

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Respondent/Defendant, Steven B. Wolfson, Clark County District Attorney, and CARL Arnold, Esq.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 29 day of MARCH, 2016 at the hour of ~~9:00~~ 8:30AM O'clock A.M., or as soon thereafter as the parties may be heard, the undersigned will bring on for hearing the attached **MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD**, before the above-entitled Court, at the Clark County Courthouse, in Las Vegas, Nevada, in Department No. XX, thereof.

DATED this 3rd day of March, 2016

Respectfully submitted,

Petitioner/Plaintiff
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

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CLERK OF THE COURT

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MAR 07 2016
CLERK OF THE COURT

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Frank Hearring #1006445
Ely State Prison, P.O. Box 1989
Ely, Nevada 89301-1989
Defendant in proper person

Please Return Filed Stamped Copy!

DA PP

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CLERK OF THE COURT

District Court
Clark County, Nevada

Frank Hearring v. Defendant State of Nevada Plaintiff	Case No: C-13-291159-1 Dept No: XX

Reply to State's Response to Defendants Motion for Request for Records/Court Case Documents (Brady Material) in order to properly appeal Defendants Conviction.

Comes now Defendant Frank Hearring in proper person and hereby Submits this Motion and the attached points of Authories in response to States Arguments in Denial of Defendants Request For Records/Court case Documents (Brady Material.)

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CLERK OF THE COURT

Points and Authorities

Introduction:

ON October 28, 2015 Defendant filed a Motion For Request for Records/Court Case Documents,

ON November 19, 2015 the Defendant not being present, in proper person, The plaintiff being represented by Steven B. Wolfson, District Attorney, through John T. Jones, Chief Deputy District Attorney, without argument, and Hereby ordered that Defendants Request for Records/Court Case Documents, Should be, and was granted IN Part-/ Denied In Part- Motion was granted as to Request for Defendants Pre-Sentencing Report and Denied Without prejudice as to other Documents without Specific Request.

ON January 21, 2016 at 4:22:13 pm Defendant Filed another Request for Records/Court Case Documents Specifically Requesting (Brady Material) See Exhibit A Requesting that (All) Documents/Material be relinquished related to case No: C-13-291159-1 in order for Defendant to thoroughly and adequately appeal/ Defendants Conviction.

ON February 23, 2016 State of Nevada District Attorney Steven B. Wolfson, through Steven S. Owens, Chief Deputy District Attorney responded to Defendants Motion to Produce Brady Material attaching the following points of authorities: In the instant Motion Defendant requests

(2)

Discovery in order to appeal his Conviction. Generally, once a defendant files a notice of appeal with the Nevada Supreme Court, that divests the district Court of jurisdiction to hear the matter until remittitur issues.

However, Defendant Dismissed his (Retained) Counsel Carl Arnold on May the 12th day of 2014, which on June 5, 2014 the Court herd Defendants Motion.

FurtherMore, Defendant upon Dismissal of Counsal then Requested (All) Documents/ Discovery pertaining to case No: C-13-291159-1.

In Mazzan V. Warden, 116 Nev. 48; 993 P.2d 25; (2000) Nev. Lexis 6; 116 Nev. Adv Rep. 7 No. 30998 Nevada Supreme Court held that where state fails to provide evidence which the Defendant did or did not request or requested generally, it is Constitutional error

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Conclusion and Relief Requested

Based on the forgoing, Defendant Hearring Request that (All) Documents related to Case No: C-13-291159-1 Records/Court case Documents (Brady Material) be turned over, he has shown "good Cause" to justify Request.

Respectfully Submitted
Dated this 5th day of March 2016

Frank Hearring #1006645
(Defendant in pro per)

Certificate of Mailing

I hereby Certify that on the 7th Day of March 2016 I placed a true and correct Copy of Defendants Reply to State's Response to Defendants Motion to produce Records/Court case Documents (Brady Material) in Mail Box for Legal Documents at Ely State Prison, postage fully prepaid and addressed as follows:

The Regional Justice Center
Clerk of the Court
200 Lewis Ave, 3rd floor
Las Vegas, NV 89155-1160

Dated: March 7, 2016
2:52pm FRANK Hearring #1006645

Exhibit A

JAN 5 2016
1:35pm

I, FRANK Hearring Jr #1006445 have Attached a Notorized copy Titled: (Brady Material) Pages (1, through (3) Numbered (1) through (12) Requesting that The State of Nevada relinquish (All) Material related to CASE # C-13-291159-1 in order for the defendant to thoroughly and adequately appeal my Murder Conviction, (Second Degree Murder)

FRANK Hearring

State of Nevada
County of White Pine

This instrument was acknowledged before me on January 15, 2016 by Frank Hearring

WILLIAM MOORE
Notary Public - State of Nevada
Appointment Recorded in White Pine County
No: 14-15242-17 - Expires February 3, 2018

Notary

V. Brady requests

Based on the foregoing law and analysis, the Defendant requests that the following Brady material be produced by the State:

1. All memorandum, notes, reports associated with any and all initial investigations and follow up investigations.

2. Disclosures of any and all compensation, express or implied promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses received[1] in exchange for their cooperation with this prosecution, including, but not limited to, any information concerning any expectation[2] of any benefit[3] of any kind to be received, or already received, by any witness presented by the State[4]. This also includes, but is not limited to, any express or implied promise made to any witness to provide counseling and/or treatment as a result of their participation in the prosecution of this case.

3. Any information on any criminal history or any material or information which relates to specific instances of misconduct of any material witness in the case from which it could be inferred that the person is untruthful and which may be or may lead to admissible evidence[5]. This is to include, but is not limited to, any felonies, misdemeanors, out-of-state arrests and convictions, outstanding arrest warrants or bench warrants, and cases which were dismissed or not pursued by the prosecuting agency or any other information that would go to the issue of credibility and bias, whether or not the information is admissible by the rules of evidence.

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[1] State v. Bennett, 119 Nev. Nev. 589, 603 (2003)(evidence that the State paid witness as an informant on several occasions)

[2] The law is clear that it is the witness' own anticipation of reward, not the intent of the prosecutor, which gives rise to the necessity of disclosure. Moore v. Kemp, 809 F.2d 702, 726, 729-30 (11th Cir.), cert. denied, 481 U.S. 1054 (1987); Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

[3] Evidence of benefits to State witnesses is not limited to agreements made in relation to the specific case at issue. Jimenez v. State, 112 Nev. 610, 622-23 (1996);) Information about benefits to an important State witness constitutes Brady material, even though no explicit deal was outlined. Browning v. State, 120 Nev. 347, 369 (2004

[4] Agreements need not be express or formal arrangements, and understandings merely implied, suggested, insinuated, or inferred to be of possible benefit to witness constitutes proper material for impeachment. Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

[5] A defendant is entitled to material in the government witness' confidential probation file that bears on the credibility of that witness. United States v. Strifler, 851 F.2d 1197, 1201 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989).

4. Disclosures of any and all statements tangible or intangible, recorded or unrecorded, made by any State witness, or any other person, at any time that are in any manner inconsistent with the written and/or recorded statements previously provided to the defense[6]. This includes material or information which would tend to exculpate the Defendant of the charges, might mitigate the punishment should he be convicted[7], or may lead to information which would tend to impeach or affect the credibility of a State witness[8], including, but not limited to, any oral statements made to the prosecutor or any other State employee during pre-trial conferences or other investigative meetings.

5. Any photographs of any lineups done or any other photographs in the case, not already given in discovery. This includes any photos taken at any medical exams as well as photos taken by law enforcement.

7. Any 911 recordings to include the relevant dispatch log.

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[6]State violated Brady when it failed to inform the defense of prior inconsistent statements by a key prosecution witness. Lay v. State, 116 Nev. 1185, 1199 (2000); State acted improperly by failing to disclose statements in its possession of evidence contradictory to another State witness. Rudin v. State, 120 Nev. 121, 139 (2004).

[7] State v. Bennett, 119 Nev. 589, 602 (2003) (admission of a co-conspirator to a jailhouse informant which could have served as mitigating evidence).

[8]Brady violation where the State failed to turn over a police report where the eyewitness was initially uncertain in their identification of the Defendant. Norris v. Slayton, 540 F.2d 1241, 1244 (4th Cir. 1976); State had a duty to disclose when, during trial, a key prosecution witness told the prosecutor that the perpetrator was lighter skinned than the derfendant she saw in court. Jackson v. Wainwright, 390 F.2d 288, 291-93 (5th Cir. 1968); Due process was violated when the government failed to provide to the defense the prior inconsistent statement given to DEA agents of a key prosecution witness where credibility was an issue. United States v. Beasley, 576 F.2d 626 (5th Cir. 1978), cert. denied, 440 U.S. 947 (1979); State violated Brady by failing to disclose to the defense reports of lie detector test administered to important prosecution witness Carter v. Rafferty, 826 F.2d 1299, 1307-08 (3rd Cir. 1987), cert. denied, 484 U.S. 1011 (1988); Suartz v. State, 506 N.W.2d 792, 794-95 (Iowa App. 1993) (evidence of alleged co-perpetrator's threatening and overbearing nature and impending psychiatric examination of him); People v. Garcia, 17 Cal. App. 4th 1169, 22 Cal. Rptr. 2d 545, 551-52 (1993) (evidence showing state's expert used faulty methodology and made errors in other cases); People v. Wright, 658 N.E.2d 1009, 1012 (1995) (alleged victim's status as police informer).

8. Copies of any and all video or audio recording of any form collected by the investigating officers or any other agent of the State during the course of the investigation.

9. All relevant reports of chain of custody. All reports of any destruction of any evidence in the case.

10. Photocopies or other reproduction of any and all handwritten or otherwise memorialized notes kept by the investigating police officers in this case (AKA "Case Monitoring Forms"), including, but not limited to, any notes documenting alternate suspects, investigative leads that were not followed up on, or any other matter bearing on the credibility of any State witness.

11. Any and all notes and reports of any expert in the case, to include mental health workers. This includes any preliminary reports or notes, not included in a final report.

12. Any and all information which shows that the defendant did not commit the crimes alleged, including, but not limited to, any information concerning an arrest of any other individual for the charged crime[9] and any information suggesting a possible suspect other than the defendant,[10] including investigative leads to other suspects[11];

[9] Banks v. Reynolds, 54 F.3d 1508, 1518 n.21 (10th Cir. 1995).

[10] State's failure to disclose evidence of another perpetrator violated Brady. Lay v. State, 116 Nev. 1185, 1195-96 (2000). Summary of prosecutor's perspective on written reports relating to potential suspects were constitutionally inadequate and reports should have been disclosed pursuant to Brady. Mazzan v. Warden, 116 Nev. 48,69 (2000); Bloodworth v. State, 512 A.2d 1056, 1059-60 (1986).

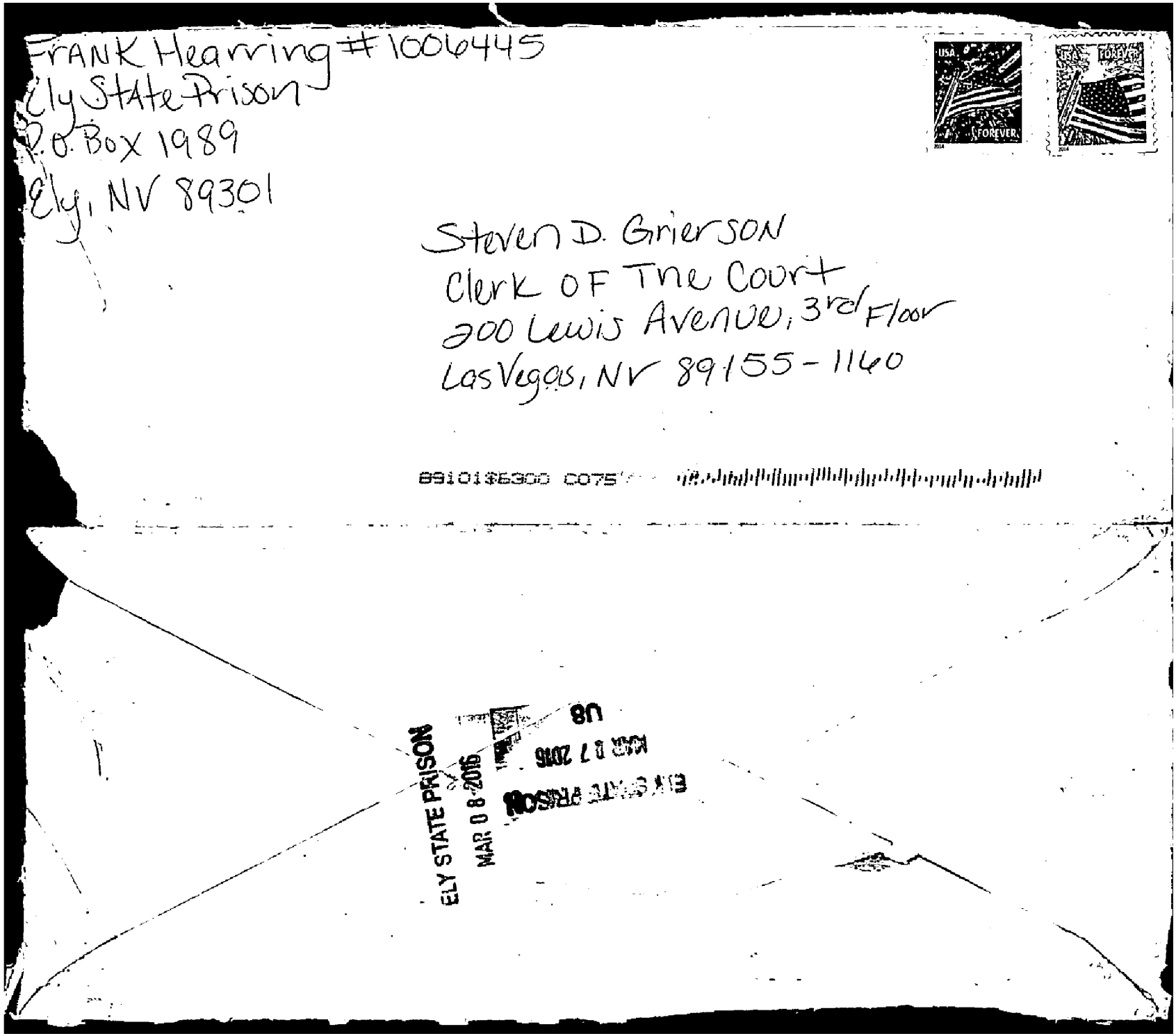
[11] Jimenez v. State, 112 Nev. 610, 622-23 (1996) (withholding evidence of investigative leads to other suspects, regardless of admissibility, constitutes Brady violation).

FRANK Hearring #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301

Steven D. Grierson
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155

89101$6300 C075

ELY STATE PRISON
JAN 18 2016
US


FRANK Hearring #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301
Steven D. Grierson
Clerk OF The Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160
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ELY STATE PRISON

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CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHAD LEXIS
Deputy District Attorney
Nevada Bar #010391
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

ORDER DENYING DEFENDANT'S MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE ALTERNATIVE, REQUEST FOR RECORDS/COURT CASE DOCUMENTS

DATE OF HEARING: MARCH 29, 2016
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 29th day of March, 2016, the Defendant not being present, in proper person, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through CHAD LEXIS, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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///

IT IS HEREBY ORDERED that the Defendant's Motion for Withdrawal of Attorney of Record or in the Alternative, Request for Records/Court Case Documents, shall be, and it is DENIED.

DATED this 8 day of April, 2016.

DISTRICT JUDGE
ERIC JOHNSON

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY #9521
CHAD LEXIS
Deputy District Attorney
Nevada Bar #010391

CERTIFICATE OF SERVICE

I certify that on the 12th day of April, 2016, I mailed a copy of the foregoing Order to:

FRANK HEARRING #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301

BY M. Crawford
M. CRAWFORD
Secretary for the District Attorney's Office

13F08177X/mc/L4

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 68968
District Court Case No. C291159

FILED
MAY 13 2016
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, 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 14th day of April, 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 May 09, 2016.

Tracie Lindeman, Supreme Court Clerk

By: Joan Hendricks
Deputy Clerk

C-13-291159-1
CCJA
NV Supreme Court Clerks Certificate/Judgn
4546754

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68968

FILED

APR 14 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a *pro se* appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Appellant filed his postconviction petition on March 30, 2015, more than one year after entry of the judgment of conviction; he did not appeal the judgment of conviction. Therefore, the petition was untimely filed and procedurally barred absent of demonstration of good cause and prejudice. *See* NRS 34.726(1). To overcome the procedural default, appellant argues that he was awaiting resolution of his motion to withdraw his guilty plea before filing his petition. However, the filing of a motion to withdraw his guilty plea is not an impediment external to the defense that prevented him from timely filing his postconviction petition. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Because appellant failed to establish good cause to excuse the delay in

filing his petition, the district court did not err by denying the petition as procedurally barred. Accordingly, we

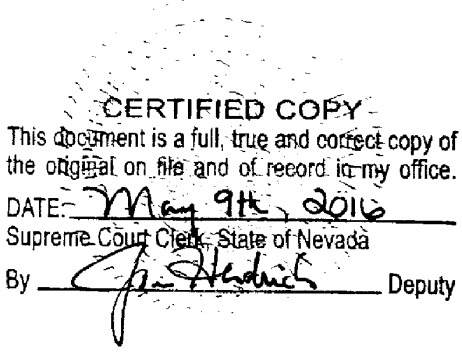
ORDER the judgment of the district court AFFIRMED.

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Gibbons

cc: Hon. Eric Johnson, District Judge
Frank Hearring, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth 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: May 9th, 2016
Supreme Court Clerk, State of Nevada
By Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 68968
District Court Case No. C291159

REMITTITUR

TO: Steven D. Grierson, Eighth 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: May 09, 2016

Tracie Lindeman, Clerk of Court

By: Joan Hendricks
Deputy Clerk

cc (without enclosures):
Hon. Eric Johnson, District Judge
Frank Hearring, Jr.
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on MAY 13 2016.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
MAY 12 2016
CLERK OF THE COURT

Frank Hearring, 1006445
Petitioner/In Propia Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

IN THE 8th JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF Clark

State of Nevada
Plaintiff,

vs.

Frank Hearring
Defendant,

Case No. C-13-291159-1
Dept. No. XX
Docket

ORDER

Upon reading the motion of defendant, Frank Hearring, requesting withdrawal of counsel, Carl Arnold, Esq., of the Clark county Public Defender's Office, and Good Cause Appearing,

IT IS HEREBY ORDERED that defendant's Motion for Withdrawal of Counsel is GRANTED.

IT IS HEREBY FURTHER ORDERED that Counsel deliver to defendant at his address, all documents, papers, pleadings, discovery and any other tangible property in the above-entitled case.

DATED and DONE this 26 day of September 2017.

DISTRICT COURT JUDGE

C-13-291159-1
LSF
Left Side Filing
4686564

Electronically Filed
10/6/2017 11:52 AM
Steven D. Grierson
CLERK OF THE COURT

Frank Hearring, 1006445
Petitioner/In Propia Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

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PP
OA

IN THE 8th JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF _____

State of Nevada
Plaintiff,

vs.

Frank Hearring
Defendant,

Case No. C-13-291159-1
Dept. No. XX
Docket _____

MOTION TO WITHDRAW COUNSEL

Date of Hearing: 10/31/17

Time of Hearing: 8:30 AM

'ORAL ARGUMENT REQUESTED, Yes ____ No ____"

COMES NOW, Defendant, Frank Hearring, proceeding in proper person, moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel of record in the proceeding action, namely,

Carl Arnold

This Motion is made and based on all papers and pleadings on file with the Clerk of the Court which are hereby incorporated by this reference, the Points and Authorities herein, and attached Affidavit of Defendant.

DATED: this 26th day of September, 2017.

BY: Frank Hearring #1006445
Defendant/In Propria Personam

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POINTS AND AUTHORITIES

The Nevada Revised Statute 7.055(1), which deals with the duty of a discharged attorney, states:

> "An attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible property which belong to or were prepared for that client."

As can be seen in this case, the defendant does not owe any fees, in fact, they, meaning counsel(s) of record, were appointed by the Court to represent the defendant, who was an indigent, in Case Number, C-13-291159-1, in Department No. XX.

N.R.S. 7.055(2) gives this Court the power to Order the Attorney(s) of record to produce and deliver to the defendant in his/her possession, which states:

> "A client who, after demand therefore and payment of the fee due from him, does not receive from his discharged attorney all papers, documents, pleadings and items of tangible personal property may, by a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his papers, Documents, pleadings and other property."

In numerous cases throughout this great land, the courts have held attorneys to a high degree of professional responsibility and integrity. This carried from the time of hiring to and through the attorney's termination of employment.

Supreme Court Rule 173 states quite clear that a withdrawn attorney owes his former client a "...prompt accounting of all his client's....property in his possession." This is echoed in Canon 2 of the Code of Professional Responsibility of the American Bar Association, which states in pertinent part EC 2-32: "A lawyer should protect the welfare of his client by . . . delivering to the client all papers and property to which the client is entitled." Again in Disciplinary Rule 2-110(A)(2) of the ABA, this is brought out that a withdrawn attorney must deliver to the client all papers an comply with applicable laws on the subject.

In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963) and State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974), both of which dealt with a factual situation involving a withdrawn attorney refusing to deliver to a former client his documents after being requested to do so by the client. The court in Yount, supra, ordered the attorney disbarred while in Alvey, supra, the court had the attorney censored.

While not the intention of the Defendant in this case to have the attorney disbarred, these cases do show a pattern in the court in considering the refusal to deliver to a former client all his documents and property after being requested to do so, a serious infraction of the law and of professional ethics. See, In Re Sullivan, 212 Kan. 233, 510 P.2d 1199 (1973).

In summary, this court has jurisdiction through NRS 7.055 to Order the attorney(s) to produce and deliver to the Defendant all documents and personal property in his/their possession belonging to him or prepared for him. The Defendant has fulfilled his obligations in trying to obtain the papers. The attorney(s) is in discord with Cannon 2 of the Code of Professional responsibility and the Nevada Supreme Court Rules 173, 176 and 203.

DATED: this 26th day of September, 2017.

BY: _____
Frank Hearring #1006446
Defendant/In Propria Personam

AFFIDAVIT OF: FRANK Hearring

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

TO WHOM IT MAY CONCERN:

I, FRANK Hearring the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045 ; 208.165, and state the following: I am requesting (all) Material related to case # C-13-291159-1, All material relative and/or under the Attached "Brady Request," (3) pages. Note: On November 19, 2015 at 9:00 am the request was made (originally) and Denied (without Prejudice) as to the request for the specific Request.

Defendant did receive P.S.I, however I am now Requesting Brady Material, (Brady Request Attached.)

See Attached (Brady Request) numbered (1-123 pages)

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 26th Day of September, 2017.

BY: Frank Hearring #1001644
Post Office Box 208 (SDCC)
Indian Springs, Nevada, 89070.
Affiant, In Propria Personam:

CERTFICATE OF SERVICE BY MAILING

I, Frank Hearring, hereby certify, pursuant to NRCP 5(b), that on this 26 day of September, 2017, I mailed a true and correct copy of the foregoing, "Motion to Withdrawal of Counsel, "Brady Material" Request" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Carl Arnold ESq
1148 S. Maryland Pkwy
Las Vegas, NV 89104

Steven B. Wolfson D.A.
200 Lewis Ave 3rd Floor
Las Vegas, NV 89155

CC:FILE

DATED: this 26th day of September, 2017.

Frank Hearring #1006494
/In Própria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice and Motion to Withdrawal of Counsel. (Brady Request)
(Title of Document)

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:
Kyles V. Whitley, 115 S. Ct. 1555, 1568 (1995)
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Signature

Sept 26, 2017
Date

Frank Hearring
Print Name

Title

v. Brady requests

Based on the foregoing law and analysis, the Defendant requests that the following Brady material be produced by the State:

1. All memorandum, notes, reports associated with any and all initial investigations and follow up investigations.

2. Disclosures of any and all compensation, express or implied promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses received[1] in exchange for their cooperation with this prosecution, including, but not limited to, any information concerning any expectation[2] of any benefit[3] of any kind to be received, or already received, by any witness presented by the State[4]. This also includes, but is not limited to, any express or implied promise made to any witness to provide counseling and/or treatment as a result of their participation in the prosecution of this case.

3. Any information on any criminal history or any material or information which relates to specific instances of misconduct of any material witness in the case from which it could be inferred that the person is untruthful and which may be or may lead to admissible evidence[5]. This is to include, but is not limited to, any felonies, misdemeanors, out-of-state arrests and convictions, outstanding arrest warrants or bench warrants, and cases which were dismissed or not pursued by the prosecuting agency or any other information that would go to the issue of credibility and bias, whether or not the information is admissible by the rules of evidence.

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[1] State v. Bennett, 119 Nev. Nev. 589, 603 (2003)(evidence that the State paid witness as an informant on several occasions)

[2] The law is clear that it is the witness' own anticipation of reward, not the intent of the prosecutor, which gives rise to the necessity of disclosure. Moore v. Kemp, 809 F.2d 702, 726, 729-30 (11th Cir.), cert. denied, 481 U.S. 1054 (1987); Duncan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

[3] Evidence of benefits to State witnesses is not limited to agreements made in relation to the specific case at issue. Jimenez v. State, 112 Nev. 610, 622-23 (1996);) Information about benefits to an important State witness constitutes Brady material, even though no explicit deal was outlined. Browning v. State, 120 Nev. 347, 369 (2004

[4] Agreements need not be express or formal arrangements, and understandings merely implied, suggested, insinuated, or inferred to be of possible benefit to witness constitutes proper material for impeachment. Duncan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

[5] A defendant is entitled to material in the government witness' confidential probation file that bears on the credibility of that witness. United States v. Strifler, 851 F.2d 1197, 1201 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989).

