

# IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLAN NEWSOME, JR.,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Electronically Filed  
Aug 09 2019 01:32 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-19-788618-W  
*Related Case C-17-321043-1*  
Docket No: 79044

## RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**  
RICHARD NEWSOME, JR. # 1194269,  
PROPER PERSON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

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

**I N D E X**

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

Richard Newsome Jr.  
Petitioner

vs

STATE OF NEVADA, WARDEN BRIAN  
Williams  
Respondents

A-19-788618-W  
Dept. XXI

FILED

FEB 01 2019

John J. Sullivan  
CLERK OF COURT

A-19-788618-W  
IPWHC  
Inmate Filed - Petition for Writ of Habeas  
4813031



SUPPLEMENTAL PETITION FOR WRIT OF HABEAS  
CORPUS POST CONVICTION, AND MOTION FOR APPOINTMENT OF  
COUNSEL ALONG WITH, REQUEST FOR EVIDENTIARY HEARING

Comes Now, The Petitioner Richard Newsome Jr proceedings in pro se ...  
within the above entitled cause, and respectfully request that this Honorable court  
GRANT

CLERK OF THE COURT

FEB 01 2019

RECEIVED

1. motion For Appointment of Counsel and  
Request For Evidentiary  
And Supplemental Petition For WRIT OF HABEAS CORPUS POST CONVICTION

STATEMENT OF THE CASE

Counsel was ineffective for failing to file notice of appeal, when he knew  
Defendant was dissatisfied with his harsh sentence, and a direct breach of plea  
agreement because the state offered a sentence of 12 to 35 years and then  
using counsel to make a promise to assure the plea was signed and/or using  
a threat of 25 to life, and also using coercion, and trickery to have the  
defendant's mother convince him to sign the plea agreement of 12 to 35  
years. And then when signing plea, Judge had personal knowledge that  
a promise was made to defendant to get him to sign deal, and this ...  
court should allow the specific performance of the plea agreement  
in front of a different sentencing Judge, because the defendant  
would not of sign the plea if he knew he would be sentenced to  
18 to life. And defendant had already given up his right to

remain silent and tendered his best bargaining chip, the knowledge of his criminal activity. And the state did not inform the Judge that he offered a 12 to 35 year sentence to defendant counsel who had defendant sign deal by promising such 12 to 35 years

TO support the Petitioner's need for 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

2. Petitioner is confined at High Desert state prison and is unable to the ability, as an attorney would or could to investigate crucial facts involved with in this petition for writ of habeas corpus.

3. The issues presented in this petition involve a complexity that Petitioner is unable to argue effectively.

3. Petitioner has no 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 have servicing 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.

4. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the cost of counsel, therefore he have had a Jail house lawyer he me out

5. The prison severely limit the hours for law library.

6. While Petitioner do have the assistant of Brick P. Houston who is not in same level, and only contact is thru mother.

7. The ends of Justice will be served in this case by the appointment of counsel.

Argument in support of motion  
For The Appointment of Counsel

This Argument motion is made and based upon the matters set forth here. NRS 34.750 (1) (2) and verification attached hereto

Motions for the Appointment of Counsel are addressed to the sound discretion of the court. The court may request an Attorney to represent any such person unable to employ counsel. On a motion for Appointment of Counsel the District Court (and) should consider whether Appointment would be of service to indigent Petitioner, the court, and respondents as well, by sharpening the Issues in the case, examination of witnesses and... ultimately shortening trial and assisting in Just determination.

In order for the Appointment of Counsel to be granted, the court must consider several factors to be met in order the Appointment of counsel to be granted. (1) The merit of 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.

Argument in support supplemental  
Petition for writ of Habeas corpus post conviction

Petitioner Reallege herein by reference there to the original writ filed in this case dealing with counsel's failure to file appeal.

Defendant should be entitled to the sentence that was the Promise. The state went to defense counsel and presented the Plea Agreement of 12 to 35 YEARS which defendant agreed, which he was threatened with 25 to Life, so he took the deal that was a promise made to defendant and his mother. The state and defense counsel allow the breach of the Plea Agreement knowing that a promise was what made the Plea to be sign. Such was coercion and by trickery,

It is obvious that the state prosecutor, told defense counsel to offer the plea deal of 12 to 35 years. in which counsel promise such plea deal. Did the state conspire and agree with defense counsel to convince the defendant to sign the plea agreement. what this court should ask itself, why... would a plea be offered, and then not be kept? Did defense counsel lie, did he use false promise of a plea agreement to have defendant sign plea? Also this court should ask itself how and why was the plea agreement breached. and who is person who assured that a breach would take place. Do this... court believe that counsel for defendant would commit legal malpractice, and commit a miscarriage of Justice and use... coercion, and/or threats along with trickery to have the defendant sign a plea agreement, and promise the mother if she have her son sign the deal, he would only receive 12 to 35 years. This shows that counsel was ineffective and that the plea agreement was not signed voluntarily and knowingly. This also shows that defendant had the... understanding that he would receive a 12 to 35 years sentence. and not a 18 to life.

The determination of whether or not an agreement has been breached is governed by the law of contracts, with some exceptions. see US v. Hamdi 432 F3d 115, 122-23 (2d Cir 2005) stated: Although plea agreements are generally analyzed under contract law, they are unique contracts with special due process concerns for fairness and adequacy of procedural safeguards.

And Also in McKeeven v. Warden SCI-Gaterford 486 F3d 81, 86, (3rd Cir 2007) stated: Although plea agreements are generally analyzed... under contract law, defendant must first be afforded the protections of due process. And in US v. Wood 378 F.3d 342, 348 (4th Cir 2004), says.....

Although plea agreements are generally analyzed under contract law, the state is held to higher standard than defendant because agreements... implicate integrity of criminal justice system. And in Peavy v. US 31 F3d 1341, 1346 (6th Cir 1994) stated: Although plea agreements are generally analyzed under contract law, analogy to contract law not complete because guilty plea involves waiver of fundamental constitutional rights, and although plea agreements are generally analyzed under contract law, plea agreements are tempered by limits that constitution places on criminal process. US v. Boward 405 F3d 634, 636 (7th Cir 2005) And the 9th... Circuit clearly state in US v. Transfiguration, 442 F3d 1222, 1229-30 (2006) Although plea agreements are generally analyzed under contract law, contract law principle of mutual mistake... cannot be asserted to invalidate agreement because, unlike commercial exchanges, plea bargains implicate liberty.

Once defendant sign the plea agreement, he expected the state, the government and his defense counsel to assure that the... promise of 12 to 35 years was kept, which was defendant reasonable understanding of the agreement. Defendant reasonably understood the plea agreement to prohibit misconduct rather than arrest based on Judge's ambiguous statement of youthful defendant.

The defendant in case at bar, reasonable understood he was eligible for the 12 to 35 years when he made plea, to hold him ineligible would bind defendant (defendant) to unknowing and involuntary plea. see McIntosh v. US 484 F3d 832, 836 (6th Cir 2007)

since Defendant is alleging that the state Breach the Plea Agreement, I must Prove the breach by a preponderance of evidence. see US v. Cruz-Mercado, 360 F3d 30, 37 (2004) Also US v. Packwood, 848 F2d 1009, 1011 (9th Cir 1989)

And since defendant Alleges that the state breached a Plea Agreement he should be entitled to an evidentiary hearing. At the Court's discretion, discovery or expansion of the record, unless... defendants Allegations are palpably "incredible" or patently frivolous or false see Blackledge v. Allison 431 US 63, 67, 80-82 (1977)

OR To determine whether defendant provided assistance... substantial enough to require state to move for downward... departure under Plea Agreement. US v. Floyd 428 F3d 513, 518 (2005) And defendant is entitled to evidentiary hearing to determine... whether state breached Promise not contain in Plea Agreement when Rule 11 colloquy fails to ensure voluntariness of Plea if Rule 11 colloquy inquired about additional promises made by state. see US v. White 366 F3d 291, 297, 298 (2004)

The Judge in the herein case had personal knowledge that a Promise was made in regards to a particular sentence, but he fail in his duty and did not address such issue and/or allow defendant to withdraw his Plea.

The Remedy for a state breach of a Plea Agreement depends on the case. see e.g. US v. Riggs 287 F3d 221, 226 (2006)

Defendant believe that he should have been inform by counsel that there would be problems after Plea was sign and

The Judge did not halt to except the plea. However once the Judge found out there was a promise made by counsel on behalf of the state, he should of given Defendant the opportunity to withdraw plea, if he was not going to go along with it. This court may alter the sentence and/or order specific performance of Agreement. see US v. Hodge 412 F3d 479, 487 (2005) where the defendant was entitled to remand for determination to whether to grant specific performance or withdrawal of plea when state breached plea agreement by implying that defendant should not be released back to community. In the case at bar the state prosecutor stated at sentencing / Plea Hearing,

At the Plea Hearing the Judge Ask? Did anyone make you ANY promises or something similar. see Hearing transcript to Plea Agreement the Judge said:

Based on the actions of the state, and the Judge's sentencing, and the promise made by counsel on behalf of the state, defendant should be entitled to specific performance of oral plea agreement when prosecution breached plea agreement by failing to argue for a reduction of sentence, claiming failure was unintentional. see US - V - McQueen 108 F3d 64, 66-67 (1997)

The state should inform the Judge that he presented a plea deal to counsel for defendant, and the offer and promise was a sentence of 12 to 35 years, and counsel did convince the defendant to sign deal and that counsel even use defendant's own mother, TIANNA Thomas to tell her son Richard to sign the deal, because if you don't, they will give a sentence of 25 to life, not a 12 to 35 years. Based on these circumstances, defendant should be entitled to specific performance of agreement before a different sentencing Judge. see US - V - MUNOZ 408 F3d 222, 229 (2005) Also see US - V - CACHUCHA 484 F3d 1266, 1271 (2007)

IN US - V - TAYLOR 77 F3d 368, 372 (1996) The defendant entitled to withdraw his plea because state breached agreement to recommend 10 year sentence.

IN Petitioner case a promise of 12 to 35 years was breached and his understanding was that he would receive what was promised and introduced by the state to counsel for defendant. This Honorable Court has a duty to determine whether defendant's choice of plea was prejudice by counsel's error regarding possible sentencing warranted Remand US - V - McMullen 86 F3d 135, 137 (1996)

Courts will set a plea of guilty on collateral attack to correct a miscarriage of justice. see US - V - Fowler 445 F3d 1035, 1238 (2006) US - V - CAMARILLO Tello 236 F3d 1024, 1027 (9th Cir 2000)

Also see Meyer - V - Warden 603 P2d 1066 (Nev 1979)  
Little - V - Warden 34 P3d 540 (Nev 2001)

The Petitioner main argument herein is that... If he had known that when he sign the Plea Agreement, He would receive a 18 to Life sentence instead of a 12 to 35 year., he would not of sign the plea and he would (of) have taken the case to trial. the circumstances of the promise, one could believe that there was reasonable probability that petitioner would not of plead guilty if he knew that he would get 18 to Life.

He was not facing the death penalty. He could not receive Life without. A deal is design to give the person a opportunity of less time than the statute mandate, and/or 18 to Life is just like 25 to life. the only deal that was reasonable was the 12 to 35 years as promise.

In the case of (more) Moore v. Bryant 348 342, 343 (7th Cir 2003) The defendant was prejudice when he was told he would face 27 years in prison if convicted at trial, reasonable probability defendant would not of plead guilty if he knew the actual... maximum was 18 years to Life.

As in the case of Bari, if he would of not been threaten of 25 to life he would with... reasonable probability not sign deal if he would get 18 to Life.

Wherefore this Honorable Court should grant the Appointment of Counsel and Request for Evidentiary Hearings, And the relief sought in Petition.

Dated January 27<sup>th</sup> 2019



VERIFICATION

I declare, Affirm and Swear under Penalty of Perjury that All of the herein 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 27<sup>th</sup> day of January 2019

  
Petitioner, Pro Per

1 AFFIDAVIT OF TIANNA THOMAS

2 STATE OF NEVADA )  
3 ) SS:  
4 COUNTY OF CLARK )

5 TO WHOM IT MAY CONCERN:

6 I, TIANNA THOMAS, the undersigned, do hereby swear that all the  
7 following statements and description of events, are true and correct, of my own  
8 knowledge, information, and belief, and to those I believe to be true and  
9 correct. Signed under penalty of perjury pursuant to NRS 208.165.

10 (1) THAT Prior to my son Richard Newsome Jr. signing his  
11 Plea Agreement counsel told myself and Richard that if he  
12 do not sign the Plea Agreement he would be given a 12 to  
13 35 year sentence. This was the counsels promise he would  
14 get Richard. This is the reason the deal was signed by my  
15 son. Richard and I both wanted to get our sides out of  
16 what happened the night of January 14, 2017. Richard and I  
17 both never got our sides of story to the Judge, Court, or  
18 public at all through the case because our counsel instructed  
19 us not which he stated on Court record at sentencing  
20 explaining to Judge they (Attorney) instructed us to not give  
21 any statements because it could hurt or interfere with our  
22 open case. Which I feel is is unfair it was judged and  
23 sentencing on a one sided story. My best friend Tracy Phillips  
24 is the one who referred us to John Momot from her own  
25 personal past cases and she was one who contacted Momot  
26 office on Saturday January 15<sup>th</sup> 2017 and instructed us to  
27 lay low to come into his office Tuesday January 17, 2017  
28 because Monday was a Holiday Martin Luther King and office  
was closed. When we arrived at Momots office on January 17<sup>th</sup>

1 2017. After discussing what happened at incident on  
2 January 14th 2017 we told Momot we wanted to be turned  
3 in right then and there to authorities so that's what we did.  
4 When Detectives came in Momot asked the detectives  
5 to not question us so they told Richard and I both  
6 together they would not question us. I also told our  
7 ~~our~~ counsel in beginning I had never been in trouble before  
8 and I am clueless about any legal criminal process and I  
9 was putting my full trust in him, I never even been to jail  
10 I was taken advantage of and so was my son because we  
11 both knew nothing. Richard was only 17 years old at the  
12 time. We both didn't know or understand anything that  
13 was going to happen or when we got to say our sides of  
14 story. Richard and I asked our counsel about going to  
15 trial with the case so we could tell our sides and court/  
16 Judge would have both parties sides to make a judgement.  
17 We were told that would put 10 plus more years on  
18 Richards life and I would be chancing going to Prison  
19 for a long time and get a felony on my record and because  
20 I do work that would stop me from working to take care  
21 of my other children. This is why Momot informed  
22 me to convince my son to sign the deal to look out  
23 for me and get sentenced to a 12 to 35. Momot said  
24 because he was only 17 years old when it happened and he  
25 turned himself in peacefully he would not get life. he  
26 would get a 12 to 35 that bring 2 to 10 for gun he  
27 said and a 10 to 25 for the Murder because if we

1 go to trial he could get 25 to life and 1<sup>st</sup> degree  
2 murder. When the court asked my son was there any  
3 kind of promises made my son Richard Newsome Jr.  
4 said Yes to the Judge on the court record clearly a  
5 promise was made to him and he was confused. When the  
6 Judge sentence Richard 18 to life this was a breach  
7 of the Plea Agreement because counsel, persuaded my  
8 son and myself by promising a 12 to 35 and this was  
9 a trick, and coercion to make my son sign the Plea Agreement  
10 to hurry and get case over with. I was told by counsel  
11 to tell my son to sign the Plea. The court had personal  
12 knowledge that counsel promise a sentence in order to have  
13 the plea signed. This court should not of allowed  
14 the Plea to stand once he found out that counsel use  
15 a promise, trickery to have my son sign deal and me  
16 agreeing to it, and telling my son to sign deal. Counsel did  
17 violate his duty by coercing my son to sign a Plea that  
18 would not hold up. But counsel did not care. Also John  
19 Momot was incompetent to care or even take our case  
20 in first place due to being ill and falling asleep on me  
21 during during office meetings regarding counsel and going  
22 over case. I had to go out to get his secretary to come  
23 wake him up and try to keep him up. Momot would just  
24 stare at documents for long periods of time without saying  
25 nothing his secretary would have to help him to respond or  
26 say "Hey John". My counsel appointments were very poor.  
27 This would happen on several office meetings. Towards end and

1 almost sentencing I took in our Character letters and I  
2 turned them into John he fell asleep after he asked me to  
3 separate Character letters from mine and Richard again  
4 had to get secretary to help she took letters. But when  
5 we got to court for sentencing Judge Valerie Adir said  
6 she never received them counsel said she turned them in  
7 Judge took recess for 5 mins and said she found them  
8 but had no time to read them so we must proceed.  
9 We had letters from our family, friends, Deacon and Pastor  
10 of our church. Our Character letters didn't even get  
11 read not one. Momot only came to a few of our hearings  
12 and after that Lin Zheng who we did not retain to be  
13 our counsel in first place and I meet with Momot most of  
14 time in office meetings. We would ask Lin Zheng where John  
15 was at she would say his allergies were bothering him, he  
16 was out of town etc. My mother and I asked was he  
17 sick once Lin Zheng said No he was actually going  
18 to become a Judge soon. My son and I didn't get a  
19 fair chance and poor counsel from an incompetent man  
20 John who really was sick and too sick to even take our  
21 case we would of choose a different counsel if John  
22 just said he couldn't do it not just send someone else  
23 without even talking it over or asking Richard and I what  
24 we wanted to do just didn't care. We didn't get proper counsel  
25 and it caused my son a very Harsh sentence that Plea  
26 Agreement was not the deal counsel promised Counsel just  
27 wanted case to get over with and after the harsh sentence

1 was given, he said nothing to Richard nor me after sentencing  
2 hearing or after at all like we didn't exist at all. They  
3 didn't even say anything about appealing case or that we  
4 could appeal case and he knew my son was dissatisfied  
5 with his harsh sentence, and only being 17 years old Richard  
6 knew nothing to do about it because counsel was poor  
7 and incompetent to even give knowledge that he could  
8 appeal. We were never contacted ever at all by John or  
9 Lin Zheng because he knew he promised a sentence  
10 of 12 to 35, My son did not consent to not  
11 appealing his case, again we were never contacted  
12 or even talked to about anything we could do. We also  
13 never still till this day got our side of story out  
14 and that just doesn't seem fair.

22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT \_\_\_\_\_ this 21 day of June, 2018

24 IN FRONT OF: BY   
25 NDOC #1194269  
26 My son  
27  
28

IN The Eight Judicial District Court of THE  
STATE OF NEVADA IN AND FOR the county of CLARK

CASE NO C-17-321043-1

Dept NO 21

FILED

FEB 01 2019

*Adam T. Williams*  
CLERK OF COURT

Richard Newsome Jr.  
Petitioner

PETITION FOR WRIT  
OF HABEAS CORPUS  
(Past conviction)

VS

THE STATE OF NEVADA, Warden

Brian William

Respondent /

A-19-788618-W

Dept XXI

### PETITION

1. I Am Presently Restrained of my liberty, At High Desert State Prison
2. Conviction under Attack was entered Judgement, In 8th Judicial District Court, Las Vegas NV
3. Date of Conviction February 8th 2018 ?
4. Case Number C-17-321043-1
5. Length of sentence 18 to life
6. I Am not serving any other sentence under attack in this motion? No
7. Nature of offense Being challenged, I was charge with 2nd Degree Murder with use of a deadly weapon.
8. I sign A Plea of Guilty
9. I did not appeal because I was not told that I could, and the counsel knew I was disatisfied with my sentence, because I was promise to be sentence to A 12 to 35 YEARS
10. First Petition, No Direct Appeal.

A-19-788618-W  
PWHC  
Petition for Writ of Habeas Corpus  
4813032



CASE NO C-17-321043-1  
DEPT. NO 21

IN The EIGHT Judicial District Court  
of the State of Nevada IN AND For the County of CLARK

Richard Newsome Jr.  
Petitioner

VS

STATE OF NEVADA, BRIAN WILLIAMS  
Respondent

PETITION FOR WRIT OF  
Habeas corpus Post conviction

PETITION

Now comes the Petitioner in pro se AND says for his Petition for writ of Habeas corpus Post conviction AS follows.

1. This Petition is to challenge Due Process of law, equal protection under the 6th, 14th AND 5th Amendment for the failure to file Notice of Appeal AS to Petitioner LARSH sentence, AND the promise sentence of 12 to 35 YEARS.
2. Petitioner is requesting leave to attach A memorandum of Points of Authorities to support Petitioner Petition for writ of Habeas corpus Post conviction.

Prepared BY BRICK P. HOUSTON

5th Amend

Ground 1. violation of Due Process, Equal Protection, 6th and 14th Amend. Counsel failure to file notice of appeal when he knew Petitioner was dissatisfied with sentence, and using coercion, trickery and a promise of a sentence of 12 to 35 years to get Petitioner to sign plea.

Supporting Facts. Requesting LEAVE to attach memorandum of law, points/authorities in support of Petition, counsel being ineffective assistance of counsel failure to file notice of appeal to Petitioner harsh sentence, and counsel's breach of plea agreement using coercion, trickery and a promise of 12 to 35 years and using threat of a 25 to life if Petitioner don't sign deal and Judge allowing deal to go thru when the record reflect that a promise was made by counsel prior to signing the deal and before sentencing; dissatisfied with harsh sentence.

Memorandum of Law in support of Petition

To state a claim of ineffective assistance of counsel that is sufficient to invalidate a judgment of conviction, a defendant must demonstrate that counsel's performance fell below the objective standard of reasonableness, and that counsel error were so severe they rendered the jury verdict unreliable. see *Strickland v. Washington* 466 US 680 (1985). Also see *Warden v. Lyons* 100 Nev 430, 683 P2d 504 (1984) cert denied, 471 US 1004, 85 LEd 159, (1985). Defendant Richard contends that his counsel acted unreasonable in failing to perfect an appeal without Petitioner consent. Defendant Petitioner ask that for purpose of this Petition that counsel failed to perfect an appeal without Petitioner consent. Also guilty plea was obtain thru coercion, trickery, threats, and by the promise of receiving a sentence of 12 to 35 years, told to mother and Petitioner to convince the signing of the plea agreement, no appeal was file without my consent.

