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JURISDICTIONAL STATEMENT

The Respondent does not object to Appellant's jurisdictional statement.

ROUTING STATEMENT

The Respondent objects to Appellant's routing statement and notes that under NRAP 17(b), this case should be assigned to the Court of Appeals because it deals with a judgement of conviction arising from a guilty plea.

STATEMENT OF THE ISSUES

Respondent objects to Appellant's statement of the issues and notes the issues as follows:

ISSUE I: Did the District Court abuse its discretion when it determined that the Appellant's claim regarding his trial attorney's failure to object to any purported breach of a plea bargain was outside the scope of NRS 34.810(1)(a), and where Appellant could not show a fundamental miscarriage of justice?

ISSUE II: Was the District Court correct when it determined that the Appellant's plea was knowingly and voluntarily made and that Appellant was not denied effective assistance of counsel in entering his plea of guilty?

ISSUE III: Did the District Court abuse its discretion when it determined that trial counsel was not ineffective on the allegation that he failed to litigate the proper charge?

ISSUE IV: Did the District Court abuse its discretion when it determined that trial counsel was not ineffective when he decided not to file a

1 motion to suppress evidence found in Appellant's motel room?

2
3 ISSUE V: Did the District Court abuse its discretion when it
4 determined that trial counsel was not ineffective when he decided not to file a
5 motion for severance of the charges against Appellant?

6
7 STATEMENT OF THE CASE

8 The Respondent does not object to Appellant's statement of the case.

9
10 STATEMENT OF FACTS

11 The Respondent objects to Appellant's Statement of Facts, and the
12 characterization of those facts as noted in his Opening Brief. Respondent
13 therefore adopts the facts set forth in the District Court's February 1, 2019
14 Order denying both Appellant's Petition for Writ of Habeas Corpus (Post-
15 Conviction) filed on November 16, 2015 and his Supplemental Petition for
16 Writ of Habeas Corpus (Post -Conviction) filed on May 15, 2017.

17
18 On January 17, 2013, Appellant was arrested by the Humboldt County
19 Sheriff's Office for aggravated stalking charges against his ex-wife Connie
20 Ramirez and her parents, who lived in Humboldt County, Nevada. Subsequently,
21 on January 7, 2014, pursuant to a guilty plea agreement Petitioner entered a plea
22 of guilty to three counts of Aggravated Stalking, a Category B. Felony, in violation
23 of NRS 200.575(2), and was thereafter sentenced on April 15, 2014 to three
24 consecutive terms of a minimum of sixty-two to one hundred fifty-six months in
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1 the Nevada Department of Corrections. Petitioner's Judgment of Conviction was
2 later affirmed on Appeal on November 12, 2014.

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4 STANDARD OF REVIEW

5 The Respondent argues that the standard of review for Issues I through
6 V is an abuse of discretion standard.

7
8 ARGUMENT

9 ISSUE I: The District Court did not abuse its discretion when it
10 determined that the Appellant's claim regarding his trial attorney's failure to
11 object to any purported breach of a plea bargain was outside the scope of NRS
12 34.810(1)(a), and where Appellant could not show a fundamental mischarge of
13 justice.
14

15 NRS 34.810 in dealing with additional reasons for dismissal of a post-
16 conviction petition for a writ of habeas corpus says in relevant part:
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18 The court shall dismiss a petition if the court determines that:

19 (a) The petitioner's conviction was upon a plea of guilty or guilty
20 but mentally ill and the petition is not based upon an allegation
21 that the plea was involuntarily or unknowingly entered or that the
22 plea was entered without effective assistance of counsel.

23 ...
24 unless the court finds both cause for the failure to present the
25 grounds and actual prejudice to the petitioner.