4. Disclosures of any and all statements tangible or intangible, recorded or unrecorded, made by any State witness, or any other person, at any time that are in any manner inconsistent with the written and/or recorded statements previously provided to the defense[6]. This includes material or information which would tend to exculpate the Defendant of the charges, might mitigate the punishment should he be convicted[7], or may lead to information which would tend to impeach or affect the credibility of a State witness[8], including, but not limited to, any oral statements made to the prosecutor or any other State employee during pre-trial conferences or other investigative meetings.

5. Any photographs of any lineups done or any other photographs in the case, not already given in discovery. This includes any photos taken at any medical exams as well as photos taken by law enforcement.

7. Any 911 recordings to include the relevant dispatch log.

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[6]State violated Brady when it failed to inform the defense of prior inconsistent statements by a key prosecution witness. Lay v. State, 116 Nev. 1185, 1199 (2000); State acted improperly by failing to disclose statements in its possession of evidence contradictory to another State witness. Rudin v. State, 120 Nev. 121, 139 (2004).

[7] State v. Bennett, 119 Nev. 589, 602 (2003) (admission of a co-conspirator to a jailhouse informant which could have served as mitigating evidence).

[8]Brady violation where the State failed to turn over a police report where the eyewitness was initially uncertain in their identification of the Defendant. Norris v. Slayton, 540 F.2d 1241, 1244 (4th Cir. 1976); State had a duty to disclose when, during trial, a key prosecution witness told the prosecutor that the perpetrator was lighter skinned than the defendant she saw in court. Jackson v. Wainwright, 390 F.2d 288, 291-93 (5th Cir. 1968); Due process was violated when the government failed to provide to the defense the prior inconsistent statement given to DEA agents of a key prosecution witness where credibility was an issue. United States v. Beasley, 576 F.2d 626 (5th Cir. 1978), cert. denied, 440 U.S. 947 (1979); State violated Brady by failing to disclose to the defense reports of lie detector test administered to important prosecution witness Carter v. Rafferty, 826 F.2d 1299, 1307-08 (3rd Cir. 1987), cert. denied, 484 U.S. 1011 (1988); Sumpt v. State, 506 N.W.2d 792, 794-95 (Iowa App. 1993) (evidence of alleged co-perpetrator's threatening and overbearing nature and impending psychiatric examination of him); People v. Garris, 17 Cal. App. 4th 1169, 22 Cal. Rptr. 2d 545, 551-52 (1993) (evidence showing state's expert used faulty methodology and made errors in other cases); People v. Wright, 658 N.E.2d 1009, 1012 (1995) (alleged victim's status as police informer).

(3)

8. Copies of any and all video or audio recording of any form collected by the investigating officers or any other agent of the State during the course of the investigation.

9. All relevant reports of chain of custody. All reports of any destruction of any evidence in the case.

10. Photocopies or other reproduction of any and all handwritten or otherwise memorialized notes kept by the investigating police officers in this case (AKA "Case Monitoring Forms"), including, but not limited to, any notes documenting alternate suspects, investigative leads that were not followed up on, or any other matter bearing on the credibility of any State witness.

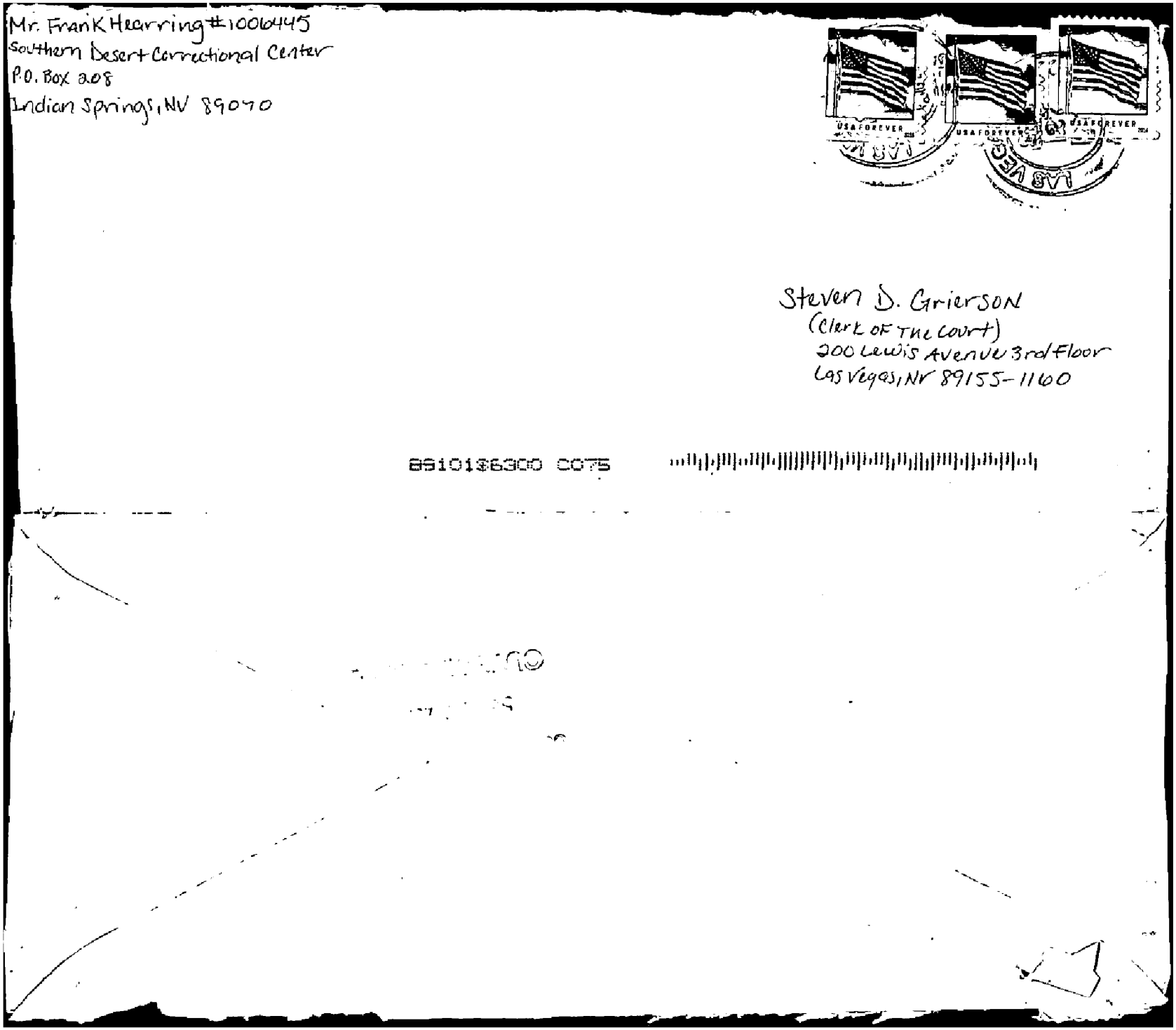
11. Any and all notes and reports of any expert in the case, to include mental health workers. This includes any preliminary reports or notes, not included in a final report.

12. Any and all information which shows that the defendant did not commit the crimes alleged, including, but not limited to, any information concerning an arrest of any other individual for the charged crime[9] and any information suggesting a possible suspect other than the defendant,[10] including investigative leads to other suspects[11];

[9] Banks v. Reynolds, 54 F.3d 1508, 1518 n.21 (10th Cir. 1995).

[10] State's failure to disclose evidence of another perpetrator violated Brady. Ley v. State, 116 Nev. 1185, 1195-96 (2000); Summary of prosecutor's perspective on written reports relating to potential suspects were constitutionally inadequate and reports should have been disclosed pursuant to Brady. Matzan v. Warden, 116 Nev. 48,69 (2000); Bloodworth v. State, 512 A.2d 1056, 1059-60 (1986).

[11] Jimenez v. State, 112 Nev. 610, 622-23 (1996) (withholding evidence of investigative leads to other suspects, regardless of admissibility, constitutes Brady violation).


Mr. Frank Hearring #1006445
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, NV 89070
Steven D. Grierson
(Clerk of the Court)
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155-1160
89101$6300 0075

ORDG
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #011002
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr., #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

ORDER GRANTING DEFENDANT'S MOTION TO WITHDRAW COUNSEL

DATE OF HEARING: October 31, 2017
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 31st day of October, 2017, the Defendant not being present, incarcerated in the Nevada Department of Corrections, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MEGAN THOMSON, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Motion to Withdraw Counsel, shall be, and it is GRANTED.

DATED this 13 day of November, 2017.

DISTRICT JUDGE

ERIC JOHNSON

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #011002

CERTIFICATE OF SERVICE

I certify that on the 14th day of November, 2017, I mailed a copy of the foregoing Order to:

FRANK HEARRING, JR., BAC #1006445
SDCC
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY
Secretary for the District Attorney's Office

13F08177X: ckb/L4

27

FRANK HEARRING ID NO: 1006645
Southern Desert Correctional Center
Post Office Box 208
Indian Springs, Nevada 89070-0208

IN THE JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

FOR THE COUNTY OF

FRANK HEARRING 1-02-18 8:30A

Plaintiff,

V.

State of Nevada

Defendant

Case No: C-13-291159-1

Dept. No: XX

NOTICE OF MOTION

MOTIONS FOR MODIFICATION OF SENTENCE

Comes now, Defendant, FRANK Hearring, pro per, and respectfully moves this Honorable court for a modification of sentence.

This motion is based pursuant to the supporting Points and Authorities attached hereto, NRS 176.555, as well as all papers.pleading, and documents on file herein.

POINTS AND AUTHORITIES

1. STANDARD OF REVIEW

The Nevada Supreme Court has long recognized that Court's have the power and Jurisdiction to modify a sentence , see, Staley v. State, 787 P.2d 396, 106 Nev. 75 (1990):

"That if a sentencing court pronounces sentence within statutory limits, the court will have Jurisdiction to MODIFY, suspend or other wise correct that sentence if it is based upon materially untrue assumptions or mistakes which work to the extreme detriment of the defendant"

Defendant believes that this court has, based upon Staley, the jurisdiction to MODIFY his sentence, due to that sentence being pronounced based upon a Pre-Sentence Investigation Report which did have several material facts in error, which will be discussed below in the statement of facts.

Respondent may argue that laches apply due to the fact that thee [3] years have passed since sentence was pronounced. However, the Nevada Supreme Court held that such time requirement does not apply to a request for Modification of Sentence, see, Passanisi v. State, 831 P2d 1371, 108 Nev. 318 (1995):

> ..."we note that the trial court has inherent authority to correct a sentence at any time if such sentence based on mistake of material fact that worked to the extreme detriment of the defendant. (Citations Omitted). If the trial court has inherent authority to correct a sentence, a Fortiori, if has the power to entertain a motion requesting it to exercise that inherent authority....Thus, the time limits and other restrictions with respect to a post-conviction relief do not apply to a Motion to Modify a Sentence based on a claim that the sentence was illegal or was based on an untrue assumption of the fact that amounted to denial of due process (Emphasis added) Id. 831 P2d at 1372n. 1. See also, Edwards v. State, 918 P2d 321, 324, 112 Nev. 704 (1996).

Defendant, as stated above, is alleging that his sentence by this Court was based upon assumptions founded upon his Pre-Sentence Investigation Report (PSI) that had several factors in error, and as such, his constitutional right to due process was violated. See, State v. District Court, 677 P2d 1044, 100 Nev. 90 (1984):

> The district court's inherent authority to correct a judgment or sentence founded on mistake is in accord with the constitutional considerations underlying the sentencing process. The United States Supreme Court has expressly held that where a defendant is sentenced on the basis of materially untrue assumptions concerning his criminal record, "(the) result whether caused by carelessness or design, is inconsistent with due process of law". Townsend v. Burke, 736, 741, 68 S. Ct. 12552, 1255, 92 L. Ed. 1690 (1948). Further, the cases clearly established that constitutionally Violate "materially untrue assumptions" concerning a criminal record may arise either as a result of a sentencing judge's correct perception of misapprehension. (Emphasis in original). Id. 677 P2d at 1048 n. 3.

Defendant would asks that this Court not perceive this request to be pointing the finger at the Court and saying 'you were wrong' as that is not the case. Defendant is merely requesting that the Court reconsider the sentence that was pronounced based upon mistakes of fact in the PSI report and at sentencing.

II. STATEMENT OF FACTS

On July 15, 2013, the state charged Petitioner (Frank Hearing) by way of information with the following: Count 1 - Murder with Use of a Deadly Weapon; Count 2 - Attempt - Murder with Use of a Deadly Weapon; Count 3 - Discharging Fire Arm at or into structure, Vehicle, Aircraft or Watercraft; and Count 4 - Possession of Fire Arm by Ex-Felon.

On October 7, 2013, pursuant to negotiations, Petitioner entered into a Guilty Plea Agreement (GPA) with the state, wherein Petitioner agreed to plead guilty to one Count of Murder (Second Degree) with Use of a Deadly Weapon.

On December 10, 2013, Petitioner was sentenced to Life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a Consecutive Sentence of a maximum of 240 months and a minimum of 96 months for the deadly weapon enhancement.

On May 17, 2013 Detective Buddy Embrey, P# 8644; Detective Mogg and Crime Scene Analysist Expert(S): DAhn, Robbie P# 5947, Reed, Gary P# 3731 and Morton, Larry P# 4935. Detective(S) and/or Crime Scene Analysist Expert(S) failed to Conduct a thorough investigation, failed to thoroughly perform forensic testing investigative duties such as locate, test and process mitigating evidence. This failure of Crime Scene Analysist Experts and/or Detectives to collect and/or thoroughly process Crime Scene evidence denied Petitioner a Constitutional Right to an appropriate investigation which were not followed up on and/or Completed by law enforcement, which lead up to Petitioners Plea negotiations because of Detective(S) and/or Crime Scene Analysist Experts bias which would Constitute and/or other wise impeach

III STATEMENT OF FACTS

their credibility violating Petitioners Constitutional and/or right(s) to Due process during a serious Criminal Proceeding(s).

These elements are instrumental in either proving a defendant's guilt or innocentance preforming these forensic testing investigative duties.

Crime Scene Expert Analysist(s) and/or Detective(s) Mishandled potential evidence that could exonarate petitioner when they concluded that based on witnesses statements of hearing one caliber of gun and/or that the spent 9mm cartridge casings are unrelated and from a previous shooting.

Petitioner also alleges prejudice ensued because evidence must be considered collectively, not item by item. However Detectives State in their Application And AFFidavit For Seach Warrent, Event Number 130517-0127 that based (only) on witnesses hearing only one caliber of gun and all the other witnesses described hearing 5-7 shots, your (affiant believes) the spent 9mm cartridge casings are unrelated and from a previous shooting, when the evidence at issue was favorable to the Petitioner. This nondisclosure undermines confidence in the outcome of the trial which would impeach the credibility, thoroughness and good faith of the police investigation and furthermore impeach the credibility of state's witnesses.

The above stated issue is favorable to the petitioner; the evidence was withheld by the (State Crime Scene Experts and/or Detectives,) either intentionally or [redacted] inadvertently; and prejudice ensued.

CONCLUSION

WHEREFORE, all of the above stated reasons, Defendant respectfully requests this Honorable Court to Modify his/her Sentence in accordance with this Court's fair and just consideration of the facts of the case.

Dated this 3rd day of December, 2017.

By: Frank Hearring #1006445

Southern Desert Correctional Center

P.O. BOX 208

INDIAN SPRINGS, NEVADA 89070-208

I, FRANK Hearring, certify that the foregoing "Motion For Modification of Sentence", was served upon the Respondent pursuant to NRCP 5 (b), by placing same in the United States Postal Service, postage being fully pre-paid, and addressed as follows:

Clerk of Courts	District Attorney's Office
Steven B. Grierson	Steven B. Wolfson
200 Lewis Ave 3rd Floor	200 Lewis Avenue P.O. Box 552212
Las Vegas, NV 89155-1160	Las Vegas, NV 89155-2212

Dated this 3rd day of December, 2017.

By: Frank Hearring #1006445

P.O. Box
Indian Springs, NV. 89070

Defendant, In Proper Person

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

For Modification OF Sentence.
(Title of Document)

filed in District Court Case number C-13-291159-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:
Mazza NV. Warden, 116 Nev. 48 2000
(State specific law)

-or-

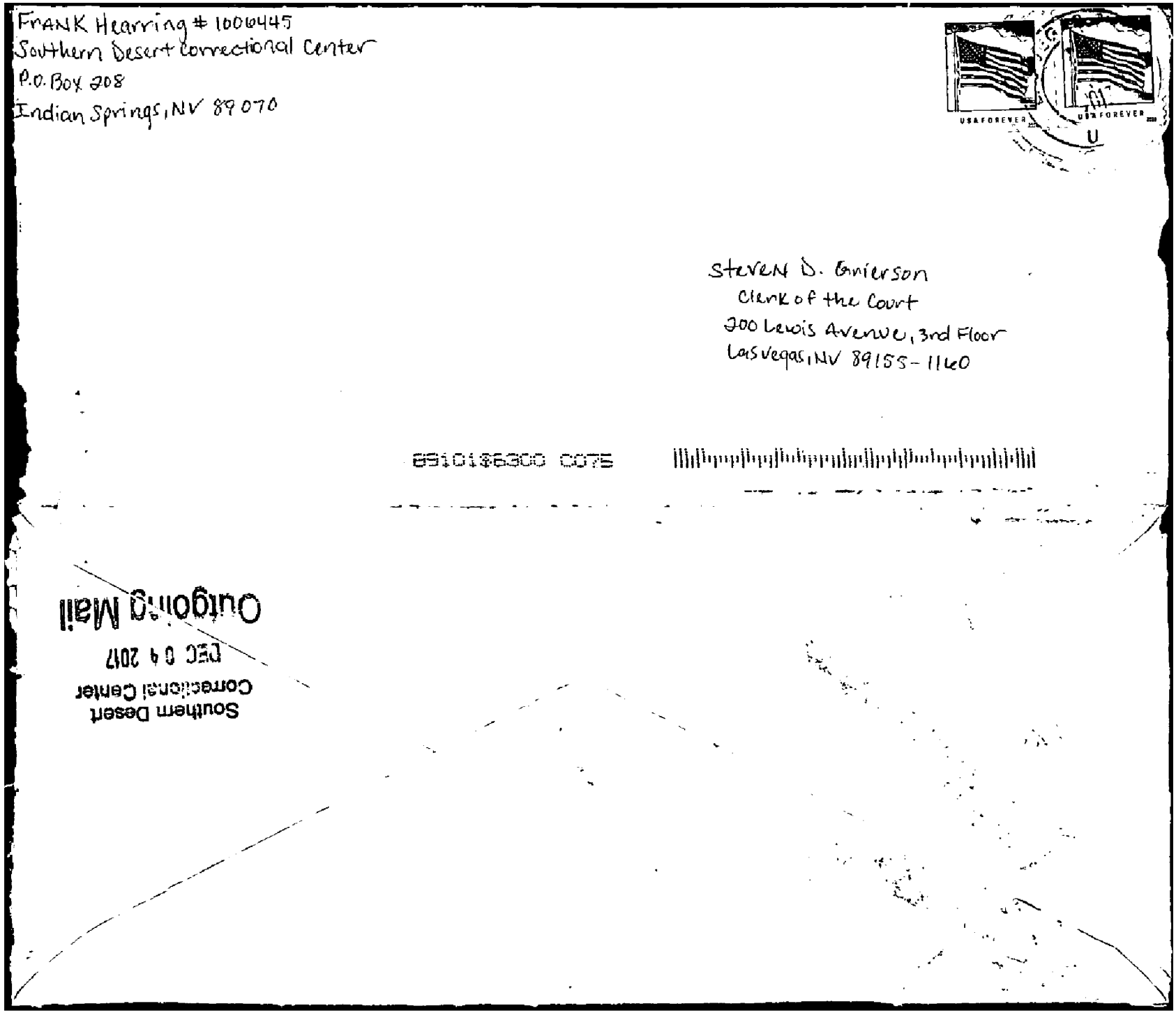
B. For the administration of a public program or for an application for a federal or state grant.

Signature

Dec 3, 2017
Date

FRANK Hearring
Print Name

Title


FRANK Hearring # 1006445
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, NV 89070
USA FOREVER
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Steven D. Grierson
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160
89101$6300 C075
Outgoing Mail
Southern Desert
Correctional Center
DEC 04 2017

OPPM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr., #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR SENTENCE MODIFICATION

DATE OF HEARING: January 2, 2018
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for Sentence Modification.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On July 15, 2013, the State charged Frank Hearring (hereinafter "Defendant") by way of Information with the following: Count 1 – Murder With Use of a Deadly Weapon; Count 2 – Attempt Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-Felon.

On October 7, 2013, pursuant to negotiations, Defendant entered into a Guilty Plea Agreement (hereinafter "GPA") with the State, wherein he agreed to plead guilty to one count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea canvass on the record and thereafter accepted Defendant's plea. An Amended Information was filed in open court reflecting the charge contained in the GPA.

On December 10, 2013, Defendant was present in court for sentencing, and was sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of 96 months for the deadly weapon enhancement. Defendant received 293 days credit for time served. On December 30, 2013, the court entered its Judgment of Conviction. Defendant did not file a direct appeal.

On May 15, 2014, Defendant filed a Motion to Withdraw Counsel, seeking removal of his court-appointed attorney, Carl Arnold, Esq. On June 12, 2014, the court granted the motion.

On November 12, 2014, Defendant filed a Motion for Appointment of Counsel and Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On December 4, 2014, the court denied the motion, finding the request for evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

On December 10, 2014, Defendant filed a Motion to Withdraw Plea. On December 22, 2014, the State filed its Opposition. On January 6, 2015, the Court denied Defendant's Motion, finding that Defendant's claims of involuntariness were belied by the record and his

claims of ineffectiveness were without merit. The district court filed its Order on January 16, 2015.

On March 30, 2015, Defendant filed a post-conviction Petition for Writ of Habeas Corpus ("Petition"). The State filed its Response on July 31, 2015. On August 4, 2015, the Court denied Defendant's Petition. A Findings of Fact, Conclusions of Law and Order was filed on September 14, 2015. On October 6, 2015, Defendant filed a Notice of Appeal. The Supreme Court affirmed the District Court's denial on April 14, 2016.

Defendant filed four Motions for Withdrawal of the Attorney of Record or in the Alternative, Request for Records/Court Documents between the denial of his Habeas Corpus appeal, and the instant motion. The motions were granted with respect to the presentence investigation report and denied with respect to all other documents. Additionally, on October 6, 2017, Defendant filed a Motion to Withdraw Counsel. On October 31, 2017, the court granted Defendant's Motion to Withdraw Counsel because Defendant did not have any outstanding motions before the court.

Defendant filed the instant motion on December 11, 2015. The State responds as follows.

ARGUMENT

I. DEFENDANT IS NOT ENTITLED TO SENTENCE MODIFICATION.

Defendant is not entitled to a sentence modification because a district court only has jurisdiction to modify a sentence in limited circumstances.

In general, a district court lacks jurisdiction to modify a sentence once the defendant has started serving it. Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1373 (1992). However, a district court has inherent authority to correct, vacate, or modify a sentence that violates due process where the defendant can demonstrate the sentence is based on a materially untrue assumption or mistake of fact about the defendant's criminal record that has worked to the *extreme detriment* of the defendant. Edwards v. State, 112 Nev. 704,707, 918 P.2d 321, 324 (1996) (emphasis added); see also Passanisi, 108 Nev. at 322, 831 P.2d at 1373.

//

Not every mistake or error during sentencing gives rise to a due process violation. State v. Eighth Judicial Dist. Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984). A district court has jurisdiction to modify a defendant's sentence "only if (1) the district court actually sentenced appellant based on a materially false assumption of fact that worked to appellant's extreme detriment, and (2) the particular mistake at issue was of the type that would rise to the level of a violation of due process." Passanisi, 108 Nev. at 322-23, 831 P.2d at 1373-74.

A. Defendant's Allegations Are Insufficient To Warrant Relief.

Defendant claims that two detectives and one crime scene analyst were deficient in their investigation of his case and that they failed to take the entirety of the crime into account during their investigation. Motion at 3-4. However, that is not the standard required for modifying a sentence. Whether or not the investigators were deficient in their investigation is irrelevant to whether or not the court can modify Defendant's sentence, as the requirement is that the sentencing court would have had to make a mistake about Defendant's "*criminal record that had worked to his extreme detriment*" in order to modify his sentence. Edwards, 112 Nev. 704, 707 (1996). In the instant Motion, there is no indication that the sentence imposed was based on any materially false assumptions of fact that worked to Defendant's extreme detriment, and without a mistake, during sentencing, it cannot be said that Defendant's due process was violated when he was sentenced. As a result, the instant Motion must be denied.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that Defendant's Motion for Modification of Sentence be denied.