1 The reasonableness of petitioner's counsel conduct  
2 The failure to obtain petitioner consent not to pursue an appeal  
3 would amount to unreasonable conduct. Courts have ruled that an  
4 attorney has a duty to perfect an appeal when a convicted defendant  
5 expresses a desire to appeal or indicates dissatisfaction with a conviction.  
6 See *Fawaz v. State*, 105 Nev. 812, 783 P.2d 425 (1989) *Downs v. Walden*  
7 93 Nev. 475, 568 P.2d 575 (1977). In *Fawaz*, for example, ...  
8 the appellant expressed a desire to challenge his conviction by  
9 filing a motion for new trial. *Fawaz*, 105 Nev. at 812, 783 P.2d  
10 at 425. We ruled that counsel was ineffective for failing to  
11 file a notice of appeal from the district court's denial of the  
12 motion for new trial. Id. because *Fawaz* demonstrated a  
13 desire to challenge his conviction by filing a motion for  
14 new trial. *Fawaz*, 105 Nev. at 812, 783 P.2d at 425. We ruled  
15 that counsel was ineffective for failing to file a notice of ...  
16 appeal from the district court's denial of the motion for new trial. Id.  
17 because *Fawaz* demonstrated a desire to challenge his conviction  
18 by filing a motion for new trial. Counsel had a duty to perfect  
19 an appeal.  
20 Similarly, in *Downs*, we noted that Downs never expressed a desire  
21 to appeal from his judgment of conviction and he seemed satis-  
22 fied with the outcome of his case. We also noted that Downs  
23 had waited well over a year before asserting his alleged right  
24 to appeal. *Downs*, 93 Nev. at 478, 568 P.2d at 576, 577. We  
25 concluded. In this factual setting, a trial attorney has no  
26 obligation to represent his client at appeal. Id. at 478, 568  
27 P.2d at 577.

1 Downs implies that we would have reached the opposite conclusion  
2 had Downs expressed dissatisfaction with his conviction or expressed  
3 a desire to appeal within the reasonable time we did not...  
4 directly address in Downs the question of whether Downs knew of  
5 his right to appeal or whether counsel must inform his client of  
6 that right. Instead we noted that the record was silent on  
7 the issue of whether Downs was informed of his right to appeal.  
8 And we concluded that under the peculiar circumstances of  
9 that case, Downs had failed to demonstrate that his attorney  
10 had been ineffective. Id.

11 The federal courts have indicated that trial counsel has an  
12 affirmative duty to instruct a convicted client of the right  
13 to appeal regardless of whether the client expresses a desire to  
14 appeal. The United States Supreme Court has never directly  
15 (110 S.Ct. 355) addressed this issue. The court's opinion remanding  
16 LOZADA's petition to the Ninth Circuit, however, appears to assume  
17 that an attorney must inform a client of the client's appeal  
18 rights. Petitioner Richard Newsome just like LOZADA claim that trial  
19 counsel either had a duty to inform him of his appeal rights or  
20 to ensure that he retained appointed counsel who would perfect  
21 an appeal. LOZADA v. DEEDS 498 U.S. 430, 431, 112 L.Ed.2d 956  
22 111 S.Ct. 860 (1991) (per curiam). The Supreme Court only address-  
23 ing the Ninth Circuit's failure to consider whether prejudice  
24 may be presumed under the circumstances LOZADA AND  
25 Petitioner Richard alleged.

26 requiring counsel to inform a convicted client of the right  
27 to appeal is consistent with the Supreme Court prior precedent.

1 IN *Onizuka v. California*, 372 U.S. 353, 9 L. Ed. 2d 211, 83 S.Ct.  
2 814 (1963) The court held that criminal defendants have a  
3 right to counsel on appeal when a state affords a right to  
4 appeal. The court has ruled further that the right to counsel on  
5 appeal -- like the promise of *Gideon v. Wainwright* 372  
6 U.S. 335 (1963) 9 L. Ed. 2d 1799, 83 S.Ct. 792  
7 (1963) that a criminal defendant has a right to counsel  
8 at trial -- would be a futile gesture unless it com-  
9 prehended the right to effective assistance of counsel.  
10 *Evitts v. Lucey* 469 U.S. 387, 397, 83 L. Ed. 2d 821, 105  
11 set 830 (1985) The right to effective counsel on appeal would  
12 also be a futile gesture if a criminal defendant does  
13 not make an informed decision whether to appeal.  
14 Several federal circuit courts have ruled that due  
15 process clause of the federal constitution imposes a  
16 duty on attorneys to inform clients of the right to  
17 appeal. In *Baker v. Kaiser*, 929 F.2d 1495, 1499 (1991)  
18 for example, the court of appeals for the Tenth circuit  
19 ruled that, in *Evitts*, the supreme court implicitly  
20 determined that the right to counsel applies to the period  
21 for perfecting an appeal. According to the tenth circuit,  
22 counsel must explain the advantages and disadvantages  
23 of an appeal, explain the merits of an appeal and then  
24 ask the client whether to pursue and appeal. Id. see also  
25 *Childs v. Collins* 985 F.2d 69 (1993) *Nelson v. Perston*  
26 415 F.2d 1154 (1969) cert. denied, 391 U.S. 1007, 251 F.2d 420, 90 set 1235 (1970)  
27

1 The Ninth Circuit's opinion in Lazada v. Deeds, 964 F.2d  
2 956 (9th Cir. 1992) also indicates that counsel has a duty  
3 to inform a client of the right to appeal a conviction.  
4 The Ninth Circuit ruled that counsel may not fail  
5 to perfect an appeal of a conviction "without the  
6 petitioner's consent." Id. at 958. Logically, a criminal  
7 defendant cannot consent to forgo an appeal  
8 unless the defendant knows of the right to appeal.  
9 The 9th Circuit thus implicitly held that counsel  
10 has a duty to discuss a client's appeal right with  
11 the client.

12 (110 Nev. 356) we find these cases persuasive.  
13 Convicted defendants likely lack the expertise  
14 necessary to perfect an appeal. The absence of the  
15 assistant of counsel during the time  
16 period for filing an appeal may also render the  
17 right to counsel on appeal meaningless. Accordingly,  
18 trial counsel must inform a convicted client of the  
19 right to appeal. This duty includes informing the  
20 client of the procedures for filing an appeal as well  
21 as the advantages and disadvantages of filing an appeal.  
22 Counsel did fail to inform petitioner of his  
23 right to appeal and his counsel did know that the  
24 petitioner was not satisfied with his sentence  
25 because it was a breach of the agreement and the  
26 promise made by counsel. Petitioner has demonstrated  
27 that his counsel acted unreasonably under Strickland

1 whether counsel's conduct prejudiced petitioner.  
2 Assuming the truth of petitioner's allegations petitioner  
3 can demonstrate prejudice under STRICKLAND. IN  
4 FAWAZ we implicitly ruled that prejudice may be  
5 presumed on claim based on the ineffective assistance  
6 of counsel when a petitioner has been deprived of the  
7 right to appeal after concluding that counsel failed to  
8 provide effective assistance of counsel. we ruled that  
9 FAWAZ was prejudiced by the ineffective conduct  
10 of his attorney because he lost his right to review  
11 by this court. FAWAZ V. STATE. 105 Nev. 682 683  
12 783 P2d 425 426 (1989)

13 the United States Supreme Court has similarly presumed  
14 in this prejudice when an attorney fails to inform a  
15 criminal defendant about the right to appeal. In the  
16 case, RODRIGUEZ V. UNITED STATES 395 US 327 331 332  
17 340, 89 S.Ct. 1715 (1969). An attorney failed to file a notice  
18 of appeal against his client's wishes. Id. at 328.  
19 The federal district court and the circuit court of  
20 appeals rejected the petitioner's request for post-  
21 conviction relief because he failed to establish pre-  
22 judice by setting forth any meritorious issues for  
23 appeal. Id. at 329.

24 The Supreme Court reversed and ruled that pre-  
25 judice must be presumed in this instance  
26 because an unrepresented defendant likely lacks  
27 the expertise necessary to formulate arguments

1 for Appeal Id at 330 Rodriguez also did  
2 not speak English and thus he lacked the skills  
3 necessary to articulate issues for appeal.  
4 Accordingly the Supreme Court presumed that  
5 Rodriguez had suffered prejudice.  
6 In Strickland v Washington 466 US 686 (92  
7 80 LEd2d 674 104 Sct 2052 (1984) the United  
8 States Supreme Court reaffirmed without citing  
9 its holding in Rodriguez specifically the Court  
10 ruled Actual or constructive denial of the assistance  
11 of [871 P2d 949] counsel altogether is legally  
12 presumed to result in prejudice. The Supreme  
13 Court further reaffirmed this rule in Penon v  
14 Ohio 488 US 75 101 LEd2d 300 (1988)  
15 In that case the Supreme Court considered the  
16 procedures to be (110 Nev 357) followed when  
17 appointed counsel files a Notice of (110 Nev 357) AND  
18 merit Appeal.  
19 The Court rejected a harmless error analysis  
20 and a prejudice requirement because in the Court's  
21 view the right to (110 Nev 357) counsel on appeal is  
22 essential to ensure justice and fairness 488  
23 US At 84-85. The Court explained that prejudice  
24 need not be shown where the denial of counsel  
25 leaves a defendant completely without representation  
26 Id At 88. Instead the Court ruled that Strickland  
27 requires a showing of prejudice only where counsel

1 fails to press a particular argument to appeal  
2 or fail to argue an issue as effectively as he  
3 or she might. Id. (citation omitted)

4 The 9th Circuit adopted similar reasoning in  
5 reviewing LAZADA petition for post conviction  
6 relief. Relying on Rodriguez AND Strickland,  
7 9th Circuit ruled that prejudice must be presumed  
8 when a defendant is denied the right to counsel on  
9 appeal. LAZADA V- Deeds 964 F2d 956, 957, 958  
10 (9th Cir 1992)

11 The 9th Cir held: Because applicants... must  
12 if indigent prepare their petition without competed  
13 to the right to counsel that a state or federal prisoner  
14 would have direct appeal. Id. at 958, the 9th Circuit  
15 thus concluded that "prejudice" is presumed under  
16 Strickland if it is established that counsel's failure  
17 to file a notice of appeal without petitioners consent  
18 Id. see also US V TR Tedding 945 F2d 458 (1991)  
19 cert denied 120 LEd2d 883 505 US 1211 112 Sct 3004  
20 (1992) ABELS V- KAISER 903 F2d 821 (1990) ESTER V- US  
21 883 F2d 645 (8th Cir 1989)

22 Based on these federal cases and our opinion in Fawcett  
23 we conclude that prejudice may be presumed for  
24 purposes of establishing the ineffective assistance of  
25 counsel when counsel's conduct completely denies a  
26 convicted defendant an appeal consequently we ~~are~~  
27 ~~are~~ required (required) petitioners to establish prejudice

1 in his appeal from the denial of his petition for post  
2 conviction relief. Assuming petitioner counsel failed to  
3 perfect an appeal without his consent, petitioner  
4 presumably suffered prejudice because he was deprived  
5 of his right to appeal.

6 B. Although petitioner has established good cause for  
7 filing a (petitioner) petition, he can show actual  
8 prejudice. Petitioner can establish prejudice if his  
9 counsel's conduct deprived him of his right to appeal.  
10 As in FAWAZ, it indicated that the denial of the  
11 right to appeal deprives a person of a basic right  
12 that presumably prejudices the person. FAWAZ v-  
13 state 105 Nev 682, 783 P2d 425 (1989). Petitioner can  
14 thus demonstrate that he has suffered sufficient  
15 prejudice to excuse the filing of a successive  
16 petition for writ of Habeas corpus.

17 The required showing of prejudice to establish  
18 a claim of ineffective assistance of [871 P2d 950]  
19 counsel is separate and distinct from the showing  
20 of prejudice required to overcome a procedural  
21 default. The Legislature requires a showing of prejudice  
22 to excuse procedural defaults to prevent the filing  
23 of successive petitions and to avoid abuse of post  
24 conviction remedies. In addition, requiring prejudice  
25 to excuse the filing of untimely petitions helps to  
26 ensure that claims are raised before evidence is lost  
27 or memories fade.

ments

1 Without such Limitation on the Availability of post  
2 conviction remedies, prisoners could petition for relief  
3 in perpetuity and thus Abuse post-conviction remedies.  
4 In addition, meritless, successive and untimely  
5 petitions clog the court system and undermine the  
6 finality of convictions. A showing of prejudice is  
7 thus essential to prevent the filing of successive and  
8 meritless petitions for post-conviction relief.  
9 These concerns do not arise, however, in the context  
10 of claims based on the ineffective assistance of  
11 counsel. Prejudice in that context addresses the effects  
12 of the unreasonable conduct of counsel on a defendant's  
13 trial. In this case, however, both Prejudice require-  
14 ments happen to address the same concern: namely, the complete  
15 denial of counsel. Petitioner counsel's conduct may have  
16 deprived petitioner of the fundamental right of counsel  
17 on appeal. This denial of this results in Prejudice for  
18 purposes of both establishing the ineffective assist-  
19 ance of counsel and for excusing the filing of a  
20 successive petition for post-conviction relief.  
21 (3) Petitioner has an Adequate remedy in the district court.  
22 Because Petitioner can establish good cause and Prejudice  
23 if he substantiates his allegations, he has an Adequate  
24 remedy in this District court through this petition. If  
25 Petitioner can establish his claim that he was denied  
26 his right to effective assistance of counsel on appeal,  
27 which had the effect of denying Petitioner his right

1 to Appeal. The Appropriate remedy would be to Allow  
2 Petitioner an opportunity to raise in his appeal  
3 any Issue which he could have raised on direct  
4 appeal. If this district court denies petitioner  
5 relief, he may appeal denial to Supreme court of  
6 Nevada or the Appeals court, which he will raise  
7 the Breach of plea Agreement, And the fact that  
8 A Amount of 12 to 35 years was promise by  
9 Counsel if he pleaded guilty Also this was the  
10 promise that was given to (my) Petitioner's Mother,  
11 Also the sentencing transcript also verify that  
12 A promise was made And the Judge had the  
13 Knowledge of such promise And he overlooked  
14 the promise, And Allowed the 18 to life sentence,  
15 Ignoring the promise that persuaded Petitioner  
16 to sign the plea Agreement in the first place.  
17 And Promise was also made to defendant's mother  
18 A complete remedy will exist, if this district  
19 court grants Petitioner ~~and~~ Independent Counsel  
20 other than public defenders office, Because convicted  
21 persons have the right to counsel on direct appeal  
22 Thus if Petitioner rights are granted this court  
23 should appoint counsel to Assist Petitioner.

#### 24 Conclusion

25 The Argument discussed herein provides A complete  
26 remedy for the Alleged denial of Petitioner right to  
27 Appeal.

Richard Newsome Jr.  
Petitioner

V

STATE OF NEVADA, ET AL  
Respondant

FILED

FEB 01 2019

*Ann L. Blum*  
CLERK OF COURT

A-19-788618-W  
Dept. XXI

## MOTION REQUESTING APPOINTMENT OF COUNSEL

Petitioner Richard Newsome Jr. Request that he is appointed counsel for the motion for Evidentiary Hearing. To assure that he have a even chance and present issue in Evidentiary Hearing correctly, and to prevent a manifest of injustice.

This motion is pursuant too NRS 34.750 AND NRS 34.820

Dated January 27th 2019

*Richard Newsome Jr.*

CLERK OF THE COURT

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FEB 01 2019

CLERK OF THE COURT

A-19-788618-W  
MAPA  
Motion for Appointment of Attorney  
4813037



8th Judicial District Court

Richard Nausome Jr.  
Petitioner

VS

CASE NO.  
DEPT NO.

A-19-788618-W  
Dept. XXI

STATE of NEVADA AND Warden  
BRIAN WILLIAMS

Respondant

FILED

FEB 01 2019

*John J. Williams*  
CLERK OF COURT

MOTION REQUESTING A  
EVIDENTIARY HEARING ON  
COUNSEL'S BREACH OF PLEA AGREEMENT PROMISE

1. Defendant ReAllege herein by reference to original Petition for writ of Habeas Corpus Post Conviction, and says for his motion requesting Evidentiary hearing on Counsel's Breach of Promise of Plea Agreement.

2. Defendant alleges that counsel did breach the Promise in regards to Plea Agreement, and should have right to Prove by the Preponderance of the Evidence.

3. Defendant is requesting a evidentiary hearing, and/or at the court's discretion, discovery or expansion of the record.

Defendant can demonstrate that counsel did breach the Plea Agreement, by promising Defendant a particular sentence and that he did use threats, coercion and/or trickery, toward the defendant and the influence of defendant's mother, who also was use to have son sign plea by a promise of a certain sentence. Counsel did not object After Judge sentence Defendant outside, And more of promise, of 12 to 35 years

A-19-788618-W  
MOT  
Motion  
4813042



CLERK OF THE COURT

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5. This Honorable court have the Authority to Alter the sentence, or order specific performance of promise, that made defendant sign the plea in the first place. Statements made by counsel should be admissible as evidence in Plea Bargaining, Counsel made No objections After the 11th sentence by the court.

### Memorandum of Points of Authorities

Defendant claiming breach must prove the breach by a preponderance of the evidence. US v. Cruz Mercado, 360 F3d 30, 37 (2004) US v. Byrd 413 F3d 249, 251 (2005), US v. Snow, 234 F3d 187, 189 (2000). Also US v. Packwood, 848 F2d 1009, 1011 (9th Cir 1988)

A defendant who alleges a breach of plea agreement may be entitled to an evidentiary. see Blackledge v. Allison 431 US 63, 76, 80-82 (1977) Allegation of breach entitles defendants to a evidentiary hearing unless defendants allegations are palpably or patently frivolous or false. see e.g. US v. Floyd 428 F3d 513, 518 (2005)

Defendants allegations are not frivolous or false, such is supported by the record at sentencing, as far as a promise being made. Also see Affidavit of Mother Attached to Petition for writ of Habeas corpus (post conviction)

Also see US v. White 366 F3d 291, 297-98 (2004)

A breach promise to recommend a sentence and then explicitly ask for more is a breach, see US v. Gonczy 357 F3d 50, 54 (2004)

Counsel had to discuss a sentence plea with the state. in order for such plea to be agree to, this is reason to hold a evidentiary hearing to find out who told counsel that if he sign plea, he would receive 12 to 35 years. And if he do not

sign plea, he will receive 25 to life. This Honorable Court CAN assure a evidentiary hearing to allow defendant to prove by preponderance of evidence that there was a breach of plea agreement.

This court can alter the sentence, and/or order specific performance of the agreement, or allow withdrawal of the plea. The remedy for a breach of a plea agreement depends on the specific case, see e.g. US v. Rigg, 287 F3d 221, 226 (2002) A defendant is entitled to remand for determination whether specific performance or opportunity to withdraw plea when breach of plea agreement. Also see US v. VAVA 404 F3d 144, 156 (2005) (also see) defendant entitled to remedy because breach of plea agreement. Also see US v. Hodge 412 F3d 479, 487 (3d Cir 2005) defendant entitled to remand for determination of whether to grant specific performance or withdrawal of plea when breach of plea agreement. Also see US v. McQueen, 108 F3d 64, 66-67 (1997) defendant entitled to specific performance on plea agreement, by prosecutor failure to mention the promise between counsel and himself. This should be reason for this Honorable to allow the specific performance of the promise of a 12 to 35 years. This was the understanding that defendant receive by signing the plea, because a promise that I believed and then such promise was not kept.

Defendant is entitled to specific performance of agreement before a different sentencing judge by breach of agreement, see Id McQueen at 64, 66-67. Also see US v. Munoz 408 F3d 222, 229 (5th Cir 2009) Also US v. Cachucha 485 F3d 1266, 1271 (2007) the defendant entitled to withdraw plea or to specific performance of agreement before (different) different sentencing judge when a plea is breached. Also in US v. TAYLOR, 77 F3d 368, 372

(11th cia 1996) defendant entitled to withdraw guilty Plea because breached agreement to recommend 10 year sentence. This Honorable court had personal knowledge that a Promise was made, and such Promise was the understanding that was a Particular sentence that Defendant would receive. Also using defendant mother to convince Defendant sign Plea, or he would receive a 25 to life.

Wherefore this Honorable court should grant the request for an evidentiary hearing, to prove by the preponderance of evidence that the Plea was Breach, and the Promise was not Kept; see Affidavit of mother TIANNA THOMAS AND sentencing transcript, that verify, that a Promise was made in order to get the Plea signed.

Dated January 27<sup>th</sup> 2019

α R e P

#  
Richard Newsome ID NO. 11942169

HIGH DESERT STATE PRISON  
22010 COLD CREEK ROAD  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89018

FILED

FEB 01 2019

Allen & Blum  
CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

Richard Newsome, Jr.  
Petitioner  
v.  
STATE OF NEVADA  
Respondent

A-19-788618-W  
Dept. XXI

MOTION REQUESTING A EVIDENTIARY  
HEARING ON COUNSEL'S BREACH OF PLEA AGREEMENT

COMES NOW, Petitioner, Richard Newsome, Jr., herein above respectfully  
moves this Honorable Court for an Order For And Evidentiary  
HEARING ON Breach of Plea Agreement of Counsel.

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities.

DATED: this 27 day of January, 2019

BY: [Signature]

#11942169  
Defendant/In Proper Personam

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A-19-788618-W  
MOT  
Motion  
4813043



DISTRICT COURT  
CLARK COUNTY NEVADA

FILED

FEB 01 2019

1 Richard

2 Petitioner

A-19-788618-W  
Dept. XXI

Debbie  
CLERK OF COURT

3 VS

4 STATE OF NEVADA ETAL

5 Respondent

6  
7 MOTION TO DISMISS ORIGINAL COUNSEL  
8 AND TO PRODUCE RECORDS/TANGIBLE DOCUMENTS

9  
10 Now comes Petitioner Richard Newsome Jr and moves  
11 this court to dismiss original counsel for following reasons  
12

13 1. I have Pleaded guilty, and sentence, and filed a Petition  
14 in pro se, and all allegations are against original counsel for  
15 ineffective Assistant of Counsel.

16 2. Counsel should be dismissed, and it would be a conflict of  
17 interest to keep him.