26 In the present case, the district court ruled that Appellant's arguments as
27 to this issue falls outside the scope of NRS 34.810(1)(a), because they concern
28 issues arising at sentencing, are not issues concerning entry of Appellant's

1 actual guilty plea, and that Appellant has failed to show under *Mazzan v.*
2 *Whitley*, 112 Nev. 838, 843, 921 P.2d 920,923.(1996), that a fundamental
3 mischarge of justice occurred, as to this allegation of any breach of a plea
4 agreement, because the "[t]rial Court was not bound by the Guilty Plea
5 agreement or any argument from the prosecutor." (See *District Court Order dated*
6 *February 1, 2019*). Appellant here has simple failed to show that the District
7 Court's decision was an abuse of discretion, especially since he failed to raise
8 this issue during his sentencing hearing or later on appeal. See *State v. Haberstroh*,
9 119 Nev. 173, 69 P.3d 676 (2003), where this Court ruled that NRS 34.810(3)
10 expressly provides that "the petitioner has the burden of pleading and proving
11 specific facts that demonstrate" both good cause for failing to present a claim
12 or for presenting a claim again and actual prejudice.
13

14 As to Appellant's ineffective of counsel claims here of both his trial and
15 appellate counsel to raise this issue, Appellant has failed to show that as to his
16 counsel, under *Strickland v. Washington*, 466 U.S. 668, 688 (1984), that his trial
17 counsel's conduct fell beneath "an objective standard of reasonableness" under
18 *Strickland v. Washington*, 466 U.S. 668, 688 (1984), and that only when the
19 Petitioner has shown that counsel's performance fell beneath "an objective
20 standard of reasonableness," and if a deficiency therefore exists, but for his
21 counsel's deficiency, a different result would have been had at trial. *Id* at 694;
22 *Rubio v. State*, 124 Nev. 1032, 1040, 194 P.3d 1224, 1229 (2008). See also *Morales v.*
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1 *State* (Nev., 2014), where this Court held that in order to prove ineffective
2 assistance of appellate counsel, petitioner “must demonstrate that counsel’s
3 performance was deficient in that it fell below an objective standard of
4 reasonableness, and resulting prejudice such that the omitted issue would have
5 a reasonable probability of success on appeal,” citing *Kirksey v. State*, 112 Nev.
6 980, 998, 923 P.2d 1102, 1114 (1996), *Morales, supra* at page 8.
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8
9 In the present case, the facts presented by Appellant in his Opening Brief
10 of a breach of the plea agreement in this case by the State are belied by the
11 record at the evidentiary hearing. For example, Appellant’s trial counsel at the
12 evidentiary hearing in this case before the district court on his Writ of Habeas
13 Corpus Petition (Post-Conviction), failed to even positively acknowledge that a
14 breach did in fact occur. (*See Appellant’s Appendix page 207*). Furthermore,
15 Appellant’s trial counsel even noted at the evidentiary hearing that the State “had
16 the right to concur with the length of time that was recommended in the
17 recommendation section, and that would have been allowable so it really came
18 down to somehow being able to know what Mr. Pasquale was concurring with.”
19 (*See Appellant’s Appendix pages 206-207*).
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24 While the law for ineffective assistance of counsel claims under *Strickland*,
25 *supra*, is different from an analysis of a breach of a plea agreement on direct
26 appeal under *Van Buskirk v. State*, 102 Nev. 241, 720 P.2d 1215, (1986), at the
27 above evidentiary hearing, Appellant’s trial counsel testified that he did not
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1 believe that the State breached the plea agreement, which is entirely reasonable in
2 explaining why Appellant's counsel did not object to any such breach at the
3 sentencing hearing or raise the issue on direct appeal. The testimony at the above
4 evidentiary hearing clearly shows that Appellants' counsel felt that the State has
5 the right to concur with the recommendation contained in the Nevada
6 Department of Public Safety, Division of Parole and Probation prepared
7 Presentence Investigation Report, and it was his understanding of the situation at
8 hand that was satisfactory to the heart of Appellant's trial counsel in showing,
9 according to his testimony at the evidentiary hearing, that there was no breach of
10 the plea argument by the State. (*See Appellant's Appendix page 207*). Appellant can
11 point to nothing in the record that would otherwise support his post-conviction
12 interpretation of the sentencing record, other than arguing that there was not
13 good reason for the defense not to object to the State's argument at sentencing
14 or argue this issue on direct appeal. (*See Petitioner's Ground Seven to Supplemental*
15 *Petition for Writ of Habeas Corpus (Post-Conviction, Appellant's Appendix pages 256-*
16 *265)*. The simple fact is that the Petitioner's trial and appellate counsel did not
17 object to any breach of the plea agreement since he believed, that there was in
18 fact, none.