DATED this 26 day of December, 2017.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
STEVEN OWENS
Chief Deputy District Attorney
Nevada Bar #004352

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 26th day of December, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING, BAC#1006445
SDCC
P.O. BOX 208
INDIAN SPRINGS, NV, 89070-0208

BY _____
Secretary for the District Attorney's Office

13F08177X: jw/SSO/ckb/L4

MC
DA
PP

FRANK Hearring #1006445
S.D.C.C.
P.O. BOX 208
INDIAN SPRINGS, NV 89018
PETITIONER – IN PROPER PERSON

Electronically Filed
12/29/2017 10:58 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK Hearring, Jr
Petitioner
v.
State of Nevada
Respondent

CASE # C-13-291159-1

DEPT.# XX

Hearing Date: 1-23-18

Time: 8:30am

MOTION TO COMPEL

COMES NOW, Petitioner FRANK Hearring, in and through his proper person hereby moves this Honorable Court for an Order compelling: Carl Arnold Esq

This motion is made and based upon all papers and pleadings on file with the Clerk of the Court , which are hereby incorporated by this reference, the Points and Authorities herein, and attached Affidavit of Petitioner.

Dated: this 19th day of December, 2017.

Submitted by: [signature]
FRANK Hearring #1006445
Petitioner / In Proper Person

50

POINTS AND AUTHORITIES

On the 31st day of October, 2017, the Court had granted the Petitioner's, "Motion To Withdraw Counsel".

However, Carl Arnold Esq has failed to comply with the Order from this Honorable Court. This Court has the power and duty to enforce its lawful judgment pursuant to N.R.S. 1.210 which states in pertinent part ;

> *" Every court shall have power :*
>
> 1. *To preserve and enforce order in its immediate presence.*
> 2. *To enforce order in the proceedings before a person or persons empowered to conduct a judicial investigation under its authority.*
> 3. *To compel obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein.*
> 4. *To control ,in furtherance of justice, the conduct of its ministerial offers."* **(emphasis added)**

Failure to comply with a court's order constitutes contempt under N.R.S. 199.340 which states in pertinent part that:

> *" **Every** person who shall commit a contempt of court of any one of the following kind shall be guilty of a **misdemeanor:***
>
> *...4. Willful disobedience to the lawful process or mandate of the court;..."* ***(emphasis added)***

In closing, by Carl Arnold Esq not adhering to the order of this court Carl Arnold Esq has displayed contempt. Petitioner cites three cases,

In Re Yount, 93 Ariz. 322, 380 P2.d 780 (1963), State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974) and In Re Sullivan, 212 Kan. 233 510 P.2d 1199 (1973) that all deal with attorneys that refused to abide by the rulings of their respective courts and were either disbarred or censored. Petitioner prays this honorable Court compel Carl Arnold Esq to comply with the order and find Carl Arnold Esq guilty of contempt for not obeying the lawful order of this Court.

DATED: this 18th day of December, 2017

Submitted by:
Frank Hearring 100655
Petitioner / In Proper Person

///

///

///

AFFIDAVIT OF: Frank Hearring

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

TO WHOM IT MAY CONCERN:

I, Frank Hearring the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045 ; 208.165, and state the following:

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 18th Day Of December, 2017.

BY: Frank Hearring #1001045
Post Office Box-208(SDCC)
Indian Springs, Nevada. 89070./
Affiant, In Propria Personam:

CERTFICATE OF SERVICE BY MAILING

I, Frank Hearring, hereby certify, pursuant to NRCP 5(b), that on this ___ day of _____, 20___, I mailed a true and correct copy of the foregoing, "Motion To Compel"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Steven D. Grierson
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

Steven B. Wolfson
200 Lewis Avenue
P.O. Box 552212
Las Vegas, NV 89155-2212

CC:FILE

DATED: this 18th day of December, 2017

Frank Hearring #1001644
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

Motion To Compel
(Title of Document)

filed in District Court Case number C-13-291159-1

☑ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Signature

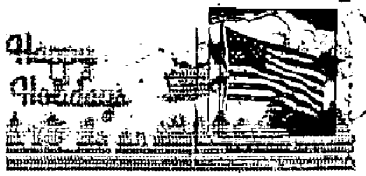
12/18/17
Date

Frank Hearring
Print Name

Title

Mr. Frank Hearring #1006645
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, NV 89070

LAS VEGAS NV 890
20 DEC 2017 PM 2 L



Steven D. Grierson
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

89101-630000

SOUTHERN DESERT CORRECTIONAL CENTER
DEC 19 2017
OUTGOING MAIL

ORDD
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #011002
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr., #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

ORDER DENYING DEFENDANT'S PRO PER MOTION FOR MODIFICATION OF SENTENCE

DATE OF HEARING: January 2, 2018
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 2nd day of January, 2018, the Defendant not being present, incarcerated in the Nevada Department of Corrections, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MEGAN THOMSON, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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///

IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Modification of Sentence, shall be, and it is DENIED.

DATED this 4 day of January, 2018.

DISTRICT JUDGE
ERIC JOHNSON

KM

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
MEGAN THOMSON
Chief Deputy District Attorney
Nevada Bar #011002

CERTIFICATE OF SERVICE

I certify that on the 8th day of January, 2018, I mailed a copy of the foregoing Order to:

FRANK HEARRING, BAC #1006445
SDCC
P.O. BOX 208
INDIAN SPRINGS, NV 89070-0208

BY
Secretary for the District Attorney's Office

13F08177X: ckb/L4

ORDG
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LEAH BEVERLY
Chief Deputy District Attorney
Nevada Bar #012556
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr., #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

ORDER GRANTING DEFENDANT'S PRO PER MOTION TO COMPEL

DATE OF HEARING: January 23, 2018
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 23rd day of January, 2018, the Defendant not being present, incarcerated in the Nevada Department of Corrections, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through LEAH BEVERLY, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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///

IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Compel, shall be, and it is GRANTED and Mr. Carl Arnold, Esq. is directed to send the file to Defendant.

DATED this 31 day of January, 2018.

DISTRICT JUDGE
ERIC JOHNSON

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
LEAH BEVERLY
Chief Deputy District Attorney
Nevada Bar #012556

CERTIFICATE OF SERVICE

I certify that on the 2nd day of February, 2018, I mailed a copy of the foregoing Order to:

FRANK HEARRING, JR., BAC #1006445
SDCC
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY
Secretary for the District Attorney's Office

13F08177X: ckb/L4

79

FRANK Hearring #1006445
S.D.C.C.
P.O. BOX 208
INDIAN SPRINGS, NV 89018
PETITIONER – IN PROPER PERSON

MC
DF
PP

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK HEARRING
Petitioner
v.
State OF Nevada
Respondent

CASE # C-13-291159-1

DEPT.# XX

Date: 06/28/18 Time: 9:00 AM

MOTION TO COMPEL

COMES NOW, Petitioner FRANK Hearring, in and through his proper person hereby moves this Honorable Court for an Order compelling: Attorney Carl Arnold Esq

This motion is made and based upon all papers and pleadings on file with the Clerk of the Court , which are hereby incorporated by this reference, the Points and Authorities herein, and attached Affidavit of Petitioner.

Dated: this 23rd day of May, 2018.

Submitted by: Frank Hearring #1006445
Petitioner / In Proper Person

POINTS AND AUTHORITIES

On the 31st day of October, 2017, the Court had granted the Petitioner's, "Motion To Compel". However, Carl Arnold has failed to comply with the Order from this Honorable Court. This Court has the power and duty to enforce its lawful judgment pursuant to N.R.S. 1.210 which states in pertinent part ;

> *" Every court shall have power :*
>
> 1. *To preserve and enforce order in its immediate presence.*
> 2. *To enforce order in the proceedings before a person or persons empowered to conduct a judicial investigation under its authority.*
> 3. *To compel obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein.*
> 4. *To control ,in furtherance of justice, the conduct of its ministerial offers."* **(emphasis added)**

Failure to comply with a court's order constitutes contempt under N.R.S. 199.340 which states in pertinent part that:

> *" **Every** person who shall commit a contempt of court of any one of the following kind shall be guilty of a **misdemeanor:***
>
> *...4. Willful disobedience to the lawful process or mandate of the court; ..."* ***(emphasis added)***

In closing, by Carl Arnold not adhering to the order of this court Carl Arnold has displayed contempt. Petitioner cites three cases,

In Re Yount, 93 Ariz. 322, 380 P2.d 780 (1963), State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974) and In Re Sullivan, 212 Kan. 233 510 P.2d 1199 (1973) that all deal with attorneys that refused to abide by the rulings of their respective courts and were either disbarred or censored. Petitioner prays this honorable Court compel Carl Arnold Esq to comply with the order and find Carl Arnold Esq guilty of contempt for not obeying the lawful order of this Court.

DATED: this 23rd day of May, 2018.

Submitted by: Frank Hearring 100648

Petitioner / In Proper Person

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///

AFFIDAVIT OF: FRANK Hearring

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

TO WHOM IT MAY CONCERN:

I, FRANK Hearring the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045 ; 208.165, and state the following: I filed this motion back in sept 2017, It was roledon and granted on October 31, 2017, however as of May 8, 2018 I have yet to receive my file or anything related to Case # C-13-291159-1 from Carl Arnold Esq. This Attorney has displayed complete disregard to any of the thoroughly disclosed information as well as (any) privously rendered litigation related to the disclosure of materials in the possession of all state agents connected with the prosecution, including police and other investigative agencies. Kyles V. Whitley, 115 S. Ct. 1555, 1568 (1995)

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 23 Day of May, 2018.

BY: [signature]
Frank Hearing #1006445
Post Office Box-208 (SDCC)
Indian Springs, Nevada. 89070./
Affiant, In Propria Personam:

CERTFICATE OF SERVICE BY MAILING

I, Frank Hearring, hereby certify, pursuant to NRCP 5(b), that on this 23rd day of May, 2018, I mailed a true and correct copy of the foregoing, "Motion To Compel" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Carl Arnold Esq
1148 S. Maryland Pkwy
Las Vegas, NV 89104

Steven B. Wolfson
200 Lewis Avenue
P.O. Box 552212
Las Vegas, NV 89155-2212

CC:FILE

DATED: this 23rd day of May, 2018.

Frank Hearring #1006645
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

Motion To Compel
(Title of Document)

filed in District Court Case number C-13-291159-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:
Kyles V. Whitley 115 S.Ct. 1555, 1568 (1995)
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Signature

May 23, 2018
Date

FRANK Hearring
Print Name

Title

Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

Steven D. Grierson
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

89101$6300 C075

OUTGOING MAIL
MAY 24 2018
NEVADA DEPARTMENT OF CORRECTIONS
WARM SPRINGS CORRECTIONAL CENTER

ORIGINAL

PP
DA

Frank Hearring
Pro Se Defendant
P.O. Box 7007
Carson City, NV 89702

NOVEMBER 6, 2018
@ 8:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada,
Plaintiff,

vs-

Case No. C-13-291159-1
Dept. No. XX

Frank Hearring, Jr.,
Defendant

MOTION FOR ORDER TO SHOW CAUSE, CONTEMPT OF COURT AND MONETARY SANCTIONS

Comes Now, Defendant Frank Hearring, Pro Se, and Files this Motion For Order To Show Cause, Contempt of Court and Monetary Sanctions, NRCP Rule 11, and pursuant to NRS 7.055, and States:

p. 1

I. Statement of Facts

In the case at bar, Defendant was represented by Counsel Carl Arnold, Esq. Upon completion of the case Defendant demanded his case File in accordance with NRS 7.055(1), after Counsel Failed to comply with the demand Defendant Filed a Motion on or about September, 2017 requesting the Court to issue a Order of Production in accordance to NRS 7.055(2). The Court granted Defendants order and directed Counsel to produce Defendants File to him. Based that Counsel refused to comply with this Courts order Defendant was Forced to File yet another motion; (motion To Compel) on June 6, 2018 in which once ago in Counsel was served a copy. The matter was set For hearing before this Court on July 31, 2018 and all parties were duly

notified by the Court. At the hearing Counsel Mr Arnold Failed to appear and Failed to File any responsive pleadings such as a Motion For Enlargement of time or continuance, or otherwise inform the court that he was not available For hearing. A second hearing was held on Aug. 2, 2018, again Counsel Failed to appear. As of the filing of this Motion Counsel has not provided Defendant with his case File even after being ordered to do so, and even with the knowledge that he failed to appear at this Courts scheduled hearing(s) to show cause see Exhibit A

II. Argument / Authority

Counsel, Mr. Arnold has shown total disregard to his duties as a represented of the Court, he has knowingly and willingly disregard this Courts orders to produce Defendants File

and has impeded upon Defendants rights to file post-conviction pleadings by withholding Defendants File. Counsel has Failed to appear at this Courts hearings even after receiving notice(s) and even with that knowledge has continued to not came into compliance with his obligations under NRS 7.055(1) without just cause and has willFully neglected to obey this Courts order issued on October 31, 2017, and on July 31, and Aug 2, 2018. The law is clear under NRS 7.055 and mandatory, based on Counsel's disregard and neglect without just cause he should be held in contempt, a Fine imposed or imprisonment until the contempt is purged. NRS 7.055(2), and he should be made to pay Defendant a reasonable cost(s) as Sanctions under NRCP Rule 11(c); NRS 7.055(2)

Based that Counsel's conduct has impeded upon Defendants rights, and Counsel acted with total disregard to this courts order and his obligation to Defendant and performance under the law. The reasonable cost in this case should be such an amount to deter repetition of such conduct or comparable conduct by others similarly situated.

whereFore, its prayed upon this Court to hold Counsel, Mr. Carl Arnold, Esq. in contempt of court and impose monetary sanctions appropriately, and For such other relief as this court deems just and proper.

This document does not contain the Social Security number of any person.

Dated this 24th day of September 2018

p 5

Respectfully Submitted,

Frank Hearring,
Pro Se Defendant
P.O. Box 7007
Carson City, NV 89702
Tel. No Phone

Certificate of Service

I certify that on this 24th day of September 2018, I mailed a copy of this Motion To Show Cause, prepaid postage, via U.S. Postal Service to:

Carl Arnold Esq.
1148 S. Maryland Pk. Wy
Las Vegas, NV 89104

By

Frank Hearring
Pro Se Defendant
P.O. Box 7007
Carson City, NV 89702

p. 6

Frank Hearring
DOC:1006445
P.O. Box 7007
Carson City, NV 89702

Clerk of Court
200 Lewis Av. 3rd Floor
Las Vegas, NV 89155-1160

RE: State vs - Hearring
Case No. C-13-291159-1
Filing of Motion

Please Find enclosed the original and a copy of Motion For Order To Show Cause, please File the Original and endorse the enclosed copy with the Filing date and return to me For my records.

In advance, thank you.

Sincerely,

Frank Hearring

Exhibit Index

Exhibit A	OFFicial court minutes. (pg's (2))

Exhibit A

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ORIGINAL

C-13-291159-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	July 31, 2018

C-13-291159-1 State of Nevada
vs
Frank Hearring, Jr.

July 31, 2018 **8:30 AM** **Show Cause Hearing**

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES PRESENT:

Kern, Samuel R.	Deputy District Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

Deft. not present; not transported. Former counsel Carl Arnold, Esq., not present. COURT ORDERED, matter CONTINUED for Mr. Arnold to appear and make representations regarding whether the case file was turned over to Deft.

NDC

8/02/18 8:30 A.M. SHOW CAUSE HEARING

CLERK'S NOTE: JEA notified Mr. Arnold regarding next Court date. /// sb

CLERK'S NOTE: A copy of the above minute order was delivered by regular mail to Frank Hearring, #1006445, Southern Desert Correctional Center, P.O. BOX 208, Indian Springs, Nevada 89018. /// sb

PRINT DATE: 07/31/2018 Page 1 of 1 Minutes Date: July 31, 2018

ORIGINAL

C-13-291159-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **August 02, 2018**

C-13-291159-1 State of Nevada
vs
Frank Hearring, Jr.

August 02, 2018 **8:30 AM** **Show Cause Hearing**

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES PRESENT: Holthus, Mary Kay — Chief Deputy District Attorney
State of Nevada — Plaintiff

JOURNAL ENTRIES

Deft. not present; was not transported and is incarcerated in Nevada Department of Corrections (NDC). Former counsel Carl Arnold, Esq., not present. At request of Mr. Arnold, which was made to Chambers prior to the case being called, COURT ORDERED, matter CONTINUED for Mr. Arnold to appear and make representations regarding whether the case file was turned over to Deft. FURTHER, Mr. Arnold to turn over the case file to Deft, if not already done so.

NDC

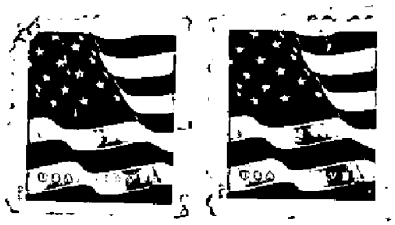
9/04/18 8:30 A.M. SHOW CAUSE HEARING

CLERK'S NOTE: JEA notified Mr. Arnold regarding next Court date. /// sb

CLERK'S NOTE: A copy of the above minute order was delivered by regular mail to Frank Hearring, #1006445, Southern Desert Correctional Center, P.O. BOX 208, Indian Springs, Nevada 89018. /// sb

PRINT DATE: 08/02/2018 Page 1 of 1 Minutes Date: August 02, 2018

Mr. Frank Hearring #1006445
W.S.C.C
P.O. Box 7007
Carson City, NV 89702



Steven D. Grierson
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

Legal-3763

457

89101$6300 C075

OUTGOING MAIL
SEP 26 2018
NEVADA DEPARTMENT OF CORRECTIONS
WILLIAM GIBBONS CORRECTIONAL CENTER

Hearring, Frank #1006445
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada, 89702

DEFENDANT, In Propria Persona

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

State of Nevada

Plaintiff,

Vs.

Frank Hearring

Defendant.

CASE No. C-13-291159-1

DEPT. No. XX

Dkt. No.

NOTICE OF APPEAL

Please take notice that Frank Hearring, Defendant, 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 6th day of November, 2018. This notice of Appeal is timely filed pursuant to NRAP 4(b).

DATED this 19th day of November, 2018.

RESPECTFULLY SUBMITTED,

DEFENDANT, ~~In~~ Propria Persona

33

3

CERTIFICATE OF MAILING

I, Frank Hearring 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:

Steven B Wolfson
District Attorney
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155-1160

(Copy to)

Carl Arnold
1428 South Jones BLVD
Las Vegas, NV 89146

DATED this 19th day of November, 2018

BY: [signature]
Appellant, In Proper Person

Frank Hearring #1006445
W.S.C.C
P.O. Box 7007
Carson City, NV 89702

RENO NV 894
20 NOV 2018 PM 2 T

Steven D. Grierson
Clerk of the Court
200 Lewis Avenue, 3rd floor
Las Vegas, NV 89155-1160

89101$6300

Hearring, Frank # 1006445
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
Appellant, In Proper Person

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

Frank Hearring
Appellant,

Vs.

State of Nevada
Respondent.

CASE No. C-13-291159-1

DEPT. No. XX

Dkt. No.

DESIGNATION OF RECORD ON APPEAL

Please take notice that Frank Hearring, Appellant, and in his proper person, hereby files this Designation of Record on Appeal in the above entitled action, pursuant to NRAP 10(b); and respectfully herein asks this Honorable Court to designate the record on appeal, to be certified by the Clerk of the District Court and transcribed to the Clerk of the Nevada Court of Appeals: All motions, pleadings, judgments and transcripts.

DATED this 19th day of November, 2018.

RESPECTFULLY SUBMITTED,

Appellant in pro se

33

ASTA

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

STATE OF NEVADA, Plaintiff(s), vs. FRANK HEARRING aka FRANK HEARRING, JR., Defendant(s),	Case No: C-13-291159-1 Dept No: XII

CASE APPEAL STATEMENT

1. Appellant(s): Frank Hearring

2. Judge: Michelle Leavitt

3. Appellant(s): Frank Hearring

Counsel:

Frank Hearring #1006445
P.O. Box 7007
Carson City, NV 89702

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.

Las Vegas, NV 89101
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: July 15, 2013

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 68968

12. Child Custody or Visitation: N/A

Dated This 27 day of November 2018.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Frank Hearring

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77549
District Court Case No. C291159

FILED
JAN 15 2019
CLERK OF COURT

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 this appeal DISMISSED."

Judgment, as quoted above, entered this 17th day of December, 2018.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 11, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

C-13-291159-1
CCJD
NV Supreme Court Clerks Certificate/Judgi
4808765

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77549

FILED

DEC 17 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a purported district court order denying a "motion for order to show cause, contempt of court and monetary sanctions."[1] Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Because no statute or court rule permits an appeal from the aforementioned order, we lack jurisdiction. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we

ORDER this appeal DISMISSED.

Cherry, J.
Cherry

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

[1]The district court removed the motion from its calendar on November 6, 2018.

cc: Hon. Michelle Leavitt, District Judge
Frank Hearring, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth 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: 1/11/19
Supreme Court Clerk, State of Nevada
By: A Ingersoll Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77549
District Court Case No. C291159

REMITTITUR

TO: Steven D. Grierson, Eighth 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: January 11, 2019

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Michelle Leavitt, District Judge
Frank Hearring, Jr.
Clark 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 JAN 15 2019.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
JAN 15 2019
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**July 18, 2013**

C-13-291159-1 State of Nevada
vs
Frank Hearring

July 18, 2013 **9:30 AM** **Initial Arraignment**

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Roshonda Mayfield

RECORDER: Kiara Schmidt

REPORTER:

PARTIES PRESENT:

Arnold, Carl E.	Attorney
Hearring, Frank, Jr.	Defendant
Mitchell, Scott Steven	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. HEARRING ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, Counsel is allowed 21 days from today and/or 21 days from the filing of the transcript for there to be any filings as to writs.

CUSTODY

8/13/13 8:30 A.M. CALENDAR CALL (DEPT. 2)

8/19/13 9:00 A.M. JURY TRIAL (DEPT. 2)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**August 13, 2013**

C-13-291159-1 State of Nevada
vs
Frank Hearring

August 13, 2013 **8:30 AM** **Calendar Call**

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES PRESENT:

Arnold, Carl E.	Attorney
Hearring, Frank, Jr.	Defendant
Schwartzer, Michael J.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Arnold advised he just finished a murder trial and is not up to speed on this one. Additionally, he and Mr. Schwartzer just realized they do not have the Preliminary Hearing transcript. Mr. Arnold stated Defendant does not want to waive his right to a speedy trial and feels he could be ready in two weeks. Mr. Schwartzer advised this was a short setting and that there is discovery coming in every day. Following additional colloquy, COURT ORDERED, trial date VACATED and RESET on the first week of next criminal stack.

CUSTODY

10/1/13 8:30 AM CALNEDAR CALL (#3)

10/7/13 9:00 AM JURY TRIAL (#3)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**October 01, 2013**

C-13-291159-1 State of Nevada
vs
Frank Hearring

October 01, 2013 **8:30 AM** **All Pending Motions**

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES PRESENT:

Arnold, Carl E.	Attorney
Hearring, Frank, Jr.	Defendant
Joseph, Lindsey D	Attorney
Schwartzer, Michael J.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- CALENDAR CALL...STATE'S REQUEST: MOTION IN LIMINE

AS TO CALENDAR CALL: Upon Court's inquiry, Ms. Joseph advised the State is ready to proceed with 20-25 witnesses and lasting 7-8 days. Mr. Arnold advised he is ready as well. Mr. Schwartzer advised an offer has been submitted to Mr. Arnold. Conference at the Bench. Court advised Jury selection would begin at 9:00 AM on Monday.

AS TO MOTION IN LIMINE: Court noted it did not receive an opposition from Mr. Arnold. Mr. Arnold advised he has no objection as he was going to raise the same issues. COURT ORDERED, Motion GRANTED as unopposed.

M. SCHWARTZER - L. JOSEPH / C. ARNOLD / 20-25 WITNESSES / 7-8 DAYS

CUSTODY

10/7/13 9:00 AM JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**October 07, 2013**

C-13-291159-1 State of Nevada
vs
Frank Hearring

October 07, 2013 **9:00 AM** **Jury Trial**

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES PRESENT:

Arnold, Carl E.	Attorney
Hearring, Frank, Jr.	Defendant
Joseph, Lindsey D	Attorney
Schwartzer, Michael J.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Arnold advised this matter has been resolved. There being no objection, Amended Information and Guilty Plea Agreement FILED IN OPEN COURT. NEGOTIATIONS: Defendant to plead guilty to Amended Information. State retains the right to argue at time of sentencing. Mr. Schwartzer concurred. DEFENDANT HEARRING WITHDREW NOT GUILTY PLEAS AND PLED GUILTY to MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Court ACCEPTED plea; referred matter to the Division of Parole and Probation for a Pre-sentence Investigation Report and ORDERED, trial date VACATED and set for sentencing.

CUSTODY

12/10/13 8:30 AM SENTENCING

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**December 10, 2013**

C-13-291159-1 State of Nevada
vs
Frank Hearring

December 10, 2013 **8:30 AM** **Sentencing**

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Katherine Streuber

RECORDER: Sara Richardson

REPORTER:

PARTIES PRESENT:

Arnold, Carl E.	Attorney
Hearring, Frank, Jr.	Defendant
Joseph, Lindsey D	Attorney
Schwartzer, Michael J.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. HEARRING ADJUDGED GUILTY of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Argument by the State. Colloquy regarding restitution. Statement by Deft. Argument by counsel. Victim Witness addressed the Court. COURT ORDERED, in addition to the $25.00 Administrative Assessment fee and a $150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to LIFE in the Nevada Department of Corrections (NDC) with parole eligibility after TEN (10) YEARS, plus a CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a MINIMUM of NINETY-SIX (96) MONTHS in the Nevada Department of Corrections (NDC) for the use of a deadly weapon, with TWO HUNDRED NINETY-THREE (293) DAYS credit for time served. FURTHER, matter SET for status check regarding restitution.