18 3. Once he is dismissed he is required to produce all records  
19 and Tangible Documents he has, pursuant to  
20 NRS 7.055 (1) and NRS 7.055 (2) Supreme Court  
21 Rule 173  
22

23 Dated January 27th 2019

24 [Signature]

25  
26 CLERK OF THE COURT

27 FEB 01 2019

28 RECEIVED

A-19-788618-W  
MDC  
Motion to Dismiss Counsel  
4813046



**CERTIFICATE OF SERVICE BY MAILING**

I, Richard Newsome Jr., hereby certify, pursuant to NRCP 5(b), that on this  
day of January, 2019, I mailed a true and correct copy of the foregoing, "Request for A  
Evid. Hearing, Appointment of Counsel, Notice of motion, Dismissal of  
Counsel"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Clerk of the Court  
200 Lewis Ave  
Las Vegas NV 89155

CC:FILE

DATED: this 27 day of January, 2019



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

1 Richard Newsome Jr.  
2 / In Propria Personam  
3 Post Office Box 650 [HDSP]  
4 Indian Springs, Nevada 89018

FILED  
FEB. 01 2019  
Allen L. Johnson  
CLERK OF COURT

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 Richard Newsome Jr.  
8 Petitioner  
9  
10 vs.  
11 STATE of NEV. BARRY WILLIAMS  
12 Respondent

Case No A-19-788618-W  
Dept No Dept. XXI  
Docket

13  
14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that A HEARING will be set  
16 And decide if A EVIDENTIARY will proceed, And Appointment of  
17 counsel  
18 will come on for hearing before the above-entitled Court on the      day of April 2019,  
19 at the hour of 9 o'clock A. M. In Department     , of said Court.

20 CC:FILE

21  
22 DATED: this 27 day of January, 2019

23  
24 BY: R  
25 #  
/In Propria Personam

CLERK OF THE COURT

FEB 01 2019

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A-19-788618-W  
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Notice of Motion  
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PPOW

**FILED**  
MAR 29 2019  
*[Signature]*  
CLERK OF COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Richard Newsome,

Petitioner,

vs.

State of Nevada; Warden Brian Williams,

Respondent,

Case No: A-19-788618-W  
Department 21

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

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on February 01, 2019. 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 9 day of May, 2019, at the hour of

9:30 o'clock for further proceedings.

*Nature Adams*

District Court Judge

*[Signature]*

RECEIVED

MAR 28 2019

CLERK OF THE COURT

A-19-788618-W  
OPWH  
Order for Petition for Writ of Habeas Corpus  
4826185





1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #6528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7  
8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 RICHARD NEWSOME, JR., aka  
13 Richard Newsome #5437116

14 Defendant.

CASE NO: A-19-788618-W  
(C321043)

DEPT NO: XXI

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS**  
16 **CORPUS (POST-CONVICTION), SUPPLEMENTAL PETITION FOR WRIT OF**  
17 **HABEAS CORPUS, MOTION TO APPOINT COUNSEL, AND REQUEST FOR**  
18 **EVIDENTIARY HEARING**

19 DATE OF HEARING: May 14, 2019

20 TIME OF HEARING: 09:30 AM

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
22 District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District  
23 Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's  
24 Petition For Writ Of Habeas Corpus (Post-Conviction), Supplemental Petition for Writ of  
25 Habeas Corpus, Motion to Appoint Counsel, and Request for Evidentiary Hearing.

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

///

///

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3  
4 On February 2, 2017, Richard Newsome Jr. (Hereinafter "Petitioner") was charged by  
5 way of Indictment with one count MURDER WITH USE OF A DEADLY WEAPON  
6 (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50001) and one count  
7 ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471 – NOC 5021)  
8 for acts committed on or about January 14, 2017. On February 9, 2017, a Superseding  
9 Indictment was filed charging Petitioner with one count MURDER WITH USE OF A  
10 DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50001);  
11 one count ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471 –  
12 NOC 5021); one count ACCESSORY TO MURDER WITH USE OF A DEADLY WEAPON  
13 (Category C Felony – NRS 195.030, 195.040, 200.010 – NOC 53090); and BATTERY WITH  
14 SUBSTANTIAL BODILY HARM (Category C Felony – NRS 200.481 – NOC 50214). On  
15 February 16, 2017, Petitioner plead not guilty to the charges and waived his right to a speedy  
16 trial.

17 On December 14, 2017, the State filed a Second Amended Superseding Indictment and  
18 Petitioner entered a Guilty Plea Agreement to MURDER (SECOND-DEGREE) WITH USE  
19 OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030.2, 193.165 – NOC  
20 5011) in which the State retained the right to argue at sentencing.

21 On February 8, 2018, Petitioner was sentenced to LIFE with the possibility of parole  
22 after ten (10) years in the Nevada Department of Corrections ("NDC") with a consecutive term  
23 of a minimum of ninety-six (96) months and a maximum of two-hundred forty (240) months  
24 in NDC with three-hundred ninety-four (394) days credit for time served. The Judgment of  
25 Conviction was filed March 5, 2018.

26 On February 1, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (Hereinafter  
27 "Petition"), Supplemental Petition for Writ of Habeas Corpus (Hereinafter "Supplement"),  
28

1 Motion for Appointment of Counsel (Hereinafter “Motion”), and Request for an Evidentiary  
2 Hearing (Hereinafter “Request”).

### 3 ARGUMENT

#### 4 **I. PETITIONER WAIVED HIS APPELLATE RIGHTS**

5 In his Petition, Petitioner claims that counsel failed to file a notice of appeal although  
6 Petitioner expressed dissatisfaction with his sentence. Petition at 3. Petitioner also alleges that  
7 counsel failed to acquire his consent not to file a notice of appeal. Id.

8 Counsel is only obligated to file a notice of appeal or to consult with a defendant  
9 regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267  
10 P.3d 795 (2011). “[T]rial counsel has a constitutional duty to file a direct appeal in two  
11 circumstances: when requested to do so and when the defendant expresses dissatisfaction with  
12 his conviction, and that the failure to do so in those circumstances is deficient for purposes of  
13 proving ineffective assistance of counsel.” Id. at 977, 267 P.3d at 800. Moreover, trial counsel  
14 has no constitutional obligation to always inform or consult with a defendant regarding his  
15 right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

16 [t]hat duty arises in the guilty-plea context only when the defendant inquires  
17 about the right to appeal or in circumstances where the defendant may benefit  
18 from receiving advice about the right to a direct appeal, ‘such as the existence  
19 of a direct appeal claim that has reasonable likelihood of success.’

20 Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

21 Courts should consider “all the information counsel knew or should have known” and  
22 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.  
23 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is  
24 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially  
25 appealable issues and because such a plea may indicate that the defendant seeks an end to  
26 judicial proceedings.” Id. Thus, when a defendant who pleaded guilty claims that he was  
27 deprived of the right to appeal, “the court must consider such factors as whether the defendant  
28

received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights.” *Id.*

Petitioner has not alleged, and there is no indication in the record, that he reserved his appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished to challenge his conviction or sentence. Petitioner states that he was dissatisfied with his sentence, but provides no context as to whether he informed counsel of this dissatisfaction. Petitioner’s conclusory statement that counsel “failed” to file an appeal ignores the fact that “the burden is on the client to indicate to his attorney that he wishes to pursue an appeal.” Toston, 127 Nev. at 979, 267 P.3d at 801 (internal citation, quotation marks and brackets omitted). Indeed, Petitioner expressly waived his appeal rights in his Guilty Plea Agreement:

## WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waving and forever giving up the following rights and privileges:

...

6. The right to appeal the conviction with the assistance of an attorney either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this mean I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

Guilty Plea Agreement (“GPA”)(12/14/17), at 4. Counsel was fully aware of this waiver.

Petitioner fails to demonstrate that counsel was ineffective for allegedly failing to consult with him about an appeal. Toston, 127 Nev. at 977, 267 P.3d at 800. He has provided no evidence of his request or dissatisfaction, as required. Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (“The burden of production lies with the petitioner in petitions for writ of habeas corpus”) (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Accordingly, this Court should find that Petitioner waived his appellate rights and deny the Petition for Writ of Habeas Corpus.

1                   **II.     PETITIONER ENTERED HIS GUILTY PLEA FREELY AND**  
2                   **VOLUNTARILY**

3                   Petitioner claims in his Supplemental Petition that he was coerced into entering his plea  
4 agreement and did not received the deal he bargained for, which was twelve (12) to thirty-five  
5 (35) years. Supplement at 3-4. This claim is belied by the record and suitable for only summary  
6 denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

7                   Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
8 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
9 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
10 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
11 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,  
12 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered  
13 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

14                  A court shall look to the totality of the circumstances to determine whether the plea  
15 was made freely, knowingly and voluntarily, and whether the defendant understood the nature  
16 of the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d  
17 442, 448 (2000). The "totality of the circumstances" test includes a review of the plea  
18 agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods,  
19 114 Nev. at 475, 958 P.2d at 95. Further, there is "[n]o specific formula for making this  
20 determination," thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,  
21 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has  
22 concluded that "[a] thorough plea canvass coupled with a detailed, consistent, written plea  
23 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and  
24 intelligently." Molina, 120 Nev. at 191, 87 P.3d at 537-38.

25                  First, there is no indication in Petitioner's guilty plea agreement that he would be  
26 receiving a sentence of twelve (12) to thirty-five (35) years. Petitioner's guilty plea agreement  
27 specifically states that the State would retain the right to argue for any sentence, and that the  
28 consequence of Petitioner's plea would be Life in the Nevada Department of Corrections with

1 the possibility of parole eligibility beginning at ten (10) years or a definite term of twenty-five  
2 (25) years with parole eligibility beginning at ten (10) years, plus a consecutive one (1) to  
3 twenty (20) years for use of a deadly weapon. GPA at 2. Furthermore, at sentencing counsel  
4 for Petitioner argued for a sentence of twelve (12) to life. See Reporter's Transcript:  
5 Sentencing (4/5/19), at 13.

6 Second, by signing the guilty plea agreement, Petitioner acknowledged that no specific  
7 sentence could be promised to him as the ultimate decision was up to the court. Therefore,  
8 Petitioner's claim that the sentencing judge overlooked the promised sentence and imposed a  
9 different sentence instead is immaterial. Petition at 13. This provision was outlined in the  
10 "Consequences of Plea" section of Petitioner's agreement:

11 CONSEQUENCES OF PLEA

12 I have not been promised or guaranteed any particular sentence by anyone. I  
13 know that my sentence is to be determined by the Court within the limits  
14 provided by statute.

15 I understand that if my attorney or the state of Nevada or both recommend  
16 any specific punishment to the Court, the Court is not obligated to accept the  
17 recommendation.

18 GPA, at 2. Petitioner also attested that his plea was voluntarily entered:

19 VOLUNTARINESS OF PLEA

20 I have discussed the elements of all of the original charge(s) against me  
21 with my attorney and I understand the nature of the charge(s) against me.

22 I understand that the State would have to prove each element of the  
23 charge(s) against me at trial.

24 I have discussed with my attorney any possible defenses, defense  
25 strategies and circumstances which might be in my favor.

26 All of the foregoing elements, consequences, rights, and waiver of rights  
27 have been thoroughly explained to me by my attorney.

28 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.*

I am not now under the influence of any intoxicating liquor, a controlled  
substance or other drug which would in any manner impair my ability to

1 comprehend or understand this agreement or the proceedings surrounding my  
2 entry of this plea.

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

6 GPA, at 4 (emphasis added). Moreover, at no point during sentencing did Petitioner inform  
7 the court that he was promised a certain sentence, and Petitioner never objected at any point  
8 when his counsel argued for twelve (12) years to life. Therefore, Petitioner's reliance on a  
9 promise of twelve (12) to thirty-five (35) years is expressly contradicted by the agreement he  
10 signed, and the sentencing transcript.

11 As such, Petitioner fails to provide any indication of coercion or any evidence to show  
12 that he did not enter his plea freely and voluntarily. Accordingly, this Court should find that  
13 Petitioner freely and voluntarily entered his plea.

### 14 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

15 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
16 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). In  
17 McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly  
18 observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-  
19 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision  
20 as being coextensive with the Sixth Amendment to the United States Constitution." McKague  
21 specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel  
22 when petitioner is under a sentence of death), one does not have "[a]ny constitutional or  
23 statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

24 However, the Nevada Legislature has given courts the discretion to appoint post-  
25 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and  
26 the petition is not dismissed summarily." NRS 34.750. NRS 34.750(1) reads:

27 [a] petition may allege that the Defendant is unable to pay the costs  
28 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 whether:

- (a) The issues are difficult;
- (b) The Defendant is unable to comprehend the proceedings;
- or
- (c) Counsel is necessary to proceed with discovery.

All three factors support the denial of Petitioner's request for appointment of counsel. First, the issues are not difficult. Petitioner's claims that counsel failed to file an appeal and that he did not freely and voluntarily enter his plea are both belied by the record and suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Second, Petitioner is able to comprehend the proceedings before him. Petitioner is very litigious as he drafted his own Supplemental Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel, and Request for an Evidentiary Hearing. Last, counsel is not necessary to proceed with discovery. All of the facts and law necessary to resolve Petitioner's claims are already available.

As such, this Court should find that appointment of counsel is not necessary and deny the Petition for Writ of Habeas Corpus.

#### **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

NRS 34.770 provides the manner in which the district court decides whether an evidentiary hearing is required. It reads:

1. 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. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.
2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

(Emphasis added).

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605

1 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
2 factual allegations, which, if true, would entitle him to relief unless the factual allegations are  
3 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at  
4 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an  
5 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
6 'belied' when it is contradicted or proven to be false by the record as it existed at the time the  
7 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

8 In this instance, Petitioner is not entitled to an evidentiary hearing because there is no  
9 need to expand the record. All of the law and facts necessary to dispose of Petitioner's claims  
10 are already available.

11 As such, this Court should find that an evidentiary hearing is not necessary, and deny  
12 Petitioner's request for an evidentiary hearing.

13 **CONCLUSION**

14 For all the foregoing, the State respectfully requests that Petitioner's Petition for Writ  
15 of Habeas Corpus, be DENIED.

16 DATED this 1st day of May, 2019.

17 Respectfully submitted,

18 STEVEN B. WOLFSON  
19 Clark County District Attorney  
Nevada Bar #01565

20 BY /s/JONATHAN E. VANBOSKERCK  
21 JONATHAN E. VANBOSKERCK  
22 Chief Deputy District Attorney  
23 Nevada Bar #6528  
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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 1st day of May, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RICHARD NEWSOME JR., #1194269  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels  
Secretary for the District Attorney's Office

17F00876/JEV/a/appellate/dd-MVU



1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #6528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 RICHARD NEWSOME JR.,  
13 aka Richard Newsome, #5437116

14 Defendant.

CASE NO: A-19-788618-W

DEPT NO: XXI

15 **FINDINGS OF FACT, CONCLUSIONS OF**  
16 **LAW AND ORDER**

17 DATE OF HEARING: May 28, 2019  
18 TIME OF HEARING: 9:30 AM

19 THIS CAUSE having come on for hearing before the Honorable VALERIE ADAIR,  
20 District Judge, on the 28th day of May, 2019, the Petitioner not being present, PROCEEDING  
21 IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark  
22 County District Attorney, by and through ADAM S. OSMAN, Deputy District Attorney, and  
23 the Court having considered the matter, including briefs, transcripts, and documents on file  
24 herein, now therefore, the Court makes the following findings of fact and conclusions of law:

25 //

26 //

27 //

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**PROCEDURAL BACKGROUND**

On February 2, 2017, Richard Newsome Jr. (Hereinafter "Petitioner") was charged by way of Indictment with one count MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and one count ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 5021) for acts committed on or about January 14, 2017. On February 9, 2017, a Superseding Indictment was filed charging Petitioner with one count MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); one count ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 5021); one count ACESSORY TO MURDER WITH USE OF A DEADLY WEAPON (Category C Felony - NRS 195.030, 195.040, 200.010 - NOC 53090); and BATTERY WITH SUBSTANTIAL BODILY HARM (Category C Felony - NRS 200.481 - NOC 50214). On February 16, 2017, Petitioner plead not guilty to the charges and waived his right to a speedy trial.

On December 14, 2017, the State filed a Second Amended Superseding Indictment and Petitioner entered a Guilty Plea Agreement to MURDER (SECOND-DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030.2, 193.165 - NOC 5011) in which the State retained the right to argue at sentencing.

On February 8, 2018, Petitioner was sentenced to LIFE with the possibility of parole after ten (10) years in the Nevada Department of Corrections ("NDC") with a consecutive term of a minimum of ninety-six (96) months and a maximum of two-hundred forty (240) months in NDC with three-hundred ninety-four (394) days credit for time served. The Judgment of Conviction was filed March 5, 2018.

On February 1, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (Hereinafter "Petition"), Supplemental Petition for Writ of Habeas Corpus (Hereinafter "Supplement"), Motion for Appointment of Counsel (Hereinafter "Motion"), and Request for an Evidentiary Hearing (Hereinafter "Request"). The State responded on May 1, 2019. The court held a hearing on May 14, 2019, and set the matter for decision on May 28, 2019.

## ANALYSIS

### **I. PETITIONER WAIVED HIS APPELLATE RIGHTS**

In his Petition, Petitioner claims that counsel failed to file a notice of appeal although Petitioner expressed dissatisfaction with his sentence. Petition at 3. Petitioner also alleges that counsel failed to acquire his consent not to file a notice of appeal. Id.

Counsel is only obligated to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). "[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction, and that the failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel." Id. at 977, 267 P.3d at 800. Moreover, trial counsel has no constitutional obligation to always inform or consult with a defendant regarding his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

[t]hat duty arises in the guilty-plea context only when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal, 'such as the existence of a direct appeal claim that has reasonable likelihood of success.

Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

Courts should consider "all the information counsel knew or should have known" and focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Importantly, whether the defendant's conviction followed a guilty plea is highly relevant to the inquiry "both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id. Thus, when a defendant who pleaded guilty claims that he was deprived of the right to appeal, "the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Id.

Petitioner has not alleged, and there is no indication in the record, that he reserved his appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished to challenge

1 his conviction or sentence. Petitioner states that he was dissatisfied with his sentence, but  
2 provides no context as to whether he informed counsel of this dissatisfaction. Petitioner's  
3 conclusory statement that counsel "failed" to file an appeal ignores the fact that "the burden is  
4 on the client to indicate to his attorney that he wishes to pursue an appeal." Toston, 127 Nev.  
5 at 979, 267 P.3d at 801 (internal citation, quotation marks and brackets omitted). Indeed,  
6 Petitioner expressly waived his appeal rights in his Guilty Plea Agreement:

7 WAIVER OF RIGHTS

8 By entering my plea of guilty, I understand that I am waving and forever  
9 giving up the following rights and privileges:

10 ...

11 6. The right to appeal the conviction with the assistance of an attorney  
12 either appointed or retained, unless specifically reserved in writing and agreed  
13 upon as provided in NRS 174.035(3). I understand this mean I am  
14 unconditionally waiving my right to a direct appeal of this conviction, including  
15 any challenge based upon reasonable constitutional, jurisdictional or other  
16 grounds that challenge the legality of the proceedings as stated in NRS  
17 177.015(4). However, I remain free to challenge my conviction through other  
18 post-conviction remedies including a habeas corpus petition pursuant to NRS  
19 Chapter 34.

20 Guilty Plea Agreement ("GPA")(12/14/17), at 4. Counsel was fully aware of this waiver.

21 Petitioner fails to demonstrate that counsel was ineffective for allegedly failing to  
22 consult with him about an appeal. Toston, 127 Nev. at 977, 267 P.3d at 800. He has provided  
23 no evidence of his request or dissatisfaction, as required. Ford v. Warden, 111 Nev. 872, 882,  
24 901 P.2d 123, 129 (1995) ("The burden of production lies with the petitioner in petitions for  
25 writ of habeas corpus") (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable  
26 only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

27 Accordingly, this Court finds Petitioner waived his appellate rights and the Petition for  
28 Writ of Habeas Corpus must be denied.

29 **II. PETITIONER ENTERED HIS GUILTY PLEA FREELY AND**  
30 **VOLUNTARILY**

31 Petitioner claims in his Supplemental Petition that he was coerced into entering his plea  
32 agreement and did not received the deal he bargained for, which was twelve (12) to thirty-five

1 (35) years. Supplement at 3-4. This claim is belied by the record and suitable for only summary  
2 denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
4 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
5 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
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10 A court shall look to the totality of the circumstances to determine whether the plea  
11 was made freely, knowingly and voluntarily, and whether the defendant understood the nature  
12 of the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d  
13 442, 448 (2000). The "totality of the circumstances" test includes a review of the plea  
14 agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods,  
15 114 Nev. at 475, 958 P.2d at 95. Further, there is "[n]o specific formula for making this  
16 determination," thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,  
17 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has  
18 concluded that "[a] thorough plea canvass coupled with a detailed, consistent, written plea  
19 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and  
20 intelligently." Molina, 120 Nev. at 191, 87 P.3d at 537-38.

21 First, there is no indication in Petitioner's guilty plea agreement that he would be  
22 receiving a sentence of twelve (12) to thirty-five (35) years. Petitioner's guilty plea agreement  
23 specifically states that the State would retain the right to argue for any sentence, and that the  
24 consequence of Petitioner's plea would be Life in the Nevada Department of Corrections with  
25 the possibility of parole eligibility beginning at ten (10) years or a definite term of twenty-five  
26 (25) years with parole eligibility beginning at ten (10) years, plus a consecutive one (1) to  
27 twenty (20) years for use of a deadly weapon. GPA at 2. Furthermore, at sentencing counsel  
28

1 for Petitioner argued for a sentence of twelve (12) to life. See Reporter's Transcript: Sentencing  
2 (4/5/19), at 13.

3 Second, by signing the guilty plea agreement, Petitioner acknowledged that no specific  
4 sentence could be promised to him as the ultimate decision was up to the court. Therefore,  
5 Petitioner's claim that the sentencing judge overlooked the promised sentence and imposed a  
6 different sentence instead is immaterial. Petition at 13. This provision was outlined in the  
7 "Consequences of Plea" section of Petitioner's agreement:

8 CONSEQUENCES OF PLEA

9 I have not been promised or guaranteed any particular sentence by  
10 anyone. I know that my sentence is to be determined by the Court within the  
11 limits provided by statute.

12 I understand that if my attorney or the state of Nevada or both recommend  
13 any specific punishment to the Court, the Court is not obligated to accept the  
14 recommendation.

15 GPA, at 2. Petitioner also attested that his plea was voluntarily entered:

16 VOLUNTARINESS OF PLEA

17 I have discussed the elements of all of the original charge(s) against me  
18 with my attorney and I understand the nature of the charge(s) against me.