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25 Furthermore, under *Morales, supra*, this Court noted that "Appellate
26 counsel is not required to raise every non-frivolous issue on appeal," *citing Jones*
27 *v. Barnes*, 463 U.S. 745, 751 (1983), and that "[r]ather, appellate counsel will be
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1 most effective when every conceivable issue is not raised on appeal,” citing *Ford*
2 *v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989), *Morales, supra* at page 8. At
3 the evidentiary hearing in this case, Appellant’s counsel testified that he raised
4 on appeal the three issues that he felt that had the most merit, and that
5 Appellant has failed to show that this decision was not unreasonable under the
6 standards articulated under *Strickland, supra* or *Morales, supra*. (See Appellant’s
7 Appendix page 207).

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10 Finally, there is no evidence in the record presented to this Court that
11 the sentencing court relied on impalpable or highly suspect evidence under
12 *Silks v. State*, 92 Nev. 91, 545 P.2d 1159 (1976), or that the sentencing court
13 abused its discretion at sentencing, since the Nevada Supreme Court has held
14 that a sentence of imprisonment which is within the limits of a valid statute,
15 regardless of its severity, is normally not considered cruel and unusual
16 punishment in the constitutional sense. *Schmidt v. State*, 94 Nev. 665, 584 P.2d
17 695 (1978). See also *United States v. Johnson*, 507 F.2d 826 (7th Cir. 1974), Cert.
18 den. 421 U.S. 949, 95 S.Ct. 1682, 44 L.Ed.2d 103 (1975). The District Court in
19 its Order dated February 1, 2019 clearly indicated that it considered Appellant’s
20 arguments here on the alleged breach issue when it stated that it was “not
21 bound by the *Guilty Plea Agreement* or any argument from the prosecutor,” and
22 that Appellant has not shown anything in the record that would contradict this
23 fact or that the District Court abused its discretion in this regard. (See
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1 *Appellant's Appendix Page 295*). As a result, the Petitioner's first allegation in
2 their opening brief lacks merit and must fail.
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4 ISSUE II: The District Court was correct when it determined that the
5 Appellant's plea was knowingly and voluntarily made and that Appellant was
6 not denied effective assistance of counsel in entering his plea of guilty.
7

8 Appellant asserts several legal arguments in why the district court was
9 incorrect in determining that the Appellant's guilty plea was not knowingly and
10 voluntary made, all of which fail upon further analysis.
11

12 While the Sixth Amendment to the United States Constitution guarantees
13 effective assistance of counsel at trial, in order to establish a claim of ineffective
14 assistance of counsel, the Appellant must first show that counsel's performance
15 fell beneath "an objective standard of reasonableness." *Strickland v. Washington*,
16 466 U.S. 668, 688 (1984). Only when the Appellant has shown that
17 counsel's performance fell beneath "an objective standard of reasonableness"
18 and a deficiency therefore exists, the Appellant must then show, but for his
19 counsel's deficiency, a different result would have been had at trial. *Id* at 694;
20 *Rubio v. State*, 124 Nev. 1032, 1040, 194 P.3d 1224, 1229 (2008). In *Oliver v. State*,
21 281 P.3d 1206 (Nev., 2009), the Nevada Supreme Court held that the court need
22 not address both components of the inquiry if the petitioner makes an
23 insufficient showing on either one. *Oliver, supra* at 1206, *Strickland v. Washington*,
24 466 U.S. 668, 697, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).
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1 In order to establish an objective standard of reasonableness, the court
2 must look to the "prevailing professional norms" of legal practice, *Wiggins v.*
3 *Smith*, 539 U.S. 510, 521 (2003) (quoting *Strickland*, 466 U.S. at 688).
4 Additionally, effectiveness does not mean errorless and courts have noted that
5 effectiveness means performance "within the range of competence demanded
6 of attorneys in criminal cases." *Jackson v. Warden, Nev. State Prison*, 91 Nev.
7 430, 432, 537 P.2d 473, 474 (1975) (quoting *McMann v. Richardson*, 397 U.S.
8 759, 771 (1970)). Courts have noted that effectiveness encompasses making
9 "sufficient inquiry into the information that is pertinent" to the case in order
10 to make "a reasonable strategy decision on how to proceed with a client's
11 case." *See Doleman v. State*, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (citing
12 *Strickland*, 466 U.S. at 690-91). Furthermore, courts have held that strategic
13 decisions made by trial counsel are assumed to be intentional and are
14 "virtually unchallengeable." *Doleman*, 112 Nev. at 848, 921 P.2d at 280
15 (quoting *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990),
16 strategic decisions based on an incomplete investigation are reasonable
17 "precisely to the extent that reasonable professional judgments support the
18 limitations on investigation." *Strickland*, *supra* 466 U.S. at 690-91).
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25 Secondly, even if Appellant can establish deficient performance of
26 his trial counsel, he must then establish "prejudice" by a showing that
27 counsel's errors were so serious as to deprive the Appellant of a fair trial, a
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1 trial whose result is reliable. *Id.* at 687. Proving prejudice requires the
2 Appellant to "show that there is a reasonable probability that, "but" for
3 counsel's unprofessional errors, the result of the proceeding would have been
4 different. In these situations, reasonable probability is defined as "a
5 probability sufficient to undermine the confidence of the outcome" with a
6 court hearing claims of ineffective assistance of counsel considering the
7 totality of the evidence in determining prejudice. *Id.*

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10 In *Morales v. State* (Nev., 2014) the court held that to prove ineffective
11 assistance of appellate counsel a petitioner "must demonstrate that counsel's
12 performance was deficient in that it fell below an objective standard of
13 reasonableness, and resulting prejudice such that the omitted issue would have
14 a reasonable probability of success on appeal," citing *Kirksey v. State*, 112 Nev.
15 980, 998, 923 P.2d 1102, 1114 (1996), *Morales, supra* at page 8. The *Morales*
16 court further noted that "Appellate counsel is not required to raise every non-
17 frivolous issue on appeal," citing *Jones v. Barnes*, 463 U.S. 745, 751 (1983), and
18 that "[r]ather, appellate counsel will be most effective when every conceivable
19 issue is not raised on appeal," citing *Ford v. State*, 105 Nev. 850, 853, 784 P.2d
20 951, 953 (1989), *Morales, supra* at page 8. Thirdly, the *Morales* court also noted
21 that "[b]oth components of the inquiry must be shown," citing *Strickland v.*
22 *Washington*, 466 U.S. 668, 697 (1984), and that they will "give deference to the
23 court's factual findings if supported by substantial evidence and not clearly
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1 erroneous but review the court's application of the law to those facts de novo,"
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3 citing *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005), *Morales*,
4 *supra* at page 9.

5 Finally, as to claims of ineffective assistance of trial counsel at sentencing
6 proceedings, according to the Nevada Supreme Court in *Oliver supra*, in order to
7 state a claim of ineffective assistance of counsel sufficient to warrant a new
8 sentencing hearing, a petitioner must demonstrate that his counsel's
9 performance was deficient in that it fell below an objective standard of
10 reasonableness, and resulting prejudice such that there is a reasonable
11 probability that, but for counsel's errors, the outcome of the proceedings would
12 have been different. See *Oliver, supra* 281 P.3d at 1206, citing *Strickland v.*
13 *Washington*, 466 U.S. at 694; and *Weaver v. Warden*, 107 Nev. 856, 858–59, 822
14 P.2d 112).
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18 In the present case, Appellant initially asserts that he suffered from
19 various mental health issues while his case was pending for trial and that his
20 trial counsel failed to adequately communicate with him, which was rebutted by
21 Appellant's trial counsel at the evidentiary hearing below, where Appellant's
22 counsel indicated that he was concerned about Appellant's risk of being
23 exposed to habitual offender status as the Appellant had six prior felonies. (See
24 *Appellant's Appendix pages 208*). The District Court in its February 1, 2019 Order
25 determined that Appellant's allegation here was without merit, that the record
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1 did not support Appellant's assertions, and that he failed to present additional
2 evidence beyond his own testimony supporting his allegations. ((See *Appellant's*
3 *Appendix page 290*). Appellant's arguments here on appeal contain the same
4 error of lack of evidence arguing that since his trial counsel did not investigate
5 his case fully and that he was not able to competently recommend a plea. (See
6 *Appellant's Opening Brief Pages 20-24*). Notwithstanding that the district court
7 ruled that this issue was outside the scope of NRS 34.810(1)(a), Appellant has
8 failed to show either why this Court should not give deference to the district
9 court's factual findings below that Appellant had failed to show the existence of
10 a mischarge of justice under *Mazzan, supra*, or why trial counsel should have
11 been required to investigate every facet of Appellant's case, or interview more
12 witnesses, contrary to the rulings in *Strickland, supra*, *Doleman v. Stat, supra*, and
13 *Lader v. Warden, supra*.

14 Furthermore, Appellant has failed to prove the second *Strickland* prong of
15 prejudice in this case since even if Appellant's trial counsel was deficient in his
16 investigative efforts, there was no resulting prejudice to show that the result
17 of the proceeding would have been in fact different, since Appellant, and his
18 trial counsel's, main concern and desire in pleading was to avoid any potential
19 habitual offender status. (See *Appellant's Appendix page 208,237*).

20 As to Appellant's arguments that his trial counsel did not file any
21 pretrial motions to suppress the evidence in his hotel room; sever the charges
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1 which he asserts were unrelated; investigate more to show that the case was
2 “significantly overcharged to force a deal” or that trial counsel made
3 Appellant feel “manhandled by a criminal justice system that would “misuse
4 the habitual offense enhancement,” Appellant fails to show how these actions
5 by his defense counsel did not fall within the range of strategic decisions
6 made by trial counsel which are assumed to be intentional and are "virtually
7 unchallengeable" under *Doleman, supra*, or that his trial counsel could even
8 control how Appellant felt about the criminal justice system or control what
9 criminal charges he eventually faced by the State. These concerns are for the
10 most part felt everyday by defense counsel and their clients throughout the
11 entire criminal justice system and form the basis everyday of strategy
12 decisions made by trial counsel, which are fully protected under *Doleman,*
13 *supra*, and are certainly within the “prevailing professional norms” of legal
14 practice, under *Wiggins v. Smith, supra*.

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20 Finally, as to the entry of the plea canvas in this case, where the district
21 court noted that the Appellant had an excellent memory of despite his alleged
22 inability to enter his pleas knowingly and voluntarily, Appellant has failed to
23 show an abuse of discretion by the district court of not finding that his trial
24 counsel fell below an objective standard of reasonableness, when it
25 determined that Appellant “was thoroughly canvassed by the Trial Court as to
26 his ability to understand the consequences of pleading guilty and his ability to
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1 do so" and that "[h]is testimony to the contrary is self-serving and unreliable.
2 (*See Appellant's Appendix page 288*). As a result, Appellant's second allegation is
3 baseless and must fail as well.
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5 ISSUE III: The District Court did not abuse its discretion when it
6 determined that trial counsel was not ineffective on the allegation that he failed
7 to litigate the proper charge.
8

9 Appellant asserts by this allegation another version of ineffective
10 assistance of counsel based on trial counsel's failure to fully investigate the
11 criminal charges against him, that he his trial counsel essentially made bad
12 strategic decisions by "threatening him with the application of the habitual
13 offender statues and that he accepted a "lousy plea offer." (*See Appellant's*
14 *Opening Brief Pages 25*). Besides the fact, as discussed above that Appellant's trial
15 counsel made, in this regard, decisions within the range of strategic decisions
16 which are assumed to be intentional and are "virtually unchallengeable" under
17 *Doleman, supra*, Appellant has failed to show that the district court abused its
18 discretion, and should not be given deference under *Strickland, supra* and *Lader*
19 *v. Warden, supra*, when it found that Appellant failed to provide the district
20 court with adequate supporting evidence for his assertion after he plead guilty
21 to all three counts of Aggravated Stalking under NRS 205.575(2), and that
22 these issues, such as the requisite intent, were outside the scope of NRS
23 34.810(1)(a). (*See Appellant's Appendix page 294*). This is on top of the fact that
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1 the District Court found expressly in its February 1, 2019 Order that there was
2 “no evidence of coercion or threats in the record” and that Appellant “entered
3 his plea knowingly, voluntarily, and with a complete understanding of the
4 nature of the offense and the related consequences,” with district court finding
5 that this ground for relief was “meritless.” (*See Appellant’s Appendix page 293*).
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8 Finally, a variation of this particular argument was addressed by this
9 Court in Appellant’s direct appeal, where he claimed in that proceeding that the
10 stalking was only committed by sending text messages, as compared to arguing
11 in his Opening Brief here, that his trial counsel did not complete an adequate
12 investigation, with the resulting fact that he should have been convicted instead
13 of category C Felonies pursuant to NRS 200.575(3), instead of category B
14 felonies pursuant to NRS 200.575(2). (*See Appellant’s Opening Brief Pages 35*).
15
16 Nevertheless, as this Court ruled in his direct appeal, “the entry of a guilty plea
17 generally waives any right to appeal from events occurring prior to the entry of
18 the plea.” (*See Order of Affirmance in Melvin Leroy Gonzales vs. The State of Nevada,*
19 *No 65768, filed on November 12, 2014*). *See also Webb v. State*, 91 Nev. 469, 470,
20 538 P.2d 164, 165 (1975); *accord Tollett v. Henderson*, 411 U.S. 258, 267 (1973).
21
22 Upon the application of the same reasoning in Appellant’s direct appeal, *Webb v*
23 *State, supra*, should apply here as well since Appellant’s guilty plea waved any
24 right to appeal from events occurring prior to the entry of his guilty plea. As a
25 result, Appellant’s third allegation must fail as well.
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1 ISSUE IV: The District Court did not abuse its discretion when it
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3 determined that trial counsel was not ineffective when he decided not to file a
4 motion to suppress evidence found in Appellant's motel room.

5 In the present case, as well as the issue dealing with the strategic decision
6 made by trial counsel as to Appellant's charges, discussed *supra*, or as to
7 severance issues discussed *infra*, Appellant has failed to show how the decision
8 not to file a motion to suppress evidence found in his hotel room was not
9 within the range of strategic decisions which are assumed to be intentional
10 and are "virtually unchallengeable" under *Doleman, supra*. Appellant's trial
11 counsel, as well as the evidence presented by Respondent at the evidentiary
12 hearing in this case by Officer Elizabeth Hill, from the Winnemucca (NV)
13 Police Department, show that Officer Hill had a reasonable basis for a
14 protective sweep under *Maryland v. Buie*, 494 U.S. 325 (1990) to enter
15 Appellant's hotel room, where Officer Hill testified that "based off of
16 knowledge, the prior history with the subject involved, we wanted to ensure
17 that we did not have a suspect armed and dangerous maybe hiding in the
18 room." (See *Appellant's Appendix page 163,209*). Officer Hill also testified that
19 she was aware of the threats case being investigated at the time against the
20 Appellant by the Humboldt County (NV) Sheriff's Office, and that these
21 threats had resulted in a code yellow lockdown at a school in Lemon Valley,
22 Washoe County, Nevada. *Id.* Finally, there is
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1 no evidence that Officer Hill lingered in Appellant's hotel room, and in fact
2 later obtained a search warrant, making the ultimate success on the
3 suppression issue for Appellant all but certain at best.
4

5 In summary, the totality of the facts here show that Appellant has again
6 failed to show that the district court abused its discretion, and or why it
7 should not be given deference to its finding here under *Strickland, supra* and
8 *Lader v. Warden, supra*, especially after the district court noted, Appellant plead
9 guilty to all three counts of Aggravated Stalking under NRS 205.575(2), and
10 that these issues were outside the scope of NRS 34.810(1)(a). (See Appellant's
11 Appendix page 292). As a result, Appellant's fourth allegation must fail as well.
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14 ISSUE V: The District Court did not abuse its discretion when it
15 determined that trial counsel was not ineffective when he decided not to file a
16 motion for severance of the charges against Appellant.
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18 Appellant raises again similar strategic decisions by trial counsel, this
19 time arguing that trial counsel was ineffective in failing to sever the seven
20 counts in the complaint into two separate cases in violation of the 5th, 6th, and
21 14th Amendments to the U.S. Constitution. Appellant has simply failed to show
22 how the decision not to file a motion to sever the charges against him into two
23 cases was not within the range of strategic decisions which are assumed to be
24 intentional and are "virtually unchallengeable" under *Doleman, supra*.
25 Furthermore, as to this issue, Appellant has again, for a final time, failed to
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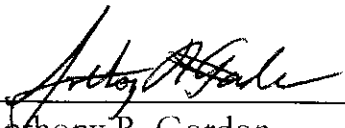
1 show that the district court abused its discretion, and or why it should not be
2 given deference to its finding here under *Strickland, supra* and *Lader v. Warden,*
3 *supra*, especially after the district court noted that Appellant plead guilty to all
4 three counts of Aggravated Stalking under NRS 205.575(2), and that these
5 issues were outside the scope of NRS 34.810(1)(a). (See Appellant's Appendix page
6 294). This is on top of the fact that the decision to join or sever charges falls
7 within the district court's discretion. See *Rimer v. State*, 131 Nev. 307, 351 P.3d
8 697, (2015), citing *Weber v. State*, 121 Nev. 554, 570, 119 P.3d 107, 119 (2015). As
9 a result, Appellant's fifth and final allegation must fail as well.

13 CONCLUSION

14 Based on the arguments above, the State of Nevada respectfully asks this
15 Court to affirm the order of the district court denying Appellant's Writ of
16 Habeas Corpus (Post-Conviction), as well as his Supplemental Petition for Writ
17 of Habeas Corpus (Post-Conviction) in this case.

18 Dated this 30th day of July, 2019.

21 MICHAEL MACDONALD
22 Humboldt County District Attorney

23 By 
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ATTORNEY CERTIFICATION OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in type face of 14 point and Garamond type face.

I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

Finally, I hereby certify that I have read the respondent brief and to the best of my knowledge, information, and belief, it is not frivolous or interposed for an improper purpose. I further certify that this brief complies with all the applicable Nevada Rules of Appellate Procedure, in particular NRAP 23(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the mater relied on is to be found. I understand that I may be subject to sanctions in

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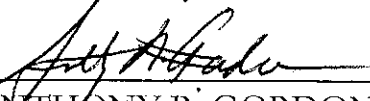
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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this the 30th day of July, 2019.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of the Humboldt County District Attorney's Office, and that on the 20th day of July, 2019, I mailed/delivered a copy of the **RESPONDENT'S ANSWERING BRIEF** to:

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