NDC

01-09-14 8:30 AM STATUS CHECK: RESTITUTION

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**December 17, 2013**

C-13-291159-1 State of Nevada
vs
Frank Hearring

December 17, 2013 **8:30 AM** **Motion to Marry**

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Carole D'Aloia

RECORDER: Sara Richardson

REPORTER:

PARTIES PRESENT:

Arnold, Carl E.	Attorney
Hearring, Frank, Jr.	Defendant
Rhoades, Kristina A.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, motion GRANTED. Court directed Mr. Arnold to prepare and submit the appropriate Order.

NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**January 09, 2014**

C-13-291159-1 State of Nevada
vs
Frank Hearring

January 09, 2014 **8:30 AM** **Status Check** **Restitution**

HEARD BY: Togliatti, Jennifer **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Athena Trujillo
Andrea Natali

RECORDER: Sara Richardson

REPORTER:

PARTIES PRESENT:

Arnold, Carl E.	Attorney
Hearring, Frank, Jr.	Defendant
Radovcic, Michael	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. present in custody. Mr. Radovcic stated the victim was requesting restitution; however, the letter of restitution had been sent to the wrong address; therefore, requested the matter be continued two weeks to obtain proof of restitution. Mr. Arnold requested the Deft. be sent to prison to serve his term. Upon Court's inquiry, Deft. agreed with Mr. Arnold's representations. COURT ORDERED, matter CONTINUED, Deft. s presence WAIVED the next date.

NDC

1/23/14 8:30 AM - STATUS CHECK: RESTITUTION

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**January 23, 2014**

C-13-291159-1 State of Nevada
vs
Frank Hearring

January 23, 2014 **8:30 AM** **Status Check**

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES PRESENT:

Arnold, Carl E.	Attorney
Joseph, Lindsey D	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted Defendant is in prison and not present. Upon Court's inquiry, Ms. Joseph advised they never received anything back from the victim's widow as to restitution and that it is unclear if she understands what would be covered under restitution. Following colloquy, COURT ORDERED, no restitution will be ordered and the matter is OFF CALENDAR.

NDC

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**June 12, 2014**

C-13-291159-1 State of Nevada
vs
Frank Hearring

June 12, 2014 **8:30 AM** **Motion**

HEARD BY: Tao, Jerome T. **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

PARTIES PRESENT:

Jones, Jr., John T.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court advised Defendant is in the Nevada Department of Corrections and not present, that this is post-conviction in nature and Mr. Arnold is not present, however, COURT ORDERED, Deft's Pro Per Motion is GRANTED. Further, Mr. Arnold to be contacted to send the file to Defendant with the proper redactions.

NDC

CLERK'S NOTE: JEA contacted Mr. Arnold's Office to advise of above.

PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
May 31 2019 12:15 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

FRANK HEARRING, JR.,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-13-291159-1
Related Case A-19-790102-W
Docket No: 78791

RECORD ON APPEAL
VOLUME
2

ATTORNEY FOR APPELLANT
FRANK HEARRING # 1006445,
PROPER PERSON
P.O. BOX 7007
CARSON CITY, NV 89702

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

C-13-291159-1 STATE OF NEVADA vs. FRANK HEARRING

I N D E X

C-13-291159-1 State of Nevada
vs
Frank Hearring

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
2	12/26/2014	APPLICATION AND ORDER FOR TRANSCRIPTS	299 - 299
2	10/07/2015	CASE APPEAL STATEMENT	351 - 352
2	11/27/2018	CASE APPEAL STATEMENT	463 - 464
3	05/31/2019	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	07/15/2013	CRIMINAL BINDOVER	1 - 31
1	01/08/2014	CRIMINAL ORDER TO STATISTICALLY CLOSE CASE	234 - 234
2	11/26/2018	DESIGNATION OF RECORD ON APPEAL	462 - 462
2	05/31/2019	DISTRICT COURT MINUTES (CONTINUED)	470 - 480
3	05/31/2019	DISTRICT COURT MINUTES (CONTINUATION)	481 - 496
2	09/14/2015	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	334 - 339
1	10/07/2013	GUILTY PLEA AGREEMENT	212 - 219
1	07/15/2013	INFORMATION	32 - 34
1	10/07/2013	INFORMATION	220 - 221
1	12/30/2013	JUDGMENT OF CONVICTION (PLEA OF GUILTY)	232 - 233
2	10/01/2018	MOTION FOR ORDER TO SHOW CAUSE CONTEMPT OF COURT AND MONETARY SANCTIONS	446 - 458
2	11/12/2014	MOTION FOR THE APPOINTMENT OF COUNSEL; REQUEST FOR EVIDENTIARY HEARING	256 - 262
2	03/08/2016	MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE ALTERNATIVE, REQUEST FOR RECORDS/COURT CASE DOCUMENTS	378 - 382
1	09/25/2013	MOTION IN LIMINE	200 - 207
2	12/29/2017	MOTION TO COMPEL	428 - 434
2	06/06/2018	MOTION TO COMPEL	439 - 445

C-13-291159-1 State of Nevada
vs
Frank Hearring

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
1	11/22/2013	MOTION TO MARRY	229 - 231
2	05/15/2014	MOTION TO WITHDRAW COUNSEL	247 - 253
2	10/06/2017	MOTION TO WITHDRAW COUNSEL	403 - 412
2	12/10/2014	MOTION TO WITHDRAWAL PLEA	268 - 276
2	05/13/2016	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - AFFIRMED	397 - 401
2	01/15/2019	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - DISMISSED	465 - 469
2	10/06/2015	NOTICE OF APPEAL	347 - 350
2	11/26/2018	NOTICE OF APPEAL	459 - 461
2	09/21/2015	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	340 - 346
1	07/26/2013	NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	35 - 41
2	05/15/2014	NOTICE OF MOTION	254 - 254
2	12/10/2014	NOTICE OF MOTION	277 - 277
2	05/26/2015	NOTICE OF MOTION	326 - 326
2	10/28/2015	NOTICE OF MOTION	356 - 357
2	01/21/2016	NOTICE OF MOTION	368 - 368
2	03/08/2016	NOTICE OF MOTION	383 - 383
2	12/11/2017	NOTICE OF MOTION; MOTION FOR MODIFICATION OF SENTENCE	415 - 422
1	08/08/2013	NOTICE OF WITNESSES [NRS 174.234(1)(A)]	42 - 45
2	12/15/2014	ORDER DENYING DEFENDANT'S MOTION FOR THE APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING	278 - 279

C-13-291159-1 State of Nevada
vs
Frank Hearring

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
2	04/12/2016	ORDER DENYING DEFENDANT'S MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE ALTERNATIVE, REQUEST FOR RECORDS/COURT CASE DOCUMENTS	395 - 396
2	01/16/2015	ORDER DENYING DEFENDANT'S MOTION TO WITHDRAW PLEA	300 - 301
2	01/08/2018	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR MODIFICATION OF SENTENCE	435 - 436
2	03/02/2016	ORDER DENYING DEFENDANT'S REQUEST FOR RECORDS/COURT CASE DOCUMENTS	376 - 377
2	05/29/2015	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	327 - 327
2	11/14/2017	ORDER GRANTING DEFENDANT'S MOTION TO WITHDRAW COUNSEL	413 - 414
2	02/02/2018	ORDER GRANTING DEFENDANT'S PRO PER MOTION TO COMPEL	437 - 438
2	12/03/2015	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S REQUEST FOR RECORDS/COURT CASE DOCUMENTS	358 - 359
2	03/30/2015	PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION); EVIDENTIARY HEARING REQUESTED	302 - 319
1	11/19/2013	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	222 - 228
1	09/24/2013	RECEIPT OF COPY	196 - 199
2	03/11/2016	REPLY TO STATE'S RESPONSE TO DEFENDANTS MOTION FOR REQUEST FOR RECORDS/COURT CASE DOCUMENTS (BRADY MATERIAL) IN ORDER TO PROPERLY APPEAL DEFENDANT'S CONVICTION.	384 - 394
2	05/26/2015	REQUEST FOR RECORDS/COURT CASE DOCUMENTS	320 - 325
2	10/28/2015	REQUEST FOR RECORDS/COURT CASE DOCUMENTS	353 - 355

C-13-291159-1 State of Nevada
vs
Frank Hearring

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
2	01/21/2016	REQUEST FOR RECORDS/COURT CASE DOCUMENTS	360 - 367
1	09/17/2013	SECOND SUPPLEMENTAL NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	170 - 195
1	08/12/2013	SECOND SUPPLEMENTAL NOTICE OF WITNESSES[NRS 174.234(1)(A)]	50 - 53
2	12/26/2017	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR SENTENCE MODIFICATION	423 - 427
2	12/22/2014	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW PLEA	288 - 298
2	11/25/2014	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR THE APPOINTMENT OF COUNSEL AND OPPOSITION TO DEFENDANT'S REQUEST FOR EVIDENTIARY HEARING	263 - 267
2	07/31/2015	STATE'S RESPONSE TO DEFENDANT'S POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS	328 - 333
2	02/17/2016	STATE'S RESPONSE TO DEFENDANT'S REQUEST FOR RECORDS/COURT CASE DOCUMENTS	369 - 375
1	09/16/2013	SUPPLEMENTAL NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	157 - 169
1	08/09/2013	SUPPLEMENTAL NOTICE OF WITNESSES [NRS 174.234(1)(A)]	46 - 49
1	09/30/2013	THIRD SUPPLEMENTAL NOTICE OF WITNESSES [NRS 174.234(1)(A)]	208 - 211
1	09/05/2013	TRANSCRIPT OF HEARING HELD ON JULY 11, 2013	54 - 156
2	12/18/2014	TRANSCRIPT OF HEARING HELD ON OCTOBER 7, 2013	280 - 287
1	04/14/2014	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED NOTICE OF MOTION AND W/COPY OF MOTION FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT (CONTINUED)	235 - 240
2	04/14/2014	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF	241 - 245

C-13-291159-1 State of Nevada
vs
Frank Hearring

I N D E X

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice and motion to withdraw counsel
(Title of Document)

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Frank Hearring
Signature

March 31, 2014
Date

Frank Hearring
Print Name

Defendant
Title

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice and Motion to Withdraw counsel
(Title of Document)

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Signature

March 31, 2024
Date

Frank Hearring
Print Name

Defendant
Title

CERTFICATE OF SERVICE BY MAILING

I, Frank Hearrings Jr., hereby certify, pursuant to NRCP 5(b), that on this ___ day of _____, 20___, I mailed a true and correct copy of the foregoing, "notice and Motion to withdraw Counsel." by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Steven B. Wolfson, D.A.
200 Lewis Ave 3rd Floor
Las Vegas, NV 89155

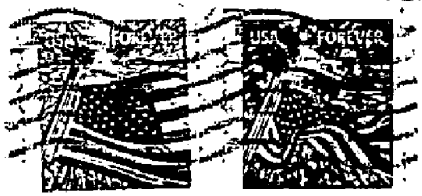
CC:FILE

DATED: this 31 day of March, 2014.

Frank Hearrings #1004445
Defendant /In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Frank Hearring #1006645
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

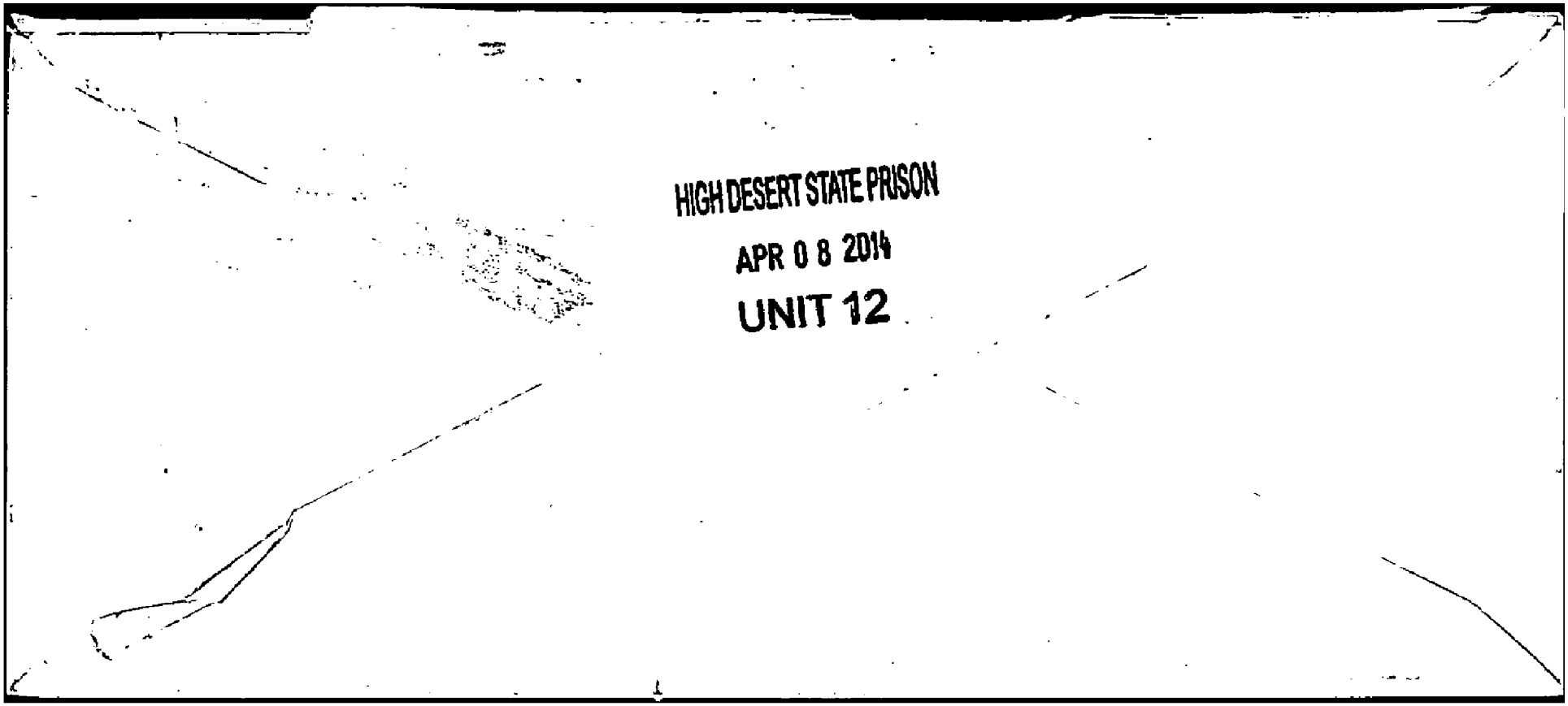
LAS VEGAS NV 889
03 APR 2014 PM 5 L



Steven D. Grierson
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155-1160

89101630000

244


HIGH DESERT STATE PRISON
APR 0 8 2014
UNIT 12

LSF

DISTRICT COURT

_____COUNTY, NEVADA

vs.

_____

Case No. C-13-291159-1

Dept. No. _____

Docket _____

ORDER

Upon reading the motion of defendant, _____, requesting withdrawal of counsel, _____, Esq., of the Clark county Public Defender's Office, and Good Cause Appearing,

IT IS HEREBY ORDERED that defendant's Motion for Withdrawal of Counsel is GRANTED.

IT IS HEREBY FURTHER ORDERED that Counsel deliver to defendant at his address, all documents, papers, pleadings, discovery and any other tangible property in the above-entitled case.

DATED and DONE this ____ day of _____, 20___.

_____

DISTRICT COURT JUDGE

C-13-291159-1
LSF
Left Side Filing
3801805

Carl Arnold Atty

Electronically Filed
05/15/2014 04:09:58 PM

CLERK OF THE COURT

MC
PP
DA
AOR

Frank Hearring #1006445
Defendant/In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

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

State of Nevada
Plaintiff

vs.

Frank Hearring
Defendant

Case No. C-13-291159-1
Dept. No. 20
Docket

MOTION TO WITHDRAW COUNSEL

Date of Hearing: 06/05/14

Time of Hearing: 8:30 AM

'ORAL ARGUMENT REQUESTED, Yes ___ No ___"

COMES NOW, Defendant, Frank Hearring, proceeding in proper person, moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel of record in the proceeding action, namely,

Carl Arnold

This Motion is made and based on all papers and pleadings on file with the Clerk of the Court which are hereby incorporated by this reference, the Points and Authorities herein, and attached Affidavit of Defendant.

DATED: this 12 day of May, 2014.

BY: Frank Hearring #1006445
Defendant/In Propria Personam

RECEIVED
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CLERK OF THE COURT

POINTS AND AUTHORITIES

NRS 7.055 states in pertinent part:

1. An attorney who has been discharged by his client shall upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.

2. . . .If the court finds that an attorney has, without just cause, refused or neglected to obey its order given under this section, the court may, after notice and fine or imprison him until the contempt purged. If the court finds that the attorney has, without just cause, withheld the client's papers, documents, pleadings, or other property, the attorney is liable for costs and attorney's fees.

Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant does not owe counsel any fees.

WHEREFORE, Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other tangible property which belong to or were prepared for the Defendant to allow Defendant the proper assistance that is needed to insure that justice is served.

DATED: this 12 day of May, 2014.

Respectfully submitted,

BY: Frank Heming #1006945
Defendant/In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

NAME: Frank Hearring Jr. # 1006445
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

DATE: May 12, 2014

TO: Carl Arnold
1148 S. Maryland Pkwy Las Vegas, NV 89014

SUBJECT: TERMINATION OF COUNSEL/TRANSFER OF RECORDS

CASE NO.: C-13-291159-1

DEPT. NO.: 20

CASE NAME: Frank Hearring Jr

Please be advised that from this date forward, your authority as Attorney of Record in the above-stated action is hereby terminated. All of the professional relations of Attorney and Client do hereby cease.

Please enter your withdrawal from this action with the Court immediately.

Pursuant to NRS 7.055, I respectfully request that you deliver to me, forthwith, all documents, papers, pleadings and tangible personal property that is in your possession that relates to the above-named action.

Your prompt attention to this request is genuinely appreciated.

Respectfully,

/ / / / /

/ / / / /

/ / / / /

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice and motion to withdraw cancel.
(Title of Document)

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Signature

May 12, 2014
Date

Frank Hearring
Print Name

Defendent
Title

CERTIFICATE OF SERVICE BY MAILING

I, Frank Hearring Jr, hereby certify, pursuant to NRCP 5(b), that on this ___ day of _____, 20___, I mailed a true and correct copy of the foregoing, "Notice and motion to withdraw Council."

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Steven B. Wolfson D.A.
200 Lewis Ave 3rd Floor
Las Vegas, NV 89155

CC:FILE

DATED: this 12 day of May, 2014.

Frank Hearring 1004995#
Defendant /In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

Frank Hearring #1006445
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890
13 MAY 2014 PM 5 L

Steven D. Grierson
200 Lewis Avenue. 3rd floor
Las Vegas, NV 89155-1160

69101630000

HIGH DESERT STATE PRISON
MAY 12 2014
UNIT 12

Carl Arnold Atty

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CLERK OF THE COURT

Frank Hearring
Defendant In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

MC
PP
DA
AOR

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada
Plaintiff

vs.

Frank Hearring
Defendant

Case No. C-13-291159-1
Dept No. 20
Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that The Foregoing Motion to Withdraw Counsel will come on for hearing before the above-entitled Court on the 05 day of June, 2014, at the hour of 8:30 o'clock A. M. In Department 20, of said Court.

CC:FILE

DATED: this 12 day of May, 2014.

BY: Frank Hearring
Frank Hearring 70646 #
Defendant/In Propria Personam

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CLERK OF THE COURT

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PLEASE FILE
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C-13-291159-1

Case No._____

Dept. No._____

IN THE_____JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF_____.

_____,
Petitioner,

-vs-

_____,
Respondents.

C-13-291159-1
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ORDER APPOINTING COUNSEL

Petitioner, _____, has filed a proper person REQUEST FOR APPOINTMENT OF COUNSEL, to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction), in the above-entitled action.

The Court has reviewed Petitioner's Request and the entire file in this action, and Good Cause Appearing, IT IS HEREBY ORDERED, that petitioner's Request for Appointment of Counsel is GRANTED.

IT IS FURTHER ORDERED that _____, Esq., is appointed to represent Petitioner on his Post-Conviction for Writ of Habeas Corpus.

Dated this _____ day of _____, 20 ___.

_____
DISTRICT COURT JUDGE

Submitted by:

_____
Petitioner, In Proper Person

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DA

Case No. C-291159-1

Dept. No. XX

C-13-291159-1

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CLERK OF THE COURT

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

Frank Hearring,
Petitioner,

-vs-

State of Nevada,
Respondents.

MOTION FOR THE APPOINTMENT OF COUNSEL

Date: 12/04/14
Time: 8:30 AM

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, Frank Hearring, proceeding pro se, within the above entitled cause of action and respectfully requests this Court to consider the appointment of counsel for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner Frank Hearring, in state custody, pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the following:

1. The merits of claims for relief in this action are of Constitutional dimension, and Petitioner is likely to succeed in this case.

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CLERK OF THE COURT

2. Petitioner is incarcerated at the Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 4 day of November, 20 14

Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

Frank Hearring
Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 4 day of November, 20 14.

Frank Hearring
Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I, Frank Hearring, hereby certify pursuant to N.R.C.P. 5(b), that on this 4 day of November, of the year 20 14, I mailed a true and correct copy of the foregoing, MOTION FOR THE APPOINTMENT OF COUNSEL; REQUEST FOR EVIDENTIARY HEARING, to the following:

Carl Arnold	Clerk of the Court	Steven Wolfson
Name	Name	Name
	200 Lewis Ave 3rd Floor Las Vegas, NV 89155	District Attorney 200 Lewis Ave Las Vegas, NV 89155
Address	Address	Address

Frank Hearring
Petitioner

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE ATTACHED DOCUMENT THAT IS ENTITLED: Frank Hearring _____, DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON, UNDER THE PAINS AND PENALTIES OF PERJURY, THIS, 4, DAY OF, November, 2014.

SIGNATURE: _____

INMATE NAME PRINTED: Frank Hearring
INMATE NUMBER: 1006445
ADDRESS: **ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301**

FRANK Hearring # 1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301

LAS VEGAS NV 890

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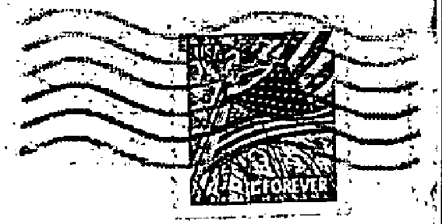

Steven Grierson
200 Lewis Ave 3rd floor
Las Vegas, NV 89155

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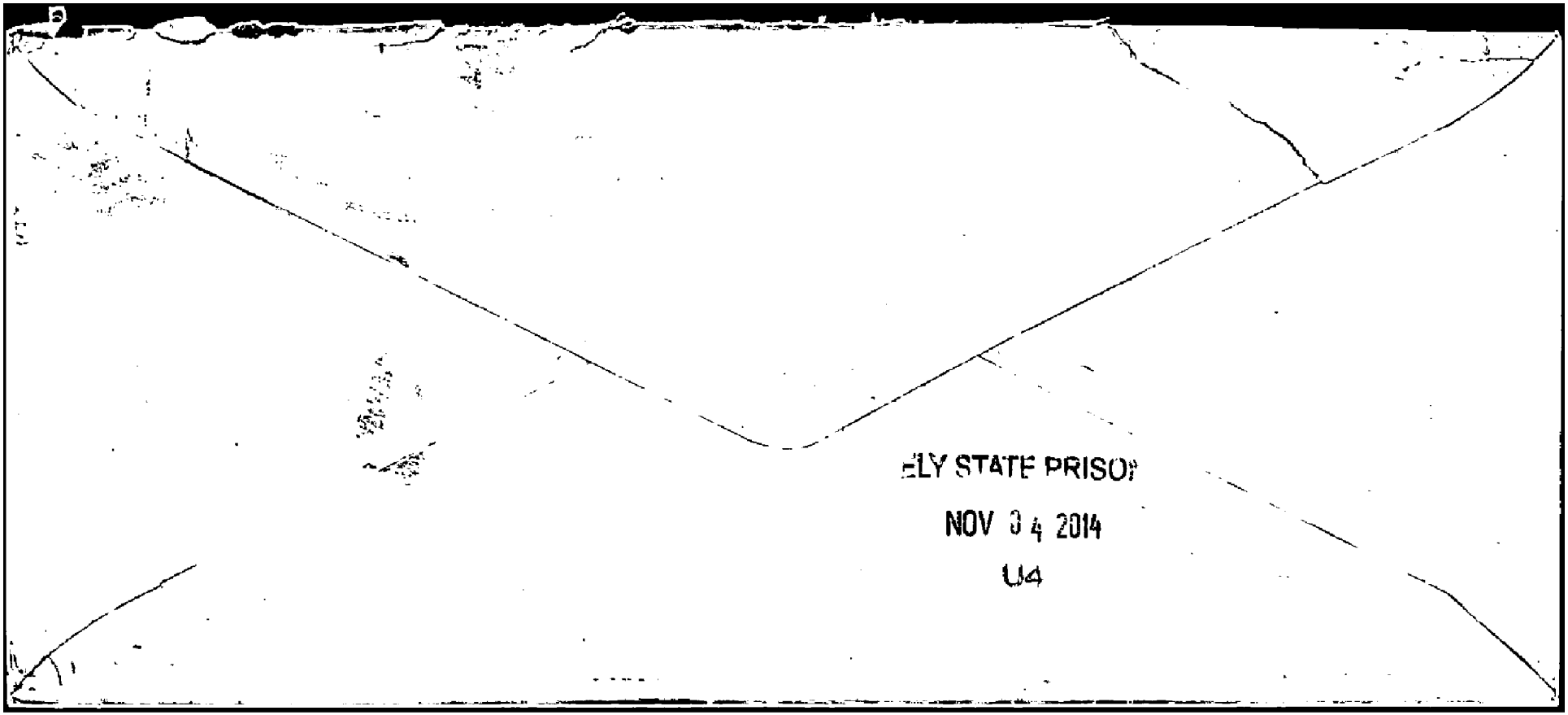
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CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR THE APPOINTMENT OF COUNSEL AND OPPOSITION TO DEFENDANT'S REQUEST FOR EVIDENTIARY HEARING

DATE OF HEARING: DECEMBER 4, 2014
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion for Appointment of Counsel and in Opposition to Defendant's Request for Evidentiary Hearing.

