

1 IN THE SUPREME COURT OF THE  
2 STATE OF NEVADA

3  
4 STATE OF NEVADA  
5 PLAINTIFF

CASE No. 79715

6 VS.

7 Jason Bolden #1032049  
8 Defendant

FILED

OCT 06 2020

CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

10 MOTION TO SUSPEND BRIEFING OF DIRECT  
11 APPEAL, DISMISS APPELLATE COUNSEL AND  
12 APPOINT ALTERNATE APPELLATE COUNSEL

13 Comes Now JASON BOLDEN, and moves this Honorable  
14 Court to DISMISS COUNSEL, BEN NADIG, suspend  
15 the briefing of defendant's direct appeal temporarily, that  
16 was filed on September 10, 2020., remand this matter  
17 to the district court for the limited purpose of  
18 securing and/or appoint an ALTERNATE Appellate Counsel  
19 to represent Appellant JASON BOLDEN for Direct Appeal.

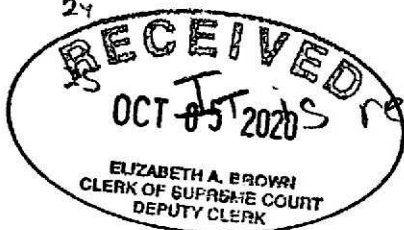
20 This motion based upon all papers, pleadings and  
21 documents on file. Factual statements are set forth  
22 in the POINTS AND AUTHORITIES contain therein.

23 Dated this 23rd day of September 2020.  
24 POINTS AND AUTHORITIES

respectfully requested of this court to

①

20-36670



1 This MOTION To dismiss Counsel Ben Nadig Nevada  
2 State Bar No. 9876 And Appoint An Appellate Counsel  
3 To defend Appellant Jason Bolden Adequately For the  
4 direct Appeal process.

5 These Are The reasons below:

6 1.) Failed To CONTACT Appellant AT High Desert State  
7 Prison.

8 2.) Fail To Come see or visit Appellant AT High Desert  
9 State Prison.

10 3.) Failed To CONSULT With Appellant AT High Desert  
11 State Prison, relating To Direct Appeal After he said he  
12 would.

13 4.) Wrote (4) letters To An LAW OFFICE OF Benjamin  
14 Nadig, Chtd. AT 228 South Fourth Street, Third  
15 Floor. LAS VEGAS, NV 89101. Asking for copy of  
16 Trial Transcripts, Client's File, To give Appellant A  
17 Correct Phone Number To speak With counsel, To schedule An  
18 Appointment To come And speak With me relating Towards  
19 Direct Appeal, Which never received A response From  
20 Counsel Benjamin Nadig.

21 5.) Failed To COMMUNICATE AND CONSULT With Appellant  
22 ONCE Transferred To Ely State Prison ON December 10th  
23 2020.

24 6.) Failed To file motion To obtain INVESTIGATOR IN  
25 CASE in A Timely Manner And/or INVESTIGATOR come To  
see me AT Ely State Prison.

- 1 8.) Failed To comply With All Rules of Professional  
2 Conduct, Court rules of Competence And Diligence  
3 To his Client.
- 4 9.) Failed To Communicate With Appellant In Any  
5 Type of Way.
- 6 10.) Failure To give Appellant Copies of All requested  
7 documents in client's file, Trial transcripts And  
8 To Consult With Appellant before filing opening brief  
9 And Appendix.
- 10 11.) Failed To Allow Appellant To make important  
11 decisions on direct Appeal.
- 12 12.) Failed To spend Any Time in legal research on  
13 direct Appeal, And Failed To do Any investigation in  
14 Case.

## 15 II ARGUMENT

16 APPELLANT JASON BOLDEN, asserts he is being  
17 denied his Constitutional right to effective represent-  
18 ation due to wholly inadequate actions which constitutes  
19 a violation of the defendant due process rights on  
20 a Direct Appeal.

21 The Constitutional to effective assistance of  
22 Counsel extends to a Direct Appeal. Burke v. State,  
23 110 Nev. 1366, 1368, P.2d 267, 268 (1994). A criminal  
24 defendant is entitled to constitutionally effective  
25 assistance of counsel on direct Appeal. Evitts v.  
Lucey, 469 U.S. 387, 394 (1985). In order to

1. Prove ineffective assistance of counsel, A petitioner  
2 must show that his attorney's performance was  
3 deficient and, second, demonstrate that such deficiency  
4 caused him prejudice. Strickland, 466 U.S. at 687.  
5 See also Flores-Ortega, 528 U.S. 470, 145 L.Ed.2d  
6 985 (2000). There the court explained that a counsel's  
7 failure to consult with defendant about an appeal  
8 constitutes deficient performance if the attorney had  
9 a duty to consult. Counsel has a constitutional  
10 duty to consult with a defendant about an appeal;  
11 or 2). The defendant reasonably demonstrated an  
12 interest in appealing. Flores-Ortega, 528 U.S. at 480.  
13 In order to establish that he was prejudiced by  
14 counsel's acts which were unreasonable, the defendant  
15 must show that, "There is a reasonable probability  
16 that but for counsel's deficient failure to consult  
17 with him about an appeal," Flores-Ortega 528 U.S.  
18 at 484, he would have filed an appeal. Mr. Nadig,  
19 appellate counsel knew that petitioner wanted him  
20 to file a direct appeal. After guilty verdict, Mr. Nadig  
21 explained to Mr. Bolden he would come and consult with him  
22 at High Desert State Prison once transferred, which he never  
23 did between September 2019 through December of 2019.  
24 A defendant has ultimate authority to make the  
25 fundamental decision as to whether to take an appeal,