19 I understand that the State would have to prove each element of the  
20 charge(s) against me at trial.

21 I have discussed with my attorney any possible defenses, defense  
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23 All of the foregoing elements, consequences, rights, and waiver of rights  
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25 I believe that pleading guilty and accepting this plea bargain is in my best  
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27 I am signing this agreement voluntarily, after consultation with my  
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I am not now under the influence of any intoxicating liquor, a controlled  
substance or other drug which would in any manner impair my ability to  
comprehend or understand this agreement or the proceedings surrounding my  
entry of this plea.

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.

1 GPA, at 4 (emphasis added). Moreover, at no point during sentencing did Petitioner inform  
2 the court that he was promised a certain sentence, and Petitioner never objected at any point  
3 when his counsel argued for twelve (12) years to life. Therefore, Petitioner's reliance on a  
4 promise of twelve (12) to thirty-five (35) years is expressly contradicted by the agreement he  
5 signed, and the sentencing transcript.

6 As such, Petitioner fails to provide any indication of coercion or any evidence to show  
7 that he did not enter his plea freely and voluntarily. Accordingly, this Court finds that  
8 Petitioner freely and voluntarily entered his plea, and the Supplemental Petition for Writ of  
9 Habeas Corpus must be denied.

### 10 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

11 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
12 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). In  
13 McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly  
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21 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and  
22 the petition is not dismissed summarily." NRS 34.750. NRS 34.750(1) reads:

23 [a] petition may allege that the Defendant is unable to pay the costs of the  
24 proceedings or employ counsel. If the court is satisfied that the allegation of  
25 indigency is true and the petition is not dismissed summarily, the court may  
26 appoint counsel at the time the court orders the filing of an answer and a return.  
In making its determination, the court may consider whether:

- 27 (a) The issues are difficult;  
28 (b) The Defendant is unable to comprehend the proceedings; or  
(c) Counsel is necessary to proceed with discovery.

1 All three factors support the denial of Petitioner's request for appointment of counsel.  
2 First, the issues are not difficult. Petitioner's claims that counsel failed to file an appeal and  
3 that he did not freely and voluntarily enter his plea are both belied by the record and suitable  
4 for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Second, Petitioner  
5 is able to comprehend the proceedings before him. Petitioner is very litigious as he drafted his  
6 own Supplemental Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel,  
7 and Request for an Evidentiary Hearing. Last, counsel is not necessary to proceed with  
8 discovery. All of the facts and law necessary to resolve Petitioner's claims are already  
9 available.

10 As such, this Court finds that appointment of counsel is not necessary.

11 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

12 NRS 34.770 provides the manner in which the district court decides whether an  
13 evidentiary hearing is required. It reads:

14 1. The judge or justice, upon review of the return, answer and all  
15 supporting documents which are filed, shall determine whether an evidentiary  
16 hearing is required. A petitioner must not be discharged or committed to the  
17 custody of a person other than the respondent unless an evidentiary hearing is  
held.

18 2. If the judge or justice determines that the petitioner is not entitled to  
19 relief and an evidentiary hearing is not required, he shall dismiss the petition  
without a hearing.

20 3. If the judge or justice determines that an evidentiary hearing is  
required, he shall grant the writ and shall set a date for the hearing.

21 (Emphasis added).

22 The Nevada Supreme Court has held that if a petition can be resolved without  
23 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,  
24 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605  
25 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
26 factual allegations, which, if true, would entitle him to relief unless the factual allegations are  
27 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at  
28 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an

1 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
2 'belied' when it is contradicted or proven to be false by the record as it existed at the time the  
3 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

4 In this instance, Petitioner is not entitled to an evidentiary hearing because there is no  
5 need to expand the record. All of the law and facts necessary to dispose of Petitioner's claims  
6 are already available.

7 As such, this Court finds that an evidentiary hearing is not necessary, and Petitioner's  
8 request for an evidentiary hearing must be denied.

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus  
11 (Post-Conviction), shall be, and it is, hereby denied.

12 IT IS FURTHER ORDERED that the Supplemental Petition for Writ of Habeas Corpus  
13 is denied.

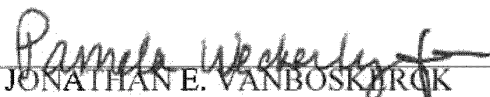
14 IT IS FURTHER ORDERED that the Motion to Appoint Counsel is denied

15 IT IS FURTHER ORDERED that the Request for Evidentiary Hearing is denied.

16 DATED this 21 day of June, 2019.

17   
18 \_\_\_\_\_  
DISTRICT JUDGE

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

21 BY   
22 JONATHAN E. VANBOSKERCK  
23 Chief Deputy District Attorney  
Nevada Bar #6528

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 18th day of  
June, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RICHARD NEWSOME #1194269  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels  
Secretary for the District Attorney's Office

17F00876/qh/appellate/dd/MVU



1 NEO

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 RICHARD NEWSOME,

6 Petitioner,

Case No: A-19-788618-W

Dept No: 21

7 vs.

8 STATE OF NEVADA; ET AL,

9 Respondent,

NOTICE OF ENTRY OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

10  
11 PLEASE TAKE NOTICE that on June 26, 2019, the court entered a decision or order in this matter, a  
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on June 27, 2019.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Debra Donaldson

18 Debra Donaldson, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 27 day of June 2019, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

22 Clark County District Attorney's Office  
23 Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Richard Newsome # 1194269  
26 P.O. Box 650  
27 Indian Springs, NV 89018

28 /s/ Debra Donaldson

Debra Donaldson, Deputy Clerk



1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #6528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

CASE NO: A-19-788618-W

12 RICHARD NEWSOME JR.,  
13 aka Richard Newsome, #5437116

DEPT NO: XXI

14 Defendant.

15 **FINDINGS OF FACT, CONCLUSIONS OF**  
16 **LAW AND ORDER**

17 DATE OF HEARING: May 28, 2019  
18 TIME OF HEARING: 9:30 AM

19 THIS CAUSE having come on for hearing before the Honorable VALERIE ADAIR,  
20 District Judge, on the 28th day of May, 2019, the Petitioner not being present, PROCEEDING  
21 IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark  
22 County District Attorney, by and through ADAM S. OSMAN, Deputy District Attorney, and  
23 the Court having considered the matter, including briefs, transcripts, and documents on file  
24 herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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## ANALYSIS

### **I. PETITIONER WAIVED HIS APPELLATE RIGHTS**

In his Petition, Petitioner claims that counsel failed to file a notice of appeal although Petitioner expressed dissatisfaction with his sentence. Petition at 3. Petitioner also alleges that counsel failed to acquire his consent not to file a notice of appeal. Id.

Counsel is only obligated to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). "[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction, and that the failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel." Id. at 977, 267 P.3d at 800. Moreover, trial counsel has no constitutional obligation to always inform or consult with a defendant regarding his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

[t]hat duty arises in the guilty-plea context only when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal, 'such as the existence of a direct appeal claim that has reasonable likelihood of success.

Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

Courts should consider "all the information counsel knew or should have known" and focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Importantly, whether the defendant's conviction followed a guilty plea is highly relevant to the inquiry "both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id. Thus, when a defendant who pleaded guilty claims that he was deprived of the right to appeal, "the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Id.

Petitioner has not alleged, and there is no indication in the record, that he reserved his appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished to challenge

1 his conviction or sentence. Petitioner states that he was dissatisfied with his sentence, but  
2 provides no context as to whether he informed counsel of this dissatisfaction. Petitioner's  
3 conclusory statement that counsel "failed" to file an appeal ignores the fact that "the burden is  
4 on the client to indicate to his attorney that he wishes to pursue an appeal." Toston, 127 Nev.  
5 at 979, 267 P.3d at 801 (internal citation, quotation marks and brackets omitted). Indeed,  
6 Petitioner expressly waived his appeal rights in his Guilty Plea Agreement:

7 WAIVER OF RIGHTS

8 By entering my plea of guilty, I understand that I am waving and forever  
9 giving up the following rights and privileges:

10 ...

11 6. The right to appeal the conviction with the assistance of an attorney  
12 either appointed or retained, unless specifically reserved in writing and agreed  
13 upon as provided in NRS 174.035(3). I understand this mean I am  
14 unconditionally waiving my right to a direct appeal of this conviction, including  
15 any challenge based upon reasonable constitutional, jurisdictional or other  
16 grounds that challenge the legality of the proceedings as stated in NRS  
17 177.015(4). However, I remain free to challenge my conviction through other  
18 post-conviction remedies including a habeas corpus petition pursuant to NRS  
19 Chapter 34.

20 Guilty Plea Agreement ("GPA")(12/14/17), at 4. Counsel was fully aware of this waiver.

21 Petitioner fails to demonstrate that counsel was ineffective for allegedly failing to  
22 consult with him about an appeal. Toston, 127 Nev. at 977, 267 P.3d at 800. He has provided  
23 no evidence of his request or dissatisfaction, as required. Ford v. Warden, 111 Nev. 872, 882,  
24 901 P.2d 123, 129 (1995) ("The burden of production lies with the petitioner in petitions for  
25 writ of habeas corpus") (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable  
26 only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

27 Accordingly, this Court finds Petitioner waived his appellate rights and the Petition for  
28 Writ of Habeas Corpus must be denied.

29 **II. PETITIONER ENTERED HIS GUILTY PLEA FREELY AND VOLUNTARILY**

30 Petitioner claims in his Supplemental Petition that he was coerced into entering his plea  
31 agreement and did not received the deal he bargained for, which was twelve (12) to thirty-five

1 (35) years. Supplement at 3-4. This claim is belied by the record and suitable for only summary  
2 denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
4 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
5 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
6 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
7 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,  
8 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered  
9 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

10 A court shall look to the totality of the circumstances to determine whether the plea  
11 was made freely, knowingly and voluntarily, and whether the defendant understood the nature  
12 of the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d  
13 442, 448 (2000). The "totality of the circumstances" test includes a review of the plea  
14 agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods,  
15 114 Nev. at 475, 958 P.2d at 95. Further, there is "[n]o specific formula for making this  
16 determination," thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,  
17 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has  
18 concluded that "[a] thorough plea canvass coupled with a detailed, consistent, written plea  
19 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and  
20 intelligently." Molina, 120 Nev. at 191, 87 P.3d at 537-38.

21 First, there is no indication in Petitioner's guilty plea agreement that he would be  
22 receiving a sentence of twelve (12) to thirty-five (35) years. Petitioner's guilty plea agreement  
23 specifically states that the State would retain the right to argue for any sentence, and that the  
24 consequence of Petitioner's plea would be Life in the Nevada Department of Corrections with  
25 the possibility of parole eligibility beginning at ten (10) years or a definite term of twenty-five  
26 (25) years with parole eligibility beginning at ten (10) years, plus a consecutive one (1) to  
27 twenty (20) years for use of a deadly weapon. GPA at 2. Furthermore, at sentencing counsel  
28

1 for Petitioner argued for a sentence of twelve (12) to life. See Reporter's Transcript: Sentencing  
2 (4/5/19), at 13.

3 Second, by signing the guilty plea agreement, Petitioner acknowledged that no specific  
4 sentence could be promised to him as the ultimate decision was up to the court. Therefore,  
5 Petitioner's claim that the sentencing judge overlooked the promised sentence and imposed a  
6 different sentence instead is immaterial. Petition at 13. This provision was outlined in the  
7 "Consequences of Plea" section of Petitioner's agreement:

8 CONSEQUENCES OF PLEA

9 I have not been promised or guaranteed any particular sentence by  
10 anyone. I know that my sentence is to be determined by the Court within the  
11 limits provided by statute.

12 I understand that if my attorney or the state of Nevada or both recommend  
13 any specific punishment to the Court, the Court is not obligated to accept the  
14 recommendation.

15 GPA, at 2. Petitioner also attested that his plea was voluntarily entered:

16 VOLUNTARINESS OF PLEA

17 I have discussed the elements of all of the original charge(s) against me  
18 with my attorney and I understand the nature of the charge(s) against me.

19 I understand that the State would have to prove each element of the  
20 charge(s) against me at trial.

21 I have discussed with my attorney any possible defenses, defense  
22 strategies and circumstances which might be in my favor.

23 All of the foregoing elements, consequences, rights, and waiver of rights  
24 have been thoroughly explained to me by my attorney.

25 I believe that pleading guilty and accepting this plea bargain is in my best  
26 interest, and that a trial would be contrary to my best interest.

27 I am signing this agreement voluntarily, after consultation with my  
28 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.

I am not now under the influence of any intoxicating liquor, a controlled  
substance or other drug which would in any manner impair my ability to  
comprehend or understand this agreement or the proceedings surrounding my  
entry of this plea.

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.

1 GPA, at 4 (emphasis added). Moreover, at no point during sentencing did Petitioner inform  
2 the court that he was promised a certain sentence, and Petitioner never objected at any point  
3 when his counsel argued for twelve (12) years to life. Therefore, Petitioner's reliance on a  
4 promise of twelve (12) to thirty-five (35) years is expressly contradicted by the agreement he  
5 signed, and the sentencing transcript.

6 As such, Petitioner fails to provide any indication of coercion or any evidence to show  
7 that he did not enter his plea freely and voluntarily. Accordingly, this Court finds that  
8 Petitioner freely and voluntarily entered his plea, and the Supplemental Petition for Writ of  
9 Habeas Corpus must be denied.

### 10 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

11 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
12 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). In  
13 McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly  
14 observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-  
15 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision  
16 as being coextensive with the Sixth Amendment to the United States Constitution." McKague  
17 specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel  
18 when petitioner is under a sentence of death), one does not have "[a]ny constitutional or  
19 statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

20 However, the Nevada Legislature has given courts the discretion to appoint post-  
21 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and  
22 the petition is not dismissed summarily." NRS 34.750. NRS 34.750(1) reads:

23 [a] petition may allege that the Defendant is unable to pay the costs of the  
24 proceedings or employ counsel. If the court is satisfied that the allegation of  
25 indigency is true and the petition is not dismissed summarily, the court may  
26 appoint counsel at the time the court orders the filing of an answer and a return.  
In making its determination, the court may consider whether:

- 27 (a) The issues are difficult;  
28 (b) The Defendant is unable to comprehend the proceedings; or  
(c) Counsel is necessary to proceed with discovery.

1 All three factors support the denial of Petitioner's request for appointment of counsel.  
2 First, the issues are not difficult. Petitioner's claims that counsel failed to file an appeal and  
3 that he did not freely and voluntarily enter his plea are both belied by the record and suitable  
4 for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Second, Petitioner  
5 is able to comprehend the proceedings before him. Petitioner is very litigious as he drafted his  
6 own Supplemental Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel,  
7 and Request for an Evidentiary Hearing. Last, counsel is not necessary to proceed with  
8 discovery. All of the facts and law necessary to resolve Petitioner's claims are already  
9 available.

10 As such, this Court finds that appointment of counsel is not necessary.

#### 11 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

12 NRS 34.770 provides the manner in which the district court decides whether an  
13 evidentiary hearing is required. It reads:

14 1. The judge or justice, upon review of the return, answer and all  
15 supporting documents which are filed, shall determine whether an evidentiary  
16 hearing is required. A petitioner must not be discharged or committed to the  
17 custody of a person other than the respondent unless an evidentiary hearing is  
held.

18 2. If the judge or justice determines that the petitioner is not entitled to  
19 relief and an evidentiary hearing is not required, he shall dismiss the petition  
without a hearing.

20 3. If the judge or justice determines that an evidentiary hearing is  
required, he shall grant the writ and shall set a date for the hearing.

21 (Emphasis added).

22 The Nevada Supreme Court has held that if a petition can be resolved without  
23 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,  
24 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605  
25 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
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28 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an

1 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
2 'belied' when it is contradicted or proven to be false by the record as it existed at the time the  
3 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

4 In this instance, Petitioner is not entitled to an evidentiary hearing because there is no  
5 need to expand the record. All of the law and facts necessary to dispose of Petitioner's claims  
6 are already available.

7 As such, this Court finds that an evidentiary hearing is not necessary, and Petitioner's  
8 request for an evidentiary hearing must be denied.

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus  
11 (Post-Conviction), shall be, and it is, hereby denied.

12 IT IS FURTHER ORDERED that the Supplemental Petition for Writ of Habeas Corpus  
13 is denied.

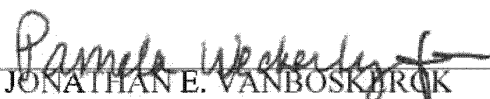
14 IT IS FURTHER ORDERED that the Motion to Appoint Counsel is denied

15 IT IS FURTHER ORDERED that the Request for Evidentiary Hearing is denied.

16 DATED this 21 day of June, 2019.

17   
18 \_\_\_\_\_  
DISTRICT JUDGE

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

21 BY   
22 JONATHAN E. VANBOSKERCK  
23 Chief Deputy District Attorney  
Nevada Bar #6528

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 18th day of  
June, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RICHARD NEWSOME #1194269  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels  
Secretary for the District Attorney's Office

17F00876/qh/appellate/dd/MVU



1 CSERV

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5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7  
8 RICHARD NEWSOME,

9 Plaintiff(s),

10 vs.

11 STATE OF NEVADA; ET AL.,

12 Defendant(s).

Case No: A-19-788618-W

Dept No: XXI

13  
14  
15 **CERTIFICATE OF RE-SERVICE**

16 I HEREBY CONFIRM that the Notice of Entry of Findings of Fact Conclusions of Law  
17 and Order originally filed on June 27, 2019 has been served on the Office of the Clark County  
18 District Attorney and the Office of the Attorney General via electronic service.

19  
20 All other respective party(ies) and their counsel(s), if any, have already received copies  
21 via U.S. Mail when initially filed.

22  
23 Steven D. Grierson, Clerk of the Court

24 s/Debra Donaldson

25 Debra Donaldson, Deputy Clerk

**Ungermann, Heather**

---

**From:** Donaldson, Debra  
**Sent:** Wednesday, July 24, 2019 10:12 AM  
**To:** 'motions@clarkcountyda.com'; 'wiznetfilings@ag.nv.gov'; Ungermann, Heather  
**Subject:** FW: Filing Accepted for Case: A-19-788618-W; Richard Newsome, Plaintiff(s)vs.State of Nevada, Defendant(s); Envelope Number: 4511473

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**From:** [efilingmail@tylerhost.net](mailto:efilingmail@tylerhost.net) [mailto:[efilingmail@tylerhost.net](mailto:efilingmail@tylerhost.net)]  
**Sent:** Thursday, June 27, 2019 8:20 AM  
**To:** Donaldson, Debra  
**Subject:** Filing Accepted for Case: A-19-788618-W; Richard Newsome, Plaintiff(s)vs.State of Nevada, Defendant(s); Envelope Number: 4511473



## Filing Accepted

Envelope Number: 4511473

Case Number: A-19-788618-W

Case Style: Richard Newsome, Plaintiff(s)vs.State of Nevada, Defendant(s)

The filing below was accepted through the eFiling system. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details	
<b>Court</b>	Clark District Criminal/Civil
<b>Case Number</b>	A-19-788618-W
<b>Case Style</b>	Richard Newsome, Plaintiff(s)vs.State of Nevada, Defendant(s)
<b>Date/Time Submitted</b>	6/27/2019 8:18 AM PST
<b>Date/Time Accepted</b>	6/27/2019 8:19 AM PST
<b>Accepted Comments</b>	Auto Review Accepted
<b>Filing Type</b>	Notice of Entry - NEO (CIV)
<b>Filing Description</b>	Notice of Entry of Findings of Fact, Conclusions of Law and Order
<b>Activity Requested</b>	EFile
<b>Filed By</b>	Debra Donaldson
<b>Filing Attorney</b>	

Document Details	
<b>Lead Document</b>	A788618.062719_neo_dd.pdf
<b>Lead Document Page</b>	11

<b>Count</b>	
<b>File Stamped Copy</b>	<a href="#"><u>Download Document</u></a>
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 14, 2019**

---

A-19-788618-W	Richard Newsome, Jr., Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

---

<b>May 14, 2019</b>	<b>9:30 AM</b>	<b>Petition for Writ of Habeas Corpus</b>
---------------------	----------------	---

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Athena Trujillo

**RECORDER:** Robin Page

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Keach, Eckley M.	Attorney
-----------------	------------------	----------

**JOURNAL ENTRIES**

- COURT noted it is unable to locate the transcript from Entry of Plea and ORDERED, matter SET for decision.

5/28/19 9:30 AM DECISION

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 28, 2019**

---

A-19-788618-W      Richard Newsome, Jr., Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**May 28, 2019      9:30 AM      Decision**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Athena Trujillo

**RECORDER:** Robin Page

**REPORTER:**

**PARTIES**

**PRESENT:** Osman, Adam B.      Attorney

**JOURNAL ENTRIES**

- Court noted it is clear from the plea canvass that the range of punishment was discussed and ORDERED, motion DENIED; State to prepare the order.

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated August 2, 2019, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 74.

RICHARD ALLAN NEWSOME, JR.,

Plaintiff(s),

vs.

STATE OF NEVADA; WARDEN BRIAN  
WILLIAMS,

Defendant(s),

Case No: A-19-788618-W  
*Related Case C-17-321043-1*  
Dept. No: XXI

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 9 day of August 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

# IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLAN NEWSOME, JR.,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: A-19-788618-W  
*Related Case C-17-321043-1*  
Docket No: 79044

## RECORD ON APPEAL

**ATTORNEY FOR APPELLANT**  
RICHARD NEWSOME, JR. # 1194269,  
PROPER PERSON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070

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

**I N D E X**

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

Richard Newsome Jr.  
Petitioner

vs

STATE OF NEVADA, Warden BRIAN  
Williams  
Respondents

A-19-788618-W  
Dept. XXI

FILED

FEB 01 2019

John J. Sullivan  
CLERK OF COURT

A-19-788618-W  
IPWHC  
Inmate Filed - Petition for Writ of Habeas  
4813031



SUPPLEMENTAL PETITION FOR WRIT OF HABEAS  
CORPUS POST CONVICTION, AND MOTION FOR APPOINTMENT OF  
COUNSEL ALONG WITH, REQUEST FOR EVIDENTIARY HEARING

Comes Now, The Petitioner Richard Newsome Jr proceedings in pro se ...  
within the above entitled cause, and respectfully request that this Honorable court  
GRANT

CLERK OF THE COURT

FEB 01 2019

RECEIVED

1. motion For APPOINTMENT of Counsel and  
Request For EVIDENTIARY  
And Supplemental Petition For WRIT OF HABEAS CORPUS POST CONVICTION

STATEMENT OF THE CASE

Counsel was ineffective for failing to file notice of appeal, when he knew  
Defendant was dissatisfied with his harsh sentence, and a direct breach of plea  
agreement because the state offered a sentence of 12 to 35 years and then  
using counsel to make a promise to assure the plea was signed and/or using  
a threat of 25 to life, and also using coercion, and trickery to have the  
defendant's mother convince him to sign the plea agreement of 12 to 35  
years. And then when signing plea, Judge had personal knowledge that  
a promise was made to defendant to get him to sign deal, and this ...  
court should allow the specific performance of the plea agreement  
in front of a different sentencing Judge, because the defendant  
would not of sign the plea if he knew he would be sentenced to  
18 to life. And defendant had already given up his right to

remain silent and tendered his best bargaining chip, the knowledge of his criminal activity. And the state did not inform the Judge that he offered a 12 to 35 year sentence to defendant counsel who had defendant sign deal by promising such 12 to 35 years

TO support the Petitioner's need for 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

2. Petitioner is confined at High Desert state prison and is unable to the ability, as an attorney would or could to investigate crucial facts involved with in this petition for writ of habeas corpus.