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On July 15, 2013, Defendant Frank Hearring was charged by way of Information with Murder With Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165), Attempt Murder With Use of a Deadly Weapon (Category B Felony – NRS 193.330, 200.010, 200.030), Discharging a Firearm at or into Structure, Vehicle, Aircraft or Watercraft (Category B Felony – NRS 202.285), and Possession of Firearm by Ex-Felon (Category B Felony – NRS 202.360). Pursuant to negotiations, on October 7, 2013, the State filed an Amended Information charging Defendant with one count of Murder With Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165).

On October 7, 2013, Defendant was arraigned on the Amended Information and a Guilty Plea Agreement was filed in open court. Defendant pleaded guilty to the charge alleged in the Amended Information.

On December 10, 2013, Defendant was sentenced for the murder charge to life in the Nevada Department of Corrections, with parole eligibility after ten (10) years, plus a consecutive term of a minimum of ninety-six (96) months and a maximum of two hundred forty (240) months for the use of the deadly weapon. Defendant received two hundred ninety-three (293) days credit for time served. The Judgment of Conviction was filed on December 30, 2013 and no direct appeal was taken.

On May 15, 2014, Defendant filed a pro per Motion to Withdraw Counsel. The district court granted the motion on June 12, 2014. On November 12, 2014, Defendant filed a pro per Motion for the Appointment of Counsel and Request for Evidentiary Hearing. The State responds as follows:

ARGUMENT

I. THE COURT HAS DISCRETION TO APPOINT AN ATTORNEY

Defendant requests the appointment of counsel pursuant to NRS 34.750. In Coleman v. Thompson, 501 U.S. 722, 752 (1991), the United States Supreme Court ruled the Sixth Amendment provides no right to counsel in post-conviction proceedings. In McKague v.

Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly observed that "[t]he Nevada Constitution . . . does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution." Id. at 258.

NRS 34.750(1) provides that a court has discretion to appoint a defendant post-conviction counsel:

> "[a] petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily, the court may appoint counsel at the time the court orders the filing of an answer and a return. In making its determination, the court may consider, among other things, the severity of the consequences facing the petitioner and whether:
> (a) The issues are difficult;
> (b) The Defendant is unable to comprehend the proceedings; or
> (c) Counsel is necessary to proceed with discovery."

Additionally, the Nevada Supreme Court has observed that a petitioner "must show that the requested review is not frivolous before he may have an attorney appointed." Peterson v. Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS 177.345(2)).

While Defendant is not entitled to appointment of an attorney, under NRS 34.750 it is clear the court has discretion in determining whether to appoint post-conviction counsel. However, Defendant has yet to file a Post-Conviction Petition for Writ of Habeas Corpus. Thus, Defendant has not made a showing regarding frivolousness, the difficulty of the issues, or a need for discovery. However, the consequences facing Defendant are severe, as Defendant is serving a life sentence with a possibility of parole after ten years, with a consecutive sentence of eight to twenty years. Therefore, the State will leave the issue of appointment of counsel to the discretion of the court.

II. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING

A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994).

"The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required." NRS 34.770(1). However, "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record." Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

In the instant case, Defendant's request for an evidentiary hearing is extremely premature. Defendant has yet to even file a Post-Conviction Petition for Writ of Habeas Corpus. Further, this Court has not yet determined whether Defendant's writ has merit. See NRS 34.770. Defendant fails to provide the court with specific allegations of how his rights were violated. Therefore, this court should deny Defendant's request for an evidentiary hearing.

CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Request for Evidentiary Hearing be DENIED. The State leaves the issue regarding the appointment of counsel to the discretion of the court.

DATED this 25th day of November, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411

///

///

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 26th day of November, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING #1006445
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY _____
Secretary for the District Attorney's Office

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CLERK OF THE COURT

MC
DA
PP

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

THE STATE OF NEVADA, Plaintiff

v.

Frank Hearring Defendant.

CASE NO. C-13-291159-1

DEPT. NO. 20

Hearing Date: 01-06-2015
Time: 8:30am

MOTION TO WITHDRAWAL PLEA

COMES NOW, Defendant, Frank Hearring -, proceeding in proper person, and moves this Honorable Court for an Order granting him permission to withdrawal his Plea Agreement in the the case number C-13-291159-1, on the date of 7th in the month of Oct in the year 2013 .where defendant was then represented by Carl Arnold as counsel. This Motion is based on all papers and pleadings on file with the Clerk of the Court which are hereby incorporated by this reference, and Points and Authorities herein and attached Affidavit of Defendant.

Dated this 20 day of November, 2014

Respectfully submitted,

Defendant in Proper Person

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MEMORANDUM OF POINTS AND AUTHORITIES

NRS. 176.165 PROVIDES:

A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed, or imposition of sentence is suspended. To correct manifest injustice, the court, after sentencing, may set aside the judgment of conviction and permit the defendant to withdraw his or plea.

Failure to adequately inform a defendant of the full consequencies of his/her plea creates manifest injustice which could be corrected by setting aside the conviction and allowing him/her to withdraw the guilty plea. Meyer v. State, 603 P.2d 1066 (Nev. 1979), and Little v. Warden, 34 P.3d 540 (Nev.2001).

Defendant herein alleges that his/her plea is in error and must withdraw the plea pursuant to the following facts: Defendant: Frank Hearing's Guilty Plea Negotiation was unknowingly and unintelligently entered due to the fact that defense Attorney: Carl Arnold, Misrepresented the actual Reason when he advised his client to Plea Negotiate which was because he advised the defendant that he would not face the death Penalty: which he never related the facts to defendant: Frank Hearring any results as to the result of the Grand Jury's decision on the Death Penalty Phase, leaving defendant: Frank Hearring to assume that he still was facing the Death Penalty which made the defendant: Frank Hearring to plea Negotiate with the States Attorney. Later, the defendant: Frank Hearing found out that the Grand Jury, had insufficient Evidence to substain a fixed determination of a guilt penalty, which if defendant: Frank Hearring would have had any knowledge that he wasn't facing the Death Penalty, he would have choosing to go to trial and demanding Trial by Jury is his Sixth Amendment Right to the federal Constitution, Letting the Jury decide all Relevant Evidence in light of the truth which trial's Defense Counsel had Rendered his Ability from this Constitution Right.

A defendant is Allowed to file A Motion to Withdraw A Guilty Plea either

1) After the Judge has accepted defendant's Plea, but [before] the Judge has sentence him; or 2) [after] the Judge has sentence him. HART, Vs, State 116. Nev. 558 (2000).

In Nevada, A defendant is NOT allowed to appeal a [guilty] Plea Agreement by going to the Nevada Supreme Court after the Judge has accepted the defendant's guilty Plea and [Filed] a "Judgment of Conviction". Defendant has to [first] file a Motion with the trial Court or file a Post-Conviction Petition for Habeas Corpus See Mitchelle, Vs, State, 109 Nev. 137.

Certain kinds of Guilty Plea Agreements will automatically be withdrawn by the trial Court. These kind of Agreements include guilty Pleas that Result From Ignorance (the defendant did not Understand or was not told about the Agreement) Fear, or Coercion (the defendant was forced by an Attorney or Someone else and did not believe he had any other choice but to Plead Guilty). See WARDEN, Nevada State Prison, Vs, Peters, 83 NEV. 298 (1967).

The Court set aside A defendant's guilty Plea where the defendant Plead Guilty to first degree Murder by Strangulation, but Refused to Admit to the Judge that he did anything more than beat the victim up. The Judge said this showed he was [coersed] or forced, to plead Guilty so that he wouldn't get the [death Penalty]. See Smith, Vs, State 110 NEV. 1009.

Defendant: Frank Hearring's Assertion, that he plead guilty on Advice of Defense Counsel due to fear of an Indictment by the

GRAND JURY's verdict upon A Death PENALTY PHASE of MURDER IN the FIRST degree with the USE of A deadly WEAPON, FALLS WITHIN this COURTS JURISDICTION through SMITH, VS, STATE IN which this DEFENSE COUNSEL PERFORMANCE RENDERED INEFFECTIVE ASSISTANCE of COUNSEL towards DEFENDANT: FRANK HEARRING's 6th AMENDMENT CONSTITUTIONAL RIGHT to the EFFECTIVE ASSISTANCE of COUNSEL IN VIOLATION of the STRICKLAND TEST. See STRICKLAND, VS, WASHINGTON 466 U.S. 668, 104 S.CT 2052 80 L.ED 2d 674 (1984)

IN STRICKLAND, VS, WASHINGTON, the UNITED STATES SUPREME COURT had ESTABLISH A TWO PRONG TEST FOR REVERSAL based upon INEFFECTIVENESS ASSISTANCE of COUNSEL. DEFENDANT MUST show that COUNSEL's PERFORMANCE WAS SO deficient, that his ERROR depeive defendant of A FAIR TRIAL. Here, defendant: FRANK HEARRING WAS Advised by TRIAL COUNSEL to ACCEPT A guilty PLEA just to AVOID the death PENALTY. The defendant: FRANK HEARRING had expressed his desiree to go to TRIAL ON NUMEROUS OCCASIONS AND COUNSEL PERFORMANCE WAS NOT TRIAL STRATEGY when he denied defendant: HEARRING's Request IN VIOLATION of his Sixth AMENDMENT RIGHT to A JURY TRIAL

The UNITED STATES SUPREME COURT has held IN HILL, VS, LOCKHART which had declined A FEDERAL HABEAS PETITIONER RELIEF to AN EVIDENTIARY HEARING claiming his GUILTY PLEA WAS INVOLUNTARY AND UNKNOWINGLY ENTERED by REASON of INEFFECTIVE ASSISTANCE of COUNSEL, SINCE he [did NOT] alleged IN his habeas petition that, had COUNSEL CORRECTLY [INFORMED] him ABOUT his PAROLE ELIGIBILITY date, he would have pleaded NOT guilty AND INSTEAD

insisted on going to trial, but that's not here, as defendant: Frank Hearring is seeking this Honorable Court's permission to withdraw his guilty Plea which he entered upon Counsel's Advise to do so by Misinformation of a Death Penalty Phase, the voluntariness to Plea Negotiate was involuntarily and unknowingly made upon the Advise of an Incompetent Trial Counsel which he would had preferred to go to trial. See Hill, Vs, Lockhart, 474 U.S. 52, 88 L.Ed.2d 203, 106 S.Ct 366 (1985)

The Death Penalty was presented to defendant: Frank Hearring after his preliminary Inflictment on July 11, 2013 by State Court decision through Defense Counsel, who never referred the decision back to Defendant: Frank Hearring by neither way via Telephone Postal Seevice or through Visitation, who went under the assumption that this Death Penalty was still sort after by the State's Attorney which had operated to coerce his Plea Agreement.

The United States Supreme Court held that the Death Penalty provision of the Statue was unconstitutional as imposing an impermissible burden upon an Accused's Exercise of his Fifth Amendment Right not to plead guilty and his Sixth Amendment Right to demand a trial by Jury. See United States, Vs, Jackson 390 U.S. 570, 20 L.3d 2d 138, 88 S.Ct 1209 (1968)

Therefore, pursuant to the facts and the law stated herein, Defentant requests that his guilty plea be withdrawn.

Dated this 20th day of November, 2014.

Respectfully Submitted,

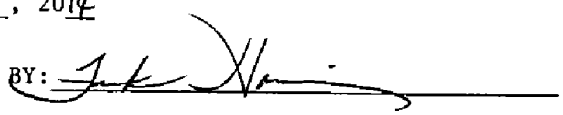
CERTIFICATE OF SERVICE BY MAILING

I, Frank Hearring, hereby certify, pursuant to NRCP 5(b), that on this 20th day of November, 2014, I mailed a true and correct copy of the foregoing Motion to withdraw Plea, by depositing it in the High Derest State Prison legal mail service provided through the Law Library, with First class Postage prepaid, and addressed to the following:

Steven B. Wolfson D.A.
200 Lewis Ave 3rd floor
Las Vegas, NV 89155

CC: File

Dated this 20 day of November, 2014

BY: 

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

To withdrawal Plea
(Title of Document)

filed in District Court Case number C-13-291159-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Signature

Nov 20, 2014
Date

Frank Hearring
Print Name

Defendent
Title

Frank Hearring #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301

Steven D. Grierson
200 Lewis Avenue 3rd floor
Las Vegas, NV 89155

89101$6300

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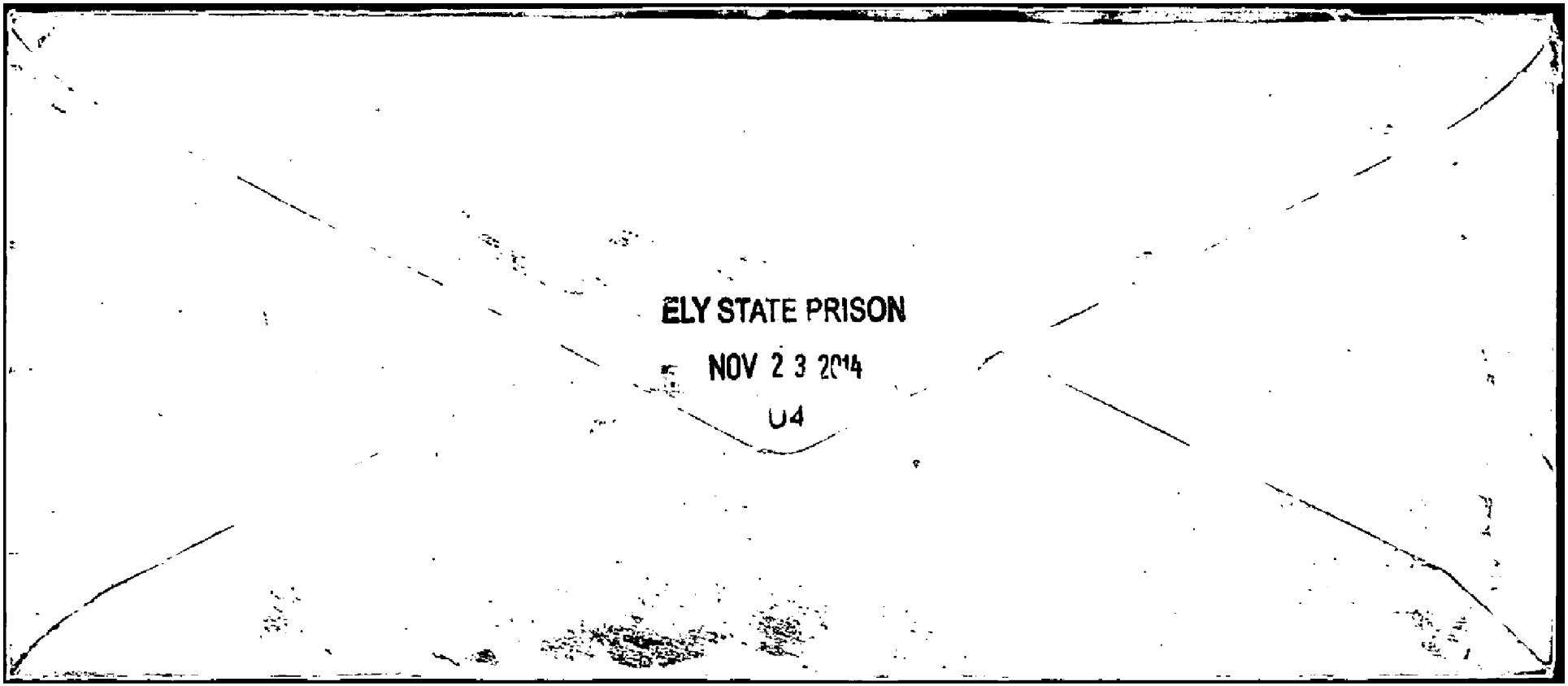

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PP

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CLERK OF THE COURT

Frank Hearring #1006445
Defendant/ In Propria Personam
Post Office Box 1989 ES.#1
Ely, Nevada 89301

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA
PLAINTIFF

vs.

FRANK HEARRING
DEFENDANT

Case No. C-13-291159-1

Dept No. 20

Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that JAMES G. COX AND CLARK COUNTY DISTRICT ATTORNEY: STEVEN B. WOLFSON

will come on for hearing before the above-entitled Court on the 06 day of January, 2015, at the hour of 8:30 o'clock am. M. In Department XX, of said Court.

CC:FILE

DATED: this 20th day of NOVEMBER, 2014.

BY: _____
FRANK HEARRING #1006445
Defendant/In Propria Personam

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CLERK OF THE COURT

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CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
K. NICHOLAS PORTZ
Deputy District Attorney
Nevada Bar #012473
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

ORDER DENYING DEFENDANT'S MOTION FOR THE APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING

DATE OF HEARING: DECEMBER 4, 2014
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 4th day of December, 2014, the Defendant not being present, in proper person, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through K. NICHOLAS PORTZ, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Motion for the Appointment of Counsel and Request for Evidentiary Hearing, shall be, and it is DENIED. Court noted this is premature as Defendant has not filed a Writ of Habeas Corpus to show what grounds he wants to raise and if counsel need to be appointed and/or a hearing needs to be set.

DATED this 10th day of December, 2014.

DISTRICT JUDGE

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
K. NICHOLAS PORTZ
Deputy District Attorney
Nevada Bar #012473

CERTIFICATE OF SERVICE

I certify that on the 15th day of December, 2014, I mailed a copy of the foregoing Order to:

FRANK HEARRING #1006445
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY
M. CRAWFORD
Secretary for the District Attorney's Office

13F08177X/mc/L4

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RTRAN

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. FRANK HEARRING, Defendant.	CASE NO. C291159 DEPT. NO. XX

BEFORE THE HONORABLE JEROME T. TAO, DISTRICT COURT JUDGE

MONDAY, OCTOBER 7, 2013

RECORDER'S TRANSCRIPT OF JURY TRIAL

APPEARANCES:

For the State: MICHAEL J. SCHWARTZER
LINDSEY DAVIS JOSEPH
Deputies District Attorney

For the Defendant: CARL E.G. ARNOLD, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

LAS VEGAS, NEVADA, MONDAY, OCTOBER 7, 2013, 10:06 A.M.

* * * * * * * *

THE COURT: Good morning, everybody, this is State versus Frank -- is it Hearring or Hearring? I'm sorry.

MR. ARNOLD: Hearring, Your Honor.

THE COURT: -- Frank Hearring, C291159. Mr. Hearring is present in custody with his attorney. It's my understanding that this case may have negotiated; is that correct?

MR. ARNOLD: That's correct, Your Honor.

MR. SCHWARTZER: That's correct, Your Honor.

THE COURT: Can someone state the negotiation for the record?

MR. ARNOLD: I will, Your Honor. My client will be agreeing to plead guilty to murder, second degree, with use of a deadly weapon. The State will retain the right to argue.

MR. SCHWARTZER: That is correct, Your Honor.

THE COURT: All right, Mr. Hearring, can you move the microphone closer to him?

MR. ARNOLD: Yes, Your Honor.

THE COURT: Thanks.

What is you true, full legal name, sir?

THE DEFENDANT: Frank Hearring, Junior.

THE COURT: And how old are you?

THE DEFENDANT: Twenty-eight.

THE COURT: How far did you go in school?

THE DEFENDANT: Eleventh grade.

THE COURT: Did -- so do you read, write, and understand the English language?

THE DEFENDANT: Yes, sir.

THE COURT: Did you hear the statement of the negotiation that the attorneys just made before me?

THE DEFENDANT: Yes, sir.

THE COURT: Do you agree with what they said?

THE DEFENDANT: Yes, sir.

THE COURT: How do you plead to the offense of second degree murder with use of a deadly weapon which is a category A felony?

THE DEFENDANT: Guilty.

THE COURT: I have in my hand a written guilty plea agreement which appears to have your signature on page five. Is this your signature?

THE DEFENDANT: Yes, sir.

THE COURT: Before signing this document did you read the entire document?

THE DEFENDANT: Yes, sir.

THE COURT: Did you understand everything in the document?

THE DEFENDANT: Yes, sir.

THE COURT: Was your attorney available to answer any questions you may have had about anything in this document?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions for me about anything in this document?

THE DEFENDANT: No, sir.

THE COURT: Before I may accept your plea of guilty I must be satisfied that your plea is freely and voluntarily entered, are you entering this plea freely and voluntarily of your own free will?

THE DEFENDANT: Yes, sir.

THE COURT: Have any threats been made against you or anyone closely associated with you in order to get you to enter this plea of guilty?

THE DEFENDANT: No, sir.

THE COURT: Other than the negotiations that have been stated, have any promises been made to you to get you to enter this plea of guilty?

THE DEFENDANT: No, sir.

THE COURT: Have you discussed with your attorney the elements of the crimes that you have been charged with and what the State must prove if you went to trial, and have you and your attorney discussed any possible defenses that you may have to the charges filed against you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you believe that it is in your best interest to enter this plea today instead of proceeding to trial on the charges against you?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with the work that your attorney has done for you in this case and the advice that you have been given so far?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Do you understand that the range of potential punishments in this case is as follows: It is either life with the possibility of parole after 10 years or a definite term of 10 years to 25 years plus a consecutive term of 1 to 20 years for the deadly weapon enhancement; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right, do you understand also that the matter of sentencing is strictly up to court and that no one can promise you exactly what I'm going to do at sentencing?

THE DEFENDANT: Yes, sir.

THE COURT: And you also understand that for these offenses you are not eligible for probation?

THE DEFENDANT: Yes, sir.

THE COURT: All right. By entering your plea of guilty, you're giving up certain valuable constitutional rights which I'm now going to list for you. The right to a speedy and public trial before an impartial jury; the right to be confronted by witnesses against you; the right to compel witnesses to testify on your behalf at trial; the right to testify in your own defense or to refuse to testify at trial; and the right to the assistance of an attorney at trial; do you understand all the rights that I just listed for you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that by entering your plea of guilty you are forever waiving and giving up all of those rights?

THE DEFENDANT: Yes, sir.

THE COURT: Are you a citizen of the United States?

THE DEFENDANT: Yes, sir.

THE COURT: Are you currently under the influence of any controlled substance or prescription medication or do you have any medical conditions that might affect your ability to understand what we're talking about here today?

THE DEFENDANT: No, sir.

THE COURT: So in knowing all of this, do you still wish to enter your plea of guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Are you pleading guilty because in truth and in fact you are guilty?

THE DEFENDANT: Yes, sir.

THE COURT: This is what the State is alleging that you did: On or about May 17, 2013, within the County of Clark, State of Nevada, that you did willfully, feloniously, without authority of law and with malice aforethought kill a human being named Michael Jordan by shooting him with a deadly weapon, namely, a firearm. So in other words, did you shoot and kill this gentleman, Michael Jordan?

THE DEFENDANT: Yes, sir.

THE COURT: And did you intend to do so? It wasn't an accident or anything like that?

THE DEFENDANT: No, sir, I didn't intend to.

THE COURT: I'm sorry?

THE DEFENDANT: I didn't intend to.

THE COURT: You didn't intend to?

THE DEFENDANT: No, sir.

MR. SCHWARTZER: Your Honor, this was a transferred intent case. I believe he was shooting at a man by the name of Clifford Watkins and shot Michael Jordan; and therefore, there was a transfer of intent.

THE COURT: Oh, I see.

MR. ARNOLD: I'll dispute that he was trying to shoot Mr. Watkins, but he was shooting a firearm and Mr. Jordan died because of that.

THE COURT: Okay. So did you -- did you intentionally point a firearm at somebody and pull the trigger?

THE DEFENDANT: Yes, sir.

THE COURT: It wasn't like an accidental discharge or something like that? You weren't target shooting, right?

THE DEFENDANT: No, sir.

THE COURT: Okay. So you intentionally pointed it at somebody, you intentionally pulled the trigger, right?

THE DEFENDANT: Yes, sir.

THE COURT: And that shooting led to the death of Michael Jordan; you're agreeing to that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. State, are you satisfied with that?

MR. SCHWARTZER: Yes, Your Honor.

THE COURT: All right. The Court finds the defendant's plea of guilty is freely and voluntarily made and he understands the nature of the offense and the consequences of his plea; and therefore, accepts his plea of guilty, this matter is referred to the Division of Parole and Probation for a presentence investigation report and is set for entry of judgment and imposition of sentence on this in-custody date and time.

THE CLERK: December 10th at 8:30.

MR. SCHWARTZER: December 10th?

THE CLERK: Yes.

MR. SCHWARTZER: Thank you.

THE COURT: All right, we'll see if that sentencing date holds with the way

P&P's been going, but, yeah. All right, thanks, everybody.

MR. ARNOLD: All right, thanks, Your Honor.

MS. JOSEPH: Thank you, Judge.

THE COURT: And, you know, just for the record, let me ask, State, anything else that you want me to cover in the canvass? I know I'm a little bit past it, but I can always go back. This is now the time to ask if there's anything else particularly that you want me to ask the defendant?

MR. SCHWARTZER: No, Your Honor. Thank you.

MR. ARNOLD: All right.

THE COURT: All right, thanks, everybody.

MS. JOSEPH: Thank you.

PROCEEDING CONCLUDED AT 10:11 A.M.

* * * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.

Sara Richardson

SARA RICHARDSON
Court Recorder/Transcriber

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CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW PLEA

DATE OF HEARING: JANUARY 6, 2015
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Withdraw Plea.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On July 15, 2013, the State charged Frank Hearring (hereinafter "Defendant") by way of Information with the following: Count 1 – Murder With Use of a Deadly Weapon (Category A Felony – NRS 200.010; 200.030; 193.165); Count 2 – Attempt Murder With Use of a Deadly Weapon (Category B Felony – NRS 193.330; 200.010; 200.030); Count 3 – Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft (Category B Felony – NRS 202.285) and Count 4 – Possession of Firearm by Ex-Felon (Category B Felony – NRS 202.360).

On October 7, 2013, pursuant to negotiations, Defendant entered into a Guilty Plea Agreement ("GPA") with the State, wherein he agreed to plead guilty to one count of Murder (Second Degree) With Use of a Deadly Weapon (Category A Felony – NRS 200.010; 200.030; 193.165). The same day, the court conducted a plea canvass on the record and thereafter accepted Defendant's plea. An Amended Information was filed in open court reflecting the charge contained in the GPA.

On December 10, 2013, Defendant was present in court for sentencing, and was sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a consecutive sentence of a maximum of two hundred forty (240) months and a minimum of ninety-six (96) months for the deadly weapon enhancement. Defendant received two hundred ninety-three (293) days credit for time served. On December 30, 2013, the court entered its Judgment of Conviction.[1]

On May 15, 2014, Defendant filed a Motion to Withdraw Counsel, seeking removal of his court-appointed attorney, Carl Arnold, Esq. On June 12, 2014, the court granted the motion.

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[1] Though the Nevada Supreme Court has held that a post-conviction petition for writ of habeas corpus is the exclusive remedy to challenge a guilty plea after sentence has been imposed, it has also made clear that a district court should construe a post-sentence motion to withdraw guilty plea which otherwise complies with NRS Chapter 34 (including the one-year time limit after a judgment of conviction within which to file) as a post-conviction petition for writ of habeas corpus. Harris v. State, 130 Nev. __, __, 329 P.3d 619, 628-629 (2014). Thus, a post-conviction motion to withdraw guilty plea filed within the one year time limit should be decided on the merits. As such, the State contends the instant motion should be construed as a post-conviction petition for writ of habeas corpus, and be decided on the merits.

On November 12, 2014, Defendant filed a Motion for Appointment of Counsel and Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On December 4, 2014, the court denied the motion, finding the request for evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

On December 10, 2014, Defendant filed the instant Motion to Withdraw Plea. The State hereby opposes that motion as follows.

ARGUMENT

I. DEFENDANT HAS NOT DEMONSTRATED ANY MANIFEST INJUSTICE TO WARRANT WITHDRAWAL OF HIS GUILTY PLEA

NRS 176.165 states that a motion to withdraw a plea of guilty may be made only before sentence is imposed, but: "[t]o correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea." See NRS 176.165; Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). Three important factors in making the determination of the presence of a "manifest injustice" are whether the defendant: 1) acted voluntarily; 2) understood the nature of the charges against him; and 3) understood the consequences of his plea. Wilson v. State, 99 Nev. 362, 373, 664 P.2d 328, 334 (1983). In the instant matter, the record plainly indicates all three factors were present.

A. Defendant's Counsel Did Not Coerce Defendant Into Entering the Guilty Plea Agreement, Rather, Defendant's Plea Was Freely and Voluntarily Entered.

The law in Nevada clearly establishes that a plea of guilty is presumptively valid and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364 (1986); Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975). Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975), suggests that the presence and advice of counsel is a significant factor in determining the voluntariness of a plea of guilty. Furthermore, the Nevada Supreme Court made clear in the case of Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973), that the guidelines for voluntariness

of guilty pleas "do not require the articulation of talismanic phrases. It is required only 'that the record affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly and voluntarily.'" Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303 (9th Cir. 1973).

In determining whether a guilty plea is knowingly and voluntarily entered, the Court will review the totality of the circumstances surrounding the defendant's plea. Bryant at 271. The proper standard set forth in Bryant requires the Court to personally address a defendant at the time he enters his plea in order to determine whether he understands the nature of the charges to which he is pleading. Id. at 271. In Wilson v. State, 99 Nev. 362, 366, 664 P.2d 328, 330 (1983), the Nevada Supreme Court stated the following regarding the acceptance of a guilty plea:

> In Higby v. Sheriff, 86 Nev. 774, 476 P.2d 950 (1970), we concluded that certain minimum requirements must be met when a judge canvasses a defendant regarding the voluntariness of a guilty plea. We held that the record must affirmatively show the following: 1) the defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; 2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; 3) the defendant understood the consequences of his plea and the range of punishment; and 4) the defendant understood the nature of the charge, i.e., the elements of the crime.

Id. at 781, 476 P.2d at 963.

In State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000), the Nevada Supreme Court held that a failure to conduct a ritualistic oral canvass does not mandate a finding of an invalid plea. Instead, the Court found that a district court should not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea. Id. at 448. As to Defendant's claim that his attorney coerced him into enter the Guilty Plea Agreement, it is counsel's duty to recommend a plea negotiation the attorney deems favorable to the defendant, but the ultimate responsibility to decide whether to accept the negotiation is the defendant's. Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002).

In the instant matter, Defendant entered a plea of guilty voluntarily in that he understood the nature of the charges against him and the consequences of the plea. The written Guilty Plea Agreement filed on October 7, 2013, and signed by Defendant, contained the following language:

> CONSEQUENCES OF THE PLEA
>
> ...
>
> I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada State Prison for TEN (10) years to life OR the Definite term of TEN (10) to TWENTY FIVE (25) years plus a consecutive term of ONE (1) to TWENTY (20) years for deadly weapon enhancement.
>
> ...
>
> I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits of the prescribed statute.
>
> ...
>
> VOLUNTARINESS OF PLEA
>
> I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charges against me.
>
> I understand that the State would have to prove each element of the charge(s) against me at trial.
>
> I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.
>
> All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.
>
> I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.
>
> I am signing this agreement voluntarily, after consultation with my attorney, and **I am not acting under duress or coercion** or by virtue of any promises of leniency, except for those set forth in this agreement.

> ...
> My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

Guilty Plea Agreement, 10/07/2013 (emphasis added). The GPA also included a "Waiver of Rights" section explaining that by signing the agreement, Defendant forfeited the privilege against self-incrimination, the right to a speedy and public trial, the right to confront, cross-examine, or subpoena witnesses, the right to testify in his own defense, and the right to appeal. Id. at 4. Finally, a copy of the Information detailing the elements of the charge of Murder (Second Degree) With Use of a Deadly Weapon was attached to the GPA. See Id.

At the plea canvass, also conducted October 7, 2013, the court orally confirmed that Defendant was entering the plea voluntarily, that he understood the charges against him, and that he comprehended the consequences of the plea. The following exchange occurred between Defendant and the court:

THE COURT:	Before signing [the GPA], did you read the entire document?
DEFENDANT:	Yes, sir.
THE COURT:	Did you understand everything in the document?
DEFENDANT:	Yes, sir.
THE COURT:	Was your attorney available to answer any questions you may have had about anything in the document?
DEFENDANT:	Yes, sir.
THE COURT:	Do you have any questions for me about anything in the document?
DEFENDANT:	No, sir.
THE COURT:	...Are you entering this plea freely and voluntarily of your own free will?
DEFENDANT:	Yes, sir.

...

THE COURT: Have you discussed with your attorney the elements of the crimes that you have been charged with and what the State must prove if you went to trial, and have you and your attorney discussed any possible defenses that you may have to the charges filed against you?

DEFENDANT: Yes, sir.

...

THE COURT: Do you understand that the range of potential punishments in this case is as follows: It is either life with the possibility of parole after 10 years or a definite term of 10 years to 25 years plus a consecutive term of 1 to 20 years for the deadly weapon enhancement; do you understand that?

DEFENDANT: Yes, sir.

...

THE COURT: Alright. By entering your plea of guilty, you're giving up certain valuable constitutional rights which I'm now going to list for you. The right to a speedy public trial before an impartial jury; the right to be confronted by the witnesses against you; the right to compel witnesses to testify on your behalf at trial; the right to testify in your own defense or to refuse to testify at trial; and the right to the assistance of an attorney at trial; do you understand all the rights that I just listed for you?

DEFENDANT: Yes, sir.

Reporter's Transcript 10/07/13, p. 3-5. The court went on to discuss each element of the crime with Defendant and found he was entering the plea freely and voluntarily, and that he understood the nature of the offense and the consequences of the plea. Id. Thus, it is clear that Defendant was at least twice apprised of the nature of the charges against him and the consequences of his plea.

Moreover, Defendant's assertion that the plea was not entered knowingly and intelligently in that he was under the impression that proceeding to trial presented the risk of

being sentenced to death is belied by the record. Pursuant to Nevada Supreme Court Rule 250, where the State intends to seek the death penalty, it must file a notice in the district court indicating such intent no later than 30 days after the filing of an information or indictment. Nev. Sup. Ct. R. 250(4)(a). Here, the State filed an Information on July 15, 2013. Defendant's trial was set to begin the day his plea was entered on October 7, 2013. At no time during the interim did the State file a notice of intent to seek the death penalty. As such, it is unlikely that Defendant, represented by a seasoned defense attorney, held a genuine belief that a guilty plea was necessary in order to avoid the death penalty. Further, even if Defendant's belief was genuine, the Nevada Supreme Court has found that a defendant's fear of death does not invalidate his guilty plea if he "voluntarily, knowingly, and understandingly consented to the imposition of a prison sentence," as Defendant did here. Conger v. Warden, 89 Nev. 263, 265, 510 P.25 1359, 1361 (1973) (citing North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970)).

Finally, Defendant's bare allegation that he discovered after entering the guilty plea that "the Grand Jury had insufficient evidence to substain [sic] a fixed determination of a guilt penalty" does not amount to a "manifest injustice" sufficient to warrant withdrawal of his plea. See Defendant's Motion, p. 2. Defendant offers no specific facts or argument in support of the contention that a jury would not have convicted him, and as such, the claim is purely speculative.

Defendant understood the content of the Guilty Plea Agreement, the potential sentence, and entered the plea knowingly and voluntarily. Indeed, because Defendant entered the plea agreement pursuant to the advice of Counsel, under Jezierski, Defendant's plea is presumptively valid. Moreover, the record affirms that the ultimate decision to plead guilty was indeed Defendant's, pursuant to Rhyne. Thus, Defendant's contention that his plea was coerced by counsel or was otherwise involuntary is without merit. As such, Defendant's plea was valid and should not be disturbed on post-conviction review.

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B. Defendant Received Effective Assistance of Counsel.

Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Under Strickland, in order to assert a claim for ineffective assistance of counsel, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland 466 U.S. at 686–687, 104 S.Ct. at 2063-64; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the Defendant must show: first, that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687–688 and 694, 104 S.Ct. at 2065 and 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 130 S.Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 131 S.Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)).

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

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Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. Furthermore, claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

Here, Defendant's only allegation in regard to counsel's alleged ineffectiveness is that counsel coerced Defendant into entering the Guilty Plea Agreement by failing to inform Defendant that he was not death penalty-eligible. As previously discussed, it is counsel's duty to recommend a plea negotiation the attorney deems favorable to the defendant, but the ultimate responsibility to decide whether to accept the negotiation is the defendant's. Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002). Moreover, Defendant's bare claim of ineffectiveness is unsupported by specific factual allegations which would entitle him to relief. Finally, Defendant has failed to establish prejudice, as he cannot show that had counsel's alleged error not occurred, he would have in fact proceeded to trial and ultimately received a lesser penalty than that imposed pursuant to the Guilty Plea Agreement. As such, Defendant has failed to satisfy the heavy burden he shoulders under Strickland, and has not established ineffectiveness of counsel. Defendant's guilty plea should therefore stand.

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CONCLUSION

Because Defendant entered the guilty plea voluntarily and knowingly in that he understood the nature of the charges against him and the consequences of the plea, the State respectfully requests that this Court reject Defendant's attempt to withdraw the plea.

DATED this 2nd day of December, 2014.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 2nd day of December, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING #1006445
ELY STATE PRISON
P.O. BOX 1989
ELY, NV, 89301

BY _____
M. CRAWFORD
Secretary for the District Attorney's Office

13F08177X/MF/mc/L4

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CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, JR.,
#1774466

Defendant.

CASE NO: C-13-291159-1
DEPT NO: XX

APPLICATION AND ORDER FOR TRANSCRIPTS

TO: COURT RECORDER, DEPT. NO. XX, SARA RICHARDSON

Upon the application of the District Attorney's Office, by and through Deputy District Attorney H. LEON SIMON, Appellate Division, attorney for Plaintiff in the above-entitled matter, and good cause appearing therefor,

IT IS HEREBY ORDERED that an original and two (2) copies of Reporter's Transcript of Proceedings on OCTOBER 7, 2013 (Plea), be prepared as soon as possible at State expense in order for the State to adequately address the issues presented in defendant's post-conviction matters.

Dated this 18th day of December, 2014.

DISTRICT JUDGE

STEVEN B. WOLFSON
District Attorney

BY
H. LEON SIMON,
Chief Deputy District Attorney
Nevada Bar #000411

jg/CAU

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CLERK OF THE COURT

ORDD
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHELLE SUDANO
Deputy District Attorney
Nevada Bar #13260
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr., #1774466

Defendant.

CASE NO: C-13-291159-1
DEPT NO: XX

ORDER DENYING DEFENDANT'S MOTION TO WITHDRAW PLEA

DATE OF HEARING: January 6, 2015
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 6th day of January, 2015, the Defendant not being present, incarcerated in the Nevada Department of Corrections, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MICHELLE SUDANO, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Motion to Withdraw Plea, shall be, and it is DENIED.

DATED this _____ day of January, 2015.

JAN 13 2015

DISTRICT JUDGE

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
MICHELLE SUDANO
Deputy District Attorney
Nevada Bar #13260

CERTIFICATE OF SERVICE

I certify that on the 16th day of Jan, 2014, I mailed a copy of the foregoing Order to:

FRANK HEARRING, BAC #1006445
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY _____
Secretary for the District Attorney's Office

13F08177X: ckb/L4

Frank Hearing #1006445
Petitioner in Pro-Per
Ely State Prison
P.O. Box #1989
Ely, Nevada 89301

FILED
MAR 3 0 2015
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

Frank Hearing,
Petitioner,

vs.

State of Nevada,
James Greg, Cox,
Renee Baker,
Respondent(s).

Case No. C-13-291159-1
Dept. No. 20
Docket

Evidentiary Hearing Requested

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

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 are not in a specific institution of the department 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 and sentence.

Failure to raise all grounds I 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) If your petition challenges the validity of your conviction or sentence, the original and one copy must be filed with the clerk of the district court for the county in which the conviction occurred. Petitions raising any other claim must be filed with the clerk of the district court for the county in which you are incarcerated. 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 who you are presently restrained of your liberty: Ely State Prison, White Pine County And Restrained by Renee Baker, Warden.

2. Name the location of court which entered the judgment of conviction under attack: The Eighth Judicial District Court of Clark County, Nevada

3. Date of judgment of conviction: December 10, 2013

4. Case number: C-13-291159-1

5. (a) Length of sentence: 10 years to Life Consecutively with 8 to 20 years.

(b) If sentence is death, state any date upon which execution is scheduled: _____.

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

Yes ____ No ✓ If "Yes", list crime, case number and sentence being served at this time: ____

_____.

7. Nature of offense involved in conviction being challenged: Murder (Second Degree) with the Use of A Deadly Weapon (Catagory A Felony)

8. What was your plea? (Check one)

(a) Not guilty ___

(b) Guilty _✓_

(c) Nolo contendere ___

9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea to another count of an indictment or information, or if a guilty plea was negotiated, give details: The Plea of Guilty was unknowingly and unintelligently made as well as involuntarely entered Due to Defense Attorney's INEffectiveness of Attorney.

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

(a) Jury ___

(b) Judge without a jury ___

11. Did you testify at trial? Yes ___ No ___

12. Did you appeal from the judgment of conviction?

Yes ___ No ✓

13. If you did appeal, answer the following:

(a) Name of court:

(b) Case number or citation:

(c) Result:

(d) Date of appeal:

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

14.) If you did not appeal, explain briefly why you did not: The Reasons was because I negotiate A Plea Agreement with the States Attorney by the Coersion of Incompetent trial Counsel.

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

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

(a) (1) Name of court: EIGHT Judicial Dist

(2) Nature of proceedings: _____

_____

(3) Grounds raised: Motion to Withdraw Guilty Plea which was denied by Trial Court, & Supreme Court Affirmed the trial Courts Decision on Give date Supreme court Affirmed decision

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

Yes ____ No ✓

(5) Result: _____

(6) Date of result: _____

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

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

(1) Name of Court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

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

Yes ____ No ____

(5) Result: N/A

(6) Date of result: N/A

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

(c) As to any third or subsequent additional application 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 ✓ No ___

Citation or date of decision: _____

(2) Second petition, application or motion?

Yes ___ No ___

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You may relate specific facts in response to this question. Your response may be included on paper which is 8 ½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length). _____

___

_____

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 or application or any other post-conviction proceeding? If so, identify:

(a) Which of the grounds is the same: INEffective Assistance of Counsel For Coersion of A Guilty Plea Agreement

(b) The proceedings in which these grounds were raised: In A Motion to Withdraw Guilty Plea Agreement

(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 ½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length). ___

Because the Negotiation of the Plea Agreement was Coersed by Defense Attorney when I wanted to go to Jury Trial.

18. If any of the grounds listed in Nos. 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 ½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length). N/A N/A

19. Are you filing this petition more than one (1) year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length). Reasons for any delays after the one year deadline was because a Motion to Withdraw Guilty Plea was filed.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ____ No ✓

If "Yes", state what court and the case number: ____

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

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

Yes ____ No ✓ If "Yes", specify where and when it is to be served, if you know: ____

23. a. GROUND ONE Petitioner Alleges that his Plea Negotiation was unknowing and unintelligently as well as involuntarely made Due to Trial Counsels ineffective Assistance in violation of the Petitioner's Sixth Amendment and Fourteenth Amendment Right.

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Defense Attorney Purposely lead Petitioner to believe he was getting the Death Penalty by withholding the Results to the Grand Jury's Indictment Seeking the Death Penalty until After Petitioner's Plea Negotiation Agreement, causing Petitioner to Plea Negotiate with the States Attorney. Petitioner was coersed into Accepting a lesser charge from first degree Murder to Second degree Murder because of trial Counsel's Coersion and this deception [forced] Petitioner to plead Guilty to Avoid the Death Penalty which he contend that due to trial Counsel's Performance of Misrepresentation, he would've Preferred to go to trial instead of Plea bargaining.

23. (b) GROUND TWO: Petitioner Alleges that TRIAL Counsel Failed to properly Interview potential witnesses and make Independent Investigation of the Facts and Circumstances of the Case Rendering Ineffectiveness Assistance of Counsel in Viol of 6th Amend.

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Court Appointed Defense Attorney: Carl Arnold to Represent Petitioner: Frank Hearring in a Murder Case in the First Degree which carried a penalty of Death. TRIAL Counsel failed to properly Interview witnesses that Petitioner Presented to him by way of visitation in the Clark County Detention Center. Petitioner Alleges that Counsel's failure to interview potential witnesses that could've exonarated him from the crime constituted bad Performance of a Reasonable TRIAL Attorney in Violation of the 6th Amendment and 14th Amendment Right to Effectiveness Assistance of Counsel and Due Process Rights to Life, Liberty

23. (c) GROUND THREE: Petitioner Alleges that the Trial Counsel Rendered INEffective Assistance of Counsel when he Failed to Use the Private Investigator of the Office to conduct A thorough Investigation in Violation of his 6th Amendment to Effective Counsel.

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Petitioner Alleges that Trial Counsel Failed to use the Law Office's Private Investigator to perform Investigative duties such as Locate Friend & Family of Petitioner who would have made Statements on behalf of Petitioner's Alibi to the Crime of Murder with the Use of A deadly Weapon and Exonarate him from doing such Criminal Activity. This Failure of the Use of A Private Investigator that Trial Counsel has choising to do, denied Petitioner A Constitutional Right to A Fair Trial Proceeding which Lead to Petitioner's Plea Negotiation because of INEffective Assistance from Counsel in Violation of His 6th Amendment to Effectiveness of Counsel during A Serious Criminal Proceeding.

23. D ROUND FOUR: Petitioner alleges that Trial Counsel failed to properly Interview States Attorney Key Witness,

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Petitioner contend that Trial Counsel failed to properly Interview the States Attorney Key Witness to Recieve the Witness point of the Investigation which Renders Competent Trial Counsel and this Prejudiced the Petitioner because this key witness pursued a course of Misidentification until they were shown A photograph that was of Petitioner and other black males which Petitioner's Picture was Expose in size much bigger then the rest of the black males. A proper Interview would have given Trial Counsel A better view of the States Witness demeanor, but trial Counsel failed to perform such critical duties which had violated Petitioner's 6th Amendment Constitutional Right to Effective Assistance of Counsel guareented under the State and Federal Constitution.

23. (e) GROUND Five. Petitioner Alleges that trial Counsel Failed to Present Mitigating Evidence during the sentencing hearing which would have Rendered A more lienant sentence From trial Judge and to show Good character of Petitioner.

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Petitioner Alleges that trial counsel Failed to present Mitigating Evidence during Sentencing which he had Advised Counsel to do and Trial Counsel Refused to present Mitigating Testimony From the Petitioner's Church Members, School Mentor, youth Counselor, Parents (Mother & Father) Fiancee, child hood friends, and Petitioner's Supervisor's as well as Employer so that trial Judge can show Lienency towards Petitioner's Sentencing because State's Attorney Presented Evidence to show Petitioner's Bad Character which Rendered unfairness in violation of the Petitioner's Constitutional Rights to the State & Federal Constitution in violation of the 6th & 14th Amendment to Effectiveness of Counsel.

23. [F] GROUND SIX. Petitioner Alleges that Trial Counsel Failed to File a Motion for a Phycological Evaluation for the States Key Witness After Knowing Witness had a Inconsistent Statement Testimony during Preliminary Hearing.

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The Petitioner Alleges that trial Counsel Failed to File a Motion for a phycological Evaluation for the states key witness once it was discovered that the states witness Testimony during the Preliminary Hearing shawed Inconsistancy which Trial Counsel Failed to Investigate And Petitioner Requested for this Evaluation to be conducted by Filing a Motion with the Courts but was told "NO" by Trial Counsel. This Rendered INEffectiveness of Councel on the Trial Attorney's Part because this key witness was the State's only witness to a Murder Conviction And Petitioner was not Allowed to Confront this witness by Questioning in Violation of Petitioner's 6th Amendment Right to Confrontation of the Accuser and the 14th Amendment to the State & Federal Const. to Due Process And Counsel's Performance Rendered INEffectiveness, denying Petitioner of his Federal Constitutional Right.

(d) Ground 7: Petitioner Alleges that trial counsel Rendered Ineffective Assistance of counsel, when counsel advised him to accept the revised plea, despite his protestations of innocence on advice of an attorney who was improperly motivated due to petitioners inability to pay retained attorney.

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

The defense Attorney purposely advised petitioner to accept plea negotiations based on petitioners inability to pay retained fee(s) of 10,000.00. Petitioner alleges that defense counsel was imporperly motivated. Defense Counsel induced guilty plea(s) based soley defendants inability to pay Counsels fee, because of Counsels Coersion and this deception forced petitioner to plead guilty, which is a violation of petitioners Sixth Amendment and fourteenth Amendment right(s).

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

EXECUTED at Ely State Prison, P.O. Box #1989

on the 24 day of March, 2015.

Signature of Petitioner

VERIFICATION

Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true and correct of his own personal knowledge, except as to those matters based on information and belief, and to those matters, he believes them to be true.

Signature of Petitioner

Jamal D. Hendrix
Attorney for Petitioner
PRO-SE LITIGANT
BROOKLYN, NYC

13.

CERTIFICATE OF SERVICE

I, Frank Hearring, hereby certify pursuant to FRCP 5(b) that on this 24 day of March, 2015, I did serve a true and correct copy of the foregoing, Petition For Writ of Habeas Corpus (Post-Conviction) Relief,

by giving it to a prison guard at Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, addressed to the following:

Steven B. Wolfson
200 Lewis Avenue 3rd Floor
Las Vegas N.V. 89155

Office of the Attorney General
100. N. Carson Street
Carson City NV 89701-4717

Signed,

Defendant Frank Hearring #1006445
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding For A

(Motion) Petition For Writ of Habeas Corpus (Post-Conviction) Relief
(Title of Document)

filed in District Court Case No. C-13-291159-1

☑ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-OR-

B. For the administration of a public program or
for an application for a federal or state grant.

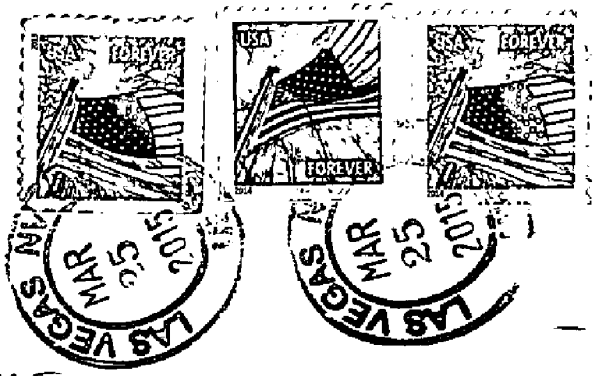
_____

Jack Nunez
(Signature)

03-24-15
(Date)

15.

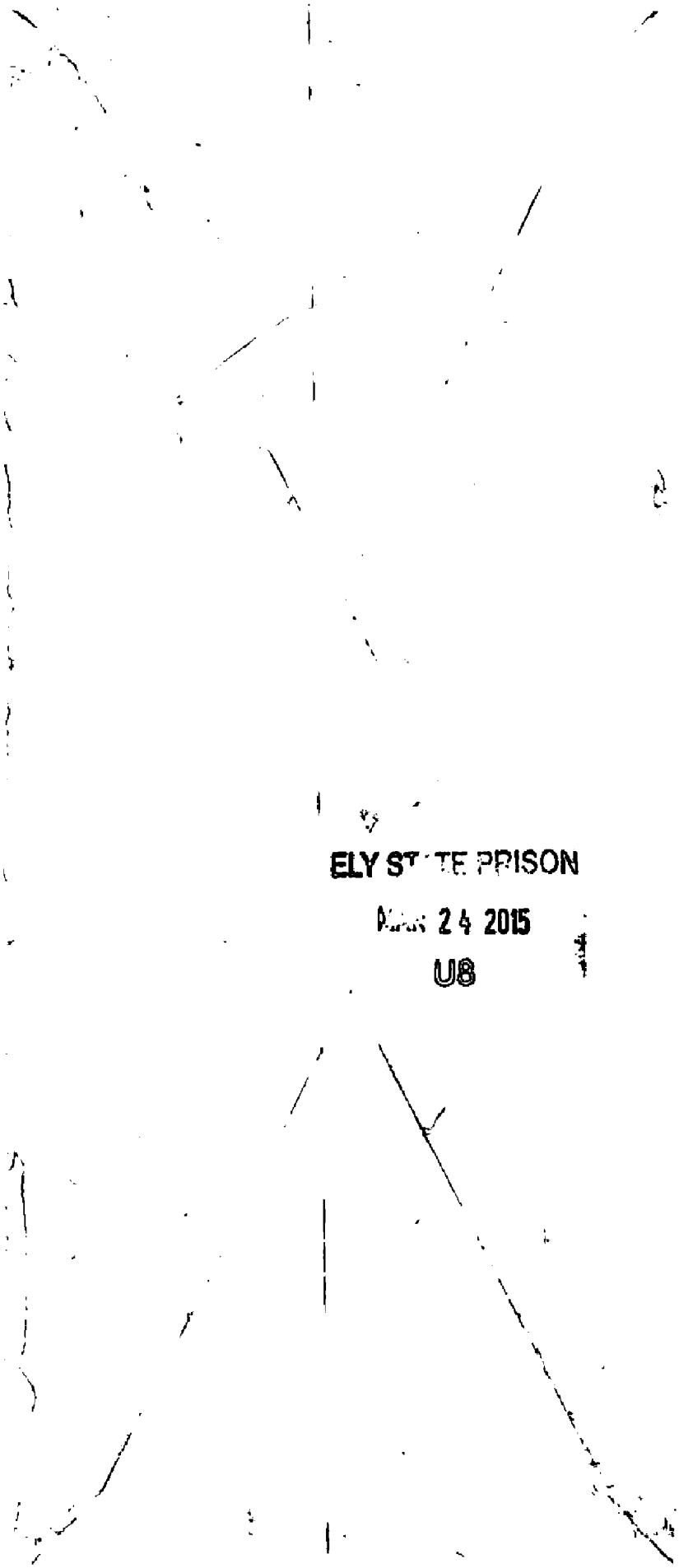
Frank Hearring #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301



Steven D. Grierson
200 Lewis Avenue 3rd floor
Las Vegas, NV 89155

318

891013500


ELY STATE PRISON
MAR 24 2015
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CLERK OF THE COURT

DA
PP

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

FRANK Hearring
Petitioner,

vs.

State of Nevada
Respondent.

Case No. C-13-291159-1

Dept. No. 20

Docket No.

6-16-15
8:30am

REQUEST FOR RECORDS/COURT CASE DOCUMENTS

COMES NOW, Petitioner, FRANK Hearring, pro per, and respectfully moves this Honorable Court for an Order granting Petitioner a copy of any and all Court records, including but not limited to, Pre-Trial Motions and Transcripts of any Hearings on same, Pre-Trial Writs of Habeas Corpus and Transcripts of any Hearings on same, any Evidentiary Hearings and Transcripts of same, Trial Transcripts, any Post-Trial Petitions or Motions, and any and all Habeas Corpus or other Post-Conviction Petitions and Transcripts of same.

POINTS AND AUTHORITIES

In **Griffin v. Illinois**, 351 U.S. 12, 76 :S. Ct. 585, 100 L.Ed. 891, the United States Supreme Court held that it violates the due process and equal protection clauses of the Fourteenth Amendment when a state denies an indigent defendant the transcripts necessary for his appeal. The Court held:

> "There can be no equal justice where the kind of a trial a man gets depends upon the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts. * * * Plainly the ability to pay costs in advance bears no rational relationship to the defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial."

This ***Griffin*** principle has been applied in other U.S. Supreme cases as well. See **Burns v. Ohio**, 360 U.S. 252, 79 :S. Ct. 1164, 3 L.Ed. 1209(Applicable to state collateral proceedings). Also, **Smith v. Bennett**, 365 U.S. 708, 81 :S. Ct. 895, 6 L.Ed. 39(No requirement of paying

statutory filing fees). The Nevada Supreme Court has also adopted the ***Griffin*** principle to Nevada. See **State v. Eighth Judicial District Court**, 396 P. 2d 680.

CONCLUSION

Based upon the above stated points and authorities and arguments, Petitioner respectfully requests this Court to Grant this Request.

DATED this 18 day of May, 2015.

Respectfully submitted,

Petitioner

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner in the foregoing Notice of Motion and Request For Records/Court Case Documents on this 18 day of May, 2015, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

Steven B. Wolfson
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155

Carl Arnold
1148 S. Maryland Parkway
Las Vegas, NV 89104

DATED this 18 day of May, 2015.

Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, FRANK Hearring, NDOC# 1006645,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE ATTACHED DOCUMENT ENTITLED Notice for Request for Records/court case Documents,

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 18 DAY OF May, 2015.

SIGNATURE: Frank Hearring

INMATE PRINTED NAME: FRANK Hearring

INMATE NDOC # 1006645

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

5·18·15
4:44pm

To Whom it May Concern:

The reason for this Motion to present all Documents is because I've Requested to have a copy of My Pre-Sentencing Report from Mr. Carl Arnold on several different occations, however to no Avail.

May I please have all Documentation of Case # C-13-291EC9-1 Sent me please including My Pre-Sentencing Report.

Most Sincerely
And Respectfully,

Jack Hamm
#1006445

FRANK Hearring #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301

Steven D. Grierson
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155

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25

CLERK OF THE COURT

MC
DA
PP

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Clark

Frank Hearring
Petitioner,

v.

State of Nevada
Respondent.

Case No. C-13-291159-1

Dept. No. 20

Docket No. _____

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Respondent, Steven B. Wolfson

Clark, County District Attorney, and Carl Arnold

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 16 day of June, 20 15 at the hour of ~~9:00~~ 8:30am O'clock A.M., or as soon thereafter as the parties may be heard, the undersigned will bring on for hearing the attached **REQUEST FOR RECORDS/COURT CASE DOCUMENTS**, before the above-entitled Court, at the Clark County Courthouse, in Las Vegas, Nevada, in Department No. 20, thereof.

DATED this 18 day of May, 20 15.

Respectfully submitted,

Petitioner
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

RECEIVED
MAY 26 2015
CLERK OF THE COURT

RECEIVED
MAY 22 2015
CLERK OF THE COURT

OPWH

FILED

2015 MAY 29 P 1:34

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK HEARING,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: C-13-291159-1
Dept No: XX

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on May 22, 2015. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

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

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 4th day of August, 2015, at the hour of 8:30 o'clock for further proceedings.

IT IS SO ORDERED THIS 26 day of May, 2015.

C-13-291159-1
OPWH
Order for Petition for Writ of Habeas Corpt
4460288

District Court Judge
ERIC JOHNSON

RECEIVED
MAY 29 2015
CLERK OF THE COURT

Electronically Filed
07/31/2015 10:37:40 AM

CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

STATE'S RESPONSE TO DEFENDANT'S POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: AUGUST 4, 2015
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN OWENS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Post-Conviction Petition for Writ of Habeas Corpus.

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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///

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On July 15, 2013, the State charged Frank Hearring (hereinafter "Defendant") by way of Information with the following: Count 1 – Murder With Use of a Deadly Weapon; Count 2 – Attempt Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-Felon.

On October 7, 2013, pursuant to negotiations, Defendant entered into a Guilty Plea Agreement (hereinafter "GPA") with the State, wherein he agreed to plead guilty to one count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea canvass on the record and thereafter accepted Defendant's plea. An Amended Information was filed in open court reflecting the charge contained in the GPA.

On December 10, 2013, Defendant was present in court for sentencing, and was sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of 96 months for the deadly weapon enhancement. Defendant received 293 days credit for time served. On December 30, 2013, the court entered its Judgment of Conviction. Defendant did not file a direct appeal.

On May 15, 2014, Defendant filed a Motion to Withdraw Counsel, seeking removal of his court-appointed attorney, Carl Arnold, Esq. On June 12, 2014, the court granted the motion.

On November 12, 2014, Defendant filed a Motion for Appointment of Counsel and Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On December 4, 2014, the court denied the motion, finding the request for evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

On December 10, 2014, Defendant filed a Motion to Withdraw Plea. On December 22, 2014, the State filed an Opposition. On January 6, 2015, the district court denied Defendant's Motion, finding that Defendant's claims of involuntariness were belied by the record and his

claims of ineffectiveness were without merit. The district court filed its Order on January 16, 2015.

On March 30, 2015, Defendant filed the instant post-conviction Petition for Writ of Habeas Corpus. The State responds as follows and requests that Defendant's Petition be denied.

ARGUMENT

In his Petition, Defendant raises a variety of ineffective assistance of counsel claims. However, Defendant's Petition is untimely, and he fails to demonstrate good cause and prejudice to overcome this procedural bar.

I. DEFENDANT'S PETITION IS UNTIMELY

Defendant's Petition was not filed within one year after the filing of the Judgment of Conviction, thus, his Petition is time-barred. Pursuant to NRS 34.726(1):

> 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 of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Here, Defendant's Judgment of Conviction was filed on December 30, 2013, and Defendant did not file a direct appeal. Therefore, Defendant had until December 30, 2014, to file a timely Petition. However, Defendant's instant Petition was not filed until March 30, 2015, several months after the one-year time frame expired. Thus, since Defendant's Petition is untimely, this Court must dismiss the Petition as time-barred under NRS 34.726.

II. DEFENDANT FAILS TO DEMONSTRATE GOOD CAUSE AND PREJUDICE TO OVERCOME THE PROCEDURAL BAR

Defendant attempts to allege good cause by stating that his "reasons for any delays after the one year deadline was because a Motion to Withdraw Guilty Plea was filed." Pet. 6.

To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. Under the first requirement, "a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, Dep't Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989). "An impediment external to the defense may be demonstrated by a showing 'that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable.'" Id. (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639 (1986) (citations and quotations omitted)). Clearly, any delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a). Once a petitioner has established cause, he must show actual prejudice resulting from the errors of which he complains, i.e., "a petitioner must show that errors in the proceedings underlying the judgment worked to the petitioner's actual and substantial disadvantage." State v. Huebler, 128 Nev. ___, ___, 275 P.3d 91, 94-95 (2012) (citing Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 716 (1993)).

Defendant fails to demonstrate good cause to overcome the procedural bar. Simply because he was waiting for his pending Motion to Withdraw Guilty Plea is not an impediment

external to the defense that prevented him from complying with the one-year time bar. In fact, he raised some similar issues in his Motion, so he was clearly aware of these issues and could have raised them in a timely Petition. Hathaway, 119 Nev. at 252, 71 P.3d at 506. Moreover, Defendant fails to even allege actual prejudice. Instead, Defendant raises a variety of claims, generally arguing that his counsel was ineffective for not interviewing witnesses, presenting mitigating evidence, and filing motions. However, these claims are simply bare allegations, as Defendant fails to explain what relevant information would have been obtained and how it would have caused him to plead not guilty and pursue a trial. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Further, Defendant re-alleges claims from his Motion to Withdraw Guilty Plea, which this court already denied as without merit. Thus, Defendant fails to show that he would suffer any actual prejudice as a result of denying his procedurally barred Petition. Accordingly, Defendant fails to demonstrate good cause and prejudice to overcome the procedural bar.

III. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING

Defendant also requests an evidentiary hearing. A defendant is entitled to an evidentiary hearing only if his petition is supported by specific factual allegations, which, if true, would entitle her to relief. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994). "The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required." NRS 34.770(1). Further, "[i]f the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing." NRS 34.770(2).

Here, as demonstrated above, Defendant's Petition is procedurally barred, thus he fails to present specific factual allegations that would entitle him to relief. Marshall, 110 Nev. at 1331, 885 P.2d at 605. As such, all facts necessary to rule on Defendant's Petition are set forth in the record and in the State's responses, thus there is no need to expand the record by holding an evidentiary hearing. Therefore, Defendant's request for an evidentiary hearing should be denied.

CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Petition be denied.

DATED this 31st day of July, 2015.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____ FOR OWENS
STEVEN OWENS
Chief Deputy District Attorney
Nevada Bar #004352

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 31st day of July, 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING #1006445
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301

BY _____
M. CRAWFORD
Secretary for the District Attorney's Office

13F08177X/BS/mc/L4

Electronically Filed
09/14/2015 10:57:53 AM

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: AUGUST 4, 2015
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable ERIC JOHNSON, District Judge, on the 4th day of August, 2015, the Petitioner not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through STEVEN S. OWENS, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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FINDINGS OF FACT, CONCLUSIONS OF LAW

On July 15, 2013, the State charged Frank Hearring ("Hearring") by way of Information with the following: Count 1 – Murder With Use of a Deadly Weapon; Count 2 – Attempt Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-Felon.

On October 7, 2013, pursuant to negotiations, Hearring entered into a Guilty Plea Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea canvass on the record and thereafter accepted Hearring's plea. An Amended Information was filed in open court reflecting the charge contained in the GPA.

On December 10, 2013, Hearring was sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of 96 months for the deadly weapon enhancement. Hearring received 293 days credit for time served. Judgment of Conviction was filed on December 30, 2013.Hearring did not file a direct appeal.

On May 15, 2014, Hearring filed a Motion to Withdraw Counsel. On June 12, 2014, the Motion was granted.

On November 12, 2014, Hearring filed a Motion for Appointment of Counsel and Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On December 4, 2014, the court denied the Motion, finding the request for evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

On December 10, 2014, Hearring filed a Motion to Withdraw Plea. On December 22, 2014, the State filed an Opposition. On January 6, 2015, the district court denied Hearring's Motion. The district court filed its Order on January 16, 2015.

On March 30, 2015, Hearring filed a Pro Per post-conviction Petition for Writ of Habeas Corpus. On July 31, 2015, the State filed its Response. A hearing was held on August 4, 2015.

///

This Court finds that Hearring's Petition for Writ of Habeas Corpus is time barred with no good cause shown for delay. Pursuant to NRS 34.726(1):

> 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 of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar prescribed by NRS 34.726 begins to run from the date the Judgment of Conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Hearring's Judgment of Conviction was filed on December 30, 2013, and he did not file a direct appeal. Therefore, Hearring had until December 30, 2014, to file a timely Petition. Hearring did not file his Petition until March 30, 2015. This Court finds this is over one year after the date of the Judgement of Conviction and in excess of the one-year time frame.

This Court finds Hearring has not shown good cause to excuse the untimely filing. Hearring alleges good cause by stating that his "reasons for any delays after one year deadline was because a Motion to Withdraw Guilty Plea was filed". To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. Under the first requirement, "a petitioner must show that an

impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (citing Pellegrini, 117 Nev. at 886-87, 34 P.3d at 537; Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, Dep't Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989). "An impediment external to the defense may be demonstrated by a showing 'that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable.'" Id. (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639 (1986) (citations and quotations omitted)). Clearly, any delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a). Once a petitioner has established cause, he must show actual prejudice resulting from the errors of which he complains, i.e., "a petitioner must show that errors in the proceedings underlying the judgment worked to the petitioner's actual and substantial disadvantage." State v. Huebler, 128 Nev. Adv. Rep. 19, ___, 275 P.3d 91, 94-95 (2012) (citing Hogan v. Warden, 109 Nev. 952, 959–60, 860 P.2d 710, 716 (1993)).

This Court finds that simply waiting for a pending Motion to Withdraw a Guilty Plea is not an impediment external to the defense that prevented Hearring from complying with the one-year time bar. Additionally, Hearring raised some similar issues in his Motion, so he was clearly aware of these issue and could have raised them in a timely Petition. Hathaway, 119 Nev. at 252, 71 P.3d at 506. Additionally, this Court finds that Hearring has failed to even allege actual prejudice. Hearring raises a variety of claims, generally arguing that his counsel was ineffective for not interviewing witnesses, presenting mitigating evidence, and filings. However, this Court finds these claims to be simply bare allegations as Hearring fails to explain what relevant information would have been obtained and how it would have caused him to plead not guilty and pursue a trial. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Additionally, Hearring re-alleges claims from his Motion to Withdraw Guilty Plea, which this Court has already denied without merit. Thus, this Court finds that Hearring has failed to show that he would suffer any actual prejudice as a result of the denial of his

Petition. Accordingly, this Court finds Hearring failed to demonstrate good cause and prejudice to overcome the procedural bar.

Additionally, this Court finds that Hearring is not entitled to an evidentiary hearing. A defendant is entitled to an evidentiary hearing only if his petition is supported by specific factual allegations, which, if true, would entitle her to relief. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994). "The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required." NRS 34.770(1). Further, "[i]f the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing." NRS 34.770(2). Since Hearring's Petition is procedurally time-barred and he has failed to demonstrate good cause or prejudice to overcome the time-bar, this Court finds that it is unnecessary to expand the record, thus, Hearring's request for an evidentiary hearing is denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 10 day of ~~August~~ September, 2015.

DISTRICT JUDGE
ERIC JOHNSON

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY For OW
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

///

///

CERTIFICATE OF SERVICE

I certify that on the 24th day of August, 2015, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

FRANK HEARRING #1006445
ELY STATE PRISON
P.O. Box 1989
Ely, NV 89301

BY _____
M. CRAWFORD
Secretary for the District Attorney's Office

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CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

FRANK HEARRING, JR.,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-13-291159-1

Dept No: XX

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEASE TAKE NOTICE that on September 14, 2015, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this 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. This notice was mailed on September 21, 2015.

STEVEN D. GRIERSON, CLERK OF THE COURT

Barbara J. Gutzmer

Barbara J. Gutzmer, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 21 day of September 2015, I placed a copy of this Notice of Entry in:

☑ The bin(s) located in the Regional Justice Center of:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:
Frank Hearring, Jr. # 1006445
P.O. Box 1989
Ely, NV 89301

Barbara J. Gutzmer

Barbara J. Gutzmer, Deputy Clerk

Electronically Filed
09/14/2015 10:57:53 AM

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: AUGUST 4, 2015
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable ERIC JOHNSON, District Judge, on the 4th day of August, 2015, the Petitioner not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through STEVEN S. OWENS, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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FINDINGS OF FACT, CONCLUSIONS OF LAW

On July 15, 2013, the State charged Frank Hearring ("Hearring") by way of Information with the following: Count 1 – Murder With Use of a Deadly Weapon; Count 2 – Attempt Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-Felon.

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///

This Court finds that Hearring's Petition for Writ of Habeas Corpus is time barred with no good cause shown for delay. Pursuant to NRS 34.726(1):

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Hearring's Judgment of Conviction was filed on December 30, 2013, and he did not file a direct appeal. Therefore, Hearring had until December 30, 2014, to file a timely Petition. Hearring did not file his Petition until March 30, 2015. This Court finds this is over one year after the date of the Judgement of Conviction and in excess of the one-year time frame.

This Court finds Hearring has not shown good cause to excuse the untimely filing. Hearring alleges good cause by stating that his "reasons for any delays after one year deadline was because a Motion to Withdraw Guilty Plea was filed". To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the petition is dismissed as untimely. Under the first requirement, "a petitioner must show that an

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This Court finds that simply waiting for a pending Motion to Withdraw a Guilty Plea is not an impediment external to the defense that prevented Hearring from complying with the one-year time bar. Additionally, Hearring raised some similar issues in his Motion, so he was clearly aware of these issue and could have raised them in a timely Petition. Hathaway, 119 Nev. at 252, 71 P.3d at 506. Additionally, this Court finds that Hearring has failed to even allege actual prejudice. Hearring raises a variety of claims, generally arguing that his counsel was ineffective for not interviewing witnesses, presenting mitigating evidence, and filings. However, this Court finds these claims to be simply bare allegations as Hearring fails to explain what relevant information would have been obtained and how it would have caused him to plead not guilty and pursue a trial. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Additionally, Hearring re-alleges claims from his Motion to Withdraw Guilty Plea, which this Court has already denied without merit. Thus, this Court finds that Hearring has failed to show that he would suffer any actual prejudice as a result of the denial of his

Petition. Accordingly, this Court finds Hearring failed to demonstrate good cause and prejudice to overcome the procedural bar.

Additionally, this Court finds that Hearring is not entitled to an evidentiary hearing. A defendant is entitled to an evidentiary hearing only if his petition is supported by specific factual allegations, which, if true, would entitle her to relief. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994). "The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required." NRS 34.770(1). Further, "[i]f the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss the petition without a hearing." NRS 34.770(2). Since Hearring's Petition is procedurally time-barred and he has failed to demonstrate good cause or prejudice to overcome the time-bar, this Court finds that it is unnecessary to expand the record, thus, Hearring's request for an evidentiary hearing is denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 10 day of September, 2015.

DISTRICT JUDGE
ERIC JOHNSON

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY for OW
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

///

///

CERTIFICATE OF SERVICE

I certify that on the 24th day of August, 2015, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

FRANK HEARRING #1006445
ELY STATE PRISON
P.O. Box 1989
Ely, NV 89301

BY _____
M. CRAWFORD
Secretary for the District Attorney's Office

13F08177X/ED/mc/L4

No. C-13-291159-1

Dept. No. XX

Electronically Filed
10/06/2015 11:36:40 AM

CLERK OF THE COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

FRANK Hearring
Petitioner/Plaintiff,

v.

State OF Nevada
Respondent/Defendant.

NOTICE OF APPEAL

Notice is hereby given that FRANK Hearring, Petitioner/Defendant above named, hereby appeals to the Supreme Court of Nevada from the final judgment/order Petition For Writ OF HABEAS Corpus (Post Conviction) entered in this action on the 1st day of October, 2015.

Dated this 1st day of October, 2015.

Appellant
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

RECEIVED
51 OCT 06 2015
CLERK OF THE COURT

4

CERTIFICATE OF SERVICE BY MAIL

I, FRANK Hearring, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 1st day of October, 20 15, I served a true and correct copy of the above-entitled Notice OF Appeal postage prepaid and addressed as follows:

Carl Arnold
1148 S. Maryland Pkwy
Las Vegas, NV 89104

Steven Wolfson
District Attorney
200 Lewis Ave
Las Vegas, NV 89155

Signature Frank Hearring

Print Name FRANK, Hearring
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

AFFIRMATION PURSUANT TO NRS 239B.030

I, Frank Hearring, NDOC# 1006445,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE ATTACHED DOCUMENT ENTITLED Notice Of Appeal For Petition For Writ Of Habeas Corpus (Post-Conviction)

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

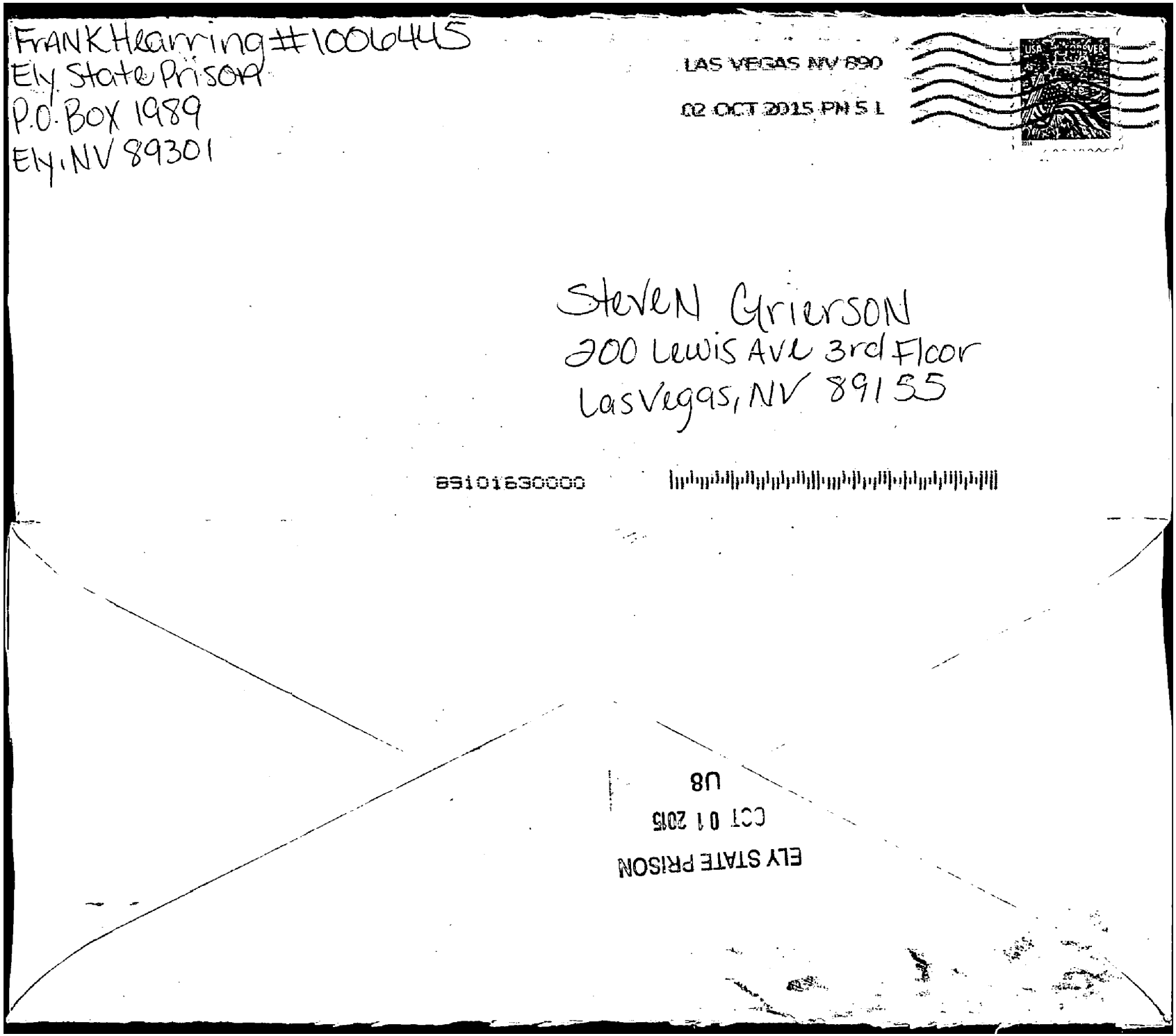
DATED THIS 1st DAY OF October, 2015.

SIGNATURE: Frank Hearring

INMATE PRINTED NAME: Frank Hearring

INMATE NDOC # 1006445

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


Frank Hearring #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301
LAS VEGAS NV 890
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Steven Grierson
200 Lewis Ave 3rd Floor
Las Vegas, NV 89155
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ELY STATE PRISON
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CLERK OF THE COURT

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

STATE OF NEVADA,

Plaintiff(s),

vs.

FRANK HEARRING, JR. aka FRANK HEARRING,

Defendant(s),

Case No: C-13-291159-1

Dept No: XX

CASE APPEAL STATEMENT

1. Appellant(s): Frank Hearring

2. Judge: Eric Johnson

3. Appellant(s): Frank Hearring

Counsel:

Frank Hearring #1006445
P.O. Box 1989
Ely, NV 89301

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.

Las Vegas, NV 89101
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
   Permission Granted: N/A

   Respondent(s)'s Attorney Licensed in Nevada: Yes
   Permission Granted: N/A

6. Appellant Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: July 15, 2013

10. Brief Description of the Nature of the Action: Criminal

    Type of Judgment or Order Being Appealed: Post-Conviction Relief

11. Previous Appeal: No

    Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 7 day of October 2015.

Steven D. Grierson, Clerk of the Court

Mary Kielty

Mary Kielty, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Frank Hearring

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CLERK OF THE COURT

MC
PP
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IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Clark

Frank Hearring,
Petitioner,

vs.

State OF Nevada,
Respondent.

Case No. C-13-291159-1

Dept. No. XX

Docket No.

11/19/15 @ 9:00am

REQUEST FOR RECORDS/COURT CASE DOCUMENTS

COMES NOW, Petitioner, Frank Hearring, pro per, and respectfully moves this Honorable Court for an Order granting Petitioner a copy of any and all Court records, including but not limited to, Pre-Trial Motions and Transcripts of any Hearings on same, Pre-Trial Writs of Habeas Corpus and Transcripts of any Hearings on same, any Evidentiary Hearings and Transcripts of same, Trial Transcripts, any Post-Trial Petitions or Motions, and any and all Habeas Corpus or other Post-Conviction Petitions and Transcripts of same.

POINTS AND AUTHORITIES

In **Griffin v. Illinois**, 351 U.S. 12, 76 :S. Ct. 585, 100 L.Ed. 891, the United States Supreme Court held that it violates the due process and equal protection clauses of the Fourteenth Amendment when a state denies an indigent defendant the transcripts necessary for his appeal. The Court held:

> "There can be no equal justice where the kind of a trial a man gets depends upon the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts. * * * Plainly the ability to pay costs in advance bears no rational relationship to the defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial."

This *Griffin* principle has been applied in other U.S. Supreme cases as well. See **Burns v. Ohio**, 360 U.S. 252, 79 :S. Ct. 1164, 3 L.Ed. 1209(Applicable to state collateral proceedings). Also, **Smith v. Bennett**, 365 U.S. 708, 81 :S. Ct. 895, 6 L.Ed. 39(No requirement of paying

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statutory filing fees). The Nevada Supreme Court has also adopted the ***Griffin*** principle to Nevada. See **State v. Eighth Judicial District Court**, 396 P. 2d 680.

CONCLUSION

Based upon the above stated points and authorities and arguments, Petitioner respectfully requests this Court to Grant this Request.

DATED this 14 day of October, 2015

Respectfully submitted,

Petitioner

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner in the foregoing Notice of Motion and Request For Records/Court Case Documents on this 14 day of October, 2015, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

Carl Arnold
1148 S. Maryland PKWy
Las Vegas, NV 89104

Steven B. Wolfson
District Attorney
200 Lewis Ave
Las Vegas, NV 89155

DATED this 14 day of October, 2015.

Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, Frank Hearring, NDOC# 1006445,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE ATTACHED DOCUMENT ENTITLED Request For Records/ Court Case Documents,

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 14 DAY OF October, 2015.

SIGNATURE: Frank Hearring

INMATE PRINTED NAME: Frank Hearring

INMATE NDOC # 1006445

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

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CLERK OF THE COURT

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IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Clark

Frank Hearring
Petitioner,
v.
State of Nevada
Respondent.

Case No. C-13-291159-1
Dept. No. XX
Docket No.

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Respondent, Steven B. Wolfson
Clark, County District Attorney, and Carl Arnold

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 19 day of November, 2015, at the hour of 9:00 O'clock A.M., or as soon thereafter as the parties may be heard, the undersigned will bring on for hearing the attached **REQUEST FOR RECORDS/COURT CASE DOCUMENTS**, before the above-entitled Court, at the Clark County Courthouse, in Las Vegas, Nevada, in Department No. XX, thereof.

DATED this 14 day of October, 2015.

Respectfully submitted,

Petitioner
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

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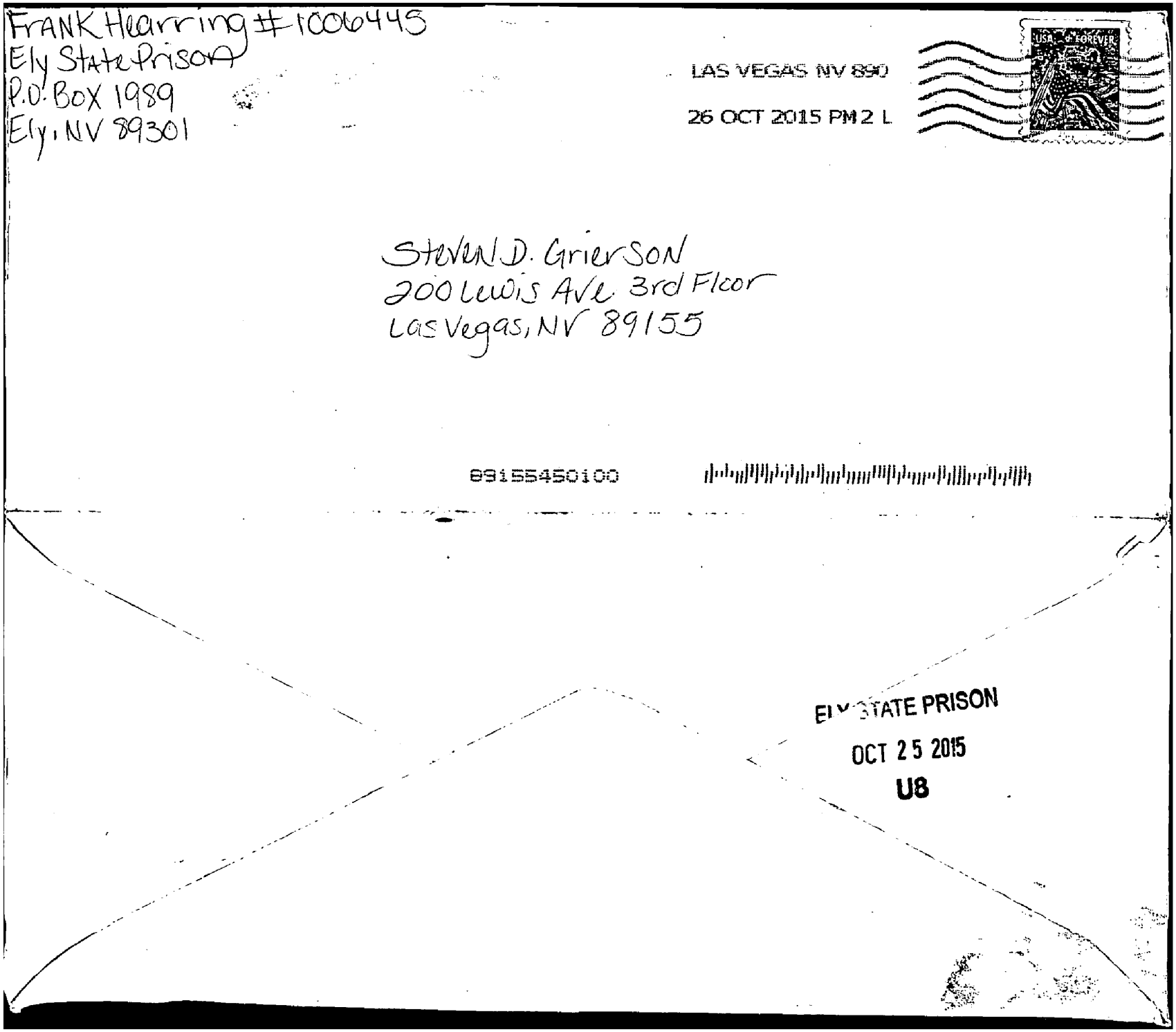
FRANK Hearring #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301
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STEVEN D. GRIERSON
200 Lewis Ave. 3rd Floor
Las Vegas, NV 89155
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CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN T. JONES
Chief Deputy District Attorney
Nevada Bar #009598
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S REQUEST FOR RECORDS/COURT CASE DOCUMENTS

DATE OF HEARING: NOVEMBER 19, 2015
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 19th day of November, 2015, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through JOHN T. JONES, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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///

IT IS HEREBY ORDERED that the Defendant's Request for Records/Court Case Documents, shall be, and it is GRANTED IN PART/DENIED IN PART - it is GRANTED as to the request for the Pre-sentence Report and DENIED WITHOUT PREJUDICE as to other documents without specific requests.

12-2-15

DISTRICT JUDGE
ERIC JOHNSON

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY
JOHN T. JONES
Chief Deputy District Attorney
Nevada Bar #009598

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 3rd day of December, 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301

BY
M. CRAWFORD
Secretary for the District Attorney's Office

13F08177X/mc/L4

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PP
DA

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CLERK OF THE COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

FRANK Hearring
Petitioner,

vs.

State of Nevada
Respondent.

Case No. C-13-291159-1

Dept. No. XX

Docket No.

REQUEST FOR RECORDS/COURT CASE DOCUMENTS

COMES NOW, Petitioner, FRANK Hearring, pro per, and respectfully moves this Honorable Court for an Order granting Petitioner a copy of any and all Court records, including but not limited to, Pre-Trial Motions and Transcripts of any Hearings on same, Pre-Trial Writs of Habeas Corpus and Transcripts of any Hearings on same, any Evidentiary Hearings and Transcripts of same, Trial Transcripts, any Post-Trial Petitions or Motions, and any and all Habeas Corpus or other Post-Conviction Petitions and Transcripts of same.

POINTS AND AUTHORITIES

In **Griffin v. Illinois**, 351 U.S. 12, 76 :S. Ct. 585, 100 L.Ed. 891, the United States Supreme Court held that it violates the due process and equal protection clauses of the Fourteenth Amendment when a state denies an indigent defendant the transcripts necessary for his appeal. The Court held:

> "There can be no equal justice where the kind of a trial a man gets depends upon the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts. * * * Plainly the ability to pay costs in advance bears no rational relationship to the defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial."

This *Griffin* principle has been applied in other U.S. Supreme cases as well. See **Burns v. Ohio**, 360 U.S. 252, 79 :S. Ct. 1164, 3 L.Ed. 1209(Applicable to state collateral proceedings). Also, **Smith v. Bennett**, 365 U.S. 708, 81 :S. Ct. 895, 6 L.Ed. 39(No requirement of paying

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CLERK OF THE COURT

statutory filing fees). The Nevada Supreme Court has also adopted the *Griffin* principle to Nevada. See State v. Eighth Judicial District Court, 396 P. 2d 680.

CONCLUSION

Based upon the above stated points and authorities and arguments, Petitioner respectfully requests this Court to Grant this Request.

DATED this 15 day of January, 2016.

Respectfully submitted,

Petitioner

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner in the foregoing Notice of Motion and Request For Records/Court Case Documents on this 15 day of January, 2016, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

Carl Arnold
1145 S. Maryland Pkwy
Las Vegas, NV 89104

Steven B. Wolfson
District Attorney
200 Lewis Ave
Las Vegas, NV 89155

DATED this 15 day of January, 2016.

Petitioner

AFFIRMATION PURSUANT TO NRS 239B.030

I, Frank Hearring, NDOC# 1006445,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE ATTACHED DOCUMENT ENTITLED Request For Records/ Court Case Documents,

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 15 DAY OF January, 2016.

SIGNATURE: Frank Hearring

INMATE PRINTED NAME: Frank Hearring

INMATE NDOC # 1006445

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

JAN 5 2016
1:35pm

I, FRANK Hearring Jr #1006445 have Attached a Notorized copy Titled: (Brady Material) Pages (1) thrugh (3) Numbered (1) through (12) Requesting that The State of Nevada relinquish (All) Material related to CASE # C-13-291159-1 in order for the defendant to thoroughly and adequately appeal my Murder Conviction, (Second Degree Murder.)

FRANK Hearring

State of Nevada
County of White Pine

This instrument was acknowledged before me on January 15, 2016 by Frank Hearring.

WILLIAM MOORE
Notary Public - State of Nevada
Appointment Recorded in White Pine County
No: 14-13242-17 - Expires February 3, 2018

Notary

(1)

v. Brady requests

Based on the foregoing law and analysis, the Defendant requests that the following Brady material be produced by the State:

1. All memorandum, notes, reports associated with any and all initial investigations and follow up investigations.

2. Disclosures of any and all compensation, express or implied promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses received[1] in exchange for their cooperation with this prosecution, including, but not limited to, any information concerning any expectation[2] of any benefit[3] of any kind to be received, or already received, by any witness presented by the State[4]. This also includes, but is not limited to, any express or implied promise made to any witness to provide counseling and/or treatment as a result of their participation in the prosecution of this case.

3. Any information on any criminal history or any material or information which relates to specific instances of misconduct of any material witness in the case from which it could be inferred that the person is untruthful and which may be or may lead to admissible evidence[5]. This is to include, but is not limited to, any felonies, misdemeanors, out-of-state arrests and convictions, outstanding arrest warrants or bench warrants, and cases which were dismissed or not pursued by the prosecuting agency or any other information that would go to the issue of credibility and bias, whether or not the information is admissible by the rules of evidence.

---

[1] State v. Bennett, 119 Nev. Nev. 589, 603 (2003)(evidence that the State paid witness as an informant on several occasions)

[2]The law is clear that it is the witness' own anticipation of reward, not the intent of the prosecutor, which gives rise to the necessity of disclosure. Moore v. Kemp, 809 F.2d 702, 726, 729-30 (11th Cir.), cert. denied, 481 U.S. 1054 (1987); Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

[3] Evidence of benefits to State witnesses is not limited to agreements made in relation to the specific case at issue. Jimenez v. State, 112 Nev. 610, 622-23 (1996);) Information about benefits to an important State witness constitutes Brady material, even though no explicit deal was outlined. Browning v. State, 120 Nev. 347, 369 (2004

[4]Agreements need not be express or formal arrangements, and understandings merely implied, suggested, insinuated, or inferred to be of possible benefit to witness constitutes proper material for impeachment. Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

[5]A defendant is entitled to material in the government witness' confidential probation file that bears on the credibility of that witness. United States v. Strifler, 851 F.2d 1197, 1201 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989).

4. Disclosures of any and all statements tangible or intangible, recorded or unrecorded, made by any State witness, or any other person, at any time that are in any manner inconsistent with the written and/or recorded statements previously provided to the defense[6]. This includes material or information which would tend to exculpate the Defendant of the charges, might mitigate the punishment should he be convicted[7], or may lead to information which would tend to impeach or affect the credibility of a State witness[8], including, but not limited to, any oral statements made to the prosecutor or any other State employee during pre-trial conferences or other investigative meetings.

5. Any photographs of any lineups done or any other photographs in the case, not already given in discovery. This includes any photos taken at any medical exams as well as photos taken by law enforcement.

7. Any 911 recordings to include the relevant dispatch log.

[6]State violated Brady when it failed to inform the defense of prior inconsistent statements by a key prosecution witness. Lay v. State, 116 Nev. 1185, 1199 (2000); State acted improperly by failing to disclose statements in its possession of evidence contradictory to another State witness . Rudin v. State, 120 Nev. 121, 139 (2004).

[7] State v. Bennett, 119 Nev. 589, 602 (2003) (admission of a co-conspirator to a jailhouse informant which could have served as mitigating evidence).

[8]Brady violation where the State failed to turn over a police report where the eyewitness was initially uncertain in their identification of the Defendant. Norris v. Slayton, 540 F.2d 1241, 1244 (4th Cir. 1976); State had a duty to disclose when , during trial, a key prosecution witness told the prosecutor that the perpetrator was lighter skinned than the derfendant she saw in court. Jackson v. Wainwright, 390 F.2d 288, 291-93 (5th Cir. 1968); Due process was violated when the government failed to provide to the defense the prior inconsistent statement given to DEA agents of a key prosecution witness where credibility was an issue. United States v. Beasley, 576 F.2d 626 (5th Cir. 1978), cert. denied, 440 U.S. 947 (1979); State violated Brady by failing to disclose to the defense reports of lie detector test administered to important prosecution witness Carter v. Rafferty, 826 F.2d 1299, 1307-08 (3rd Cir. 1987), cert. denied, 484 U.S. 1011 (1988); Suartz v. State, 506 N.W.2d 792, 794-95 (Iowa App. 1993) (evidence of alleged co-perpetrator's threatening and overbearing nature and impending psychiatric examination of him); People v. Garcia, 17 Cal. App. 4th 1169, 22 Cal. Rptr. 2d 545, 551-52 (1993) (evidence showing state's expert used faulty methodology and made errors in other cases); People v. Wright, 658 N.E.2d 1009, 1012 (1995) (alleged victim's status as police informer).

(3)

8. Copies of any and all video or audio recording of any form collected by the investigating officers or any other agent of the State during the course of the investigation.

9. All relevant reports of chain of custody. All reports of any destruction of any evidence in the case.

10. Photocopies or other reproduction of any and all handwritten or otherwise memorialized notes kept by the investigating police officers in this case (AKA "Case Monitoring Forms"), including, but not limited to, any notes documenting alternate suspects, investigative leads that were not followed up on, or any other matter bearing on the credibility of any State witness.

11. Any and all notes and reports of any expert in the case, to include mental health workers. This includes any preliminary reports or notes, not included in a final report.

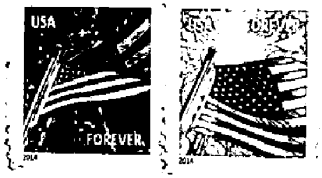
12. Any and all information which shows that the defendant did not commit the crimes alleged, including, but not limited to, any information concerning an arrest of any other individual for the charged crime[9] and any information suggesting a possible suspect other than the defendant,[10] including investigative leads to other suspects[11].

[9] Banks v. Reynolds, 54 F.3d 1508, 1518 n.21 (10th Cir. 1995).

[10] State's failure to disclose evidence of another perpetrator violated Brady. Lay v. State, 116 Nev. 1185, 1195-96 (2000).; Summary of prosecutor's perspective on written reports relating to potential suspects were constitutionally inadequate and reports should have been disclosed pursuant to Brady. Mazzan v. Warden, 116 Nev. 48,69 (2000); Bloodworth v. State, 512 A.2d 1056, 1059-60 (1986).

[11] Jimenez v. State, 112 Nev. 610, 622-23 (1996) (withholding evidence of investigative leads to other suspects, regardless of admissibility, constitutes Brady violation).

FRANK Harring #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301



Steven D. Grierson
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155

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CLERK OF THE COURT

IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Clark

FRANK Hearring,
Petitioner,
v.
State OF Nevada,
Respondent.

Case No. C-13-291159-1
Dept. No. XX
Docket No.

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Respondent, Steven B. Wolfson
Clark, County District Attorney, and Carl Arnold

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 11 day of February, 2016, at the hour of 9:00 O'clock A.M., or as soon thereafter as the parties may be heard, the undersigned will bring on for hearing the attached **REQUEST FOR RECORDS/COURT CASE DOCUMENTS**, before the above-entitled Court, at the Clark County Courthouse, in Las Vegas, Nevada, in Department No. XX, thereof.

DATED this 15 day of January, 2016.

Respectfully submitted,

Petitioner
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

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CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,
Frank Hearring, Jr., #1774466

Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

STATE'S RESPONSE TO DEFENDANT'S REQUEST FOR RECORDS/COURT CASE DOCUMENTS

DATE OF HEARING: FEBRUARY 23, 2016
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Request for Records/Court Case Documents.

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On July 15, 2013, the State charged Frank Hearring (hereinafter "Defendant") by way of Information with the following: Count 1 – Murder With Use of a Deadly Weapon; Count 2 – Attempt Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-Felon.

On October 7, 2013, pursuant to negotiations, Defendant entered into a Guilty Plea Agreement (hereinafter "GPA") with the State, wherein he agreed to plead guilty to one count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea canvass on the record and thereafter accepted Defendant's plea. An Amended Information was filed in open court reflecting the charge contained in the GPA.

On December 10, 2013, Defendant was present in court for sentencing, and was sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of 96 months for the deadly weapon enhancement. Defendant received 293 days credit for time served. On December 30, 2013, the court entered its Judgment of Conviction. Defendant did not file a direct appeal.

On May 15, 2014, Defendant filed a Motion to Withdraw Counsel, seeking removal of his court-appointed attorney, Carl Arnold, Esq. On June 12, 2014, the court granted the motion.

On November 12, 2014, Defendant filed a Motion for Appointment of Counsel and Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On December 4, 2014, the court denied the motion, finding the request for evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

On December 10, 2014, Defendant filed a Motion to Withdraw Plea. On December 22, 2014, the State filed its Opposition. On January 6, 2015, the Court denied Defendant's Motion, finding that Defendant's claims of involuntariness were belied by the record and his claims of ineffectiveness were without merit. The district court filed its Order on January 16, 2015.

On March 30, 2015, Defendant filed a post-conviction Petition for Writ of Habeas Corpus ("Petition"). The State filed its Response on July 31, 2015. On August 4, 2015, the Court denied Defendant's Petition. A Findings of Fact, Conclusions of Law and Order was filed on September 14, 2015. On October 6, 2015, Defendant filed a Notice of Appeal.

ARGUMENT

In the instant motion Defendant requests discovery in order appeal his conviction. Generally, once a defendant files a notice of appeal with the Nevada Supreme Court, that divests the district court of jurisdiction to hear the matter until remittitur issues. See Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994). Here, Defendant filed a Notice of Appeal from his order denying his Petition for Writ of Habeas Corpus. Pursuant to Nevada Supreme Court's Order Directing Transmission of record, the court clerk has transmitted the entire record for appeal. Exhibit 1. The appeal has been briefed and has been submitted for decision. Defendant does not have a right to discovery pending an appeal and this Court does not have jurisdiction to hear Defendant's Motion.

CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Request for Records/Court Case Documents be denied.

DATED this 17th day of February, 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

///

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///

///

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 17th day of February, 2016, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING #1006445
Ely State Prison
P.O. Box 1989
Ely, NV 89301

BY _____
M. CRAWFORD
Secretary for the District Attorney's Office

13F08177X/ED/mc/L4

EXHIBIT "1"