1 And counsel's obligation to assist defendant includes  
2 A duty to consult with the defendant on important  
3 decisions. Defendant wrote (2) letters to Mr. Nadig  
4 explaining to come see him AT High Desert State Prison  
5 Also called Appellate Attorney, which he never was  
6 able to get in contact with Mr. Nadig. Nor did  
7 Mr. Nadig return ANY calls from the family of  
8 Mr. Jason Bolden. Once defendant was transferred to  
9 Elly State Prison in December 2019 the 10th day. Mr.  
10 Nadig never contacted defendant by mail, scheduled AN  
11 appointment to come see Mr. Bolden, returned none of Mr.  
12 Bolden phone calls. Despite the pandemic of Covid-19 around  
13 the world. Appellate Counsel never made AN attempt  
14 to schedule a phone conference nor video conference.  
15 Not only did Mr. Nadig make representation to  
16 the petitioner but he also made them to the  
17 Court, "ooo well sit there and fretter out what  
18 those issues are and put those all in a appeal because  
19 he has that right. Due process is offended if  
20 Attorney does NOT provide effective assistance for the  
21 appeal. U.S. Constitution Amendment of 14th Affords  
22 A criminal defendant the right to AN effective  
23 counsel on First Appeal AS of right from Judgment  
24 of Conviction. A party whose counsel is unable to provide  
25 effective representation is in no better position than  
one who has NO counsel AT ALL. Mr. Benjamin Nadig

1 has neglected his duties. It is incumbent upon  
2 Mr. Nadig, AS part of his professional obligations of  
3 competence and diligence to his client, to know and  
4 comply with all applicable court rules. See RPC 1.1;  
5 RPC 1.3. These rules have been implemented to promote  
6 cost-effective, timely access to the courts; it is  
7 "imperative" that he follow these rules and timely  
8 comply with the directives. The Supreme Court  
9 explains that [c]ompetent representation requires the  
10 legal knowledge, skills, and representation reasonably  
11 necessary for the representation. My individual  
12 rights and liberties are thus at stake in my  
13 direct appeal. A defendant has a right to counsel  
14 to aid in the direct appeal of his conviction.  
15 This right to counsel is violated when appellate counsel  
16 is ineffective. Mr. Nadig has not consulted with  
17 appellant, nor contacted appellant by mail while being  
18 housed at High Desert State Prison between September  
19 15th 2019 to December 10th 2019. Nor did Mr. Nadig  
20 consult with appellant, nor contact appellant by  
21 mail, answer or return phone calls of appellant, and  
22 appellants' family while being housed at Ely State  
23 Prison from December 10th 2019 to September 23rd of  
24 2020. There is no question that the appellant  
25 wanted a direct appeal, and that he was not afforded

1 A direct Appeal with Consultation in Violation of the  
2 Sixth Amendment and Fourteenth Amendment right  
3 To the U.S. Constitution and Article 1 Section 8  
4 To the Nevada Constitution. The defendant has A  
5 right to pursue A direct Appeal even if frivolous,  
6 which Counsel must assist as "AN ACTIVE ADVOCATE  
7 on behalf of his client." Anders v. California, 386  
8 U.S. 738, 744, 87 S.Ct. 1369 (1967).

9 The United States Supreme Court also held that  
10 The "Fundamental decision of whether to appeal rests  
11 With the defendant". Jones v. Barnes, 463 U.S.  
12 745, 751, 103 S.Ct. 3208. (1983) IF complete Collapse  
13 of the Attorney client relationship is evident, A  
14 refusal to substitute Counsel violates Mr. Bolden's  
15 Sixth Amendment rights. Young v. State, 120 Nev  
16 963 (2004)

17 WHEREFORE, the undersigned pray that the Court  
18 grants this Motion to Suspend briefing of Direct  
19 Appeal temporarily, remand this matter to the district  
20 court for the limited purpose of dismissing Counsel  
21 and Appoint other Counsel for direct Appeal.

1 Dated this 23rd day of September, 2020.

2 I Jason Bolden, do solemnly swear, under  
3 The penalty of perjury, That the Above Facts is  
4 Accurate, correct, And True To the best of my  
5 Knowledge. NRS 171.102 And NRS 208.165

6  
7  
8 Respectfully Submitted

9 Jason Bolden 1110325-99

10  
11  
12 Appellant T.

1 I hereby certify that a copy of the foregoing  
2 document Motion To Dismiss Appoint Counsel And Appoint  
3 Alternate Appoint Counsel was mailed to  
4 Supreme Court of Nevada  
5 Office of Clerk  
6 201 S. Carson Street, Suite 201  
7 Carson City, Nevada 89701

8  
9 On September 23rd, 2020.

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