3. The issues presented in this petition involve a complexity that Petitioner is unable to argue effectively.

3. Petitioner has no 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 have servicing 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.

4. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the cost of counsel, therefore he have had a Jail house lawyer he me out

5. The prison severely limit the hours for law library.

6. While Petitioner do have the assistant of BRICK P. Houston who is not in same level, and only contact is thru mother.

7. The ends of Justice will be served in this case by the appointment of counsel.

Argument in support of motion  
For The Appointment of Counsel

This Argument motion is made and based upon the matters set forth here. NRS 34.750 (1) (2) and verification attached hereto

Motions for the Appointment of Counsel are addressed to the sound discretion of the court. The court may request an Attorney to represent any such person unable to employ counsel. On a motion for Appointment of Counsel the District Court (and) should consider whether Appointment would be of service to indigent Petitioner, the court, and respondents as well, by sharpening the Issues in the case, examination of witnesses and... ultimately shortening trial and assisting in Just determination.

In order for the Appointment of Counsel to be granted, the court must consider several factors to be met in order the Appointment of counsel to be granted. (1) The merit of 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.

Argument in support supplemental  
Petition for writ of Habeas corpus post conviction

Petitioner Reallege herein by reference there to the original writ filed in this case dealing with counsel's failure to file appeal.

Defendant should be entitled to the sentence that was the Promise. The state went to defense counsel and presented the Plea Agreement of 12 to 35 YEARS which defendant agreed, which he was threatened with 25 to Life, so he took the deal that was a promise made to defendant and his mother. The state and defense counsel allow the breach of the Plea Agreement knowing that a promise was what made the Plea to be sign. Such was coercion and by trickery,

It is obvious that the state prosecutor, told defense counsel to offer the plea deal of 12 to 35 years. in which counsel promise such plea deal. Did the state conspire and agree with defense counsel to convince the defendant to sign the plea agreement. what this court should ask itself, why... would a plea be offered, and then not be kept? Did defense counsel lie, did he use false promise of a plea agreement to have defendant sign plea? Also this court should ask itself how and why was the plea agreement breached. and who is person who assured that a breach would take place. Do this... court believe that counsel for defendant would commit legal malpractice, and commit a miscarriage of Justice and use... coercion, and/or threats, along with trickery to have the defendant sign a plea agreement, and promise the mother if she have her son sign the deal, he would only receive 12 to 35 years. This shows that counsel was ineffective and that the plea agreement was not signed voluntarily and knowingly. This also shows that defendant had the... understanding that he would receive a 12 to 35 years sentence, and not a 18 to life.

The determination of whether or not an agreement has been breached is governed by the law of contracts, with some exceptions. see US v. Hamdi 432 F3d 115, 122-23 (2d Cir 2005) stated: Although plea agreements are generally analyzed under contract law, they are unique contracts with special due process concerns for fairness and adequacy of procedural safeguards.

And Also in McKeeven v. Warden SCI-Gaterford 486 F3d 81, 86, (3rd Cir 2007) stated: Although plea agreements are generally analyzed... under contract law, defendant must first be afforded the protections of due process. And in US v. Wood 378 F.3d 342, 348 (4th Cir 2004), says.....

Although plea agreements are generally analyzed under contract law, the state is held to higher standard than defendant because agreements... implicate integrity of criminal justice system. And in Peavy v. US 31 F3d 1341, 1346 (6th Cir 1994) stated: Although plea agreements are generally analyzed under contract law, analogy to contract law not complete because guilty plea involves waiver of fundamental constitutional rights, and although plea agreements are generally analyzed under contract law, plea agreements are tempered by limits that constitution places on criminal process. US v. Boward 405 F3d 634, 636 (7th Cir 2005) And the 9th... Circuit clearly state in US v. Transfiguration, 442 F3d 1222, 1229-30 (2006) Although plea agreements are generally analyzed under contract law, contract law principle of mutual mistake... cannot be asserted to invalidate agreement because, unlike commercial exchanges, plea bargains implicate liberty.

Once defendant sign the plea agreement, he expected the state, the government and his defense counsel to assure that the... promise of 12 to 35 years was kept, which was defendant reasonable understanding of the agreement. Defendant reasonably understood the plea agreement to prohibit misconduct rather than arrest based on Judge's ambiguous statement of youthful defendant.

The defendant in case at bar, reasonable understood he was eligible for the 12 to 35 years when he made plea, to hold him ineligible would bind defendant (defendant) to unknowing and involuntary plea. see McIntosh v. US 484 F3d 832, 836 (6th Cir 2007)

since Defendant is alleging that the state Breach the Plea Agreement, I must Prove the breach by a preponderance of evidence. see US v. Cruz-Mercado, 360 F3d 30, 37 (2004) Also US v. Packwood, 848 F2d 1009, 1011 (9th Cir 1989)

And since defendant alleges that the state breached a Plea Agreement he should be entitled to an evidentiary hearing. At the court's discretion, discovery or expansion of the record, unless... defendants allegations are palpably "incredible" or patently frivolous or false see Blackledge v. Allison 431 US 63, 67, 80-82 (1977)

OR To determine whether defendant provided assistance... substantial enough to require state to move for downward... departure under Plea Agreement. US v. Floyd 428 F3d 513, 518 (2005) And defendant is entitled to evidentiary hearing to determine... whether state breached promise not contain in Plea Agreement when Rule 11 colloquy fails to ensure voluntariness of Plea if Rule 11 colloquy inquired about additional promises made by state. see US v. White 366 F3d 291, 297, 298 (2004)

The Judge in the herein case had personal knowledge that a promise was made in regards to a particular sentence, but he fail in his duty and did not address such issue and/or allow defendant to withdraw his Plea.

The Remedy for a state breach of a Plea Agreement depends on the case. see e.g. US v. Riggs 287 F3d 221, 226 (2006)

Defendant believe that he should have been inform by counsel that there would be problems after Plea was sign and

The Judge did not halt to except the plea. However once the Judge found out there was a promise made by counsel on behalf of the state, he should of given Defendant the opportunity to withdraw plea, if he was not going to go along with it. This court may alter the sentence and/or order specific performance of Agreement. see US -V- Hodge 412 F3d 479,487 (2005) where the defendant was entitled to remand for determination to whether to grant specific performance or withdrawal of plea when state breached plea agreement by implying that defendant should not be release back to community. In the case at bar the state prosecutor stated at sentencing/ Plea Hearing,

At the Plea Hearing the Judge Ask? Did anyone make you ANY promises or something similar. see Hearing transcript to Plea Agreement the Judge said:

Based on the actions of the state, and the Judge's sentencing, and the promise made by counsel on behalf of the state, defendant should be entitled to specific performance of oral plea agreement when prosecution breached plea agreement by failing to argue for a reduction of sentence, claiming failure was unintentional. see US - V - McQueen 108 F3d 64, 66-67 (1997)

The state should inform the Judge that he presented a plea deal to counsel for defendant, and the offer and promise was a sentence of 12 to 35 years, and counsel did convince the defendant to sign deal and that counsel even use defendant's own mother, TIANNA Thomas to tell her son Richard to sign the deal, because if you don't, they will give a sentence of 25 to life, not a 12 to 35 years. Based on these circumstances, defendant should be entitled to specific performance of agreement before a different sentencing Judge. see US - V - MUNOZ 408 F3d 222, 229 (2005) Also see US - V - CACHUCHA 484 F3d 1266, 1271 (2007)

IN US - V - TAYLOR 77 F3d 368, 372 (1996) The defendant entitled to withdraw his plea because state breached agreement to recommend 10 year sentence.

IN Petitioner case a promise of 12 to 35 years was breached and his understanding was that he would receive what was promise and introduce by the state to counsel for defendant. This Honorable Court has a duty to determine whether defendant's choice of plea was prejudice by counsel's error regarding possible sentencing warranted Remand US - V - McMullen 86 F3d 135, 137 (1996)

Courts will set a plea of guilty on collateral attack to correct a miscarriage of justice. see US - V - Fowler 445 F3d 1035, 1238 (2006) US - V - CAMARILLO Tello 236 F3d 1024, 1027 (9th Cir 2000)

Also see Meyer - V - Warden 603 P2d 1066 (Nev 1979)  
Little - V - Warden 34 P3d 540 (Nev 2001)

The Petitioner main argument herein is that... If he had known that when he sign the Plea Agreement, He would receive a 18 to Life sentence instead of a 12 to 35 year., he would not of sign the Plea and he would (of) have taken the case to trial. the circumstances of the promise, one could believe that there was reasonable probability that petitioner would not of Plead Guilty if he knew that he would get 18 to Life.

He was not facing the death penalty. He could not receive Life without. A deal is design to give the person a opportunity of less time than the statute mandate, and/or 18 to Life is Just like 25 to life. the only deal that was reasonable was the 12 to 35 years. as promise.

In the case of (more) Moore v. Bryant 348 342, 343 (7th Cir 2003) The defendant was prejudice when he was told He would face 27 years in prison if convicted at trial, Reasonable Probability defendant would not of Plead Guilty if he knew the actual... maximum was 18 years to Life.

As in the case of Bari, if he would of not been threaten of 25 to life he would with... reasonable probability not sign deal if he would get 18 to Life.

Wherefore this Honorable Court should grant the Appointment of Counsel and Request for Evidentiary Hearings, And the relief sought in Petition.

Dated January 27<sup>th</sup> 2019



VERIFICATION

I declare, Affirm and Swear under Penalty of Perjury that All of the herein 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 27<sup>th</sup> day of January 2019

  
Petitioner, Pro Per

1 AFFIDAVIT OF TIANNA THOMAS

2 STATE OF NEVADA )  
3 ) SS:  
4 COUNTY OF CLARK )

5 TO WHOM IT MAY CONCERN:

6 I, TIANNA THOMAS, the undersigned, do hereby swear that all the  
7 following statements and description of events, are true and correct, of my own  
8 knowledge, information, and belief, and to those I believe to be true and  
9 correct. Signed under penalty of perjury pursuant to NRS 208.165.

10 (1) THAT Prior to my son Richard Newsome Jr. signing his  
11 Plea Agreement counsel told myself and Richard that if he  
12 do not sign the Plea Agreement he would be given a 12 to  
13 35 year sentence. This was the counsels promise he would  
14 get Richard. This is the reason the deal was signed by my  
15 son. Richard and I both wanted to get our sides out of  
16 what happened the night of January 14, 2017. Richard and I  
17 both never got our sides of story to the Judge, Court, or  
18 public at all through the case because our counsel instructed  
19 us not which he stated on Court record at sentencing  
20 explaining to Judge they (Attorney) instructed us to not give  
21 any statements because it could hurt or interfere with our  
22 open case. Which I feel is is unfair it was judged and  
23 sentencing on a one sided story. My best friend Tracy Phillips  
24 is the one who referred us to John Momot from her own  
25 personal past cases and she was one who contacted Momot  
26 office on Saturday January 15<sup>th</sup> 2017 and instructed us to  
27 lay low to come into his office Tuesday January 17, 2017  
28 because Monday was a Holiday Martin Luther King and office  
was closed. When we arrived at Momots office on January 17<sup>th</sup>

1 2017. After discussing what happened at incident on  
2 January 14th 2017 we told Momot we wanted to be turned  
3 in right then and there to authorities so that's what we did.  
4 When Detectives came in Momot asked the detectives  
5 to not question us so they told Richard and I both  
6 together they would not question us. I also told our  
7 ~~our~~ counsel in beginning I had never been in trouble before  
8 and I am clueless about any legal criminal process and I  
9 was putting my full trust in him, I never even been to jail  
10 I was taken advantage of and so was my son because we  
11 both knew nothing. Richard was only 17 years old at the  
12 time. We both didn't know or understand anything that  
13 was going to happen or when we got to say our sides of  
14 story. Richard and I asked our counsel about going to  
15 trial with the case so we could tell our sides and court/  
16 Judge would have both parties sides to make a judgement.  
17 We were told that would put 10 plus more years on  
18 Richards life and I would be chancing going to Prison  
19 for a long time and get a felony on my record and because  
20 I do work that would stop me from working to take care  
21 of my other children. This is why Momot informed  
22 me to convince my son to sign the deal to look out  
23 for me and get sentenced to a 12 to 35. Momot said  
24 because he was only 17 years old when it happened and he  
25 turned himself in peacefully he would not get life he  
26 would get a 12 to 35 that bring 2 to 10 for gun he  
27 said and a 10 to 25 for the Murder because if we

1 go to trial he could get 25 to life and 1<sup>st</sup> degree  
2 murder. When the court asked my son was there any  
3 kind of promises made my son Richard Newsome Jr.  
4 said Yes to the Judge on the court record clearly a  
5 promise was made to him and he was confused. When the  
6 Judge sentence Richard 18 to life this was a breach  
7 of the Plea Agreement because counsel, persuaded my  
8 son and myself by promising a 12 to 35 and this was  
9 a trick, and coercion to make my son sign the Plea Agreement  
10 to hurry and get case over with. I was told by counsel  
11 to tell my son to sign the Plea. The court had personal  
12 knowledge that counsel promise a sentence in order to have  
13 the plea signed. This court should not of allowed  
14 the Plea to stand once he found out that counsel use  
15 a promise, trickery to have my son sign deal and me  
16 agreeing to it, and telling my son to sign deal. Counsel did  
17 violate his duty by coercing my son to sign a Plea that  
18 would not hold up. But counsel did not care. Also John  
19 Momot was incompetent to care or even take our case  
20 in first place due to being ill and falling asleep on me  
21 ~~during~~ during office meetings regarding counsel and going  
22 over case. I had to go out to get his secretary to come  
23 wake him up and try to keep him up. Momot would just  
24 stare at documents for long periods of time without saying  
25 nothing his secretary would have to help him to respond or  
26 say "Hey John". My counsel appointments were very poor.  
27 This would happen on several office meetings. Towards end and

1 almost sentencing I took in our Character letters and I  
2 turned them into John he fell asleep after he asked me to  
3 separate Character letters from mine and Richard again  
4 had to get secretary to help she took letters. But when  
5 we got to court for sentencing Judge Valerie Adir said  
6 she never received them counsel said she turned them in  
7 Judge took recess for 5 mins and said she found them  
8 but had no time to read them so we must proceed.  
9 We had letters from our family, friends, Deacon and Pastor  
10 of our church. Our Character letters didn't even get  
11 read not one. Momot only came to a few of our hearings  
12 and after that Lin Zheng who we did not retain to be  
13 our counsel in first place and I meet with Momot most of  
14 time in office meetings. We would ask Lin Zheng where John  
15 was at she would say his allergies were bothering him, he  
16 was out of town etc. My mother and I asked was he  
17 sick once Lin Zheng said No he was actually going  
18 to become a Judge soon. My son and I didn't get a  
19 fair chance and poor counsel from an incompetent man  
20 John who really was sick and too sick to even take our  
21 case we would of choose a different counsel if John  
22 just said he couldn't do it not just send someone else  
23 without even talking it over or asking Richard and I what  
24 we wanted to do just didn't care. We didn't get proper counsel  
25 and it caused my son a very Harsh sentence that Plea  
26 Agreement was not the deal counsel promised Counsel just  
27 wanted case to get over with and after the harsh sentence

1 was given, he said nothing to Richard nor me after sentencing  
2 hearing or after at all like we didn't exist at all. They  
3 didn't even say anything about appealing case or that we  
4 could appeal case and he knew my son was dissatisfied  
5 with his harsh sentence, and only being 17 years old Richard  
6 knew nothing to do about it because counsel was poor  
7 and incompetent to even give knowledge that he could  
8 appeal. We were never contacted ever at all by John or  
9 Lin Zheng because he knew he promised a sentence  
10 of 12 to 35, My son did not consent to not  
11 appealing his case, again we were never contacted  
12 or even talked to about anything we could do. We also  
13 never still till this day got our side of story out  
14 and that just doesn't seem fair.

22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT \_\_\_\_\_ this 21 day of June, 2018

24 IN FRONT OF: BY   
25 NDOC #1194269  
26 My son  
27  
28

IN The Eight Judicial District Court of THE  
STATE OF NEVADA IN AND FOR the county of CLARK

CASE NO C-17-321043-1

Dept NO 21

FILED

FEB 01 2019

*Adam T. Williams*  
CLERK OF COURT

Richard Newsome Jr.  
Petitioner

PETITION FOR WRIT  
OF HABEAS CORPUS  
(Past conviction)

VS

THE STATE OF NEVADA, Warden

Brian William

Respondent /

A-19-788618-W

Dept XXI

### PETITION

1. I Am Presently Restrained of my liberty, At High Desert State Prison
2. Conviction under Attack was entered Judgement, In 8<sup>th</sup> Judicial District Court, Las Vegas NV
3. Date of Conviction February 8<sup>th</sup> 2018 ?
4. Case Number C-17-321043-1
5. Length of sentence 18 to life
6. I Am not serving any other sentence under attack in this motion? No
7. Nature of offense being challenged, I was charge with 2<sup>nd</sup> Degree Murder with use of a deadly weapon.
8. I sign A Plea of Guilty
9. I did not appeal because I was not told that I could, and the counsel knew I was disatisfied with my sentence, because I was promise to be sentence to A 12 to 35 YEARS
10. First Petition, No Direct Appeal.

A-19-788618-W  
PWHC  
Petition for Writ of Habeas Corpus  
4813032



CASE NO C-17-321043-1  
DEPT. NO 21

IN The EIGHT Judicial District Court  
of the State of Nevada IN AND For the County of CLARK

Richard Newsome Jr.  
Petitioner

VS

STATE OF NEVADA, BRIAN WILLIAMS  
Respondent

PETITION FOR WRIT OF  
HABEAS CORPUS Post conviction

PETITION

Now comes the Petitioner in pro se AND says for his Petition for writ of Habeas corpus Post conviction AS follows.

1. This Petition is to challenge Due Process of law, equal protection under the 6th, 14th AND 5th Amendment for the failure to file Notice of Appeal AS to Petitioner LARSH sentence, AND the promise sentence of 12 to 35 YEARS.
2. Petitioner is requesting leave to attach A memorandum of Points of Authorities to support Petitioner Petition for writ of Habeas corpus Post conviction.

Prepared BY BRICK P. HOUSTON

5th and

Ground 1. violation of Due Process, Equal Protection, 6th and 14th Amend. Counsel failure to file Notice of Appeal when he knew Petitioner was dissatisfied with sentence, and using coercion, trickery and a promise of a sentence of 12 to 35 years to get Petitioner to sign plea.

Supporting Facts. Requesting LEAVE to attach memorandum of law, points/authorities in support of Petition, counsel being ineffective assistance of counsel failure to file notice of appeal to petitioner harsh sentence, and counsel's breach of plea agreement using coercion, trickery and a promise of 12 to 35 years and using threat of a 25 to life if petitioner don't sign deal and judge allowing deal to go thru when the record reflect that a promise was made by counsel prior to signing the deal and before sentencing; dissatisfied with harsh sentence.

Memorandum of Law in support of Petition

To state a claim of ineffective assistance of counsel that is sufficient to invalidate a judgment of conviction, a defendant must demonstrate that counsel's performance fell below the objective standard of reasonableness, and that counsel error were so severe they rendered the jury verdict unreliable. see *Strickland v. Washington* 466 US 680 (1985). Also see *Warden v. Lyons* 100 Nev 430, 683 P2d 504 (1984) cert denied, 471 US 1004, 85 LEd 159, (1985). Defendant Richard contends that his counsel acted unreasonable in failing to perfect an appeal without petitioner consent. Defendant Petitioner ask that for purpose of this petition that counsel failed to perfect an appeal without petitioner consent. Also guilty plea was obtain thru coercion, trickery, threats, and by the promise of receiving a sentence of 12 to 35 years, told to mother and petitioner to convince the signing of the plea agreement. no appeal was file without my consent.

1 The reasonableness of petitioner's counsel conduct  
2 The failure to obtain petitioner consent not to pursue an appeal  
3 would amount to unreasonable conduct. Courts have ruled that an  
4 attorney has a duty to perfect an appeal when a convicted defendant  
5 expresses a desire to appeal or indicates dissatisfaction with a conviction.  
6 See *Fawaz v. State*, 105 Nev. 812, 783 P.2d 425 (1989) *Downs v. Walden*  
7 93 Nev. 475, 568 P.2d 575 (1977). In *Fawaz*, for example, ...  
8 the appellant expressed a desire to challenge his conviction by  
9 filing a motion for new trial. *Fawaz*, 105 Nev. at 812, 783 P.2d  
10 at 425. We ruled that counsel was ineffective for failing to  
11 file a notice of appeal from the district court's denial of the  
12 motion for new trial. Id. because *Fawaz* demonstrated a  
13 desire to challenge his conviction by filing a motion for  
14 new trial. *Fawaz*, 105 Nev. at 812, 783 P.2d at 425. We ruled  
15 that counsel was ineffective for failing to file a notice of ...  
16 appeal from the district court's denial of the motion for new trial. Id.  
17 because *Fawaz* demonstrated a desire to challenge his conviction  
18 by filing a motion for new trial. Counsel had a duty to perfect  
19 an appeal.  
20 Similarly, in *Downs*, we noted that Downs never expressed a desire  
21 to appeal from his judgment of conviction and he seemed satis-  
22 fied with the outcome of his case. We also noted that Downs  
23 had waited well over a year before asserting his alleged right  
24 to appeal. *Downs*, 93 Nev. at 478, 568 P.2d at 576, 577. We  
25 concluded. In this factual setting, a trial attorney has no  
26 obligation to represent his client at appeal. Id. at 478, 568  
27 P.2d at 577.

1 Downs implies that we would have reached the opposite conclusion  
2 had Downs expressed dissatisfaction with his conviction or expressed  
3 a desire to appeal within the reasonable time we did not...  
4 directly address in Downs the question of whether Downs knew of  
5 his right to appeal or whether counsel must inform his client of  
6 that right. Instead we noted that the record was silent on  
7 the issue of whether Downs was informed of his right to appeal.  
8 And we concluded that under the peculiar circumstances of  
9 that case, Downs had failed to demonstrate that his attorney  
10 had been ineffective. Id.

11 The federal courts have indicated that trial counsel has an  
12 affirmative duty to instruct a convicted client of the right  
13 to appeal regardless of whether the client expresses a desire to  
14 appeal. The United States Supreme Court has never directly  
15 (110 S.Ct. 355) addressed this issue. The court's opinion remanding  
16 LOZADA's petition to the Ninth Circuit, however, appears to assume  
17 that an attorney must inform a client of the client's appeal  
18 rights. Petitioner Richard Newsome just like LOZADA claim that trial  
19 counsel either had a duty to inform him of his appeal rights or  
20 to ensure that he retained appointed counsel who would perfect  
21 an appeal. LOZADA v. DEEDS 498 U.S. 430, 431, 112 L.Ed.2d 956  
22 111 S.Ct. 860 (1991) (per curiam). The Supreme Court only address-  
23 ing the Ninth Circuit's failure to consider whether prejudice  
24 may be presumed under the circumstances LOZADA AND  
25 Petitioner Richard alleged.

26 requiring counsel to inform a convicted client of the right  
27 to appeal is consistent with the Supreme Court prior precedent.

1 IN OUGRA V. CALIFORNIA, 372 U.S. 353, 9 L. Ed. 2d 211, 83 S.Ct.  
2 814 (1963) The court held that criminal defendants have a  
3 right to counsel on appeal when a state affords a right to  
4 appeal. The court has ruled further that the right to counsel on  
5 appeal -- like the promise of Gideon v. Wainwright 372  
6 U.S. 335 (1963) 9 L. Ed. 2d 1799, 83 S.Ct. 792  
7 (1963) that a criminal defendant has a right to counsel  
8 at trial -- would be a futile gesture unless it com-  
9 prehended the right to effective assistance of counsel.  
10 Evitts v. Lucey 469 U.S. 387, 397, 83 L. Ed. 2d 821, 105  
11 set 830 (1985) The right to effective counsel on appeal would  
12 also be a futile gesture if a criminal defendant does  
13 not make an informed decision whether to appeal.  
14 Several federal circuit courts have ruled that due  
15 process clause of the federal constitution imposes a  
16 duty on attorneys to inform clients of the right to  
17 appeal. IN BAKER V. KAISER, 929 F.2d 1495, 1499 (1991)  
18 for example, the court of appeals for the Tenth circuit  
19 ruled that, IN Evitts, the supreme court implicitly  
20 determined that the right to counsel applies to the period  
21 for perfecting an appeal. According to the tenth circuit,  
22 counsel must explain the advantages and disadvantages  
23 of an appeal, explain the merits of an appeal and then  
24 ask the client whether to pursue and appeal. Id. see also  
25 see Childs v. Collins 985 F.2d 69 (1993) Nelson v. Perston  
26 415 F.2d 1154 (1969) cert. denied, 391  
27 U.S. 1007, 251 F.2d 420, 90 set 1235 (1970)

1 The Ninth Circuit's opinion in Lazada v. Deeds, 964 F.2d  
2 956 (9th Cir. 1992) also indicates that counsel has a duty  
3 to inform a client of the right to appeal a conviction.  
4 The Ninth Circuit ruled that counsel may not fail  
5 to perfect an appeal of a conviction "without the  
6 petitioner's consent." Id. at 958. Logically, a criminal  
7 defendant cannot consent to forgo an appeal  
8 unless the defendant knows of the right to appeal.  
9 The 9th Circuit thus implicitly held that counsel  
10 has a duty to discuss a client's appeal right with  
11 the client.

12 (110 Nev. 356) we find these cases persuasive.  
13 Convicted defendants likely lack the expertise  
14 necessary to perfect an appeal. The absence of the  
15 assistant of counsel during the time  
16 period for filing an appeal may also render the  
17 right to counsel on appeal meaningless. Accordingly,  
18 trial counsel must inform a convicted client of the  
19 right to appeal. This duty includes informing the  
20 client of the procedures for filing an appeal as well  
21 as the advantages and disadvantages of filing an appeal.  
22 Counsel did fail to inform petitioner of his  
23 right to appeal and his counsel did know that the  
24 petitioner was not satisfied with his sentence  
25 because it was a breach of the agreement and the  
26 promise made by counsel. Petitioner has demonstrated  
27 that his counsel acted unreasonably under Strickland

1 whether counsel's conduct prejudiced petitioner.  
2 Assuming the truth of petitioner's allegations petitioner  
3 can demonstrate prejudice under STRICKLAND. IN  
4 FAWAZ we implicitly ruled that prejudice may be  
5 presumed on claim based on the ineffective assistance  
6 of counsel when a petitioner has been deprived of the  
7 right to appeal after concluding that counsel failed to  
8 provide effective assistance of counsel. we ruled that  
9 FAWAZ was prejudiced by the ineffective conduct  
10 of his attorney because he lost his right to review  
11 by this court. FAWAZ V. STATE. 105 Nev. 682 683  
12 783 P2d 425 426 (1989)

13 the United States Supreme Court has similarly presumed  
14 in this prejudice when an attorney fails to inform a  
15 criminal defendant about the right to appeal. In the  
16 case, Rodriguez V. United States 395 US 327 23 LEd2d  
17 340, 89 S.Ct. 1715 (1969). An attorney failed to file a notice  
18 of appeal against his client's wishes. Id. at 328.  
19 The federal district court and the circuit court of  
20 appeals rejected the petitioner's request for post-  
21 conviction relief because he failed to establish pre-  
22 judice by setting forth any meritorious issues for  
23 appeal. Id. at 329.

24 The Supreme Court reversed and ruled that pre-  
25 judice must be presumed in this instance  
26 because an unrepresented defendant likely lacks  
27 the expertise necessary to formulate arguments

1 for Appeal Id at 330 Rodriguez also did  
2 not speak English and thus he lacked the skills  
3 necessary to articulate issues for appeal.  
4 Accordingly the Supreme Court presumed that  
5 Rodriguez had suffered prejudice.  
6 In Strickland v Washington 466 US 686 (92  
7 80 LEd2d 674 104 Sct 2052 (1984) the United  
8 States Supreme Court reaffirmed without citing  
9 its holding in Rodriguez specifically the Court  
10 ruled Actual or constructive denial of the assistance  
11 of [871 P2d 949] counsel altogether is legally  
12 presumed to result in prejudice. The Supreme  
13 Court further reaffirmed this rule in Penon v  
14 Ohio 488 US 75 101 LEd2d 300 (1988)  
15 In that case the Supreme Court considered the  
16 procedures to be (110 Nev 357) followed when  
17 appointed counsel files a Notice of (110 Nev 357) AND  
18 merit Appeal.  
19 The Court rejected a harmless error analysis  
20 and a prejudice requirement because in the Court's  
21 view the right to (110 Nev 357) counsel on appeal is  
22 essential to ensure justice and fairness 488  
23 US At 84-85. The Court explained that prejudice  
24 need not be shown where the denial of counsel  
25 leaves a defendant completely without representation  
26 Id At 88. Instead the Court ruled that Strickland  
27 requires a showing of prejudice only where counsel

1 fails to press a particular argument to appeal  
2 or fail to argue an issue as effectively as he  
3 or she might. Id. (citation omitted)

4 The 9th Circuit adopted similar reasoning in  
5 reviewing LAZADA petition for post conviction  
6 relief. Relying on Rodriguez AND Strickland,  
7 9th Circuit ruled that prejudice must be presumed  
8 when a defendant is denied the right to counsel on  
9 appeal. LAZADA V- Deeds 964 F2d 956, 957, 958  
10 (9th Cir 1992)

11 The 9th Cir held: Because applicants... must  
12 if indigent prepare their petition without competed  
13 to the right to counsel that a state or federal prisoner  
14 would have direct appeal. Id. at 958, the 9th Circuit  
15 thus concluded that "prejudice" is presumed under  
16 Strickland if it is established that counsel's failure  
17 to file a notice of appeal without petitioners consent  
18 Id. see also US V TR Tedding 945 F2d 458 (1991)  
19 cert denied 120 LEd2d 883 505 US 1211 112 Sct 3004  
20 (1992) ABELS V- KAISER 903 F2d 821 (1990) ESTER V- US  
21 883 F2d 645 (8th Cir 1989)

22 Based on these federal cases and our opinion in Fawcett  
23 we conclude that prejudice may be presumed for  
24 purposes of establishing the ineffective assistance of  
25 counsel when counsel's conduct completely denies a  
26 convicted defendant an appeal consequently we ~~are~~  
27 ~~are~~ required (required) petitioners to establish prejudice

1 in his appeal from the denial of his petition for post  
2 conviction relief. Assuming petitioner counsel failed to  
3 perfect an appeal without his consent, petitioner  
4 presumably suffered prejudice because he was deprived  
5 of his right to appeal.

6 B. Although petitioner has established good cause for  
7 filing a (petitioner) petition, he can show actual  
8 prejudice. Petitioner can establish prejudice if his  
9 counsel's conduct deprived him of his right to appeal.  
10 As in FAWAZ, it indicated that the denial of the  
11 right to appeal deprives a person of a basic right  
12 that presumably prejudices the person. FAWAZ v-  
13 state 105 Nev 682, 783 P2d 425 (1989). Petitioner can  
14 thus demonstrate that he has suffered sufficient  
15 prejudice to excuse the filing of a successive  
16 petition for writ of Habeas corpus.

17 The required showing of prejudice to establish  
18 a claim of ineffective assistance of [871 P2d 950]  
19 counsel is separate and distinct from the showing  
20 of prejudice required to overcome a procedural  
21 default. The Legislature requires a showing of prejudice  
22 to excuse procedural defaults to prevent the filing  
23 of successive petitions and to avoid abuse of post  
24 conviction remedies. In addition, requiring prejudice  
25 to excuse the filing of untimely petitions helps to  
26 ensure that claims are raised before evidence is lost  
27 or memories fade.

ments

1 Without such Limitation on the Availability of post  
2 conviction remedies, prisoners could petition for relief  
3 in perpetuity and thus Abuse post-conviction remedies.  
4 In addition, meritless, successive and untimely  
5 petitions clog the court system and undermine the  
6 finality of convictions. A showing of prejudice is  
7 thus essential to prevent the filing of successive and  
8 meritless petitions for post-conviction relief.  
9 These concerns do not arise, however, in the context  
10 of claims based on the ineffective assistance of  
11 counsel. Prejudice in that context addresses the effects  
12 of the unreasonable conduct of counsel on a defendant's  
13 trial. In this case, however, both Prejudice require-  
14 ments happen to address the same concern: namely, the complete  
15 denial of counsel. Petitioner counsel's conduct may have  
16 deprived petitioner of the fundamental right of counsel  
17 on appeal. This denial of this results in Prejudice for  
18 purposes of both establishing the ineffective assist-  
19 ance of counsel and for excusing the filing of a  
20 successive petition for post-conviction relief.  
21 (3) Petitioner has an Adequate remedy in the district court.  
22 Because Petitioner can establish good cause and Prejudice  
23 if he substantiates his allegations, he has an Adequate  
24 remedy in this District court through this petition. If  
25 Petitioner can establish his claim that he was denied  
26 his right to effective assistance of counsel on appeal,  
27 which had the effect of denying Petitioner his right

1 to Appeal. The Appropriate remedy would be to Allow  
2 Petitioner an opportunity to raise in his appeal  
3 any Issue which he could have raised on direct  
4 appeal. If this district court denies petitioner  
5 relief, he may appeal denial to Supreme court of  
6 Nevada or the Appeals court, which he will raise  
7 the Breach of plea Agreement, And the fact that  
8 A Amount of 12 to 35 years was promise by  
9 Counsel if he pleaded guilty Also this was the  
10 promise that was given to (my) Petitioner's Mother,  
11 Also the sentencing transcript also verify that  
12 A promise was made And the Judge had the  
13 Knowledge of such promise And he overlooked  
14 the promise, And Allowed the 18 to life sentence,  
15 Ignoring the promise that persuaded Petitioner  
16 to sign the plea Agreement in the first place.  
17 And Promise was also made to defendant's mother  
18 A complete remedy will exist, if this district  
19 court grants Petitioner ~~and~~ Independent Counsel  
20 other than public defenders office, Because convicted  
21 persons have the right to counsel on direct appeal  
22 Thus if Petitioner rights are granted this court  
23 should appoint counsel to Assist Petitioner.

#### 24 Conclusion

25 The Argument discussed herein provides A complete  
26 remedy for the Alleged denial of Petitioner right to  
27 Appeal.

Richard Newsome Jr.  
Petitioner

V

STATE OF NEVADA, ET AL  
Respondant

FILED

FEB 01 2019

*Ann L. Blum*  
CLERK OF COURT

A-19-788618-W  
Dept. XXI

## MOTION REQUESTING APPOINTMENT OF COUNSEL

Petitioner Richard Newsome Jr. Request that he is appointed counsel for the motion for Evidentiary Hearing. To assure that he have a even chance and present issue in Evidentiary Hearing correctly, and to prevent a manifest of injustice.

This motion is pursuant too NRS 34.750 AND NRS 34.820

Dated January 27th 2019

*Richard Newsome Jr.*

CLERK OF THE COURT

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FEB 01 2019

CLERK OF THE COURT

A-19-788618-W  
MAPA  
Motion for Appointment of Attorney  
4813037



8th Judicial District Court

Richard Nausome Jr.  
Petitioner

VS

CASE NO.  
DEPT NO.

A-19-788618-W  
Dept. XXI

STATE of NEVADA AND Warden  
BRIAN WILLIAMS

Respondant

FILED

FEB 01 2019

*John J. Williams*  
CLERK OF COURT

MOTION REQUESTING A  
EVIDENTIARY HEARING ON  
COUNSEL'S BREACH OF PLEA AGREEMENT PROMISE

1. Defendant Reallege herein by reference to original Petition for writ of Habeas Corpus Post Conviction, and says for his motion requesting Evidentiary hearing on Counsel's Breach of Promise of Plea Agreement.

2. Defendant alleges that counsel did breach the Promise in regards to Plea Agreement, and should have right to Prove by the Preponderance of the Evidence.

3. Defendant is requesting a evidentiary hearing, and/or at the court's discretion, discovery or expansion of the record.

Defendant can demonstrate that counsel did breach the Plea Agreement, by promising Defendant a particular sentence and that he did use threats, coercion and/or trickery, toward the defendant and the influence of defendant's mother, who also was use to have son sign plea by a promise of a certain sentence. Counsel did not object After Judge sentence Defendant outside, And more of promise, of 12 to 35 years

A-19-788618-W  
MOT  
Motion  
4813042



CLERK OF THE COURT

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5. This Honorable court have the Authority to Alter the sentence, or order specific performance of promise, that made defendant sign the plea in the first place. Statements made by counsel should be admissible as evidence in Plea Bargaining, Counsel made No objections After the 11th sentence by the court.

### Memorandum of Points of Authorities

Defendant claiming breach must prove the breach by a preponderance of the evidence. US v. Cruz Mercado, 360 F3d 30, 37 (2004) US v. Byrd 413 F3d 249, 251 (2005), US v. Snow, 234 F3d 187, 189 (2000). Also US v. Packwood, 848 F2d 1009, 1011 (9th Cir 1988)

A defendant who alleges a breach of plea agreement may be entitled to an evidentiary. see Blackledge v. Allison 431 US 63, 76, 80-82 (1977) Allegation of breach entitles defendants to a evidentiary hearing unless defendants allegations are palpably or patently frivolous or false. see e.g. US v. Floyd 428 F3d 513, 518 (2005)

Defendants allegations are not frivolous or false, such is supported by the record at sentencing, as far as a promise being made. Also see Affidavit of Mother Attached to Petition for writ of Habeas corpus (post conviction)

Also see US v. White 366 F3d 291, 297-98 (2004)

A breach promise to recommend a sentence and then explicitly ask for more is a breach, see US v. Gonczy 357 F3d 50, 54 (2004)

Counsel had to discuss a sentence plea with the state. in order for such plea to be agree to, this is reason to hold a evidentiary hearing to find out who told counsel that if he sign plea, he would receive 12 to 35 years. And if he do not

sign plea, he will receive 25 to life. This Honorable Court CAN assure a evidentiary hearing to allow defendant to prove by preponderance of evidence that there was a breach of plea agreement.

This court can alter the sentence, and/or order specific performance of the agreement, or allow withdrawal of the plea. The remedy for a breach of a plea agreement depends on the specific case, see e.g. US v. Rigg, 287 F3d 221, 226 (2002) A defendant is entitled to remand for determination whether specific performance or opportunity to withdraw plea when breach of plea agreement. Also see US v. Vaval 404 F3d 144, 156 (2005) (also see) defendant entitled to remedy because breach of plea agreement. Also see US v. Hodge 412 F3d 479, 487 (3d Cir 2005) defendant entitled to remand for determination of whether to grant specific performance or withdrawal of plea when breach of plea agreement. Also see US v. McQueen, 108 F3d 64, 66-67 (1997) defendant entitled to specific performance on plea agreement, by prosecutor failure to mention the promise between counsel and himself. This should be reason for this Honorable to allow the specific performance of the promise of a 12 to 35 years. This was the understanding that defendant receive by signing the plea, because a promise that I believed and then such promise was not kept.

Defendant is entitled to specific performance of agreement before a different sentencing judge by breach of agreement, see Id McQueen at 64, 66-67. Also see US v. Munoz 408 F3d 222, 229 (5th Cir 2009) Also US v. Cachucha 485 F3d 1266, 1271 (2007) the defendant entitled to withdraw plea or to specific performance of agreement before (different) different sentencing judge when a plea is breached. Also in US v. TAYLOR, 77 F3d 368, 372

(11th cia 1996) defendant entitled to withdraw guilty Plea because breached agreement to recommend 10 year sentence. This Honorable court had personal knowledge that a Promise was made, and such Promise was the understanding that was a Particular sentence that Defendant would receive. Also using defendant mother to convince Defendant sign Plea, or he would receive a 25 to life.

Wherefore this Honorable court should grant the request for an evidentiary hearing, to prove by the preponderance of evidence that the Plea was Breach, and the Promise was not Kept; see Affidavit of mother TIANNA THOMAS AND sentencing transcript, that verify, that a Promise was made in order to get the Plea signed.

Dated January 27<sup>th</sup> 2019

α R e P

#  
Richard Newsome ID NO. 11942169

HIGH DESERT STATE PRISON  
22010 COLD CREEK ROAD  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89018

FILED

FEB 01 2019

Allen & Blum  
CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY NEVADA

Richard Newsome, Jr.  
Petitioner  
v.  
STATE OF NEVADA  
Respondent

A-19-788618-W  
Dept. XXI

MOTION REQUESTING A EVIDENTIARY  
HEARING ON COUNSEL'S BREACH OF PLEA AGREEMENT

COMES NOW, Petitioner, Richard Newsome, Jr., herein above respectfully  
moves this Honorable Court for an Order For And Evidentiary  
HEARING ON Breach of Plea Agreement of Counsel.

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities.

DATED: this 27 day of January, 2019

BY: [Signature]

#11942169  
Defendant/In Proper Personam

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FEB 01 2019

A-19-788618-W  
MOT  
Motion  
4813043



DISTRICT COURT  
CLARK COUNTY NEVADA

FILED

FEB 01 2019

1 Richard

2 Petitioner

A-19-788618-W  
Dept. XXI

Debbie  
CLERK OF COURT

3 VS

4 STATE OF NEVADA ETAL

5 Respondent

6  
7 MOTION TO DISMISS ORIGINAL COUNSEL  
8 AND TO PRODUCE RECORDS/TANGIBLE DOCUMENTS  
9

10 Now comes Petitioner Richard Newsome Jr and moves  
11 this court to dismiss original counsel for following reasons  
12

13 1. I have Pleaded guilty, and sentence, and filed a Petition  
14 in pro se, and all allegations are against original counsel for  
15 ineffective Assistant of Counsel.

16 2. Counsel should be dismissed, and it would be a conflict of  
17 interest to keep him.

18 3. Once he is dismissed he is required to produce all records  
19 and tangible documents he has, pursuant to  
20 NRS 7.055 (1) and NRS 7.055 (2) Supreme Court  
21 Rule 173  
22

23 Dated January 27th 2019

24 [Signature]

25  
26  
27  
28 CLERK OF THE COURT

FEB 01 2019

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A-19-788618-W  
MDC  
Motion to Dismiss Counsel  
4813046



**CERTIFICATE OF SERVICE BY MAILING**

I, Richard Newsome Jr., hereby certify, pursuant to NRCP 5(b), that on this  
day of January, 2019, I mailed a true and correct copy of the foregoing, "Request for A  
Evid. Hearing, Appointment of Counsel, Notice of motion, Dismissal of  
Counsel"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Clerk of the Court  
200 Lewis Ave  
Las Vegas NV 89155

CC:FILE

DATED: this 27 day of January, 2019



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

1 Richard Newsome Jr.  
2 / In Propria Personam  
3 Post Office Box 650 [HDSP]  
4 Indian Springs, Nevada 89018

FILED  
FEB. 01 2019  
*John J. Johnson*  
CLERK OF COURT

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 Richard Newsome Jr.  
8 Petitioner  
9  
10 vs.  
11 STATE of NEV. BARRY WILLIAMS  
12 Respondent

Case No A-19-788618-W  
Dept No Dept. XXI  
Docket

13  
14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that A HEARING will be set  
16 And decide if A EVIDENTIARY will proceed, And Appointment of  
17 counsel  
18 will come on for hearing before the above-entitled Court on the      day of April 2019,  
19 at the hour of 9 o'clock A. M. In Department     , of said Court.

20 CC:FILE

21  
22 DATED: this 27 day of January, 2019

23  
24 BY: *Richard Newsome Jr.*  
25 #  
/In Propria Personam

CLERK OF THE COURT

FEB 01 2019

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A-19-788618-W  
NOTM  
Notice of Motion  
4813048



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PPOW

**FILED**  
MAR 29 2019  
*[Signature]*  
CLERK OF COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Richard Newsome,

Petitioner,

vs.

State of Nevada; Warden Brian Williams,

Respondent,

Case No: A-19-788618-W  
Department 21

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

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on February 01, 2019. 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 9 day of May, 2019, at the hour of

9:30 o'clock for further proceedings.

*Nature Adams*

District Court Judge

*[Signature]*

RECEIVED

MAR 28 2019

CLERK OF THE COURT

A-19-788618-W  
OPWH  
Order for Petition for Writ of Habeas Corpus  
4826185





1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #6528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7  
8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 RICHARD NEWSOME, JR., aka  
13 Richard Newsome #5437116

14 Defendant.

CASE NO: A-19-788618-W  
(C321043)

DEPT NO: XXI

15 **STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS**  
16 **CORPUS (POST-CONVICTION), SUPPLEMENTAL PETITION FOR WRIT OF**  
17 **HABEAS CORPUS, MOTION TO APPOINT COUNSEL, AND REQUEST FOR**  
18 **EVIDENTIARY HEARING**

19 DATE OF HEARING: May 14, 2019

20 TIME OF HEARING: 09:30 AM

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
22 District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District  
23 Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's  
24 Petition For Writ Of Habeas Corpus (Post-Conviction), Supplemental Petition for Writ of  
25 Habeas Corpus, Motion to Appoint Counsel, and Request for Evidentiary Hearing.

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

///

///

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3  
4 On February 2, 2017, Richard Newsome Jr. (Hereinafter "Petitioner") was charged by  
5 way of Indictment with one count MURDER WITH USE OF A DEADLY WEAPON  
6 (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50001) and one count  
7 ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471 – NOC 5021)  
8 for acts committed on or about January 14, 2017. On February 9, 2017, a Superseding  
9 Indictment was filed charging Petitioner with one count MURDER WITH USE OF A  
10 DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165 – NOC 50001);  
11 one count ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471 –  
12 NOC 5021); one count ACCESSORY TO MURDER WITH USE OF A DEADLY WEAPON  
13 (Category C Felony – NRS 195.030, 195.040, 200.010 – NOC 53090); and BATTERY WITH  
14 SUBSTANTIAL BODILY HARM (Category C Felony – NRS 200.481 – NOC 50214). On  
15 February 16, 2017, Petitioner plead not guilty to the charges and waived his right to a speedy  
16 trial.

17 On December 14, 2017, the State filed a Second Amended Superseding Indictment and  
18 Petitioner entered a Guilty Plea Agreement to MURDER (SECOND-DEGREE) WITH USE  
19 OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030.2, 193.165 – NOC  
20 5011) in which the State retained the right to argue at sentencing.

21 On February 8, 2018, Petitioner was sentenced to LIFE with the possibility of parole  
22 after ten (10) years in the Nevada Department of Corrections ("NDC") with a consecutive term  
23 of a minimum of ninety-six (96) months and a maximum of two-hundred forty (240) months  
24 in NDC with three-hundred ninety-four (394) days credit for time served. The Judgment of  
25 Conviction was filed March 5, 2018.

26 On February 1, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (Hereinafter  
27 "Petition"), Supplemental Petition for Writ of Habeas Corpus (Hereinafter "Supplement"),  
28

1 Motion for Appointment of Counsel (Hereinafter “Motion”), and Request for an Evidentiary  
2 Hearing (Hereinafter “Request”).

### 3 ARGUMENT

#### 4 **I. PETITIONER WAIVED HIS APPELLATE RIGHTS**

5 In his Petition, Petitioner claims that counsel failed to file a notice of appeal although  
6 Petitioner expressed dissatisfaction with his sentence. Petition at 3. Petitioner also alleges that  
7 counsel failed to acquire his consent not to file a notice of appeal. Id.

8 Counsel is only obligated to file a notice of appeal or to consult with a defendant  
9 regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267  
10 P.3d 795 (2011). “[T]rial counsel has a constitutional duty to file a direct appeal in two  
11 circumstances: when requested to do so and when the defendant expresses dissatisfaction with  
12 his conviction, and that the failure to do so in those circumstances is deficient for purposes of  
13 proving ineffective assistance of counsel.” Id. at 977, 267 P.3d at 800. Moreover, trial counsel  
14 has no constitutional obligation to always inform or consult with a defendant regarding his  
15 right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

16 [t]hat duty arises in the guilty-plea context only when the defendant inquires  
17 about the right to appeal or in circumstances where the defendant may benefit  
18 from receiving advice about the right to a direct appeal, ‘such as the existence  
19 of a direct appeal claim that has reasonable likelihood of success.’

20 Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

21 Courts should consider “all the information counsel knew or should have known” and  
22 focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct.  
23 1029, 1036 (2000). Importantly, whether the defendant’s conviction followed a guilty plea is  
24 highly relevant to the inquiry “both because a guilty plea reduces the scope of potentially  
25 appealable issues and because such a plea may indicate that the defendant seeks an end to  
26 judicial proceedings.” Id. Thus, when a defendant who pleaded guilty claims that he was  
27 deprived of the right to appeal, “the court must consider such factors as whether the defendant  
28

1 received the sentence bargained for as part of the plea and whether the plea expressly reserved  
2 or waived some or all appeal rights.” Id.

3 Petitioner has not alleged, and there is no indication in the record, that he reserved his  
4 appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished to challenge  
5 his conviction or sentence. Petitioner states that he was dissatisfied with his sentence, but  
6 provides no context as to whether he informed counsel of this dissatisfaction. Petitioner’s  
7 conclusory statement that counsel “failed” to file an appeal ignores the fact that “the burden is  
8 on the client to indicate to his attorney that he wishes to pursue an appeal.” Toston, 127 Nev.  
9 at 979, 267 P.3d at 801 (internal citation, quotation marks and brackets omitted). Indeed,  
10 Petitioner expressly waived his appeal rights in his Guilty Plea Agreement:

11 WAIVER OF RIGHTS

12 By entering my plea of guilty, I understand that I am waving and forever  
13 giving up the following rights and privileges:

14 ...

15 6. The right to appeal the conviction with the assistance of an attorney either  
16 appointed or retained, unless specifically reserved in writing and agreed upon as  
17 provided in NRS 174.035(3). I understand this mean I am unconditionally  
18 waiving my right to a direct appeal of this conviction, including any challenge  
19 based upon reasonable constitutional, jurisdictional or other grounds that  
20 challenge the legality of the proceedings as stated in NRS 177.015(4). However,  
21 I remain free to challenge my conviction through other post-conviction remedies  
22 including a habeas corpus petition pursuant to NRS Chapter 34.

23 Guilty Plea Agreement (“GPA”)(12/14/17), at 4. Counsel was fully aware of this waiver.

24 Petitioner fails to demonstrate that counsel was ineffective for allegedly failing to  
25 consult with him about an appeal. Toston, 127 Nev. at 977, 267 P.3d at 800. He has provided  
26 no evidence of his request or dissatisfaction, as required. Ford v. Warden, 111 Nev. 872, 882,  
27 901 P.2d 123, 129 (1995) (“The burden of production lies with the petitioner in petitions for  
28 writ of habeas corpus”) (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable  
only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Accordingly, this Court should find that Petitioner waived his appellate rights and deny  
the Petition for Writ of Habeas Corpus.

1                   **II.     PETITIONER ENTERED HIS GUILTY PLEA FREELY AND**  
2                   **VOLUNTARILY**

3                   Petitioner claims in his Supplemental Petition that he was coerced into entering his plea  
4 agreement and did not received the deal he bargained for, which was twelve (12) to thirty-five  
5 (35) years. Supplement at 3-4. This claim is belied by the record and suitable for only summary  
6 denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

7                   Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
8 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
9 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
10 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
11 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,  
12 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered  
13 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

14                  A court shall look to the totality of the circumstances to determine whether the plea  
15 was made freely, knowingly and voluntarily, and whether the defendant understood the nature  
16 of the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d  
17 442, 448 (2000). The "totality of the circumstances" test includes a review of the plea  
18 agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods,  
19 114 Nev. at 475, 958 P.2d at 95. Further, there is "[n]o specific formula for making this  
20 determination," thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,  
21 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has  
22 concluded that "[a] thorough plea canvass coupled with a detailed, consistent, written plea  
23 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and  
24 intelligently." Molina, 120 Nev. at 191, 87 P.3d at 537-38.

25                  First, there is no indication in Petitioner's guilty plea agreement that he would be  
26 receiving a sentence of twelve (12) to thirty-five (35) years. Petitioner's guilty plea agreement  
27 specifically states that the State would retain the right to argue for any sentence, and that the  
28 consequence of Petitioner's plea would be Life in the Nevada Department of Corrections with

1 the possibility of parole eligibility beginning at ten (10) years or a definite term of twenty-five  
2 (25) years with parole eligibility beginning at ten (10) years, plus a consecutive one (1) to  
3 twenty (20) years for use of a deadly weapon. GPA at 2. Furthermore, at sentencing counsel  
4 for Petitioner argued for a sentence of twelve (12) to life. See Reporter's Transcript:  
5 Sentencing (4/5/19), at 13.

6 Second, by signing the guilty plea agreement, Petitioner acknowledged that no specific  
7 sentence could be promised to him as the ultimate decision was up to the court. Therefore,  
8 Petitioner's claim that the sentencing judge overlooked the promised sentence and imposed a  
9 different sentence instead is immaterial. Petition at 13. This provision was outlined in the  
10 "Consequences of Plea" section of Petitioner's agreement:

11 CONSEQUENCES OF PLEA

12 I have not been promised or guaranteed any particular sentence by anyone. I  
13 know that my sentence is to be determined by the Court within the limits  
14 provided by statute.

15 I understand that if my attorney or the state of Nevada or both recommend  
16 any specific punishment to the Court, the Court is not obligated to accept the  
17 recommendation.

18 GPA, at 2. Petitioner also attested that his plea was voluntarily entered:

19 VOLUNTARINESS OF PLEA

20 I have discussed the elements of all of the original charge(s) against me  
21 with my attorney and I understand the nature of the charge(s) against me.

22 I understand that the State would have to prove each element of the  
23 charge(s) against me at trial.

24 I have discussed with my attorney any possible defenses, defense  
25 strategies and circumstances which might be in my favor.

26 All of the foregoing elements, consequences, rights, and waiver of rights  
27 have been thoroughly explained to me by my attorney.

28 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.*

I am not now under the influence of any intoxicating liquor, a controlled  
substance or other drug which would in any manner impair my ability to

1 comprehend or understand this agreement or the proceedings surrounding my  
2 entry of this plea.

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

6 GPA, at 4 (emphasis added). Moreover, at no point during sentencing did Petitioner inform  
7 the court that he was promised a certain sentence, and Petitioner never objected at any point  
8 when his counsel argued for twelve (12) years to life. Therefore, Petitioner's reliance on a  
9 promise of twelve (12) to thirty-five (35) years is expressly contradicted by the agreement he  
10 signed, and the sentencing transcript.

11 As such, Petitioner fails to provide any indication of coercion or any evidence to show  
12 that he did not enter his plea freely and voluntarily. Accordingly, this Court should find that  
13 Petitioner freely and voluntarily entered his plea.

### 14 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

15 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
16 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). In  
17 McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly  
18 observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-  
19 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision  
20 as being coextensive with the Sixth Amendment to the United States Constitution." McKague  
21 specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel  
22 when petitioner is under a sentence of death), one does not have "[a]ny constitutional or  
23 statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

24 However, the Nevada Legislature has given courts the discretion to appoint post-  
25 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and  
26 the petition is not dismissed summarily." NRS 34.750. NRS 34.750(1) reads:

27 [a] petition may allege that the Defendant is unable to pay the costs  
28 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 whether:

- (a) The issues are difficult;
- (b) The Defendant is unable to comprehend the proceedings;
- or
- (c) Counsel is necessary to proceed with discovery.

All three factors support the denial of Petitioner's request for appointment of counsel. First, the issues are not difficult. Petitioner's claims that counsel failed to file an appeal and that he did not freely and voluntarily enter his plea are both belied by the record and suitable for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Second, Petitioner is able to comprehend the proceedings before him. Petitioner is very litigious as he drafted his own Supplemental Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel, and Request for an Evidentiary Hearing. Last, counsel is not necessary to proceed with discovery. All of the facts and law necessary to resolve Petitioner's claims are already available.

As such, this Court should find that appointment of counsel is not necessary and deny the Petition for Writ of Habeas Corpus.

#### **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

NRS 34.770 provides the manner in which the district court decides whether an evidentiary hearing is required. It reads:

1. 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. A petitioner must not be discharged or committed to the custody of a person other than the respondent unless an evidentiary hearing is held.
2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.
3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

(Emphasis added).

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605

1 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
2 factual allegations, which, if true, would entitle him to relief unless the factual allegations are  
3 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at  
4 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an  
5 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
6 'belied' when it is contradicted or proven to be false by the record as it existed at the time the  
7 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

8 In this instance, Petitioner is not entitled to an evidentiary hearing because there is no  
9 need to expand the record. All of the law and facts necessary to dispose of Petitioner's claims  
10 are already available.

11 As such, this Court should find that an evidentiary hearing is not necessary, and deny  
12 Petitioner's request for an evidentiary hearing.

13 **CONCLUSION**

14 For all the foregoing, the State respectfully requests that Petitioner's Petition for Writ  
15 of Habeas Corpus, be DENIED.

16 DATED this 1st day of May, 2019.

17 Respectfully submitted,

18 STEVEN B. WOLFSON  
19 Clark County District Attorney  
Nevada Bar #01565

20 BY /s/JONATHAN E. VANBOSKERCK  
21 JONATHAN E. VANBOSKERCK  
22 Chief Deputy District Attorney  
23 Nevada Bar #6528  
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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 1st day of May, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RICHARD NEWSOME JR., #1194269  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels  
Secretary for the District Attorney's Office

17F00876/JEV/a/appellate/dd-MVU



1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #6528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 RICHARD NEWSOME JR.,  
13 aka Richard Newsome, #5437116

14 Defendant.

CASE NO: A-19-788618-W

DEPT NO: XXI

15 **FINDINGS OF FACT, CONCLUSIONS OF**  
16 **LAW AND ORDER**

17 DATE OF HEARING: May 28, 2019  
18 TIME OF HEARING: 9:30 AM

19 THIS CAUSE having come on for hearing before the Honorable VALERIE ADAIR,  
20 District Judge, on the 28th day of May, 2019, the Petitioner not being present, PROCEEDING  
21 IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark  
22 County District Attorney, by and through ADAM S. OSMAN, Deputy District Attorney, and  
23 the Court having considered the matter, including briefs, transcripts, and documents on file  
24 herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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## ANALYSIS

### **I. PETITIONER WAIVED HIS APPELLATE RIGHTS**

In his Petition, Petitioner claims that counsel failed to file a notice of appeal although Petitioner expressed dissatisfaction with his sentence. Petition at 3. Petitioner also alleges that counsel failed to acquire his consent not to file a notice of appeal. Id.

Counsel is only obligated to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). "[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction, and that the failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel." Id. at 977, 267 P.3d at 800. Moreover, trial counsel has no constitutional obligation to always inform or consult with a defendant regarding his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

[t]hat duty arises in the guilty-plea context only when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal, 'such as the existence of a direct appeal claim that has reasonable likelihood of success.

Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

Courts should consider "all the information counsel knew or should have known" and focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Importantly, whether the defendant's conviction followed a guilty plea is highly relevant to the inquiry "both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id. Thus, when a defendant who pleaded guilty claims that he was deprived of the right to appeal, "the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Id.

Petitioner has not alleged, and there is no indication in the record, that he reserved his appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished to challenge

1 his conviction or sentence. Petitioner states that he was dissatisfied with his sentence, but  
2 provides no context as to whether he informed counsel of this dissatisfaction. Petitioner's  
3 conclusory statement that counsel "failed" to file an appeal ignores the fact that "the burden is  
4 on the client to indicate to his attorney that he wishes to pursue an appeal." Toston, 127 Nev.  
5 at 979, 267 P.3d at 801 (internal citation, quotation marks and brackets omitted). Indeed,  
6 Petitioner expressly waived his appeal rights in his Guilty Plea Agreement:

7 WAIVER OF RIGHTS

8 By entering my plea of guilty, I understand that I am waving and forever  
9 giving up the following rights and privileges:

10 ...

11 6. The right to appeal the conviction with the assistance of an attorney  
12 either appointed or retained, unless specifically reserved in writing and agreed  
13 upon as provided in NRS 174.035(3). I understand this mean I am  
14 unconditionally waiving my right to a direct appeal of this conviction, including  
15 any challenge based upon reasonable constitutional, jurisdictional or other  
16 grounds that challenge the legality of the proceedings as stated in NRS  
17 177.015(4). However, I remain free to challenge my conviction through other  
18 post-conviction remedies including a habeas corpus petition pursuant to NRS  
19 Chapter 34.

20 Guilty Plea Agreement ("GPA")(12/14/17), at 4. Counsel was fully aware of this waiver.

21 Petitioner fails to demonstrate that counsel was ineffective for allegedly failing to  
22 consult with him about an appeal. Toston, 127 Nev. at 977, 267 P.3d at 800. He has provided  
23 no evidence of his request or dissatisfaction, as required. Ford v. Warden, 111 Nev. 872, 882,  
24 901 P.2d 123, 129 (1995) ("The burden of production lies with the petitioner in petitions for  
25 writ of habeas corpus") (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable  
26 only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

27 Accordingly, this Court finds Petitioner waived his appellate rights and the Petition for  
28 Writ of Habeas Corpus must be denied.

29 **II. PETITIONER ENTERED HIS GUILTY PLEA FREELY AND VOLUNTARILY**

30 Petitioner claims in his Supplemental Petition that he was coerced into entering his plea  
31 agreement and did not received the deal he bargained for, which was twelve (12) to thirty-five

1 (35) years. Supplement at 3-4. This claim is belied by the record and suitable for only summary  
2 denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
4 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
5 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
6 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
7 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,  
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10 A court shall look to the totality of the circumstances to determine whether the plea  
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13 442, 448 (2000). The "totality of the circumstances" test includes a review of the plea  
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15 114 Nev. at 475, 958 P.2d at 95. Further, there is "[n]o specific formula for making this  
16 determination," thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,  
17 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has  
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19 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and  
20 intelligently." Molina, 120 Nev. at 191, 87 P.3d at 537-38.

21 First, there is no indication in Petitioner's guilty plea agreement that he would be  
22 receiving a sentence of twelve (12) to thirty-five (35) years. Petitioner's guilty plea agreement  
23 specifically states that the State would retain the right to argue for any sentence, and that the  
24 consequence of Petitioner's plea would be Life in the Nevada Department of Corrections with  
25 the possibility of parole eligibility beginning at ten (10) years or a definite term of twenty-five  
26 (25) years with parole eligibility beginning at ten (10) years, plus a consecutive one (1) to  
27 twenty (20) years for use of a deadly weapon. GPA at 2. Furthermore, at sentencing counsel  
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1 for Petitioner argued for a sentence of twelve (12) to life. See Reporter's Transcript: Sentencing  
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3 Second, by signing the guilty plea agreement, Petitioner acknowledged that no specific  
4 sentence could be promised to him as the ultimate decision was up to the court. Therefore,  
5 Petitioner's claim that the sentencing judge overlooked the promised sentence and imposed a  
6 different sentence instead is immaterial. Petition at 13. This provision was outlined in the  
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9 I have not been promised or guaranteed any particular sentence by  
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12 I understand that if my attorney or the state of Nevada or both recommend  
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15 GPA, at 2. Petitioner also attested that his plea was voluntarily entered:

16 VOLUNTARINESS OF PLEA

17 I have discussed the elements of all of the original charge(s) against me  
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19 I understand that the State would have to prove each element of the  
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21 I have discussed with my attorney any possible defenses, defense  
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23 All of the foregoing elements, consequences, rights, and waiver of rights  
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25 I believe that pleading guilty and accepting this plea bargain is in my best  
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27 I am signing this agreement voluntarily, after consultation with my  
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promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled  
substance or other drug which would in any manner impair my ability to  
comprehend or understand this agreement or the proceedings surrounding my  
entry of this plea.

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.

1 GPA, at 4 (emphasis added). Moreover, at no point during sentencing did Petitioner inform  
2 the court that he was promised a certain sentence, and Petitioner never objected at any point  
3 when his counsel argued for twelve (12) years to life. Therefore, Petitioner's reliance on a  
4 promise of twelve (12) to thirty-five (35) years is expressly contradicted by the agreement he  
5 signed, and the sentencing transcript.

6 As such, Petitioner fails to provide any indication of coercion or any evidence to show  
7 that he did not enter his plea freely and voluntarily. Accordingly, this Court finds that  
8 Petitioner freely and voluntarily entered his plea, and the Supplemental Petition for Writ of  
9 Habeas Corpus must be denied.

### 10 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

11 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
12 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). In  
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20 However, the Nevada Legislature has given courts the discretion to appoint post-  
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23 [a] petition may allege that the Defendant is unable to pay the costs of the  
24 proceedings or employ counsel. If the court is satisfied that the allegation of  
25 indigency is true and the petition is not dismissed summarily, the court may  
26 appoint counsel at the time the court orders the filing of an answer and a return.  
In making its determination, the court may consider whether:

- 27 (a) The issues are difficult;  
28 (b) The Defendant is unable to comprehend the proceedings; or  
(c) Counsel is necessary to proceed with discovery.

1 All three factors support the denial of Petitioner's request for appointment of counsel.  
2 First, the issues are not difficult. Petitioner's claims that counsel failed to file an appeal and  
3 that he did not freely and voluntarily enter his plea are both belied by the record and suitable  
4 for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Second, Petitioner  
5 is able to comprehend the proceedings before him. Petitioner is very litigious as he drafted his  
6 own Supplemental Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel,  
7 and Request for an Evidentiary Hearing. Last, counsel is not necessary to proceed with  
8 discovery. All of the facts and law necessary to resolve Petitioner's claims are already  
9 available.

10 As such, this Court finds that appointment of counsel is not necessary.

11 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

12 NRS 34.770 provides the manner in which the district court decides whether an  
13 evidentiary hearing is required. It reads:

14 1. The judge or justice, upon review of the return, answer and all  
15 supporting documents which are filed, shall determine whether an evidentiary  
16 hearing is required. A petitioner must not be discharged or committed to the  
17 custody of a person other than the respondent unless an evidentiary hearing is  
held.

18 2. If the judge or justice determines that the petitioner is not entitled to  
19 relief and an evidentiary hearing is not required, he shall dismiss the petition  
without a hearing.

20 3. If the judge or justice determines that an evidentiary hearing is  
required, he shall grant the writ and shall set a date for the hearing.

21 (Emphasis added).

22 The Nevada Supreme Court has held that if a petition can be resolved without  
23 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,  
24 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605  
25 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
26 factual allegations, which, if true, would entitle him to relief unless the factual allegations are  
27 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at  
28 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an

1 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
2 'belied' when it is contradicted or proven to be false by the record as it existed at the time the  
3 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

4 In this instance, Petitioner is not entitled to an evidentiary hearing because there is no  
5 need to expand the record. All of the law and facts necessary to dispose of Petitioner's claims  
6 are already available.

7 As such, this Court finds that an evidentiary hearing is not necessary, and Petitioner's  
8 request for an evidentiary hearing must be denied.

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus  
11 (Post-Conviction), shall be, and it is, hereby denied.

12 IT IS FURTHER ORDERED that the Supplemental Petition for Writ of Habeas Corpus  
13 is denied.

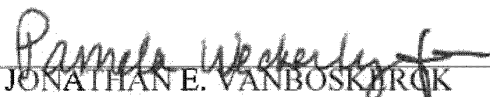
14 IT IS FURTHER ORDERED that the Motion to Appoint Counsel is denied

15 IT IS FURTHER ORDERED that the Request for Evidentiary Hearing is denied.

16 DATED this 21 day of June, 2019.

17   
18 \_\_\_\_\_  
DISTRICT JUDGE

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

21 BY   
22 JONATHAN E. VANBOSKERCK  
23 Chief Deputy District Attorney  
Nevada Bar #6528

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 18th day of  
June, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RICHARD NEWSOME #1194269  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels  
Secretary for the District Attorney's Office

17F00876/qh/appellate/dd/MVU



1 NEO

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 RICHARD NEWSOME,

6 Petitioner,

Case No: A-19-788618-W

Dept No: 21

7 vs.

8 STATE OF NEVADA; ET AL,

9 Respondent,

NOTICE OF ENTRY OF FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

10  
11 PLEASE TAKE NOTICE that on June 26, 2019, the court entered a decision or order in this matter, a  
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on June 27, 2019.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Debra Donaldson

18 Debra Donaldson, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 27 day of June 2019, I served a copy of this Notice of Entry on the following:

21 ☒ By e-mail:

22 Clark County District Attorney's Office  
23 Attorney General's Office – Appellate Division-

24 ☒ The United States mail addressed as follows:

25 Richard Newsome # 1194269  
26 P.O. Box 650  
27 Indian Springs, NV 89018

28 /s/ Debra Donaldson

Debra Donaldson, Deputy Clerk



1 **FCL**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JONATHAN E. VANBOSKERCK  
6 Chief Deputy District Attorney  
7 Nevada Bar #6528  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 RICHARD NEWSOME JR.,  
13 aka Richard Newsome, #5437116

14 Defendant.

CASE NO: A-19-788618-W

DEPT NO: XXI

15 **FINDINGS OF FACT, CONCLUSIONS OF**  
16 **LAW AND ORDER**

17 DATE OF HEARING: May 28, 2019  
18 TIME OF HEARING: 9:30 AM

19 THIS CAUSE having come on for hearing before the Honorable VALERIE ADAIR,  
20 District Judge, on the 28th day of May, 2019, the Petitioner not being present, PROCEEDING  
21 IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark  
22 County District Attorney, by and through ADAM S. OSMAN, Deputy District Attorney, and  
23 the Court having considered the matter, including briefs, transcripts, and documents on file  
24 herein, now therefore, the Court makes the following findings of fact and conclusions of law:

25 //

26 //

27 //

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//

**PROCEDURAL BACKGROUND**

On February 2, 2017, Richard Newsome Jr. (Hereinafter "Petitioner") was charged by way of Indictment with one count MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and one count ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 5021) for acts committed on or about January 14, 2017. On February 9, 2017, a Superseding Indictment was filed charging Petitioner with one count MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); one count ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 5021); one count ACCESSORY TO MURDER WITH USE OF A DEADLY WEAPON (Category C Felony - NRS 195.030, 195.040, 200.010 - NOC 53090); and BATTERY WITH SUBSTANTIAL BODILY HARM (Category C Felony - NRS 200.481 - NOC 50214). On February 16, 2017, Petitioner plead not guilty to the charges and waived his right to a speedy trial.

On December 14, 2017, the State filed a Second Amended Superseding Indictment and Petitioner entered a Guilty Plea Agreement to MURDER (SECOND-DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 5011) in which the State retained the right to argue at sentencing.

On February 8, 2018, Petitioner was sentenced to LIFE with the possibility of parole after ten (10) years in the Nevada Department of Corrections ("NDC") with a consecutive term of a minimum of ninety-six (96) months and a maximum of two-hundred forty (240) months in NDC with three-hundred ninety-four (394) days credit for time served. The Judgment of Conviction was filed March 5, 2018.

On February 1, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (Hereinafter "Petition"), Supplemental Petition for Writ of Habeas Corpus (Hereinafter "Supplement"), Motion for Appointment of Counsel (Hereinafter "Motion"), and Request for an Evidentiary Hearing (Hereinafter "Request"). The State responded on May 1, 2019. The court held a hearing on May 14, 2019, and set the matter for decision on May 28, 2019.

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**ANALYSIS**

**I. PETITIONER WAIVED HIS APPELLATE RIGHTS**

In his Petition, Petitioner claims that counsel failed to file a notice of appeal although Petitioner expressed dissatisfaction with his sentence. Petition at 3. Petitioner also alleges that counsel failed to acquire his consent not to file a notice of appeal. Id.

Counsel is only obligated to file a notice of appeal or to consult with a defendant regarding filing a notice of appeal in certain circumstances. Toston v. State, 127 Nev. 971, 267 P.3d 795 (2011). "[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction, and that the failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel." Id. at 977, 267 P.3d at 800. Moreover, trial counsel has no constitutional obligation to always inform or consult with a defendant regarding his right to a direct appeal when the defendant is convicted pursuant to a guilty plea. Id. Rather,

[t]hat duty arises in the guilty-plea context only when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal, 'such as the existence of a direct appeal claim that has reasonable likelihood of success.

Id. (quoting Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999)).

Courts should consider "all the information counsel knew or should have known" and focus on the totality of the circumstances. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Importantly, whether the defendant's conviction followed a guilty plea is highly relevant to the inquiry "both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id. Thus, when a defendant who pleaded guilty claims that he was deprived of the right to appeal, "the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Id.

Petitioner has not alleged, and there is no indication in the record, that he reserved his appeal rights, asked counsel to file an appeal on his behalf, or otherwise wished to challenge

1 his conviction or sentence. Petitioner states that he was dissatisfied with his sentence, but  
2 provides no context as to whether he informed counsel of this dissatisfaction. Petitioner's  
3 conclusory statement that counsel "failed" to file an appeal ignores the fact that "the burden is  
4 on the client to indicate to his attorney that he wishes to pursue an appeal." Toston, 127 Nev.  
5 at 979, 267 P.3d at 801 (internal citation, quotation marks and brackets omitted). Indeed,  
6 Petitioner expressly waived his appeal rights in his Guilty Plea Agreement:

7 WAIVER OF RIGHTS

8 By entering my plea of guilty, I understand that I am waving and forever  
9 giving up the following rights and privileges:

10 ...

11 6. The right to appeal the conviction with the assistance of an attorney  
12 either appointed or retained, unless specifically reserved in writing and agreed  
13 upon as provided in NRS 174.035(3). I understand this mean I am  
14 unconditionally waiving my right to a direct appeal of this conviction, including  
15 any challenge based upon reasonable constitutional, jurisdictional or other  
16 grounds that challenge the legality of the proceedings as stated in NRS  
17 177.015(4). However, I remain free to challenge my conviction through other  
18 post-conviction remedies including a habeas corpus petition pursuant to NRS  
19 Chapter 34.

20 Guilty Plea Agreement ("GPA")(12/14/17), at 4. Counsel was fully aware of this waiver.

21 Petitioner fails to demonstrate that counsel was ineffective for allegedly failing to  
22 consult with him about an appeal. Toston, 127 Nev. at 977, 267 P.3d at 800. He has provided  
23 no evidence of his request or dissatisfaction, as required. Ford v. Warden, 111 Nev. 872, 882,  
24 901 P.2d 123, 129 (1995) ("The burden of production lies with the petitioner in petitions for  
25 writ of habeas corpus") (citing NRS 34.370(4)). As such, his claim is a bare allegation suitable  
26 only for summary dismissal. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

27 Accordingly, this Court finds Petitioner waived his appellate rights and the Petition for  
28 Writ of Habeas Corpus must be denied.

29 **II. PETITIONER ENTERED HIS GUILTY PLEA FREELY AND**  
30 **VOLUNTARILY**

31 Petitioner claims in his Supplemental Petition that he was coerced into entering his plea  
32 agreement and did not received the deal he bargained for, which was twelve (12) to thirty-five

1 (35) years. Supplement at 3-4. This claim is belied by the record and suitable for only summary  
2 denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225.

3 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
4 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
5 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
6 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
7 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,  
8 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered  
9 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

10 A court shall look to the totality of the circumstances to determine whether the plea  
11 was made freely, knowingly and voluntarily, and whether the defendant understood the nature  
12 of the offense and the consequences of the plea. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d  
13 442, 448 (2000). The "totality of the circumstances" test includes a review of the plea  
14 agreement, the canvass conducted by the district court, and the record as a whole. Id.; Woods,  
15 114 Nev. at 475, 958 P.2d at 95. Further, there is "[n]o specific formula for making this  
16 determination," thus each case is evaluated on a case-by-case basis. Freese, 116 Nev. at 1106,  
17 13 P.3d at 448. Even though there is no specific formula, the Nevada Supreme Court has  
18 concluded that "[a] thorough plea canvass coupled with a detailed, consistent, written plea  
19 agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and  
20 intelligently." Molina, 120 Nev. at 191, 87 P.3d at 537-38.

21 First, there is no indication in Petitioner's guilty plea agreement that he would be  
22 receiving a sentence of twelve (12) to thirty-five (35) years. Petitioner's guilty plea agreement  
23 specifically states that the State would retain the right to argue for any sentence, and that the  
24 consequence of Petitioner's plea would be Life in the Nevada Department of Corrections with  
25 the possibility of parole eligibility beginning at ten (10) years or a definite term of twenty-five  
26 (25) years with parole eligibility beginning at ten (10) years, plus a consecutive one (1) to  
27 twenty (20) years for use of a deadly weapon. GPA at 2. Furthermore, at sentencing counsel  
28

1 for Petitioner argued for a sentence of twelve (12) to life. See Reporter's Transcript: Sentencing  
2 (4/5/19), at 13.

3 Second, by signing the guilty plea agreement, Petitioner acknowledged that no specific  
4 sentence could be promised to him as the ultimate decision was up to the court. Therefore,  
5 Petitioner's claim that the sentencing judge overlooked the promised sentence and imposed a  
6 different sentence instead is immaterial. Petition at 13. This provision was outlined in the  
7 "Consequences of Plea" section of Petitioner's agreement:

8 CONSEQUENCES OF PLEA

9 I have not been promised or guaranteed any particular sentence by  
10 anyone. I know that my sentence is to be determined by the Court within the  
11 limits provided by statute.

12 I understand that if my attorney or the state of Nevada or both recommend  
13 any specific punishment to the Court, the Court is not obligated to accept the  
14 recommendation.

15 GPA, at 2. Petitioner also attested that his plea was voluntarily entered:

16 VOLUNTARINESS OF PLEA

17 I have discussed the elements of all of the original charge(s) against me  
18 with my attorney and I understand the nature of the charge(s) against me.

19 I understand that the State would have to prove each element of the  
20 charge(s) against me at trial.

21 I have discussed with my attorney any possible defenses, defense  
22 strategies and circumstances which might be in my favor.

23 All of the foregoing elements, consequences, rights, and waiver of rights  
24 have been thoroughly explained to me by my attorney.

25 I believe that pleading guilty and accepting this plea bargain is in my best  
26 interest, and that a trial would be contrary to my best interest.

27 I am signing this agreement voluntarily, after consultation with my  
28 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.

I am not now under the influence of any intoxicating liquor, a controlled  
substance or other drug which would in any manner impair my ability to  
comprehend or understand this agreement or the proceedings surrounding my  
entry of this plea.

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.

1 GPA, at 4 (emphasis added). Moreover, at no point during sentencing did Petitioner inform  
2 the court that he was promised a certain sentence, and Petitioner never objected at any point  
3 when his counsel argued for twelve (12) years to life. Therefore, Petitioner's reliance on a  
4 promise of twelve (12) to thirty-five (35) years is expressly contradicted by the agreement he  
5 signed, and the sentencing transcript.

6 As such, Petitioner fails to provide any indication of coercion or any evidence to show  
7 that he did not enter his plea freely and voluntarily. Accordingly, this Court finds that  
8 Petitioner freely and voluntarily entered his plea, and the Supplemental Petition for Writ of  
9 Habeas Corpus must be denied.

### 10 **III. PETITIONER IS NOT ENTITLED TO APPOINTMENT OF COUNSEL**

11 Under the U.S. Constitution, the Sixth Amendment provides no right to counsel in post-  
12 conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546 (1991). In  
13 McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly  
14 observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-  
15 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision  
16 as being coextensive with the Sixth Amendment to the United States Constitution." McKague  
17 specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel  
18 when petitioner is under a sentence of death), one does not have "[a]ny constitutional or  
19 statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

20 However, the Nevada Legislature has given courts the discretion to appoint post-  
21 conviction counsel so long as "the court is satisfied that the allegation of indigency is true and  
22 the petition is not dismissed summarily." NRS 34.750. NRS 34.750(1) reads:

23 [a] petition may allege that the Defendant is unable to pay the costs of the  
24 proceedings or employ counsel. If the court is satisfied that the allegation of  
25 indigency is true and the petition is not dismissed summarily, the court may  
26 appoint counsel at the time the court orders the filing of an answer and a return.  
In making its determination, the court may consider whether:

- 27 (a) The issues are difficult;  
28 (b) The Defendant is unable to comprehend the proceedings; or  
(c) Counsel is necessary to proceed with discovery.

1 All three factors support the denial of Petitioner's request for appointment of counsel.  
2 First, the issues are not difficult. Petitioner's claims that counsel failed to file an appeal and  
3 that he did not freely and voluntarily enter his plea are both belied by the record and suitable  
4 for only summary denial under Hargrove, 100 Nev. at 502, 686 P.2d at 225. Second, Petitioner  
5 is able to comprehend the proceedings before him. Petitioner is very litigious as he drafted his  
6 own Supplemental Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel,  
7 and Request for an Evidentiary Hearing. Last, counsel is not necessary to proceed with  
8 discovery. All of the facts and law necessary to resolve Petitioner's claims are already  
9 available.

10 As such, this Court finds that appointment of counsel is not necessary.

11 **IV. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

12 NRS 34.770 provides the manner in which the district court decides whether an  
13 evidentiary hearing is required. It reads:

14 1. The judge or justice, upon review of the return, answer and all  
15 supporting documents which are filed, shall determine whether an evidentiary  
16 hearing is required. A petitioner must not be discharged or committed to the  
17 custody of a person other than the respondent unless an evidentiary hearing is  
held.

18 2. If the judge or justice determines that the petitioner is not entitled to  
19 relief and an evidentiary hearing is not required, he shall dismiss the petition  
without a hearing.

20 3. If the judge or justice determines that an evidentiary hearing is  
required, he shall grant the writ and shall set a date for the hearing.

21 (Emphasis added).

22 The Nevada Supreme Court has held that if a petition can be resolved without  
23 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,  
24 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605  
25 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
26 factual allegations, which, if true, would entitle him to relief unless the factual allegations are  
27 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at  
28 502, 686 P.2d at 225 ("[a] defendant seeking post-conviction relief is not entitled to an

1 evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is  
2 'belied' when it is contradicted or proven to be false by the record as it existed at the time the  
3 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

4 In this instance, Petitioner is not entitled to an evidentiary hearing because there is no  
5 need to expand the record. All of the law and facts necessary to dispose of Petitioner's claims  
6 are already available.

7 As such, this Court finds that an evidentiary hearing is not necessary, and Petitioner's  
8 request for an evidentiary hearing must be denied.

9 **ORDER**

10 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus  
11 (Post-Conviction), shall be, and it is, hereby denied.

12 IT IS FURTHER ORDERED that the Supplemental Petition for Writ of Habeas Corpus  
13 is denied.

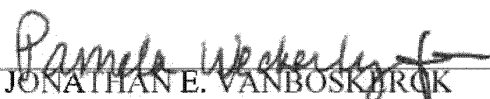
14 IT IS FURTHER ORDERED that the Motion to Appoint Counsel is denied

15 IT IS FURTHER ORDERED that the Request for Evidentiary Hearing is denied.

16 DATED this 21 day of June, 2019.

17   
18 \_\_\_\_\_  
DISTRICT JUDGE

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

21 BY   
22 JONATHAN E. VANBOSKERCK  
23 Chief Deputy District Attorney  
Nevada Bar #6528

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 18th day of  
June, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RICHARD NEWSOME #1194269  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070-0650

BY /s/D. Daniels  
Secretary for the District Attorney's Office

17F00876/qh/appellate/dd/MVU



1 CSERV

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5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7  
8 RICHARD NEWSOME,

9 Plaintiff(s),

10 vs.

11 STATE OF NEVADA; ET AL.,

12 Defendant(s).

Case No: A-19-788618-W

Dept No: XXI

13  
14  
15 **CERTIFICATE OF RE-SERVICE**

16 I HEREBY CONFIRM that the Notice of Entry of Findings of Fact Conclusions of Law  
17 and Order originally filed on June 27, 2019 has been served on the Office of the Clark County  
18 District Attorney and the Office of the Attorney General via electronic service.

19  
20 All other respective party(ies) and their counsel(s), if any, have already received copies  
21 via U.S. Mail when initially filed.

22  
23 Steven D. Grierson, Clerk of the Court

24 s/Debra Donaldson

25 Debra Donaldson, Deputy Clerk

**Ungermann, Heather**

---

**From:** Donaldson, Debra  
**Sent:** Wednesday, July 24, 2019 10:12 AM  
**To:** 'motions@clarkcountyda.com'; 'wiznetfilings@ag.nv.gov'; Ungermann, Heather  
**Subject:** FW: Filing Accepted for Case: A-19-788618-W; Richard Newsome, Plaintiff(s)vs.State of Nevada, Defendant(s); Envelope Number: 4511473

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**From:** [efilingmail@tylerhost.net](mailto:efilingmail@tylerhost.net) [mailto:[efilingmail@tylerhost.net](mailto:efilingmail@tylerhost.net)]  
**Sent:** Thursday, June 27, 2019 8:20 AM  
**To:** Donaldson, Debra  
**Subject:** Filing Accepted for Case: A-19-788618-W; Richard Newsome, Plaintiff(s)vs.State of Nevada, Defendant(s); Envelope Number: 4511473



## Filing Accepted

Envelope Number: 4511473

Case Number: A-19-788618-W

Case Style: Richard Newsome, Plaintiff(s)vs.State of Nevada, Defendant(s)

The filing below was accepted through the eFiling system. You may access the file stamped copy of the document filed by clicking on the below link.

Filing Details	
<b>Court</b>	Clark District Criminal/Civil
<b>Case Number</b>	A-19-788618-W
<b>Case Style</b>	Richard Newsome, Plaintiff(s)vs.State of Nevada, Defendant(s)
<b>Date/Time Submitted</b>	6/27/2019 8:18 AM PST
<b>Date/Time Accepted</b>	6/27/2019 8:19 AM PST
<b>Accepted Comments</b>	Auto Review Accepted
<b>Filing Type</b>	Notice of Entry - NEO (CIV)
<b>Filing Description</b>	Notice of Entry of Findings of Fact, Conclusions of Law and Order
<b>Activity Requested</b>	EFile
<b>Filed By</b>	Debra Donaldson
<b>Filing Attorney</b>	

Document Details	
<b>Lead Document</b>	A788618.062719_neo_dd.pdf
<b>Lead Document Page</b>	11

<b>Count</b>	
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 14, 2019**

---

A-19-788618-W	Richard Newsome, Jr., Plaintiff(s)
	vs.
	State of Nevada, Defendant(s)

---

<b>May 14, 2019</b>	<b>9:30 AM</b>	<b>Petition for Writ of Habeas Corpus</b>
---------------------	----------------	---

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Athena Trujillo

**RECORDER:** Robin Page

**REPORTER:**

**PARTIES**

**PRESENT:** Keach, Eckley M. Attorney

**JOURNAL ENTRIES**

- COURT noted it is unable to locate the transcript from Entry of Plea and ORDERED, matter SET for decision.

5/28/19 9:30 AM DECISION

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**May 28, 2019**

---

A-19-788618-W      Richard Newsome, Jr., Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

---

**May 28, 2019      9:30 AM      Decision**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Athena Trujillo

**RECORDER:** Robin Page

**REPORTER:**

**PARTIES**

**PRESENT:** Osman, Adam B.      Attorney

**JOURNAL ENTRIES**

- Court noted it is clear from the plea canvass that the range of punishment was discussed and ORDERED, motion DENIED; State to prepare the order.

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated August 2, 2019, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 74.

RICHARD ALLAN NEWSOME, JR.,

Plaintiff(s),

vs.

STATE OF NEVADA; WARDEN BRIAN  
WILLIAMS,

Defendant(s),

Case No: A-19-788618-W  
*Related Case C-17-321043-1*  
Dept. No: XXI

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 9 day of August 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk