

1 **NOASC**
2 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 **MCLEATCHIE LAW**
5 701 E. Bridger Avenue, Suite 520
6 Las Vegas, NV 89101
7 Telephone: (702) 728-5300; Fax (702) 425-8220
8 Email: alina@nvlitigation.com
9 *Counsel for Petitioner, Wilburt Hickman*

Electronically Filed
Feb 14 2020 03:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 WILBURT HICKMAN,
11 Petitioner,

Case No.: C-12-278699-1

Dept. No.: V

12 vs.

NOTICE OF APPEAL

13 THE STATE OF NEVADA,
14 Respondent.
15

16 PLEASE TAKE NOTICE that Petitioner WILBURT HICKMAN, by and through
17 his attorney of record, Alina M. Shell of the law firm McLetchie Law, pursuant to Nevada
18 Rule of Appellate Procedure 4(b)(1), hereby timely appeals to the Supreme Court of Nevada
19 from the Findings of Fact, Conclusions of Law and Order entered in the above-captioned
20 case on January 13, 2020.

21 DATED this 12th day of February, 2020.

22
23 /s/ Alina M. Shell

24 MARGARET A. MCLEATCHIE, Nevada Bar No. 10931
25 ALINA M. SHELL, Nevada Bar No. 11711
26 **MCLEATCHIE LAW**
27 701 E. Bridger Avenue, Suite 520
28 Las Vegas, NV 89101
Telephone: (702) 728-5300; Fax (702) 728-5300
Email: alina@nvlitigation.com
Counsel for Petitioner, Wilburt Hickman

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2020, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF APPEAL in *Hickman. vs. State of Nevada*, Clark County District Court Case No. C-12-278699-1, to be filed and served via using Odyssey File & Serve's electronic court filing system, to all parties with an email address on record.

I further hereby certify that on the 12th day of February, 2020, pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing NOTICE OF CHANGE OF APPAL by depositing the same in the United States mail, first-class postage pre-paid, to the following:

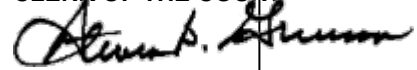
STEVEN B. WOLFSON, District Attorney
TALEEN R. PANDUKHT, Chief Deputy District Attorney
Office of the District Attorney
200 Lewis Avenue
P.O. Box 552212
Las Vegas, NV 89155

JONATHAN VANBOSKERCK, Chief Deputy District Attorney
Office of the District Attorney
301 E. Clark Avenue # 100
Las Vegas, NV 89155

Attorneys for Respondent, STATE OF NEVADA

WILBURT HICKMAN, ID #62150
High Desert State Prison
22010 Cold Creek Road
P.O. Box 650
Indian Springs, Nevada 89070-0650
Petitioner

Certified by: /s/ Pharan Burchfield
An Employee of McLetchie Law



ASTA
ALINA M. SHELL, Nevada Bar No. 11711
MCLEATCHIE LAW
701 E. Bridger Avenue, Suite 520
Las Vegas, NV 89101
Telephone: (702) 728-5300; Fax (702) 425-8220
Email: alina@nvlitigation.com
Counsel for Petitioner, Wilburt Hickman

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WILBURT HICKMAN,
Petitioner,

vs.

THE STATE OF NEVADA,
Respondent.

Case No.: C-12-278699-1

Dept. No.: V

CASE APPEAL STATEMENT

1. **Name of appellant filing this case appeal statement:** Wilburt Hickman.
2. **Judge issuing the decision, judgment, or order appealed from:** The Honorable Carolyn Ellsworth.

3. **Name and address of appellant's counsel:**

ALINA M. SHELL, Nevada Bar No. 11711
MCLEATCHIE LAW
701 E. Bridger Avenue, Suite 520
Las Vegas, NV 89101
Attorney for Appellant, Wilburt Hickman

4. **Name and address of respondent's counsel:**

STEVEN B. WOLFSON, Nevada Bar No. 1565
ALEXANDER G. CHEN, Nevada Bar No. 10539
OFFICE OF THE DISTRICT ATTORNEY
200 Lewis Avenue
Las Vegas, NV 89155
Attorneys for Respondent, the State of Nevada

///

- 1 5. **Attorneys not licensed to practice law in Nevada:** None.
- 2 6. **Whether appellant was represented by appointed or retained counsel in the**
- 3 **district court:** Appellant was represented by appointed counsel in the district court.
- 4 7. **Whether appellant is represented by appointed or retained counsel on appeal:**
- 5 Appellant is represented by appointed counsel on appeal.
- 6 8. **Whether appellant was granted leave to proceed in forma pauperis:** N/A.
- 7 9. **Date the proceedings commenced in the district court:** January 10, 2012.
- 8 10. **A brief description of the nature of the action and result in the district court,**
- 9 **including the type of judgment or order being appealed and the relief granted by the**
- 10 **district court:** Appellant submitted his Petition for Writ of Habeas Corpus (post-conviction
- 11 relief) on June 15, 2016. Appellant submitted a Supplemental Petition for Writ of Habeas
- 12 Corpus (Post-Conviction) on April 28, 2017. The district court conducted an evidentiary
- 13 hearing on September 27, 2019. The district court orally denied Appellant's Petition at the
- 14 conclusion of the September 27, 2019 hearing, and entered a Notice of Entry of Findings of
- 15 Fact, Conclusions of Law and Order on January 10, 2020. Appellant appeals from this denial
- 16 of Post-Conviction Relief.
- 17 11. **Whether the case has previously been the subject of an appeal to or original**
- 18 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**
- 19 **number of the prior proceeding:** *Wilburt Hickman v. State of Nevada*, Case No. 64776;
- 20 *Wilburt Hickman v. State of Nevada*, Case No. 64776-COA.
- 21 12. **Whether the appeal involves child custody or visitation:** This case does not
- 22 involve child custody or visitation.
- 23 ///
- 24 ///
- 25 ///
- 26 ///
- 27 ///
- 28 ///

DATED this 12th day of February, 2020.

Counsel for Petitioner, Wilburt Hickman

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2020, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing CASE APPEAL STATEMENT in *Hickman. vs. State of Nevada*, Clark County District Court Case No. C-12-278699-1, to be filed and served via using Odyssey File & Serve's electronic court filing system, to all parties with an email address on record.

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STEVEN B. WOLFSON, District Attorney
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Office of the District Attorney
301 E. Clark Avenue # 100
Las Vegas, NV 89155

Attorneys for Respondent, STATE OF NEVADA

WILBURT HICKMAN, ID #62150
High Desert State Prison
22010 Cold Creek Road
P.O. Box 650
Indian Springs, Nevada 89070-0650
Petitioner

Certified by: /s/ Pharan Burchfield
An Employee of McLetchie Law

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-12-278699-1

**State of Nevada
vs
Wilburt Hickman**

§ Location: **Department 5**
§ Judicial Officer: **Ellsworth, Carolyn**
§ Filed on: **01/10/2012**
§ Cross-Reference Case Number: **C278699**
§ Defendant's Scope ID #: **905481**
§ ITAG Booking Number: **1100075829**
§ ITAG Case ID: **1332273**
§ Lower Court Case # Root: **11F21695**
§ Lower Court Case Number: **11F21695X**
§ Supreme Court No.: **64776**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. ATT. MURDER WITH A DEADLY WEAPON	200.030	F	12/18/2011	Case Status:	03/13/2014 Closed
2. ATT. MURDER WITH A DEADLY WEAPON	200.030	F	12/18/2011		
3. ATT. MURDER WITH A DEADLY WEAPON	200.030	F	12/18/2011		
4. ATT. MURDER WITH A DEADLY WEAPON	200.030	F	12/18/2011		
5. ATT. MURDER WITH A DEADLY WEAPON	200.030	F	12/18/2011		
6. ATT. MURDER WITH A DEADLY WEAPON	200.030	F	12/18/2011		
7. ATT. MURDER WITH A DEADLY WEAPON	200.030	F	12/18/2011		
8. ATT. MURDER WITH A DEADLY WEAPON	200.030	F	12/18/2011		
9. BATTERY WITH USE OF A DEADLY WEAPON	200.481	F	12/18/2011		
10. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM	200.481	F	12/18/2011		
11. ASSAULT WITH A DEADLY WEAPON	200.471	F	12/18/2011		
12. ASSAULT WITH A DEADLY WEAPON	200.471	F	12/18/2011		
13. ASSAULT WITH A DEADLY WEAPON	200.471	F	12/18/2011		
14. ASSAULT WITH A DEADLY WEAPON	200.471	F	12/18/2011		
15. ASSAULT WITH A DEADLY WEAPON	200.471	F	12/18/2011		
16. ASSAULT WITH A DEADLY WEAPON	200.471	F	12/18/2011		
17. BURGLARY	205.060	F	12/18/2011		
18. MALICIOUS DESTRUCTION PRIVATE PROPERTY	206.310	F	12/18/2011		

Statistical Closures

03/13/2014 Jury Trial - Conviction - Criminal
01/09/2014 Jury Trial - Conviction - Criminal

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number C-12-278699-1
Court Department 5
Date Assigned 01/10/2012
Judicial Officer Ellsworth, Carolyn

CASE SUMMARY**CASE NO. C-12-278699-1**


PARTY INFORMATION

Defendant	Hickman, Wilburt	<i>Lead Attorneys</i> Shell, Alina <i>Retained</i> 702-728-5300(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
01/10/2012	 Criminal Bindover	
01/10/2012	Bail Set \$100,000	
01/11/2012	 Information Information	
01/30/2012	 Notice of Witnesses and/or Expert Witnesses Notice of Witnesses	
02/01/2012	 Notice of Hearing	
02/09/2012	 Reporters Transcript Filed By: Plaintiff State of Nevada Reporter's Transcript Of Preliminary Hearing - Heard 1/4/2012	
02/16/2012	 Motion to Continue Trial Filed By: Defendant Hickman, Wilburt Motion to Continue Trial Date	
02/22/2012	Bail Modified RESET \$30,000.00	
02/28/2012	 Petition Petition for Writ of Habeas Corpus	
03/07/2012	 Order	
03/08/2012	 Writ of Habeas Corpus	
03/14/2012	 Return Return to Writ of Habeas Corpus	
04/03/2012	 Amended Information Amended Information	
04/09/2012	 Order Denying Filed By: Plaintiff State of Nevada Order Denying Defendant's Writ of Habeas Corpus in Part and Granting in Part	
04/30/2012		

CASE SUMMARY

CASE NO. C-12-278699-1

	 Notice of Entry of Order
06/29/2012	 Motion for Discovery Filed By: Defendant Hickman, Wilburt
08/31/2012	 Supplemental <i>Supplemental Notice of Witnesses</i>
09/05/2012	 Supplemental <i>Second Supplemental Notice of Witnesses</i>
09/05/2012	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Expert Witnesses</i>
09/10/2012	 Notice of Witnesses and/or Expert Witnesses <i>Supplemental Notice of Expert Witnesses</i>
09/24/2012	 Motion to Continue Trial <i>Motion to Continue Trial Date</i>
10/03/2012	 Response <i>State's Response to Defendant's Motion for Discovery</i>
10/18/2012	 Order Filed By: Defendant Hickman, Wilburt
04/17/2013	 Substitution of Attorney Filed by: Defendant Hickman, Wilburt <i>Mitchell Posin Esq Substituted as Attorney</i>
06/20/2013	 Supplemental <i>Third Supplemental Notice of Witnesses</i>
06/20/2013	 Supplemental <i>Second Supplemental Notice of Expert Witnesses</i>
06/21/2013	 Supplemental <i>Amended Supplemental Notice of Witnesses</i>
06/21/2013	 Supplemental <i>Amended Second Supplemental Notice of Expert Witnesses</i>
08/23/2013	 Notice <i>Notice of Habitual Criminality</i>
08/23/2013	 Notice of Witnesses and/or Expert Witnesses <i>Fourth Supplemental Notice of Witnesses</i>
08/30/2013	 Amended Information <i>Second Amended Information</i>

CASE SUMMARY
CASE NO. C-12-278699-1

09/03/2013	 Jury List
09/06/2013	 Proposed Jury Instructions Not Used At Trial <i>Defendant's</i>
09/09/2013	 Amended Jury List
09/09/2013	 Instructions to the Jury
09/09/2013	 Verdict
10/17/2013	 Notice <i>Notice of Change of Hearing</i>
10/17/2013	 Notice of Motion Filed By: Defendant Hickman, Wilburt <i>Notice of Motion and Motion for Ineffective Assistance of Counsel and Motion for New Trial</i>
10/30/2013	 Opposition <i>State's Opposition to Defendant's Notice of Motion and Motion for Ineffective Assistance of Counsel and Motion for New Trial</i>
11/14/2013	 PSI
11/26/2013	Motion <i>Motion For Continuance On Grounds of Absences Of Witnesses and Discovery Evidence, Requesting New counsel and new Trial to Submit new Evidence</i>
11/26/2013	 Affidavit in Support <i>Affidavit in Support of Motion of Support For Motion For Continuance on Grounds of Absences of Witness Testimonies and Discovery Evidence</i>
11/26/2013	 Notice of Motion <i>Notice of Motion</i>
12/03/2013	 Receipt of Copy <i>Receipt of Copy</i>
01/02/2014	 Judgment of Conviction <i>JUDGMENT OF CONVICTION (JURY TRIAL)</i>
01/06/2014	 Notice of Appeal (criminal) Party: Defendant Hickman, Wilburt
01/06/2014	 Document Filed Filed by: Defendant Hickman, Wilburt <i>Direct Appeal</i>
01/08/2014	 Case Appeal Statement <i>Case Appeal Statement</i>
01/22/2014	 Notice of Motion

CASE SUMMARY

CASE NO. C-12-278699-1

Notice of Motion and Motion for Reconsideration of Motion for a New Trial Due to Ineffective Assistance of Counsel and Conflict of Interest

01/24/2014	 Opposition <i>State's Opposition to Defendant's Pro Per Direct Appeal</i>
02/07/2014	 Response <i>State's Response to Defendant's Notice of Motion and Motion for Reconsideration of Motion for New Trial</i>
02/24/2014	 Order <i>Order Denying Defendant's Notice of Motion and Motion for Reconsideration of Motion for New Trial</i>
03/13/2014	 Criminal Order to Statistically Close Case <i>Criminal Order to Statistically Close Case</i>
03/18/2014	 Recorders Transcript of Hearing <i>Recorder's Partial Rough Draft Transcript Jury Trial, Day 1 - 9/3/2013</i>
03/18/2014	 Recorders Transcript of Hearing <i>Recorder's Rough Draft Transcript of Proceedings Jury Trial, Day 2 - 9/2/2013</i>
03/18/2014	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings Jury Trial, Day 3 - 9/5/2013</i>
03/18/2014	 Recorders Transcript of Hearing <i>September 6, 2013 Recorder's Partial Rough Draft Transcript of Proceedings Jury Trial, Day 4</i>
03/18/2014	 Recorders Transcript of Hearing <i>Recorder's Rough Draft Transcript of Proceedings Jury Trial, Day 5 - 9/9/2013</i>
03/24/2014	 Recorders Transcript of Hearing <i>Recorder's Transcript Re: Sentencing -- 12-18-13</i>
08/19/2014	 Order <i>Ex-Parte Order to Appoint Counsel and to Waive District Court Filing Fees</i>
11/26/2014	 Request <i>Request for Recorder's Transcripts</i>
01/09/2015	 Recorders Transcript of Hearing <i>Tuesday, Septemberr 3, 2013 Recorder's Partial Rough Draft Transcript of Proceedings Jury Trial - Day 1</i>
01/09/2015	 Recorders Transcript of Hearing <i>Recorder's Partial Rough Draft Transcript: Jury Trial - Day 4 - Closing Arguments -- 9-16-13</i>
10/16/2015	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
01/07/2016	 Motion <i>Motion to Withdraw Counsel</i>
01/07/2016	 Motion

CASE SUMMARY
CASE NO. C-12-278699-1

Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Defendant

02/18/2016	 Order <i>Order Granting Defendant's Pro Per Motion to Withdraw Counsel and Order Denying Defendant's Pro Per Motion for Production of Documents, Papers, Pleadings and Tangible Property of Defendant</i>
02/22/2016	 Motion to Compel <i>Motion to Compel</i>
03/24/2016	 Application to Proceed in Forma Pauperis Filed By: Defendant Hickman, Wilburt
03/25/2016	 Petition <i>Petition for Writ of Habeas Corpus (Post-Conviction)</i>
03/25/2016	 Motion for Appointment of Attorney <i>Motion for Appointment of Counsel</i>
03/25/2016	 Notice of Motion <i>Notice of Motion</i>
04/06/2016	 Notice of Hearing <i>Notice of Hearing</i>
04/06/2016	 Order for Petition for Writ of Habeas Corpus
05/04/2016	 Motion <i>Petitioner's Motion to Disqualification of Judge Carolyn Ellsworth Dept. No. 5</i>
05/17/2016	 Response <i>State's Response to Defendant's Post-Conviction Petition for Writ of Habeas Corpus and Opposition to Motion for the Appointment of Counsel and Request for Evidentiary Hearing</i>
05/25/2016	 Order <i>Order Denying Defendant's Pro Per Motion to Compel</i>
07/01/2016	 Notice <i>Notice of Change of Hearing</i>
08/08/2016	 Motion <i>Motion for Order for Production of Records from Prior Counsel</i>
08/16/2016	 Supplement <i>Supplement to Motion for Order for Production of Records from Prior Counsel</i>
09/02/2016	 Motion <i>Motion for Paralegal Fees</i>
09/07/2016	 Opposition <i>State's Opposition to Defendant's Motion for Paralegal Fees</i>
09/12/2016	 Reply

CASE SUMMARY
CASE NO. C-12-278699-1

Reply to State's Opposition to Motion for Paralegal Fees

10/04/2016



Order

Order Granting Defendant's Motion for Paralegal Fees

10/04/2016



Notice of Entry of Order

Notice of Entry of Order

10/11/2016



Request

Request for Recorder's Transcripts

10/20/2016



Motion

Motion and Notice of Motion for Supplemental Fees

10/25/2016



Opposition

State's Opposition to Defendant's Motion for Supplemental Fees

10/27/2016



Declaration

Declaration of Alina M. Shell in Support of Petitioner's Motion for Supplemental Fees

12/27/2016



Notice of Entry of Order

Notice of Entry of Order

12/27/2016



Stipulation and Order

Stipulated Extension of Habeas Petition Dates and [Proposed] Order

12/28/2016



Order

Order Denying Defendant's Motion for Supplemental Fees

03/16/2017



Stipulation and Order

Stipulated Extension of Habeas Petition Dates and [Proposed] Order

03/20/2017



Notice of Entry of Order

Notice of Entry of Order

03/28/2017



Notice of Entry of Order

Notice of Entry of Order

03/28/2017



Stipulation and Order

Stipulated Extension of Habeas Petition Dates and Order

04/28/2017



Supplement

Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)

04/28/2017



Exhibits

Appendix of Exhibits to Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)

05/11/2017



Order










Motion and Order to File Under Seal

CASE SUMMARY

CASE NO. C-12-278699-1

05/11/2017	 Notice of Entry of Order <i>Notice of Entry of Order</i>
05/15/2017	 Filed Under Seal Filed By: Defendant Hickman, Wilburt <i>Sealed Appendix of Exhibits to Supplemental memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post- Conviction)</i>
06/20/2017	 Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Supplmeental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)</i>
08/22/2017	 Filed Under Seal Filed By: Defendant Hickman, Wilburt <i>Ex Parte Motion and Order to File Under Seal</i>
08/22/2017	 Filed Under Seal Filed By: Defendant Hickman, Wilburt <i>Ex Parte Motion and [Proposed] Order for Retained Expert</i>
09/19/2017	 Order Filed By: Defendant Hickman, Wilburt <i>Protective Order</i>
09/19/2017	 Notice of Entry of Order Filed By: Defendant Hickman, Wilburt <i>Notice of Entry of Order</i>
01/26/2018	 Stipulation and Order Filed by: Defendant Hickman, Wilburt <i>Stipulated Extension of Habeas Petition Date and Order</i>
01/26/2018	 Notice of Entry of Order Filed By: Defendant Hickman, Wilburt <i>Notice of Entry of Order</i>
03/02/2018	 Stipulation and Order Filed by: Defendant Hickman, Wilburt <i>Stipulated Extension of Habeas Petition Dates and Order</i>
03/02/2018	 Notice of Entry of Order Filed By: Defendant Hickman, Wilburt <i>Notice of Entry of Order</i>
06/05/2018	 Stipulation and Order Filed by: Defendant Hickman, Wilburt <i>Stipulated Extension of Habeas Petition Dates and [Proposed] Order</i>
06/05/2018	 Notice of Entry of Order Filed By: Defendant Hickman, Wilburt <i>Notice of Entry of Order</i>
06/14/2018	 Supplement

CASE SUMMARY
CASE NO. C-12-278699-1

	<p>Filed by: Defendant Hickman, Wilburt <i>Supplement to Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)</i></p>
08/17/2018	<p> Response Filed by: Plaintiff State of Nevada <i>State's Response to Defendant's Supplement to Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus</i></p>
08/30/2018	<p> Reply Filed by: Defendant Hickman, Wilburt <i>Reply to the State's Response to his Supplement to Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)</i></p>
09/28/2018	<p> Order for Production of Inmate Party: Plaintiff State of Nevada <i>Order for Production of Inmate Wilburt Hickman, BAC #62150</i></p>
05/14/2019	<p> Order Filed By: Defendant Hickman, Wilburt <i>Order for Supplemental Fees for Expert</i></p>
06/06/2019	<p> Notice of Change of Firm Name Filed By: Defendant Hickman, Wilburt <i>Notice of Change of Firm Name</i></p>
01/10/2020	<p> Findings of Fact, Conclusions of Law and Order</p>
01/13/2020	<p> Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i></p>
02/12/2020	<p> Notice of Appeal (criminal) Party: Defendant Hickman, Wilburt <i>Notice of Appeal</i></p>
02/12/2020	<p> Case Appeal Statement Filed By: Defendant Hickman, Wilburt <i>Case Appeal Statement</i></p>
	<p><u>DISPOSITIONS</u></p>
01/12/2012	<p>Plea (Judicial Officer: Ellsworth, Carolyn)</p> <ol style="list-style-type: none"> ATT. MURDER WITH A DEADLY WEAPON Not Guilty PCN: Sequence: ATT. MURDER WITH A DEADLY WEAPON Not Guilty PCN: Sequence: ATT. MURDER WITH A DEADLY WEAPON Not Guilty PCN: Sequence: ATT. MURDER WITH A DEADLY WEAPON Not Guilty PCN: Sequence:

CASE SUMMARY
CASE NO. C-12-278699-1

5. ATT. MURDER WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
6. ATT. MURDER WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
7. ATT. MURDER WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
8. ATT. MURDER WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
9. BATTERY WITH USE OF A DEADLY WEAPON
Not Guilty
PCN: Sequence:
10. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM
Not Guilty
PCN: Sequence:
11. ASSAULT WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
12. ASSAULT WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
13. ASSAULT WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
14. ASSAULT WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
15. ASSAULT WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
16. ASSAULT WITH A DEADLY WEAPON
Not Guilty
PCN: Sequence:
17. BURGLARY
Not Guilty
PCN: Sequence:
18. MALICIOUS DESTRUCTION PRIVATE PROPERTY
Not Guilty
PCN: Sequence:

08/30/2013 **Disposition** (Judicial Officer: Ellsworth, Carolyn)
18. MALICIOUS DESTRUCTION PRIVATE PROPERTY
Amended Information Filed/Charges Not Addressed
PCN: Sequence:

CASE SUMMARY
CASE NO. C-12-278699-1

09/09/2013 **Disposition** (Judicial Officer: Ellsworth, Carolyn)

9. BATTERY WITH USE OF A DEADLY WEAPON

Guilty

PCN: Sequence:

10. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

Guilty

PCN: Sequence:

11. ASSAULT WITH A DEADLY WEAPON

Guilty

PCN: Sequence:

12. ASSAULT WITH A DEADLY WEAPON

Guilty

PCN: Sequence:

13. ASSAULT WITH A DEADLY WEAPON

Guilty

PCN: Sequence:

14. ASSAULT WITH A DEADLY WEAPON

Guilty

PCN: Sequence:

15. ASSAULT WITH A DEADLY WEAPON

Guilty

PCN: Sequence:

16. ASSAULT WITH A DEADLY WEAPON

Guilty

PCN: Sequence:

17. BURGLARY

Guilty

PCN: Sequence:

09/25/2013 **Disposition** (Judicial Officer: Ellsworth, Carolyn)

Hung Jury

1. ATT. MURDER WITH A DEADLY WEAPON

Dismissed

PCN: Sequence:

2. ATT. MURDER WITH A DEADLY WEAPON

Dismissed

PCN: Sequence:

3. ATT. MURDER WITH A DEADLY WEAPON

Dismissed

PCN: Sequence:

4. ATT. MURDER WITH A DEADLY WEAPON

Dismissed

PCN: Sequence:

5. ATT. MURDER WITH A DEADLY WEAPON

Dismissed

PCN: Sequence:

CASE SUMMARY
CASE NO. C-12-278699-1

	<p>6. ATT. MURDER WITH A DEADLY WEAPON Dismissed PCN: Sequence:</p>
	<p>7. ATT. MURDER WITH A DEADLY WEAPON Dismissed PCN: Sequence:</p>
	<p>8. ATT. MURDER WITH A DEADLY WEAPON Dismissed PCN: Sequence:</p>
12/18/2013	<p>Adult Adjudication (Judicial Officer: Ellsworth, Carolyn) 9. BATTERY WITH USE OF A DEADLY WEAPON 12/18/2011 (F) 200.481 (5025) PCN: Sequence:</p> <hr/> <p>Sentenced to Nevada Dept. of Corrections Term: Minimum:60 Months, Maximum:215 Months Other Fees 1. , \$26,272.50 Payable to Anneesah Franklin</p>
12/18/2013	<p>Adult Adjudication (Judicial Officer: Ellsworth, Carolyn) 10. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM 12/18/2011 (F) 200.481 (8005) PCN: Sequence:</p> <hr/> <p>Sentenced to Nevada Dept. of Corrections Term: Minimum:60 Months, Maximum:215 Months Consecutive: Charge 9 Other Fees 1. , \$3,263.73 Anyla Hoye</p>
12/18/2013	<p>Adult Adjudication (Judicial Officer: Ellsworth, Carolyn) 11. ASSAULT WITH A DEADLY WEAPON 12/18/2011 (F) 200.471 (5024) PCN: Sequence:</p> <hr/> <p>Sentenced to Nevada Dept. of Corrections Term: Minimum:16 Months, Maximum:72 Months Concurrent: Charge 10</p>
12/18/2013	<p>Adult Adjudication (Judicial Officer: Ellsworth, Carolyn) 12. ASSAULT WITH A DEADLY WEAPON 12/18/2011 (F) 200.471 (5024) PCN: Sequence:</p> <hr/> <p>Sentenced to Nevada Dept. of Corrections Term: Minimum:16 Months, Maximum:72 Months Concurrent: Charge 11</p>
12/18/2013	<p>Adult Adjudication (Judicial Officer: Ellsworth, Carolyn) 13. ASSAULT WITH A DEADLY WEAPON 12/18/2011 (F) 200.471 (5024) PCN: Sequence:</p> <hr/> <p>Sentenced to Nevada Dept. of Corrections Term: Minimum:16 Months, Maximum:72 Months Concurrent: Charge 12</p>
12/18/2013	<p>Adult Adjudication (Judicial Officer: Ellsworth, Carolyn)</p>

CASE SUMMARY**CASE NO. C-12-278699-1**

14. ASSAULT WITH A DEADLY WEAPON

12/18/2011 (F) 200.471 (5024)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:16 Months, Maximum:72 Months

Concurrent: Charge 13

12/18/2013 **Adult Adjudication** (Judicial Officer: Ellsworth, Carolyn)

15. ASSAULT WITH A DEADLY WEAPON

12/18/2011 (F) 200.471 (5024)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:16 Months, Maximum:72 Months

Concurrent: Charge 14

12/18/2013 **Adult Adjudication** (Judicial Officer: Ellsworth, Carolyn)

16. ASSAULT WITH A DEADLY WEAPON

12/18/2011 (F) 200.471 (5024)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:16 Months, Maximum:72 Months

Concurrent: Charge 15

12/18/2013 **Adult Adjudication** (Judicial Officer: Ellsworth, Carolyn)

17. BURGLARY

12/18/2011 (F) 205.060 (5506)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:22 Months, Maximum:96 Months

Concurrent: Charge 16

Credit for Time Served: 731 Days

Fee Totals:

Administrative

Assessment Fee

25.00

\$25

DNA Analysis Fee

150.00

\$150

Fee Totals \$

175.00


HEARINGS01/12/2012  **Initial Arraignment** (9:00 AM) (Judicial Officer: De La Garza, Melisa)

Events: 01/10/2012 Criminal Bindover

Plea Entered;

Journal Entry Details:

DEFT. HICKMAN ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, counsel has 21 days after the filing of the Preliminary Hearing transcript or today's date, whichever is later, to file a Writ. CUSTODY 02/29/12 9:00 AM CALENDAR CALL 03/05/12 1:30 PPM JURY TRIAL ;

02/22/2012  **Motion** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Events: 02/16/2012 Motion to Continue Trial

Motion to Continue Trial Date



Granted;

Journal Entry Details:

There being no opposition, good cause appearing and the Defendant waiving his right to a speedy trial. COURT ORDERED, motion GRANTED; trial dates VACATED and RESET. CUSTODY 9/24/12 9:00 AM CALENDAR CALL 10/1/12 1:30 PM JURY TRIAL ;





CASE SUMMARY

CASE NO. C-12-278699-1

02/27/2012	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated</i>
03/05/2012	CANCELED Jury Trial (1:30 PM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Judge</i>
03/28/2012	 Petition for Writ of Habeas Corpus (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Events: 02/28/2012 Petition Granted in Part; Journal Entry Details: <i>DEFT'S PETITION FOR WRIT OF HABEAS CORPUS Deft. present in custody. Counsel submitted matter on the briefs. COURT finds as to the issue of the alternate theory on Count 15 Motion GRANTED, but DENIED as to the rest of the Motion; as to the Attempt Murder, Petition DENIED; and as to Malicious Destruction Petition is DENIED for purpose of the Writ. State to prepare order and file Amended Information. CUSTODY ;</i>
09/24/2012	Calendar Call (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Matter Heard;
09/24/2012	 Motion for Discovery (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) 09/24/2012, 10/10/2012, 10/15/2012 Events: 06/29/2012 Motion for Discovery <i>Defendant's Motion for Discovery</i> Continued; Continued; Motion Granted; Journal Entry Details: <i>DEFENDANT'S MOTION FOR DISCOVERY Deft. present in custody. As to Request #1-4, Motion GRANTED; as to Request #5 any and all records of car-to-car police communications is already covered by #4, Motion GRANTED; as to Request #6 any and all information relating to other suspects, Motion GRANTED; as to Request #7-24 any and all statements taped or otherwise, Motion GRANTED, and State to make an affirmative inquiry; as to Request #25-42 any and all relevant criminal history, Motion GRANTED to the extent of Brady material; as to Request #43-44, Motion GRANTED; as to Request #45 any and all officer and/or detective reports, Motion GRANTED; as to Request #46 and an all officer and/or detective notes, Motion GRANTED and State to make an affirmative inquiry; as to Request #47 any other reports, witness statements, affidavits, declarations, video, or other material the State is relying on in its case in chief, Motion GRANTED. Ms. Ballou to prepare the Order. CUSTODY ;</i> Continued; Continued; Motion Granted; Journal Entry Details: <i>DEFT'S MOTION FOR DISCOVERY Deft. present in custody. Mr. Bonaventure requested this be continued for Ms. Ballou to be present. COURT ORDERED, matter CONTINUED. CUSTODY CONTINUED TO: 10/15/12 9 AM ;</i> Continued; Continued; Motion Granted;
09/24/2012	 All Pending Motions (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Matter Heard; Journal Entry Details: <i>CALENDAR CALL...DEFENDANT'S MOTION FOR DISCOVERY MOTION TO CONTINUE TRIAL DATE FILED IN OPEN COURT Mr. Scow announced ready to proceed to Trial, but indicated there was no opposition to the Motion to Continue, as this case needed investigating. COURT ORDERED Motion to Continue GRANTED; Trial date VACATED and RESET. Court noted that the Motion for Discovery was filed on June 29, 2012, and no opposition had been filed. Mr. Scow stated that he believed the Motion could be resolved out of Court, and requested a continuance; Ms. Ballou advised she was amenable to a continuance, and suggested a Status Check be set. COURT ORDERED Motion for Discovery CONTINUED two weeks; Mr. Scow to file a response within ten (10) days. CUSTODY 10/10/12 9:00 AM DEFENDANT'S MOTION FOR DISCOVERY 4/8/13 9:00 AM CALENDAR CALL 4/15/13 1:30 PM JURY TRIAL ;</i>
10/01/2012	CANCELED Jury Trial (1:30 PM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Judge</i>

CASE SUMMARY

CASE NO. C-12-278699-1

03/13/2013	 Request (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Def't's request for new trial setting</i> Vacated and Reset; Journal Entry Details: <i>ALSO PRESENT: Michael Posen, Esq. Mr. Posen advised he is not counsel of record for Def't., but he will be substituting in. Court directed Mr. Posen to file a Substitution of Attorney motion; once filed, the Public Defender's office will then transfer Def't.'s file to Mr. Posen. All parties agreed to set new trial dates for mid to late May. COURT ORDERED, trial dates vacated and reset. CUSTODY 5/6/2013 9:00 AM CALENDAR CALL 5/13/2013 1:30 PM JURY TRIAL ;</i>
04/08/2013	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Judge</i>
04/15/2013	CANCELED Jury Trial (1:30 PM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Judge</i>
04/17/2013	 Status Check: Trial Setting (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Vacated and Reset; Journal Entry Details: <i>STATUS CHECK: TRIAL SETTING Def't. present in custody. Mr. Posin filed a Substitution of Attorney in OPEN COURT, and requested trial date to be reset. COURT ORDERED, trial date VACATED and RESET. Court noted this is the last time trial date will be reset. CUSTODY 8/26/13 9:00 AM CALENDAR CALL 9/3/13 1:30 PM JURY TRIAL ;</i>
05/06/2013	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Thompson, Charles) <i>Vacated - per Judge</i>
05/13/2013	CANCELED Jury Trial (1:00 PM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Judge</i>
08/26/2013	 Calendar Call (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) 08/26/2013, 08/28/2013 Matter Continued; Trial Date Set; Journal Entry Details: <i>CALENDAR CALL Def't. present in custody. Counsel announced ready. COURT ORDERED, matter SET for trial. CUSTODY 9/3/13 9 AM JURY TRIAL HAMNER/POSIN 5-6 DAYS ;</i> Matter Continued; Trial Date Set; Journal Entry Details: <i>Mr. Hamner advised the Court trial is expected to go 5-6 days making is not eligible for overflow. Court TRAILED matter to allow Mr. Posin to be present. Matter RECALLED with Mr. Posin present but not Mr. Hamners. Court CONTINUED matter. 8/28/13 9:00 AM CONTINUED CUSTODY ;</i>
09/03/2013	 Jury Trial (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) 09/03/2013-09/06/2013, 09/09/2013 Trial Continues; Trial Continues; Trial Continues; Trial Continues; Verdict; Journal Entry Details: <i>JURY TRIAL Jury Deliberations continued. OUTSIDE THE PRESENCE OF THE JURY. Court advised the jury foreman was bring brought into the courtroom to as the foreman had sent out a question regarding if the jury could not come to an agreement on all the charges. At 12:13 PM Jury Foreman brought into the courtroom. Upon Court's inquiry, Foreman stated the jurors had agreed upon some of the charges but not others; however, there was a possibility they might be able to continue deliberations. Court advised the Jury Foreman that the Jury could come back with a verdict on some charges even if they were hung on other charges; however, those undecided charges would have to be re-tried and advised the foreman to return to continue deliberations. Foreman excused at 12:15 PM tor return to jury room for further deliberations. Juror's note admitted as Court's exhibit #1. Court advised the jury foreman was going to be brought in as the jury had not reached a verdict on all of the counts and to inquire if further deliberations</i>

CASE SUMMARY

CASE NO. C-12-278699-1

would change the jury's decision. At 3:26 PM Jury Foreman brought into the courtroom. Upon Court's inquiry, Foreman stated he did not think further deliberations would change the jurors decision on the undecided charges. Foreman excused at 3:26 PM. Court noted the amount of time the Jury had deliberated and that additional deliberations would not result in the jury making a decision on the hung charges. State and Defense agreed to discontinue additional deliberations and accept the verdict as it stands at this time. **IN THE PRESENCE OF THE JURY:** Upon Court's inquiry, Foreman advised further deliberations would not return a verdict as to the hung charges. At 3:31 PM this date, jury returned with the following verdicts: COUNTS 1, 2, 3, 4, 5, 6, 7, and 8 HUNG JURY. **GUILTY of: COUNT 9 BATTERY WITH USE OF A DEADLY WEAPON (AMNESIA FRANKLIN); COUNT 10 BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (ANIELA HOYER); COUNT 11 ASSAULT WITH USE OF A DEADLY WEAPON (ALLEN BURSE); COUNT 12 ASSAULT WITH USE OF A DEADLY WEAPON (WASHINGTON THOMPSON); COUNT 13 ASSAULT WITH USE OF A DEADLY WEAPON (MARQUETTE JENKINS); COUNT 14 ASSAULT WITH USE OF A DEADLY WEAPON (RAMEKIN ADAMS); COUNT 15 ASSAULT WITH USE OF A DEADLY WEAPON (SHARON POWELL); COUNT 16 ASSAULT WITH USE OF A DEADLY WEAPON (TIFFANY TRESS); COUNT 17 BURGLARY. OUTSIDE THE PRESENCE OF THE JURY:** Upon Court's inquiry, State requested additional time to determine whether they would like a trial set on the hung charges. Arguments by State in support of remanding Deft. Argument by Mr. Posin regarding bail. **COURT ORDERED, Deft. REMANDED INTO CUSTODY; NO BAIL. COURT FURTHER ORDERED, matter SET for Status Check on setting a sentencing date and whether the state would like a re-trial set on the hung charges. CUSTODY 9/25/13 9:00 AM - STATUS CHECK: SET SENTENCING DATE...STATE'S DECISION ON RETRYING ON REMAINING COUNTS/RESET TRIAL DATE ;**

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY: Argument by Mr. Posin as to whether Defendant's proposed instruction regarding when voluntary intoxication may be considered and what should be considered to convict a defendant of attempted murder. Court advised Mr. Posin the specific intent was already covered in other instructions and would therefore be duplicative. Jury Instructions settled. Court advised Deft. of his right not to testify. Deft. **INVOKED** his right to remain silent and chose to not to testify. **IN THE PRESENCE OF THE JURY.** Testimony presented per worksheet. Plaintiff and Defense rested. Court instructed jury. Closing arguments by counsel. At 12:30 PM this date, jury retired to begin deliberations. Jury Trial, **CONTINUED** for deliberations. Court **ADJOURNED. EVENING RECESS CUSTODY 9/9/13 8:30 AM - JURY TRIAL ;**

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

JURY TRIAL IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheets. **CONFERENCE AT BENCH. COURT ADMONISHED and EXCUSED** jury for evening recess; **ADVISED** to return tomorrow at 10:00 A.M. **OUTSIDE THE PRESENCE OF THE JURY:** COURT DIRECTED counsel to meet in Chambers at 2:00 PM to settle jury instructions off the record. Matter **CONTINUED.** Court **ADJOURNED. EVENING RECESS CUSTODY CONTINUED TO: 9/6/13 10:00 AM;**

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict;

Journal Entry Details:

JURY TRIAL IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheets. **EVENING RECESS CONTINUED TO: 9/4/13 9 AM ;**

Trial Continues;

Trial Continues;

Trial Continues;




Trial Continues;

Verdict;

Journal Entry Details:

TRIAL BY JURY IN THE PRESENCE OF JURY VENIRE. Panel sworn and jury selection commenced. Twelve jurors and two alternates selected. Clerk read information and advised of Deft's pleas of not guilty. Court instructed jury as to trial procedure. Opening statements by counsel. Testimony and exhibits per worksheets. **EVENING RECESS CONTINUED TO: 9/4/13 1:30 PM ;**

CASE SUMMARY
CASE NO. C-12-278699-1


09/25/2013	<p> Status Check (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)</p> <p><i>Status Check: Set Sentencing Date...State's Decision on Retrying on remaining counts/Reset trial date Continued;</i></p> <p>Journal Entry Details:</p> <p><i>STATUS CHECK: SET SENTENCING DATE...STATE'S DECISION ON RETRYING ON REMAINING COUNTS / RESET TRIAL DATE Deft. present in custody. State advised they are not going to proceed on counts 1-8. COURT ORDERED, CTS 1- 8 DISMISSED WITH PREJUDICE. FURTHER, matter referred to P&P and SET for sentencing. CUSTODY CONTINUED TO: 12/4/13 9 AM ;</i></p>
11/04/2013	<p> Motion to Withdraw as Counsel (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)</p> <p><i>Defendant's Notice of Motion and Motion for Ineffective Assistance of Counsel and Motion for New Trial Motion Denied; Defendant's Notice of Motion and Motion for Ineffective Assistance of Counsel and Motion for New Trial</i></p> <p>Journal Entry Details:</p> <p><i>DEFENDANT'S NOTICE OF MOTION AND MOTION FOR INEFFECTIVE ASSISTANCE OF COUNSEL AND MOTION FOR NEW TRIAL Deft. present in custody and Mitchell Posin, Esq., not present. COURT ADVISED, Deft. he was not allowed to file a motion when represented by counsel; noted a Motion for New Trial and Ineffective Assistance of Counsel had been filed. Statement by Deft. regarding whether his attorney was ineffective due to trial preparations and the lack of attorney client correspondence leading up to trial; whether his attorney had filed a timely motion on his behalf. COURT FURTHER NOTED, Mr. Posin would not be discharged as counsel until he had filed a proper motion and, ORDERED, Motion DENIED. FURTHER NOTED, ineffective assistance is a post trial conviction matter. CUSTODY;</i></p>
12/04/2013	<p> Sentencing (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)</p> <p>12/04/2013, 12/09/2013, 12/18/2013</p> <p><i>Sentencing - CTS 9 - 17 Continued;</i></p> <p>Defendant Sentenced;</p> <p>Journal Entry Details:</p> <p><i>SENTENCING 9-17 Deft. present in custody. DEFT. HICKMAN ADJUDGED GUILTY OF CT 9 - BATTERY WITH USE OF A DEADLY WEAPON (F) under the SMALL HABITUAL STATUTE; CT 10 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (F) under the SMALL HABITUAL STATUTE; COUNTS 11 - 16 - ASSAULT WITH USE OF A DEADLY WEAPON (F); and CT 17 BURGLARY (F). A packet of Deft's PRIOR JOC'S provided by the State ADMITTED as State's exhibit number 1. Arguments by counsel. Statement by Deft. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and RESTITUTION total amount of \$26,272.50, payable as noted in sentence below, Deft. SENTENCED to: CT 9 - a MAXIMUM TWO HUNDRED AND FIFTEEN (215) of MONTHS and MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC) and \$12,639.83 RESTITUTION payable to ANNEESA FRANKLIN; CT 10 - a MAXIMUM TWO HUNDRED AND FIFTEEN (215) of MONTHS and MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC) and \$3,263.73 RESTITUTION payable to ANYLA HOYE, to run CONSECUTIVE to CT 9; CT 11 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 10; CT 12 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 11; CT 13 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 12; CT 14 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 13; CT 15 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 14; CT 16 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 15; CT 17 - a MAXIMUM NINETY SIX (96) MONTHS and MINIMUM of TWENTY TWO (22) MONTHS in the NDC, and \$10,369.04 RESTITUTION payable to ANTIOCH CHURCH OF LAS VEGAS, INC A NON-PROFIT CORP dba ANTIOCH CHURCH, to run CONCURRENT with CT 16 with 731 DAYS credit for time served. NDC ;</i></p> <p><i>Continued;</i></p> <p>Defendant Sentenced;</p> <p>Journal Entry Details:</p> <p><i>SENTENCING CTS 9-17 Deft. present in custody. Mr. Posin advised both sides agree to continue sentencing as Deft. wants him to withdraw as counsel. COURT ORDERED, Mr. Posin allowed to withdraw, and PD's office to interview Deft. to see if he qualifies. Mr. Bonaventure objected as it is the policy of office not to take over cases for sentencing. Court noted they are only going to see if he qualifies at this time. Deft. advised he did not fire Mr. Posin, but Mr. Posin wants more money for sentencing, and he can not pay him now as he is in custody. COURT ORDERED, matter CONTINUED. CUSTODY 12/9/13 9 AM SENTENCING CTS 9-17...CONFIRMATION OF COUNSEL (PD) ;</i></p>
12/09/2013	<p>Motion to Continue (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)</p>


CASE SUMMARY


CASE NO. C-12-278699-1


Motion for Continuance on Grounds of Absences of Witnesses and Discover Evidence Requesting New Counsel and New Trial to Submit New Evidence

12/09/2013 **Confirmation of Counsel** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Confirmation of Counsel (PD)

12/09/2013  **All Pending Motions** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
All Pending Motions 12/9/13
Matter Heard;
Journal Entry Details:
DEFT'S MOTION FOR CONTINUANCE ON GROUNDS OF ABSENCES OF WITNESSES & DISCOVER EVIDENCE, REQUESTING NEW COUNSEL & NEW TRIAL TO SUBMIT NEW EVIDENCE...SENTENCING...CONFIRMATION OF COUNSEL (PUBLIC DEFENDER) Deft. present in custody. Mr. Posin advised he withdrew on Monday. Mr. Rue objected based on office policy not to take over a case at sentencing. Mr. Posin stated Deft. wanted him to withdraw, but will do as ordered by the Court. COURT ORDERED, it is reversing Judge Hardcastle's order and Mr. Posin will NOT be allowed to withdraw as counsel. FURTHER, he will remain as counsel until he has filed fast track appeal for Deft. after sentencing. COURT noted as to Deft's Motion, it is a fugitive document that should not have been filed and ORDERED, it to be stricken. State noted there is an issue with the PSI, as it lists 6 misdemeanor's but Scope shows about 17. Court provided copies handwritten letters on Deft's behalf to State and Mr. Posin. Mr. Posin advised he gave Deft. a copy of his file, and requested sentencing be continued so he can speak to Deft. COURT ORDERED, sentencing CONTINUED. Upon request of Mr. Posin, COURT ORDERED, Deft. determined to be indigent for purposes of obtaining transcripts. CUSTODY 12/18/13 9 AM SENTENCING ;


01/29/2014  **Hearing** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Events: 01/06/2014 Document Filed
Defendant - Direct Appeal
Appeal Dismissed;
Journal Entry Details:
HEARING DEFT. - DIRECT APPEAL Deft. nor his counsel present. COURT NOTED this motion was filed in properly in State Court, however, his counsel properly filed direct appeal with Supreme Court. FURTHER, this Court does not have jurisdiction to hear direct appeal and ORDERED, appeal is stricken as moot. CCDC (NDC) CLERK'S NOTE: Clerk mailed copy of minutes to Deft. this date./dt Wilbert Hickman #0905481 Clark County Detention Center 330 S. Casino Center Blvd. Las Vegas, NV 89101 ;

02/12/2014  **Motion For Reconsideration** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Defendant's Notice of Motion and Motion for Reconsideration of Motion for a New Trial Due to Ineffective Assistance of Counsel and Conflict of Interest
Denied;
Journal Entry Details:
DEFT'S PRO PER MOTION FOR RECONSIDERATION OF MOTION FOR A NEW TRIAL DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL AND CONFLICT OF ANSWER Deft. nor his counsel present. COURT ORDERED, Motion DENIED, this type of motion must be filed by way of a post conviction relief writ of habeas corpus. NDC ;

08/18/2014  **Appointment of Counsel** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Granted;
Journal Entry Details:
APPOINTMENT OF COUNSEL Deft. not present. Ms. Wildeveld confirmed as counsel and Order to Appoint Counsel signed in open court. Upon Ms. Wildeveld inquiry, Court advised she can put matter back on calendar if she has trouble getting file. NDC ;

02/01/2016 **Motion** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Defendant's Pro Per Motion to Withdraw Counsel

02/01/2016 **Motion** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Defendant's Pro Per Motion for Production of Documents, Papers, Pleadings, and Tangible Property of Defendant


02/01/2016  **All Pending Motions** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
All Pending Motions: 2/1/16
Matter Heard;

CASE SUMMARY

CASE NO. C-12-278699-1

Journal Entry Details:

DEFT'S PRO PER MOTION TO WITHDRAW COUNSEL...DEFT'S PRO PER MOTION FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFT. Deft. not present. Without benefit of argument, COURT finds both motions have identical points and authorities, an attached affidavit is mentioned, however, there is not affidavit attached. FURTHER, there is nothing in motion indicating he has tried to obtain his file and counsel refused to send it to him. COURT ORDERED, Motion to withdraw counsel is GRANTED and Motion for Pro Per Motion for Production is DENIED WITHOUT PREJUDICE, unless or until he can show Court that he has/had requested said documents and counsel refused. State to prepare the order. NDC CLERK'S NOTE: A copy of minute order mailed to Deft. on 2/2/16./dt WILBER HICKMAN NDOP #62150 P.O. BOX 208 INDIAN SPRINGS, NV 89070;

03/14/2016  **Motion to Compel** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Defendant's Motion to Compel

Denied;


Journal Entry Details:

DEFT'S MOTION TO COMPEL Deft. not present. Ms. Wildeveld advised she has sent Deft. 2 copies, the latest one was 1/14/16, and showed Court proof. Further, she brought another copy in case someone else wanted to send it and see if it got to Deft. COURT ORDERED, Motion to Compel is DENIED, and had Ms. Wildeveld provide Court with the copy for her staff to send to Deft. NDC;

06/15/2016 **Petition for Writ of Habeas Corpus** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

06/15/2016 **Motion for Appointment of Attorney** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Petitioner's Pro Per Motion for Appointment of Counsel


06/15/2016  **All Pending Motions** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

All Pending Motions: C278699

Matter Heard;

Journal Entry Details:

PETITIONER'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...PETITIONER'S PRO PER MOTION FOR APPOINTMENT OF COUNSEL Deft. not present. Court noted as to ground 1, it should have been brought up on initial appeal. As to general allegations of ineffective assistance of trial counsel, COURT ORDERED, matter referred to Mr. Christensen's office for appoint of counsel to review Deft's allegations. FURTHER, Matter CONTINUED. NDC 6/20/16 9 AM CONFIRMATION OF COUNSEL ...RESET WRIT;

06/20/2016  **Confirmation of Counsel** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Confirmation of Counsel / Reset Writ

Confirmed;

Journal Entry Details:

CONFIRMATION OF COUNSEL / RESET WRIT Deft. present in custody. Ms. Shell advised she can accept appointment for post-conviction relief and request this be continued for 30 days before setting briefing schedule so she can try to get file from trial lawyer. COURT ORDERED, matter CONTINUED. NDC 7/20/16 9 AM STATUS CHECK: SET BRIEFING SCHEDULE ;

07/20/2016  **Status Check** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Status Check: Receipt of File...Set Briefing Schedule

Continued;

Journal Entry Details:

STATUS CHECK: RECEIPT OF FILE...SET BRIEFING SCHEDULE Deft. not present. Ms. Shell advised she is still waiting for records and requested until early January to file her supplemental petition. COURT ORDERED, briefing schedule as follows: Deft's Supplemental brief due January 9, 2017; State to respond by 3/13/17; Deft. to reply by 5/3/17 with matter being set for hearing thereafter. Court noted after hearing, she will decide if evidentiary hearing is needed with Deft. present. NDC 5/3/17 9 AM HEARING: WRIT OF HABEAS CORPUS (POST-CONVICTION) ;

07/28/2016  **Motion to Disqualify Judge** (3:00 AM) (Judicial Officer: Barker, David)

Petitioner's Pro Per Motion to Disqualification of Judge Carolyn Ellsworth, Dept. No. 5

Off Calendar; Petitioner's Pro Per Motion to Disqualification of Judge Carolyn Ellsworth, Dept. No. V

Journal Entry Details:

COURT NOTES no record of proper service of the motion upon Judge Ellsworth. As a result, Judge Ellsworth s obligation to file an answer in response to the motion pursuant to NRS 1.235(5) has not been triggered. COURT FURTHER NOTES Defendant filed the motion to disqualify in proper person but he is now represented in this matter

CASE SUMMARY

CASE NO. C-12-278699-1

by attorney Alina Shell. COURT ORDERED, the clerk is directed to forward a copy of Defendant s motion and this minute order to attorney Alina Shell for review. Upon review of Defendant s motion and after consultation with Defendant, Ms. Shell as Defendant s attorney to decide whether to file and properly serve a motion for disqualification of Judge Ellsworth. It is FURTHER ORDERED, Defendant s Motion for Disqualification of Judge Carolyn Ellsworth Dept. No. 5, FILED, May 4, 2016, OFF CALENDAR. CLERK'S NOTE: The above minute order has been distributed to: McLetchie Shell, LLC (Alina Shell, Esq.). ac/07/28/16.;

08/22/2016



Motion for Order (9:00 AM) (Judicial Officer: Bixler, James)

Petitioner's Motion for Order for Production of Records from Prior Counsel

Matter Heard;

Journal Entry Details:

PETITIONER'S MOTION FOR ORDER FOR PRODUCTION OF RECORDS FROM PRIOR COUNSEL Deft. not present. Court noted he received a letter by fax this morning about sending file to Deft. in 2014. Ms. Shell advised Court of the problems she has had trying to obtain the file. She did receive a file, but it has no work product, such as interviews with witnesses, etc., and this was a long case with multiple charges, so there has to be more than what was presented. COURT ORDERED, Mr. Posin to provide everything he has on the case and provide Court with written verification to Court and counsel. FURTHER, matter CONTINUED for status check. NDC 9/25/16 9 AM STATUS CHECK: RECORDS CLERK'S NOTE: Law clerk called and left message on Mr. Posin's voicemail./dt;

09/19/2016



Motion (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Defendant's Motion for Paralegal Fees

Granted;

Journal Entry Details:

DEFT'S MOTION FOR PARALEGAL FEES Deft. not present. State opposes motion. COURT finds that \$50.00 per hour for a paralegal is preferable to paying for attorney to do some of the work needed on this case. Upon Court's inquiry, Ms. Shell stated she could probably use 60 - 80 hours. COURT ORDERED, Motion GRANTED for 40 hours, and if she needs more time, she can bring matter back on calendar. NDC;

09/28/2016



Status Check (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Status Check: Records

Off Calendar;

Journal Entry Details:

STATUS CHECK: RECORDS Deft. not present. Ms. Shell advised she believes she has received Mr. Posin's entire file. COURT ORDERED, matter OFF CALENDAR. NDC;

11/07/2016



Motion (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Defendant's Motion for Supplemental Fees

Denied;

Journal Entry Details:

DEFT'S MOTION FOR SUPPLEMENTAL FEES Deft. not present. Statement by Ms. Shell. COURT stated findings and ORDERED, Motion DENIED. NDC;

07/24/2017



Status Check (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

07/24/2017, 08/14/2017, 08/21/2017

Status Check: Request for Briefing Schedule Extension

Continued; Status Check: Request for Briefing Schedule Extension

Continued;

Briefing Schedule Set;

Continued; Status Check: Request for Briefing Schedule Extension

Continued;

Briefing Schedule Set;

Continued; Status Check: Request for Briefing Schedule Extension

Continued;

Briefing Schedule Set;

Journal Entry Details:


Deft. not present, incarcerated in the Nevada Dept. of Corrections (NDC). COURT NOTED, it was concerned that there was a request for a briefing schedule extension for the Reply, there was no request for an evaluation and there would be new matters raised. Ms. Shell stated when she took on this case in November she had started requesting records, but she didn't receive the social security records until June, which was after she had filed the supplement on this matter; additionally, she had issues getting hold of her investigator and she wanted to give the State time to respond. Ms. Pandukht stated she had concerns that the 90 day request seemed lengthy, mental health was not

CASE SUMMARY**CASE NO. C-12-278699-1**

brought up to prior counsel, or in the plea, there was an evaluation done four months prior to the incident and he did not have any issues; argued this was irrelevant and no matter what the Deft.'s mental state was now it was irrelevant. COURT NOTED, it had this type of matter come up before, where a psychiatrist or psychologist couldn't say whether the Deft. had a mental health issue at the time; therefore, it wanted to make sure first there was a basis and the expert the Defense wanted to hire, could say he would be able to opine on what the Deft.'s mental health state was at the time and that request would need to be made upon the Court. Ms. Shell stated the Deft. was receiving treatment from Southern Nevada Adult Mental Health Services (SNAMHS) at the time of the offense and several years prior to, and that was included with her supplement; advised she needed an expert to look at the voluminous records. COURT DIRECTED, the defense to send those records for in camera review this week and ORDERED, matter CONTINUED three weeks to allow it to review the records, then it would look at the State's documents and determine how much time for the supplement, the States response, and the Defense reply. COURT FURTHER ORDERED, the matter currently set on July 31, 2017 is VACATED. NDC 8/17/17 - 9:00 AM - STATUS CHECK: REQUEST FOR BRIEFING SCHEDULE EXTENSION ... STATUS CHECK: RESET HEARING;

07/31/2017 **CANCELED Hearing** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Vacated - per Judge

08/14/2017 **Status Check** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
08/14/2017, 08/21/2017
Status Check: Reset Hearing
Continued;
Matter Heard;
Continued;
Matter Heard;


08/14/2017  **All Pending Motions** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

MINUTES

Matter Heard;

Journal Entry Details:


STATUS CHECK: RESET HEARING ... STATUS CHECK: REQUEST FOR BRIEFING SCHEDULE EXTENSION
Deft. not present, incarcerated in the Nevada Dept. of Corrections (NDC). COURT NOTED, it had the ex parte motion to retina the expert and the order to file under seal for all the records, which it had reviewed and there were a lot of records. FURTHER NOTED, the social security was messed up as in 2008 the evaluator indicated the Deft. was a malingeringer, but two years later after reviewing the same documentation another evaluator approved and gave the Deft. benefits; therefore, ORDERED, the ex parte motion to appoint an expert GRANTED; DIRECTED, counsel to provide the documents to the State, the new evaluator will have to look at the documents, and the defense will have to show how this matter fits into Strickland. As to providing the documents, Ms. Shell requested to prepare an order as medical records were protected. COURT SO AGREED. Further, Ms. Shell requested the status checks be CONTINUED one week. COURT SO ORDERED and DIRECTED Ms. Shell to send the Widdis order over as it had approved fees to obtain an expert. Order related to filing documents under seal SIGNED IN OPEN COURT and provided to Ms. Shell to file. NDC CONTINUED TO: 8/21/17 - 9:00 AM;

08/21/2017  **All Pending Motions** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Matter Heard;

Journal Entry Details:

STATUS CHECK: RESET HEARING ... STATUS CHECK: REQUEST FOR BRIEFING SCHEDULE EXTENSION
Deft. not present incarcerated in the Nevada Dept. of Corrections. Ms. Shell stated she spoke with the expert and based on his schedule he will be able to go out to do the assessment in October; therefore, requested the briefing schedule be set to begin in later December. COURT ORDERED, matter SET for hearing and counsel advised of following briefing schedule: Defendant's supplemental brief DUE BY 12/18/17, State's response DUE BY 2/16/18, Defendant's reply DUE BY 3/2/18. NDC 3/19/18 - 9:00 AM - HEARING: SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION);

02/28/2018  **At Request of Court** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Re: Stipulation to Extend Habeas Petition Dates

Matter Heard;

Journal Entry Details:



Deft. not present. CONFERENCE AT THE BENCH. COURT NOTED this matter was placed on calendar because there was another stipulation to extend the petition dates and it wanted to make sure this was the last extension; therefor, ADVISED, it would sign the order and figure out the appropriate date and have its JEA indicate the date within the order. COURT ORDERED, matter CURRENTLY set for June 11, 2018 is VACATED and TO BE RESET

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-12-278699-1

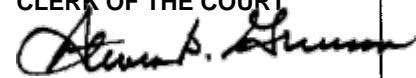
sometime after July 20, 2018. NDC ;

09/10/2018	 Hearing (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Hearing: Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)</i> 08/13/2018 Continued to 09/10/2018 - Stipulation and Order - Hickman, Wilburt VACATED & TO BE RESET AFTER ORDER HAS BEEN SIGNED Hearing Set; Journal Entry Details: <i>Deft. not present, incarcerated in the Nevada Dept. of Corrections (NDC). COURT ORDERED, matter SET for evidentiary hearing on whether the Deft. was mentally ill at any time counsel had dealt with the Deft. Colloquy regarding the other attorneys who represented the Deft. Ms. Pandukht stated she was ready to argue the matter and opposed an evidentiary hearing from being set. CONFERENCE AT THE BENCH. NDC 11/30/18 - 9:00 AM - EVIDENTIARY HEARING: SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION);</i>
11/30/2018	CANCELED Evidentiary Hearing (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated</i> EVIDENTIARY HEARING: SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)
09/27/2019	 Evidentiary Hearing (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) EVIDENTIARY HEARING: SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) 03/22/2019 Continued to 05/31/2019 - At the Request of Counsel - Hickman, Wilburt counsel unavailable Matter Heard; Journal Entry Details: <i>Deft. present at liberty. Upon Court's inquiry, Deft. ACKNOWLEDGED his attorney client privilege would have to be WAIVED. Mr. Hamner INVOKED the exclusionary rule. Testimony and Exhibit presented (see worksheets). Argument by Ms. Shell in support of the Petition, noting that the Deft.'s trial and sentencing counsel had a duty, to ask the Deft. about his Mental Health (MH). Further argument by Ms. Shell regarding how it prejudiced the Deft. at sentencing, as the Court may not have imposed the small habitual criminal provision, if it had known the Deft. had MH issues. COURT ADVISED, knowing what it knew now, that the Deft. intentionally went off his medications and he had been grossly intoxicated, it more than likely would have sentenced the Deft. for a longer time, as it would have felt the Deft. was a danger. COURT NOTED, even in a controlled environment, the Deft. refused to take his medications, FURTHER ADVISED, the Deft. was a hazard to society and it would not have sentenced the Deft. to a lesser time, as all those things wouldn't have mitigated, they would have enhanced. Ms. Shell submitted. Argument by Mr. Hamner in opposition to the petition, noting why Mr. Posin would not have asked about the Deft.'s MH status, as the Deft. did not show any external symptoms of having a MH illness. COURT FURTHER NOTED, based upon the testimony, it didn't think the Deft.'s attorney would have thought the Deft. had a MH issue, as the Deft. stated he concealed it. COURT FINDS there was no showing that trial counsel was ineffective, there was no prejudice to the Deft., as it didn't think it would have made a difference, and considering the evidence today, it was better for the Deft. to be in prison. FURTHER FINDS, trial counsel did good at trial, there was no prejudice at sentencing, and all the other things were without merit. COURT DIRECTED, the State to prepare the Findings of Fact and Conclusions of Law, and provide to Ms. Shell, before submission to the Court. NDC;</i>

DATE

FINANCIAL INFORMATION

Defendant Hickman, Wilburt	
Total Charges	175.00
Total Payments and Credits	175.00
Balance Due as of 2/12/2020	0.00



1 FCL

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,
6 Plaintiff,

7 -vs-

8 WILBURT HICKMAN,
9 #0905481

10 Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

11
12 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

13 DATE OF HEARING: SEPTEMBER 27, 2019
14 TIME OF HEARING: 9:00 PM

15 THIS CAUSE came on for hearing on the 15th day of June, 2016, the petitioner was
16 not present, IN PROPER PERSON, the respondent was represented by STEVEN B.
17 WOLFSON, Clark County District Attorney, by and through HILARY HEAP, Deputy
18 District Attorney. The Court continued the matter for confirmation of counsel. Thereafter, on
19 the 20th day of June, 2016, the petitioner was present, IN PROPER PERSON, the respondent
20 was represented by STEVEN B. WOLFSON, Clark County District Attorney, by and
21 through HILARY HEAP, Deputy District Attorney. Alina Shell, Esq. confirmed as counsel
22 for the petitioner and the matter was set for a status check to allow counsel time to obtain the
23 petitioner's file from the trial lawyer. Thereafter, on the 20th day of July, 2016, the petitioner
24 was not present, represented by ALINA SHELL, ESQ., the respondent was represented by
25 STEVEN B. WOLFSON, Clark County District Attorney, by and through TALEEN
26 PANDUKHT, Chief Deputy District Attorney. The Court set a briefing schedule for a
27 Supplemental Petition and set the matter for argument. Thereafter, on the 24th day of July,
28 2017, the matter was before the Court for a status check on a request for briefing schedule

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1 extension. The petitioner was not present, represented by ALINA SHELL, ESQ., the
2 respondent was represented by STEVEN B. WOLFSON, Clark County District Attorney, by
3 and through TALEEN PANDUKHT, Chief Deputy District Attorney. The Court continued
4 the matter for Alina Shell, ESQ. to submit records to the Court for in camera review.
5 Thereafter, on the 14th day of August, 2017, the petitioner was not present, represented by
6 ALINA SHELL, ESQ., the respondent was represented by STEVEN B. WOLFSON, Clark
7 County District Attorney, by and through TALEEN PANDUKHT, Chief Deputy District
8 Attorney. The Court granted an ex parte motion to appoint an expert and continued the
9 matter for a status check on the briefing schedule. Thereafter, on the 21st day of August,
10 2017, the petitioner was not present, represented by ALINA SHELL, ESQ., the respondent
11 was represented by STEVEN B. WOLFSON, Clark County District Attorney, by and
12 through VIVIAN LUONG, Deputy District Attorney. The Court set a briefing schedule and
13 set the matter for hearing. Thereafter, the Court requested to have the matter placed on
14 calendar after receiving an additional stipulation to extend the briefing schedule. On the 28th
15 day of February, 2018, the petitioner was not present, represented by ALINA SHELL, ESQ.,
16 the respondent was represented by STEVEN B. WOLFSON, Clark County District Attorney,
17 by and through TALEEN PANDUKHT, Chief Deputy District Attorney. The Court signed
18 the Stipulation and Order to Extend the Briefing Schedule and set the matter for hearing.
19 Thereafter, on the 10th day of September, 2018, the petitioner was not present, represented
20 by ALINA SHELL, ESQ., the respondent was represented by STEVEN B. WOLFSON,
21 Clark County District Attorney, by and through TALEEN PANDUKHT, Chief Deputy
22 District Attorney. The Court set the matter for an Evidentiary Hearing. After stipulated
23 continuances, the matter came on for hearing before the Honorable CAROLYN
24 ELLSWORTH, District Judge, on the 27th day of September, 2019, the petitioner being
25 present, represented by ALINA SHELL, ESQ., the respondent being represented by
26 STEVEN B. WOLFSON, Clark County District Attorney, by and through CHRISTOPHER
27 S. HAMNER, Chief Deputy District Attorney, and the Court having considered the matter,

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1 including briefs, transcripts, arguments of counsel, and documents on file herein, now
2 therefore, the Court makes the following findings of fact and conclusions of law.

3 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

4 **PROCEDURAL HISTORY**

5 On January 11, 2012, Wilburt Hickman ("Defendant") was charged by way of
6 Information with the following: Counts 1 through 8 – Attempt Murder with Use of a Deadly
7 Weapon (a Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count 9 –
8 Battery with Use of a Deadly Weapon (a Category B Felony – NRS 200.481); Count 10 –
9 Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (a Category B
10 Felony – NRS 200.481.2e); Counts 11 through 16 – Assault with a Deadly Weapon (a
11 Category B Felony – NRS 200.471); Count 17 – Burglary (a Category B Felony – NRS
12 205.060); and Count 18 – Malicious Destruction of Property (a Category C Felony – NRS
13 206.310, 193.155).

14 On April 3, 2012, an Amended Information was filed removing the alternative theory
15 in Count 15 due to the granting, in part, of a pre-trial petition. On August 23, 2013, the State
16 filed a Notice of Habitual Criminality. A Second Amended Information removing Count 18,
17 Malicious Destruction of Property, was filed on August 30, 2013.

18 On September 3, 2013, Defendant's five-day jury trial commenced. On September 9,
19 2013, the jury returned a verdict of guilty of Counts 9 through 17 and were hung on Counts 1
20 through 8. On September 25, 2013, the State advised the Court that it was not going to
21 proceed on Counts 1 through 8, therefore the Court dismissed Counts 1 through 8 with
22 prejudice.

23 On December 18, 2013, Defendant was adjudged guilty and sentenced to the Nevada
24 Department of Corrections as follows: Count 9 - under the small Habitual Criminal Statute to
25 a maximum of 215 months with a minimum parole eligibility of 60 months; Count 10 -
26 under the small Habitual Criminal Statute to a maximum of 215 months with a minimum
27 parole eligibility of 60 months, to run consecutive to Count 9; Count 11 – a maximum of 72
28 months with a minimum parole eligibility of 16 months, to run concurrent with Count 10;

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Count 12 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 11; Count 13 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 12; Count 14 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 13; Count 15 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 14; Count 16 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 15; Count 17 – a maximum of 96 months with a minimum parole eligibility of 22 months, to run concurrent with Count 16. Defendant received 731 days credit for time served. The Judgment of Conviction was filed on January 2, 2014.

On January 6, 2014, Defendant filed a Notice of Appeal. The Nevada Supreme Court affirmed his conviction. Hickman v. State, Docket No. 64776 (Order of Affirmance, September 16, 2015). Remittitur issued on October 12, 2015.

On March 25, 2016, Defendant filed a pro per Post-Conviction Petition for Writ of Habeas Corpus. On May 17, 2016, the State filed its Response. On June 15, 2016, this Court appointed counsel. On April 28, 2017, Defendant, through counsel, filed a Supplemental Memorandum of Points and Authorities in Support Of Petition for Writ of Habeas Corpus (Post-Conviction) (“First Supplemental Memo”). On June 20, 2017, the State filed its Response. The parties entered into a Stipulated Extension of Habeas Petition Dates and Order on January 26, 2018, on March 2, 2018, and again on June 5, 2018.

Defendant filed his Supplement to Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (“Supplement”) on June 14, 2018. The State filed its Response on August 17, 2018. Defendant filed a Reply on August 30, 2018. On September 27, 2019, the Court held an evidentiary hearing, and denied the Petition, finding as follows.

ANALYSIS

I. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

Defendant alleges ineffective assistance of counsel, primarily on the grounds of

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1 alleged lack of investigation into Defendant's mental health and how substance abuse issues
2 may have affected his mental health. Nevada has adopted the standard outlined in Strickland
3 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), for determinations regarding the
4 effectiveness of counsel. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984);
5 Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996). Under Strickland, in order
6 to assert a claim of ineffective assistance of counsel, the defendant must prove that he was
7 denied "reasonably effective assistance" of counsel by satisfying a two-pronged test.
8 Strickland 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138,
9 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's
10 representation fell below an objective standard of reasonableness, and that, but for counsel's
11 errors, there is a reasonable probability that the result of the proceedings would have been
12 different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

13 "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559
14 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's
15 representations amounted to incompetence under prevailing professional norms, "not
16 whether it deviated from best practices or most common custom." Harrington v. Richter, 562
17 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean
18 errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence
19 demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev.
20 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90
21 S. Ct. 1441, 1449 (1970)).

22 A court begins with a presumption of effectiveness and then must determine whether
23 the defendant has demonstrated by a preponderance of the evidence that counsel was
24 ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a
25 court in considering allegations of ineffective assistance of counsel is "not to pass upon the
26 merits of the action not taken but to determine whether, under the particular facts and
27 circumstances of the case, trial counsel failed to render reasonably effective assistance."

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1 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing
2 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

3 In considering whether trial counsel was effective, the court must determine whether
4 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.”
5 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing Strickland, 466 U.S.
6 at 690–691, 104 S. Ct. at 2066. Once this decision is made, the court will consider whether
7 counsel made “a reasonable strategy decision on how to proceed with his client’s case.”
8 Doleman, 112 Nev. at 846, 921 P.2d at 280; citing Strickland, 466 U.S. at 690–691, 104 S.
9 Ct. at 2066. Counsel’s strategy decision is a “tactical” decision and will be “virtually
10 unchallengeable absent extraordinary circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at
11 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466
12 U.S. at 691, 104 S. Ct. at 2066.

13 This analysis does not indicate that the court should “second guess reasoned choices
14 between trial tactics, nor does it mean that defense counsel, to protect himself against
15 allegations of inadequacy, must make every conceivable motion no matter how remote the
16 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551
17 F.2d at 1166. In essence, the court must “judge the reasonableness of counsel’s challenged
18 conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.”
19 Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed
20 ineffective for failing to make futile objections, file futile motions, or for failing to make
21 futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

22 Even if a defendant can demonstrate that his counsel’s representation fell below an
23 objective standard of reasonableness, he must still demonstrate prejudice and show a
24 reasonable probability that, but for counsel’s errors, the result of the trial would have been
25 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
26 Strickland, 466 U.S. at 687). “A reasonable probability is a probability sufficient to
27 undermine confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A
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1 defendant who contends his attorney was ineffective because he did not adequately
2 investigate must show how a better investigation would have rendered a more favorable
3 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

4 Finally, claims asserted in a petition for post-conviction relief must be supported with
5 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
6 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not
7 sufficient, nor are those belied and repelled by the record. Id.

8 **A. Counsel Did Not Act in an Objectively Unreasonable Manner Regarding**
9 **Defendant’s Mental Health or Substance Abuse History.**

10 Defendant asserts that trial counsel was objectively unreasonable in failing to conduct
11 any investigation into Defendant’s psychiatric history and substance abuse that may have
12 made his mental health issues worse. Supplement at 6. However, trial counsel was not
13 ineffective for failing to look into Defendant’s mental health history.

14 Counsel cannot be ineffective when he has no information nor any reason to believe
15 that a defendant has “particular psychological conditions or disorders that may have shown
16 prior mental disturbance or impaired mental state.” Riley v. State, 110 Nev. 638, 650, 878
17 P.2d 272, 280 (1994), overruled on other grounds by Riley v. McDaniel, 786 F.3d 719 (9th
18 Cir. 2015). During the pendency of this case, Defendant did not once alert his counsel,
19 Parole & Probation, or the Court that he had ever received a mental health diagnosis or
20 treatment. Indeed, Defendant was totally silent as to his mental health history—through trial
21 and even through his first pro se Petition. Defendant’s ineffective assistance claim thus fails
22 to demonstrate deficient performance by way of failure to investigate.

23 i. *Defendant did not tell counsel about his alleged mental health issues.*

24 Defendant offers no specific conversation or interaction that should have put trial
25 counsel on notice of a mental health issue. Instead, the record supports the conclusion that
26 Defendant’s actions did *not* indicate to trial counsel that he suffered from a mental health or
27 related substance abuse issue. Defendant had multiple attorneys, including the Public

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1 Defender. Not one of his three trial attorneys raised any issues that would have sent
2 Defendant to Competency Court. Not once, in the two years of court appearances between
3 his arrest and his trial, was there any reference to a mental health issue. Defendant's pro per
4 Motion for Reconsideration and pro per Petition for Writ of Habeas Corpus never indicated
5 that he suffered from a mental illness. And no attorney until present post-conviction counsel
6 indicated that Defendant's mental health was at issue. See, e.g., Petition for Writ of Habeas
7 Corpus, filed 02/28/12 (challenging Defendant's intent to kill not via a mental health defense
8 but via the determination of probable cause). In fact, at the evidentiary hearing on
9 Defendant's Petition, Defendant explicitly testified that he never informed trial counsel of
10 his mental health issues. Indeed, Defendant only admitted to trial counsel that he was
11 intoxicated.

12 ii. *Defendant's actions and demeanor did not alert counsel to a mental health*
13 *issue.*

14 Further, Defendant admitted to Dr. Kinsora in the most recent Assessment of
15 Neurocognition that "he keeps his mental health issues private, and away from prison staff
16 because he worries that he will end up overmedicated." Supplement, Exhibit A at 1, 2. Dr.
17 Kinsora further remarks that "[m]ore likely than not, [Defendant's] psychiatric issues are
18 reasonably containable when he is free from recreational substance use/abuse." Id. at 2. In
19 fact, Dr. Kinsora states, "more likely than not, [Defendant] mislead his treating psychiatrist
20 with regard to both medication compliance, and his re-initiation of recreational substance
21 use." Id. at 3.

22 In other words, Dr. Kinsora's testimony revealed that Defendant is fully capable of
23 lying to doctors and misleading them about his mental health, and hiding his mental illness.
24 It follows that trial counsel—who dealt with Defendant while he was incarcerated and thus
25 not using recreational substances that would allegedly exacerbate his symptoms, and who
26 furthermore is not a social worker or mental health provider—would not have been able to
27 independently detect Defendant's alleged mental health issues. Like Dr. Kinsora, trial

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1 counsel testified that he never saw any outward signs that Defendant suffered from mental
2 health issues. Testimony from the evidentiary hearing provided further evidence of such
3 concealment. Dr. Kinsora testified that during his interview with Defendant, Defendant
4 exhibited no outward symptoms of mental illness, he actively hid symptoms from others, and
5 he refused to take medication for his symptoms.

6 iii. *Even Defendant's mental health records would not have put counsel on notice.*

7 Finally, no document that trial counsel would have had access to points to mental
8 health concerns or related substance abuse issues that counsel should have investigated for
9 purposes of a theory of defense or sentence mitigation. Defendant never alleges, in any of his
10 post-conviction pleadings, that counsel had access to any of Defendant's medical records—
11 including those provided in Defendant's sealed appendix—at or before the time of trial. In
12 fact, Defendant specifically states in these post-conviction proceedings that “there is no
13 evidence in either the record of this case or trial counsel's file that trial counsel either had
14 [Defendant] evaluated for mental health issues or requested records from [Defendant's]
15 mental health providers.” First Supplemental Memo at 5. As discussed *supra*, Defendant has
16 provided absolutely no basis on which trial counsel should have requested such records.¹
17 Trial counsel simply did not have information or reason to believe Defendant had a mental
18 health issue and thus cannot have been ineffective for not obtaining them. Riley, 110 Nev.
19 650, 878 P.2d 280.

20 Even if trial counsel did have access to portions of Defendant's health records, the
21 information therein would not have been enough to put counsel on notice that Defendant
22 should have been psychologically evaluated or that the defense should have pursued an
23 intent-related defense on the basis of insanity or even sentence mitigation. Sealed

24 //

25
26
27
28 ¹ Conversely, trial counsel did have an indication that Defendant had a standalone intoxication defense. Several witnesses testified that they smelled alcohol on Defendant the night of the attack; but none noticed any other symptoms of intoxication. Recorder's Rough Draft Transcript of Proceedings Jury Trial (“RT”), September 3, 2013, pp. 11–12, 21–22, 31–32; RT, 09/04/13, at 9–10, 24, 33–34, 42–43, 59–60; RT, 9/5/13, at 11, 16. Trial counsel did request—and receive—voluntary intoxication jury instructions. Instructions to the Jury filed September 9, 2013, Instruction Nos. 16–18. Finally, counsel argued at sentencing that the alcohol had “loosen[ed] [Defendant's] inhibitions,” affecting his thought process. RT, 12/18/13, pp. 13–14. Given these actions, as well as his testimony at the evidentiary hearing, if counsel had known of a possible mental health-related intent defense, counsel would have presented it.

1 Petitioner's Appendix ("SPA") at 014–103. For example, the records from Southern Nevada
2 Adult Mental Health Services ("SNAMHS") show that Defendant suffered from
3 depression—but had never been in a psychiatric hospital. SPA at 014, 017. In 2003,
4 SNAMHS documented that Defendant was "cooperative, well groomed," with "no thought
5 d/o [disorder]," "no hallucinations," "logic through process," and "no suicidal or homicidal
6 ideas, intent, or plans," with "good" impulse control. SPA at 015. Defendant had no manic
7 symptoms or delusions, and was again "cooperative," oriented to person, place, time, and
8 situation, with a "coherent" thought process and "good" judgment, and was "not a danger to
9 self or others." SPA at 17, 22, 26. Some inconsistencies seem to appear in the records. But a
10 mental health evaluation less than four (4) months before the attack revealed that Defendant
11 had never been hospitalized, was functioning very well on his medication, and, once again,
12 was "pleasant, cooperative," with a "logical" thought processes, alert and oriented, suffered
13 "no hallucinations [] delusions, [or] illusions," and had "good insight and judgment." SPA at
14 44.

15 No other mental health records were obtained until well after Defendant was
16 convicted and sentenced, when current post-conviction counsel requested social security
17 records and this Court reviewed those records *in camera*. See District Court Minutes, July
18 24, 2017, at 1–2. Defendant does not establish how Defendant's trial counsel should have
19 known about these or any other alleged mental health records.

20 Trial counsel testified at the evidentiary hearing that had he become aware of
21 Defendant's mental health issues, he would have referred Defendant to competency court for
22 further evaluations, ordered Defendant's medical records, looked into the issues for
23 mitigation purposes, and/or incorporated his mental health issues into his defense. However,
24 since Defendant did not inform trial counsel of such ailments, nor did he show any outward
25 symptoms, trial counsel had no way of knowing Defendant was suffering from such issues.
26 The inability to discover Defendant's mental health issues was exacerbated by the fact that
27 Defendant was admittedly intoxicated at the time of the offense. Consequently, trial counsel

28 //

1 did not act unreasonably for failing to ask Defendant about his mental health as Defendant
2 failed to tell his trial counsel that he was suffering from mental health issues, he showed no
3 outward symptoms of such ailment, and he was intoxicated at the time of the offense. Thus,
4 Defendant cannot satisfy the first prong of the Strickland test.

5 **B. Defendant was Not Prejudiced.**

6 Defendant's Supplement re-asserts his claims from his First Supplemental Memo: that
7 trial counsel's alleged failure to investigate prevented him from putting on a defense
8 regarding his inability to form the intent to commit the offenses, from offering jury
9 instructions tailored to his mental health issues, and from presenting Defendant's mental
10 health history to the Division of Parole & Probation ("P&P") for use in the preparation of the
11 PSI that the Court would use in its sentencing decision. Supplement at 6; Supplemental
12 Memo at 9, 13–14, 16. However, ultimately, Defendant cannot demonstrate the prejudice
13 necessary to substantiate his ineffective assistance of counsel claim.

14 First, Defendant himself had a chance to present mitigating evidence by way of
15 mental health concerns to both P&P and the Court during sentencing. Counsel did not stop
16 him from doing so, and thus cannot have prejudiced him. Defendant did not contradict his
17 attorney that there was no legal reason not to proceed at sentencing. RT, 12/18/13, at 2. The
18 Court was aware that Defendant had chosen not to speak to P&P. See SPA at 003. During his
19 allocution, Defendant's entire statement was as follows:

20
21 Yes, Your Honor. He [the State] really made me look like a bad
22 guy, Your Honor, but it's—I'm really not. Your Honor, I've lost
23 a lot. I lost a car, my home, family, jewelry, clothes, money. I
lose my freedom. I even lost my cat, Your Honor. I've been in
custody for two years, Your Honor. I think I've paid my debt to
society, Your Honor. I'm very sorry about what happened.

24 You've read my letters—I hope you read my letters that I've sent
25 you. And it really was a problem, Your Honor. And you read the
26 story. And that's what it is, Your Honor. I'm not a loose cannon
going around trying to ruin people's Christmas, like he said.
27 Your Honor, he spoke a lot of things, Your Honor, that were
untrue, but he had the floor, and, you know, he painted his
picture. You read my story. And I'm throwing myself at the
28 mercy of the Court, Your Honor.

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1 RT, 12/18/13, at 11. His counsel clarified that these “letters” discuss that “he’s had some
2 problems and he’s made some poor decisions.” Id. at 14. Had Defendant wanted to introduce
3 mitigation in the way of mental health issues, he had ample opportunity to do so. Counsel did
4 not stop him.

5 Second, Defendant provides bare speculation as to what effect an intent defense or
6 related jury instructions would have had. Such speculation is insufficient to support his
7 claims of ineffectiveness. Hargrove, 100 Nev. at 502, 686 P.2d at 225. To establish
8 prejudice, Defendant must show a reasonable probability that but for counsel’s alleged lack
9 of investigation, the result would have been different: that is, that he would not have been
10 convicted. See McNelton, 115 Nev. at 403, 990 P.2d at 1268; Molina, 120 Nev. at 192, 87
11 P.3d at 538. To avoid conviction on the grounds of insanity, Defendant would have had to
12 show by a preponderance of the evidence that during the crime, he was “in a delusional state
13 preventing him from knowing or understanding the nature of his act or from appreciating the
14 wrongfulness of his act.” See, e.g., Blake v. State, 121 Nev. 779, 793, 121 P.3d 567, 576
15 (2005); Miller v. State, 112 Nev. 168, 172, 911 P.2d 1183, 1185 (1996) (stating “a successful
16 insanity defense must show the elements of [legal insanity] existed at the time of the act”).
17 Though Defendant has provided past mental health records and a new Assessment of
18 Neurocognition, he cannot meet this high burden. Further, trial counsel succeeded in hanging
19 the jury on all of Defendant’s attempt murder charges, leading to a favorable outcome for
20 Defendant at trial.

21 Finally, the sentencing decision would not have been more beneficial to Defendant.
22 Even had P&P and the Court had the “fullest information possible” about Defendant,
23 Defendant has not established that the outcome would have been any different. Defendant
24 merely argues that P&P and the Court did not have “sufficient information” and that his
25 history of mental health and/or drug abuse would have “taken the sting out of the State’s
26 arguments at sentencing.” Supplement at 8. To the contrary, had the Court known at the time
27 of sentencing that Defendant was actively hiding his mental health issues and refusing to

28 //

1 take his medication, it would not have sentenced Defendant to less time as he poses a danger
2 to the community. Indeed, Defendant's sentence may have been longer.

3 As the Court of Appeals noted, "Hickman's conduct in this case was egregious."
4 Hickman v. State, Docket No. 64776 *6 (Order of Affirmance, Sep. 16, 2015). At trial, the
5 Court heard that after a brief confrontation with a church security officer who told Defendant
6 to leave, Defendant walked to his car, got in the driver's seat, and started the engine. RT,
7 09/03/13, at 21-25; RT, 09/04/13, at 13-15. Defendant reversed out of his parking spot, put
8 his car in drive, turned his car toward the guard, revved the engine and sped toward him,
9 causing his tires to leave skid marks as he accelerated. RT, 09/03/13, at 36; RT, 09/04/13, at
10 17, 41-42. The security guard dove out of the way to avoid being hit. Id.

11 After narrowly missing the officer, Defendant turned the wheel a second time toward
12 the group of people standing outside the front entrance of the church while continuing to
13 accelerate. Id. Several others were standing just on the inside of the church entrance with one
14 of the entry doors ajar. RT, 09/05/13, at 20, 32, 35. Defendant struck two people as he
15 plowed into the front entrance of the church, including a 9-year-old girl. RT, 09/04/13, at 7,
16 21-22. The force of the impact caused one person to fly in the air up onto the hood of
17 Defendant's car and knocked the child out of one of her shoes. Id. at 8, 10.

18 After Defendant collided with the church, he attempted to move his car and had to be
19 restrained. RT, 09/04/13, at 21-22. While being restrained, Defendant threatened "I'm going
20 to kill you mother fuckers," and "I'll kill everybody in here." RT, 09/03/13, at 30; RT,
21 09/05/13, at 15. Defendant told another security officer "you're next." RT, 09/04/13, at 45.
22 Defendant was also physically resistant and attempted to fight. RT, 09/03/13, at 30-31.
23 LVMPD traffic investigators determined there was no evidence of any braking or weaving,
24 but that there was evidence of deliberate turns by Defendant and that he was accelerating at
25 the point of impact. RT, 09/05/13, at 40-49.

26 At sentencing, the Court considered these facts, counsel's arguments, and Defendant's
27 prior convictions. RT, 12/18/13, at 16-17. The Court stated Defendant was lucky no one was
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1 killed and that “[t]here’s not any excuse for this kind of behavior at [his] age.” *Id.* at 16.

2 Indeed, even had the Court had evidence that Defendant had a mental health issue,
3 such evidence does not provide automatic mitigation at sentencing. In *Ford v. State*, the
4 Nevada Supreme Court affirmed the murder convictions and death sentence for a defendant
5 who drove her car onto a crowded sidewalk in downtown Reno. 102 Nev. 126, 127–28, 717
6 P.2d 27, 28 (1986). Despite her known significant mental health and competency issues, the
7 Court held that the defendant’s mental health issues did not diminish the imposed sentence.
8 *Id.* at 137, 717 P.2d at 35. Likewise, even if the Court was aware of Defendant’s mental
9 illness, the facts of the case sufficiently outweighed any mitigating effect and the sentence
10 would have been the same, if not longer.

11 Based on the foregoing, Defendant was not prejudiced at Sentencing. As stated *supra*,
12 had the Court had the information it now has, it would not have reduced Defendant’s
13 sentence, but instead may have increased it. Therefore, because Defendant cannot satisfy the
14 first or second prong of the *Strickland* test, the Court denies Defendant’s ineffective
15 assistance of counsel claim.

16 **II. The Court Denies All of Defendant’s Remaining Claims.**

17 In addition to the Court denying Defendant’s ineffective assistance of counsel claim,
18 it further denies all of Defendant’s remaining claims as they are without merit.
19

20 **ORDER**

21
22 Based on the foregoing, IT IS HEREBY ORDERED that the Petition and
23 Supplemental Petitions for Post-Conviction Relief shall be, and are, hereby denied.

24 DATED this 9th day of ^{Jan. 2020}~~December~~, 2019.

25
26 
DISTRICT JUDGE

27
28 11F21695X

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the date filed she served the foregoing Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

STEVEN B. WOLFSON
Christopher Hamner, Esq.
Clark County District Attorney

Alina Shell, Esq.
Attorney for Defendant


Shelby Lopaze, Judicial Executive Assistant

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Order filed in District Court case number C278699 **DOES NOT** contain the social security number of any person.



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

WILBURT HICKMAN,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-12-278699-1

Dept No: V

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

PLEASE TAKE NOTICE that on January 10, 2020, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on January 13, 2020.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 13 day of January 2020, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

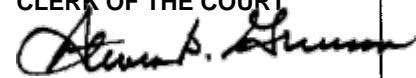
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Wilburt Hickman # 62150	Alina M. Shell, Esq.
P.O. Box 650	701 E. Bridger Ave., Ste 520
Indian Springs, NV 89070	Las Vegas, NV 89101

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk



1 FCL

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,
6 Plaintiff,

7 -vs-

8 WILBURT HICKMAN,
9 #0905481

10 Defendant.

CASE NO: C-12-278699-1

DEPT NO: V

11
12 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

13 DATE OF HEARING: SEPTEMBER 27, 2019
14 TIME OF HEARING: 9:00 PM

15 THIS CAUSE came on for hearing on the 15th day of June, 2016, the petitioner was
16 not present, IN PROPER PERSON, the respondent was represented by STEVEN B.
17 WOLFSON, Clark County District Attorney, by and through HILARY HEAP, Deputy
18 District Attorney. The Court continued the matter for confirmation of counsel. Thereafter, on
19 the 20th day of June, 2016, the petitioner was present, IN PROPER PERSON, the respondent
20 was represented by STEVEN B. WOLFSON, Clark County District Attorney, by and
21 through HILARY HEAP, Deputy District Attorney. Alina Shell, Esq. confirmed as counsel
22 for the petitioner and the matter was set for a status check to allow counsel time to obtain the
23 petitioner's file from the trial lawyer. Thereafter, on the 20th day of July, 2016, the petitioner
24 was not present, represented by ALINA SHELL, ESQ., the respondent was represented by
25 STEVEN B. WOLFSON, Clark County District Attorney, by and through TALEEN
26 PANDUKHT, Chief Deputy District Attorney. The Court set a briefing schedule for a
27 Supplemental Petition and set the matter for argument. Thereafter, on the 24th day of July,
28 2017, the matter was before the Court for a status check on a request for briefing schedule

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1 extension. The petitioner was not present, represented by ALINA SHELL, ESQ., the
2 respondent was represented by STEVEN B. WOLFSON, Clark County District Attorney, by
3 and through TALEEN PANDUKHT, Chief Deputy District Attorney. The Court continued
4 the matter for Alina Shell, ESQ. to submit records to the Court for in camera review.
5 Thereafter, on the 14th day of August, 2017, the petitioner was not present, represented by
6 ALINA SHELL, ESQ., the respondent was represented by STEVEN B. WOLFSON, Clark
7 County District Attorney, by and through TALEEN PANDUKHT, Chief Deputy District
8 Attorney. The Court granted an ex parte motion to appoint an expert and continued the
9 matter for a status check on the briefing schedule. Thereafter, on the 21st day of August,
10 2017, the petitioner was not present, represented by ALINA SHELL, ESQ., the respondent
11 was represented by STEVEN B. WOLFSON, Clark County District Attorney, by and
12 through VIVIAN LUONG, Deputy District Attorney. The Court set a briefing schedule and
13 set the matter for hearing. Thereafter, the Court requested to have the matter placed on
14 calendar after receiving an additional stipulation to extend the briefing schedule. On the 28th
15 day of February, 2018, the petitioner was not present, represented by ALINA SHELL, ESQ.,
16 the respondent was represented by STEVEN B. WOLFSON, Clark County District Attorney,
17 by and through TALEEN PANDUKHT, Chief Deputy District Attorney. The Court signed
18 the Stipulation and Order to Extend the Briefing Schedule and set the matter for hearing.
19 Thereafter, on the 10th day of September, 2018, the petitioner was not present, represented
20 by ALINA SHELL, ESQ., the respondent was represented by STEVEN B. WOLFSON,
21 Clark County District Attorney, by and through TALEEN PANDUKHT, Chief Deputy
22 District Attorney. The Court set the matter for an Evidentiary Hearing. After stipulated
23 continuances, the matter came on for hearing before the Honorable CAROLYN
24 ELLSWORTH, District Judge, on the 27th day of September, 2019, the petitioner being
25 present, represented by ALINA SHELL, ESQ., the respondent being represented by
26 STEVEN B. WOLFSON, Clark County District Attorney, by and through CHRISTOPHER
27 S. HAMNER, Chief Deputy District Attorney, and the Court having considered the matter,

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1 including briefs, transcripts, arguments of counsel, and documents on file herein, now
2 therefore, the Court makes the following findings of fact and conclusions of law.

3 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

4 **PROCEDURAL HISTORY**

5 On January 11, 2012, Wilburt Hickman ("Defendant") was charged by way of
6 Information with the following: Counts 1 through 8 – Attempt Murder with Use of a Deadly
7 Weapon (a Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Count 9 –
8 Battery with Use of a Deadly Weapon (a Category B Felony – NRS 200.481); Count 10 –
9 Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (a Category B
10 Felony – NRS 200.481.2e); Counts 11 through 16 – Assault with a Deadly Weapon (a
11 Category B Felony – NRS 200.471); Count 17 – Burglary (a Category B Felony – NRS
12 205.060); and Count 18 – Malicious Destruction of Property (a Category C Felony – NRS
13 206.310, 193.155).

14 On April 3, 2012, an Amended Information was filed removing the alternative theory
15 in Count 15 due to the granting, in part, of a pre-trial petition. On August 23, 2013, the State
16 filed a Notice of Habitual Criminality. A Second Amended Information removing Count 18,
17 Malicious Destruction of Property, was filed on August 30, 2013.

18 On September 3, 2013, Defendant's five-day jury trial commenced. On September 9,
19 2013, the jury returned a verdict of guilty of Counts 9 through 17 and were hung on Counts 1
20 through 8. On September 25, 2013, the State advised the Court that it was not going to
21 proceed on Counts 1 through 8, therefore the Court dismissed Counts 1 through 8 with
22 prejudice.

23 On December 18, 2013, Defendant was adjudged guilty and sentenced to the Nevada
24 Department of Corrections as follows: Count 9 - under the small Habitual Criminal Statute to
25 a maximum of 215 months with a minimum parole eligibility of 60 months; Count 10 -
26 under the small Habitual Criminal Statute to a maximum of 215 months with a minimum
27 parole eligibility of 60 months, to run consecutive to Count 9; Count 11 – a maximum of 72
28 months with a minimum parole eligibility of 16 months, to run concurrent with Count 10;

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Count 12 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 11; Count 13 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 12; Count 14 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 13; Count 15 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 14; Count 16 – a maximum of 72 months with a minimum parole eligibility of 16 months, to run concurrent with Count 15; Count 17 – a maximum of 96 months with a minimum parole eligibility of 22 months, to run concurrent with Count 16. Defendant received 731 days credit for time served. The Judgment of Conviction was filed on January 2, 2014.

On January 6, 2014, Defendant filed a Notice of Appeal. The Nevada Supreme Court affirmed his conviction. Hickman v. State, Docket No. 64776 (Order of Affirmance, September 16, 2015). Remittitur issued on October 12, 2015.

On March 25, 2016, Defendant filed a pro per Post-Conviction Petition for Writ of Habeas Corpus. On May 17, 2016, the State filed its Response. On June 15, 2016, this Court appointed counsel. On April 28, 2017, Defendant, through counsel, filed a Supplemental Memorandum of Points and Authorities in Support Of Petition for Writ of Habeas Corpus (Post-Conviction) (“First Supplemental Memo”). On June 20, 2017, the State filed its Response. The parties entered into a Stipulated Extension of Habeas Petition Dates and Order on January 26, 2018, on March 2, 2018, and again on June 5, 2018.

Defendant filed his Supplement to Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (“Supplement”) on June 14, 2018. The State filed its Response on August 17, 2018. Defendant filed a Reply on August 30, 2018. On September 27, 2019, the Court held an evidentiary hearing, and denied the Petition, finding as follows.

ANALYSIS

I. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

Defendant alleges ineffective assistance of counsel, primarily on the grounds of

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1 alleged lack of investigation into Defendant's mental health and how substance abuse issues
2 may have affected his mental health. Nevada has adopted the standard outlined in Strickland
3 v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), for determinations regarding the
4 effectiveness of counsel. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984);
5 Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996). Under Strickland, in order
6 to assert a claim of ineffective assistance of counsel, the defendant must prove that he was
7 denied "reasonably effective assistance" of counsel by satisfying a two-pronged test.
8 Strickland 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138,
9 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's
10 representation fell below an objective standard of reasonableness, and that, but for counsel's
11 errors, there is a reasonable probability that the result of the proceedings would have been
12 different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

13 "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559
14 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's
15 representations amounted to incompetence under prevailing professional norms, "not
16 whether it deviated from best practices or most common custom." Harrington v. Richter, 562
17 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean
18 errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence
19 demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev.
20 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90
21 S. Ct. 1441, 1449 (1970)).

22 A court begins with a presumption of effectiveness and then must determine whether
23 the defendant has demonstrated by a preponderance of the evidence that counsel was
24 ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a
25 court in considering allegations of ineffective assistance of counsel is "not to pass upon the
26 merits of the action not taken but to determine whether, under the particular facts and
27 circumstances of the case, trial counsel failed to render reasonably effective assistance."

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1 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing
2 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

3 In considering whether trial counsel was effective, the court must determine whether
4 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.”
5 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing Strickland, 466 U.S.
6 at 690–691, 104 S. Ct. at 2066. Once this decision is made, the court will consider whether
7 counsel made “a reasonable strategy decision on how to proceed with his client’s case.”
8 Doleman, 112 Nev. at 846, 921 P.2d at 280; citing Strickland, 466 U.S. at 690–691, 104 S.
9 Ct. at 2066. Counsel’s strategy decision is a “tactical” decision and will be “virtually
10 unchallengeable absent extraordinary circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at
11 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466
12 U.S. at 691, 104 S. Ct. at 2066.

13 This analysis does not indicate that the court should “second guess reasoned choices
14 between trial tactics, nor does it mean that defense counsel, to protect himself against
15 allegations of inadequacy, must make every conceivable motion no matter how remote the
16 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551
17 F.2d at 1166. In essence, the court must “judge the reasonableness of counsel’s challenged
18 conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.”
19 Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed
20 ineffective for failing to make futile objections, file futile motions, or for failing to make
21 futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

22 Even if a defendant can demonstrate that his counsel’s representation fell below an
23 objective standard of reasonableness, he must still demonstrate prejudice and show a
24 reasonable probability that, but for counsel’s errors, the result of the trial would have been
25 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
26 Strickland, 466 U.S. at 687). “A reasonable probability is a probability sufficient to
27 undermine confidence in the outcome.” Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A
28 //

1 defendant who contends his attorney was ineffective because he did not adequately
2 investigate must show how a better investigation would have rendered a more favorable
3 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

4 Finally, claims asserted in a petition for post-conviction relief must be supported with
5 specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v.
6 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not
7 sufficient, nor are those belied and repelled by the record. Id.

8 **A. Counsel Did Not Act in an Objectively Unreasonable Manner Regarding**
9 **Defendant’s Mental Health or Substance Abuse History.**

10 Defendant asserts that trial counsel was objectively unreasonable in failing to conduct
11 any investigation into Defendant’s psychiatric history and substance abuse that may have
12 made his mental health issues worse. Supplement at 6. However, trial counsel was not
13 ineffective for failing to look into Defendant’s mental health history.

14 Counsel cannot be ineffective when he has no information nor any reason to believe
15 that a defendant has “particular psychological conditions or disorders that may have shown
16 prior mental disturbance or impaired mental state.” Riley v. State, 110 Nev. 638, 650, 878
17 P.2d 272, 280 (1994), overruled on other grounds by Riley v. McDaniel, 786 F.3d 719 (9th
18 Cir. 2015). During the pendency of this case, Defendant did not once alert his counsel,
19 Parole & Probation, or the Court that he had ever received a mental health diagnosis or
20 treatment. Indeed, Defendant was totally silent as to his mental health history—through trial
21 and even through his first pro se Petition. Defendant’s ineffective assistance claim thus fails
22 to demonstrate deficient performance by way of failure to investigate.

23 i. *Defendant did not tell counsel about his alleged mental health issues.*

24 Defendant offers no specific conversation or interaction that should have put trial
25 counsel on notice of a mental health issue. Instead, the record supports the conclusion that
26 Defendant’s actions did *not* indicate to trial counsel that he suffered from a mental health or
27 related substance abuse issue. Defendant had multiple attorneys, including the Public

28 //

1 Defender. Not one of his three trial attorneys raised any issues that would have sent
2 Defendant to Competency Court. Not once, in the two years of court appearances between
3 his arrest and his trial, was there any reference to a mental health issue. Defendant's pro per
4 Motion for Reconsideration and pro per Petition for Writ of Habeas Corpus never indicated
5 that he suffered from a mental illness. And no attorney until present post-conviction counsel
6 indicated that Defendant's mental health was at issue. See, e.g., Petition for Writ of Habeas
7 Corpus, filed 02/28/12 (challenging Defendant's intent to kill not via a mental health defense
8 but via the determination of probable cause). In fact, at the evidentiary hearing on
9 Defendant's Petition, Defendant explicitly testified that he never informed trial counsel of
10 his mental health issues. Indeed, Defendant only admitted to trial counsel that he was
11 intoxicated.

12 ii. *Defendant's actions and demeanor did not alert counsel to a mental health*
13 *issue.*

14 Further, Defendant admitted to Dr. Kinsora in the most recent Assessment of
15 Neurocognition that "he keeps his mental health issues private, and away from prison staff
16 because he worries that he will end up overmedicated." Supplement, Exhibit A at 1, 2. Dr.
17 Kinsora further remarks that "[m]ore likely than not, [Defendant's] psychiatric issues are
18 reasonably containable when he is free from recreational substance use/abuse." Id. at 2. In
19 fact, Dr. Kinsora states, "more likely than not, [Defendant] mislead his treating psychiatrist
20 with regard to both medication compliance, and his re-initiation of recreational substance
21 use." Id. at 3.

22 In other words, Dr. Kinsora's testimony revealed that Defendant is fully capable of
23 lying to doctors and misleading them about his mental health, and hiding his mental illness.
24 It follows that trial counsel—who dealt with Defendant while he was incarcerated and thus
25 not using recreational substances that would allegedly exacerbate his symptoms, and who
26 furthermore is not a social worker or mental health provider—would not have been able to
27 independently detect Defendant's alleged mental health issues. Like Dr. Kinsora, trial

28 //

1 counsel testified that he never saw any outward signs that Defendant suffered from mental
2 health issues. Testimony from the evidentiary hearing provided further evidence of such
3 concealment. Dr. Kinsora testified that during his interview with Defendant, Defendant
4 exhibited no outward symptoms of mental illness, he actively hid symptoms from others, and
5 he refused to take medication for his symptoms.

6 iii. *Even Defendant's mental health records would not have put counsel on notice.*

7 Finally, no document that trial counsel would have had access to points to mental
8 health concerns or related substance abuse issues that counsel should have investigated for
9 purposes of a theory of defense or sentence mitigation. Defendant never alleges, in any of his
10 post-conviction pleadings, that counsel had access to any of Defendant's medical records—
11 including those provided in Defendant's sealed appendix—at or before the time of trial. In
12 fact, Defendant specifically states in these post-conviction proceedings that “there is no
13 evidence in either the record of this case or trial counsel's file that trial counsel either had
14 [Defendant] evaluated for mental health issues or requested records from [Defendant's]
15 mental health providers.” First Supplemental Memo at 5. As discussed *supra*, Defendant has
16 provided absolutely no basis on which trial counsel should have requested such records.¹
17 Trial counsel simply did not have information or reason to believe Defendant had a mental
18 health issue and thus cannot have been ineffective for not obtaining them. Riley, 110 Nev.
19 650, 878 P.2d 280.

20 Even if trial counsel did have access to portions of Defendant's health records, the
21 information therein would not have been enough to put counsel on notice that Defendant
22 should have been psychologically evaluated or that the defense should have pursued an
23 intent-related defense on the basis of insanity or even sentence mitigation. Sealed

24 //

25
26
27 ¹ Conversely, trial counsel did have an indication that Defendant had a standalone intoxication defense. Several witnesses testified that
28 they smelled alcohol on Defendant the night of the attack; but none noticed any other symptoms of intoxication. Recorder's Rough
Draft Transcript of Proceedings Jury Trial (“RT”), September 3, 2013, pp. 11–12, 21–22, 31–32; RT, 09/04/13, at 9–10, 24, 33–34,
42–43, 59–60; RT, 9/5/13, at 11, 16. Trial counsel did request—and receive—voluntary intoxication jury instructions. Instructions to
the Jury filed September 9, 2013, Instruction Nos. 16–18. Finally, counsel argued at sentencing that the alcohol had “loosen[ed]
[Defendant's] inhibitions,” affecting his thought process. RT, 12/18/13, pp. 13–14. Given these actions, as well as his testimony at the
evidentiary hearing, if counsel had known of a possible mental health-related intent defense, counsel would have presented it.

1 Petitioner's Appendix ("SPA") at 014–103. For example, the records from Southern Nevada
2 Adult Mental Health Services ("SNAMHS") show that Defendant suffered from
3 depression—but had never been in a psychiatric hospital. SPA at 014, 017. In 2003,
4 SNAMHS documented that Defendant was "cooperative, well groomed," with "no thought
5 d/o [disorder]," "no hallucinations," "logic through process," and "no suicidal or homicidal
6 ideas, intent, or plans," with "good" impulse control. SPA at 015. Defendant had no manic
7 symptoms or delusions, and was again "cooperative," oriented to person, place, time, and
8 situation, with a "coherent" thought process and "good" judgment, and was "not a danger to
9 self or others." SPA at 17, 22, 26. Some inconsistencies seem to appear in the records. But a
10 mental health evaluation less than four (4) months before the attack revealed that Defendant
11 had never been hospitalized, was functioning very well on his medication, and, once again,
12 was "pleasant, cooperative," with a "logical" thought processes, alert and oriented, suffered
13 "no hallucinations [] delusions, [or] illusions," and had "good insight and judgment." SPA at
14 44.

15 No other mental health records were obtained until well after Defendant was
16 convicted and sentenced, when current post-conviction counsel requested social security
17 records and this Court reviewed those records *in camera*. See District Court Minutes, July
18 24, 2017, at 1–2. Defendant does not establish how Defendant's trial counsel should have
19 known about these or any other alleged mental health records.

20 Trial counsel testified at the evidentiary hearing that had he become aware of
21 Defendant's mental health issues, he would have referred Defendant to competency court for
22 further evaluations, ordered Defendant's medical records, looked into the issues for
23 mitigation purposes, and/or incorporated his mental health issues into his defense. However,
24 since Defendant did not inform trial counsel of such ailments, nor did he show any outward
25 symptoms, trial counsel had no way of knowing Defendant was suffering from such issues.
26 The inability to discover Defendant's mental health issues was exacerbated by the fact that
27 Defendant was admittedly intoxicated at the time of the offense. Consequently, trial counsel

28 //

1 did not act unreasonably for failing to ask Defendant about his mental health as Defendant
2 failed to tell his trial counsel that he was suffering from mental health issues, he showed no
3 outward symptoms of such ailment, and he was intoxicated at the time of the offense. Thus,
4 Defendant cannot satisfy the first prong of the Strickland test.

5 **B. Defendant was Not Prejudiced.**

6 Defendant's Supplement re-asserts his claims from his First Supplemental Memo: that
7 trial counsel's alleged failure to investigate prevented him from putting on a defense
8 regarding his inability to form the intent to commit the offenses, from offering jury
9 instructions tailored to his mental health issues, and from presenting Defendant's mental
10 health history to the Division of Parole & Probation ("P&P") for use in the preparation of the
11 PSI that the Court would use in its sentencing decision. Supplement at 6; Supplemental
12 Memo at 9, 13–14, 16. However, ultimately, Defendant cannot demonstrate the prejudice
13 necessary to substantiate his ineffective assistance of counsel claim.

14 First, Defendant himself had a chance to present mitigating evidence by way of
15 mental health concerns to both P&P and the Court during sentencing. Counsel did not stop
16 him from doing so, and thus cannot have prejudiced him. Defendant did not contradict his
17 attorney that there was no legal reason not to proceed at sentencing. RT, 12/18/13, at 2. The
18 Court was aware that Defendant had chosen not to speak to P&P. See SPA at 003. During his
19 allocution, Defendant's entire statement was as follows:

20
21 Yes, Your Honor. He [the State] really made me look like a bad
22 guy, Your Honor, but it's—I'm really not. Your Honor, I've lost
23 a lot. I lost a car, my home, family, jewelry, clothes, money. I
lose my freedom. I even lost my cat, Your Honor. I've been in
custody for two years, Your Honor. I think I've paid my debt to
society, Your Honor. I'm very sorry about what happened.

24 You've read my letters—I hope you read my letters that I've sent
25 you. And it really was a problem, Your Honor. And you read the
26 story. And that's what it is, Your Honor. I'm not a loose cannon
going around trying to ruin people's Christmas, like he said.
27 Your Honor, he spoke a lot of things, Your Honor, that were
untrue, but he had the floor, and, you know, he painted his
picture. You read my story. And I'm throwing myself at the
28 mercy of the Court, Your Honor.

//

1 RT, 12/18/13, at 11. His counsel clarified that these “letters” discuss that “he’s had some
2 problems and he’s made some poor decisions.” Id. at 14. Had Defendant wanted to introduce
3 mitigation in the way of mental health issues, he had ample opportunity to do so. Counsel did
4 not stop him.

5 Second, Defendant provides bare speculation as to what effect an intent defense or
6 related jury instructions would have had. Such speculation is insufficient to support his
7 claims of ineffectiveness. Hargrove, 100 Nev. at 502, 686 P.2d at 225. To establish
8 prejudice, Defendant must show a reasonable probability that but for counsel’s alleged lack
9 of investigation, the result would have been different: that is, that he would not have been
10 convicted. See McNelton, 115 Nev. at 403, 990 P.2d at 1268; Molina, 120 Nev. at 192, 87
11 P.3d at 538. To avoid conviction on the grounds of insanity, Defendant would have had to
12 show by a preponderance of the evidence that during the crime, he was “in a delusional state
13 preventing him from knowing or understanding the nature of his act or from appreciating the
14 wrongfulness of his act.” See, e.g., Blake v. State, 121 Nev. 779, 793, 121 P.3d 567, 576
15 (2005); Miller v. State, 112 Nev. 168, 172, 911 P.2d 1183, 1185 (1996) (stating “a successful
16 insanity defense must show the elements of [legal insanity] existed at the time of the act”).
17 Though Defendant has provided past mental health records and a new Assessment of
18 Neurocognition, he cannot meet this high burden. Further, trial counsel succeeded in hanging
19 the jury on all of Defendant’s attempt murder charges, leading to a favorable outcome for
20 Defendant at trial.

21 Finally, the sentencing decision would not have been more beneficial to Defendant.
22 Even had P&P and the Court had the “fullest information possible” about Defendant,
23 Defendant has not established that the outcome would have been any different. Defendant
24 merely argues that P&P and the Court did not have “sufficient information” and that his
25 history of mental health and/or drug abuse would have “taken the sting out of the State’s
26 arguments at sentencing.” Supplement at 8. To the contrary, had the Court known at the time
27 of sentencing that Defendant was actively hiding his mental health issues and refusing to

28 //

1 take his medication, it would not have sentenced Defendant to less time as he poses a danger
2 to the community. Indeed, Defendant's sentence may have been longer.

3 As the Court of Appeals noted, "Hickman's conduct in this case was egregious."
4 Hickman v. State, Docket No. 64776 *6 (Order of Affirmance, Sep. 16, 2015). At trial, the
5 Court heard that after a brief confrontation with a church security officer who told Defendant
6 to leave, Defendant walked to his car, got in the driver's seat, and started the engine. RT,
7 09/03/13, at 21-25; RT, 09/04/13, at 13-15. Defendant reversed out of his parking spot, put
8 his car in drive, turned his car toward the guard, revved the engine and sped toward him,
9 causing his tires to leave skid marks as he accelerated. RT, 09/03/13, at 36; RT, 09/04/13, at
10 17, 41-42. The security guard dove out of the way to avoid being hit. Id.

11 After narrowly missing the officer, Defendant turned the wheel a second time toward
12 the group of people standing outside the front entrance of the church while continuing to
13 accelerate. Id. Several others were standing just on the inside of the church entrance with one
14 of the entry doors ajar. RT, 09/05/13, at 20, 32, 35. Defendant struck two people as he
15 plowed into the front entrance of the church, including a 9-year-old girl. RT, 09/04/13, at 7,
16 21-22. The force of the impact caused one person to fly in the air up onto the hood of
17 Defendant's car and knocked the child out of one of her shoes. Id. at 8, 10.

18 After Defendant collided with the church, he attempted to move his car and had to be
19 restrained. RT, 09/04/13, at 21-22. While being restrained, Defendant threatened "I'm going
20 to kill you mother fuckers," and "I'll kill everybody in here." RT, 09/03/13, at 30; RT,
21 09/05/13, at 15. Defendant told another security officer "you're next." RT, 09/04/13, at 45.
22 Defendant was also physically resistant and attempted to fight. RT, 09/03/13, at 30-31.
23 LVMPD traffic investigators determined there was no evidence of any braking or weaving,
24 but that there was evidence of deliberate turns by Defendant and that he was accelerating at
25 the point of impact. RT, 09/05/13, at 40-49.

26 At sentencing, the Court considered these facts, counsel's arguments, and Defendant's
27 prior convictions. RT, 12/18/13, at 16-17. The Court stated Defendant was lucky no one was
28 //

1 killed and that “[t]here’s not any excuse for this kind of behavior at [his] age.” *Id.* at 16.

2 Indeed, even had the Court had evidence that Defendant had a mental health issue,
3 such evidence does not provide automatic mitigation at sentencing. In *Ford v. State*, the
4 Nevada Supreme Court affirmed the murder convictions and death sentence for a defendant
5 who drove her car onto a crowded sidewalk in downtown Reno. 102 Nev. 126, 127–28, 717
6 P.2d 27, 28 (1986). Despite her known significant mental health and competency issues, the
7 Court held that the defendant’s mental health issues did not diminish the imposed sentence.
8 *Id.* at 137, 717 P.2d at 35. Likewise, even if the Court was aware of Defendant’s mental
9 illness, the facts of the case sufficiently outweighed any mitigating effect and the sentence
10 would have been the same, if not longer.

11 Based on the foregoing, Defendant was not prejudiced at Sentencing. As stated *supra*,
12 had the Court had the information it now has, it would not have reduced Defendant’s
13 sentence, but instead may have increased it. Therefore, because Defendant cannot satisfy the
14 first or second prong of the *Strickland* test, the Court denies Defendant’s ineffective
15 assistance of counsel claim.

16 **II. The Court Denies All of Defendant’s Remaining Claims.**

17 In addition to the Court denying Defendant’s ineffective assistance of counsel claim,
18 it further denies all of Defendant’s remaining claims as they are without merit.
19

20 **ORDER**

21
22 Based on the foregoing, IT IS HEREBY ORDERED that the Petition and
23 Supplemental Petitions for Post-Conviction Relief shall be, and are, hereby denied.

24 DATED this 9th day of ^{Jan. 2020}~~December~~, 2019.

25
26 
DISTRICT JUDGE

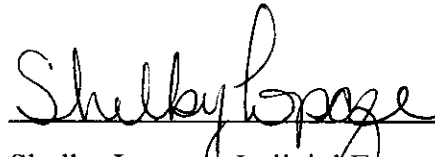
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the date filed she served the foregoing Order by faxing, mailing, or electronically serving a copy to counsel as listed below:

STEVEN B. WOLFSON
Christopher Hamner, Esq.
Clark County District Attorney

Alina Shell, Esq.
Attorney for Defendant


Shelby Lopaze, Judicial Executive Assistant

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Order filed in District Court case number C278699 **DOES NOT** contain the social security number of any person.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 12, 2012

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

January 12, 2012 9:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Carole D'Aloia
Athena Trujillo
Sharry Frascarelli

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D.	Attorney
	Hickman, Wilburt	Defendant
	Mitchell, Scott Steven	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. HICKMAN ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, counsel has 21 days after the filing of the Preliminary Hearing transcript or today's date, whichever is later, to file a Writ.

CUSTODY

02/29/12 9:00 AM CALENDAR CALL

03/05/12 1:30 PPM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 22, 2012

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

February 22, 2012 9:00 AM Motion

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Alice Jacobson

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D.	Attorney
	Hickman, Wilburt	Defendant
	Morgan, Shaun	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- There being no opposition, good cause appearing and the Defendant waiving his right to a speedy trial. COURT ORDERED, motion GRANTED; trial dates VACATED and RESET.

CUSTODY

9/24/12 9:00 AM CALENDAR CALL

10/1/12 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 28, 2012

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

**March 28, 2012 9:00 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16A

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D.	Attorney
	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT'S PETITION FOR WRIT OF HABEAS CORPUS

Deft. present in custody. Counsel submitted matter on the briefs. COURT finds as to the issue of the alternate theory on Count 15 Motion GRANTED, but DENIED as to the rest of the Motion; as to the Attempt Murder, Petition DENIED; and as to Malicious Destruction Petition is DENIED for purpose of the Writ. State to prepare order and file Amended Information.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 24, 2012

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

September 24, 2012 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Denise Trujillo
 Kristin Duncan

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D.	Attorney
	Hickman, Wilburt	Defendant
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- CALENDAR CALL...DEFENDANT'S MOTION FOR DISCOVERY

MOTION TO CONTINUE TRIAL DATE FILED IN OPEN COURT

Mr. Scow announced ready to proceed to Trial, but indicated there was no opposition to the Motion to Continue, as this case needed investigating. COURT ORDERED Motion to Continue GRANTED; Trial date VACATED and RESET.

Court noted that the Motion for Discovery was filed on June 29, 2012, and no opposition had been filed. Mr. Scow stated that he believed the Motion could be resolved out of Court, and requested a continuance; Ms. Ballou advised she was amenable to a continuance, and suggested a Status Check be set. COURT ORDERED Motion for Discovery CONTINUED two weeks; Mr. Scow to file a response within ten (10) days.

CUSTODY

PRINT DATE: 02/12/2020

Page 4 of 54

Minutes Date: January 12, 2012

10/10/12 9:00 AM DEFENDANT'S MOTION FOR DISCOVERY

4/8/13 9:00 AM CALENDAR CALL

4/15/13 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 10, 2012

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

October 10, 2012 9:00 AM Motion for Discovery

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Denise Trujillo
 Aaron Carbajal

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D.	Attorney
	Hickman, Wilburt	Defendant
	State of Nevada	Plaintiff
	Wong, Hetty O.	Attorney

JOURNAL ENTRIES

- DEFT'S MOTION FOR DISCOVERY

Deft. present in custody. Mr. Bonaventure requested this be continued for Ms. Ballou to be present.
COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 10/15/12 9 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 15, 2012

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

October 15, 2012 9:00 AM Motion for Discovery

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16A

COURT CLERK: Denise Trujillo
 Aaron Carbajal

RECORDER: Debbie Winn

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D.	Attorney
	Hickman, Wilburt	Defendant
	State of Nevada	Plaintiff
	Wong, Hetty O.	Attorney

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR DISCOVERY

Deft. present in custody. As to Request #1-4, Motion GRANTED; as to Request #5 any and all records of car-to-car police communications is already covered by #4, Motion GRANTED; as to Request #6 any and all information relating to other suspects, Motion GRANTED; as to Request #7-24 any and all statements taped or otherwise, Motion GRANTED, and State to make an affirmative inquiry; as to Request #25-42 any and all relevant criminal history, Motion GRANTED to the extent of Brady material; as to Request #43-44, Motion GRANTED; as to Request #45 any and all officer and/or detective reports, Motion GRANTED; as to Request #46 and an all officer and/or detective notes, Motion GRANTED and State to make an affirmative inquiry; as to Request #47 any other reports, witness statements, affidavits, declarations, video, or other material the State is relying on in its case in chief, Motion GRANTED. Ms. Ballou to prepare the Order.

CUSTODY

PRINT DATE: 02/12/2020

Page 7 of 54

Minutes Date: January 12, 2012

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 13, 2013

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

March 13, 2013 9:00 AM Request

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Denise Trujillo
 Dania Batiste
 Teresa Slade
 Keri Cromer
 Sharon Coffman

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D.	Attorney
	Hickman, Wilburt	Defendant
	Monje, Ofelia L.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- ALSO PRESENT: Michael Posen, Esq.

Mr. Posen advised he is not counsel of record for Deft., but he will be substituting in. Court directed Mr. Posen to file a Substitution of Attorney motion; once filed, the Public Defender's office will then transfer Deft.'s file to Mr. Posen.

All parties agreed to set new trial dates for mid to late May. COURT ORDERED, trial dates vacated and reset.

CUSTODY

C-12-278699-1

5/6/2013 9:00 AM CALENDAR CALL

5/13/2013 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 17, 2013

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

April 17, 2013 9:00 AM Status Check: Trial Setting

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Denise Trujillo
Dania Batiste

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Ballou, Erika D.	Attorney
	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: TRIAL SETTING

Deft. present in custody. Mr. Posin filed a Substitution of Attorney in OPEN COURT, and requested trial date to be reset. COURT ORDERED, trial date VACATED and RESET. Court noted this is the last time trial date will be reset.

CUSTODY

8/26/13 9:00 AM CALENDAR CALL

9/3/13 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 26, 2013

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

August 26, 2013 9:00 AM Calendar Call

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Denise Trujillo
 Jill Chambers

RECORDER: Debbie Winn

REPORTER:

PARTIES

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Hamner advised the Court trial is expected to go 5-6 days making is not eligible for overflow.
Court TRAILED matter to allow Mr. Posin to be present.

Matter RECALLED with Mr. Posin present but not Mr. Hamners. Court CONTINUED matter.

8/28/13 9:00 AM CONTINUED

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 28, 2013

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

August 28, 2013 9:00 AM Calendar Call

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- CALENDAR CALL

Deft. present in custody. Counsel announced ready. COURT ORDERED, matter SET for trial.

CUSTODY

9/3/13 9 AM JURY TRIAL

HAMNER/POSIN
5-6 DAYS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 03, 2013

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

September 03, 2013 9:00 AM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- TRIAL BY JURY

IN THE PRESENCE OF JURY VENIRE. Panel sworn and jury selection commenced. Twelve jurors and two alternates selected. Clerk read information and advised of Deft's pleas of not guilty. Court instructed jury as to trial procedure. Opening statements by counsel. Testimony and exhibits per worksheets.

EVENING RECESS

CONTINUED TO: 9/4/13 1:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 04, 2013

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

September 04, 2013 1:30 PM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- JURY TRIAL

IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheets.

EVENING RECESS

CONTINUED TO: 9/4/13 9 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 05, 2013

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

September 05, 2013 9:00 AM Jury Trial

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- JURY TRIAL

IN THE PRESENCE OF THE JURY. Testimony and exhibits per worksheets. CONFERENCE AT BENCH. COURT ADMONISHED and EXCUSED jury for evening recess; ADVISED to return tomorrow at 10:00 A.M.

OUTSIDE THE PRESENCE OF THE JURY: COURT DIRECTED counsel to meet in Chambers at 2:00 PM to settle jury instructions off the record. Matter CONTINUED. Court ADJOURNED.

EVENING RECESS

CUSTODY

CONTINUED TO: 9/6/13 10:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 06, 2013

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

September 06, 2013 10:00 AM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 10D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Argument by Mr. Posin as to whether Defendant's proposed instruction regarding when voluntary intoxication may be considered and what should be considered to convict a defendant of attempted murder. Court advised Mr. Posin the specific intent was already covered in other instructions and would therefore be duplicative. Jury Instructions settled. Court advised Deft. of his right not to testify. Deft. INVOKED his right to remain silent and chose to not to testify.

IN THE PRESENCE OF THE JURY. Testimony presented per worksheet. Plaintiff and Defense rested. Court instructed jury. Closing arguments by counsel. At 12:30 PM this date, jury retired to begin deliberations.

Jury Trial, CONTINUED for deliberations. Court ADJOURNED.

EVENING RECESS

C-12-278699-1

CUSTODY

9/9/13 8:30 AM - JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 09, 2013

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

September 09, 2013 8:30 AM Jury Trial

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03B

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- JURY TRIAL

Jury Deliberations continued.

OUTSIDE THE PRESENCE OF THE JURY. Court advised the jury foreman was bring brought into the courtroom to as the foreman had sent out a question regarding if the jury could not come to an agreement on all the charges. At 12:13 PM Jury Foreman brought into the courtroom. Upon Court's inquiry, Foreman stated the jurors had agreed upon some of the charges but not others; however, there was a possibility they might be able to continue deliberations. Court advised the Jury Foreman that the Jury could come back with a verdict on some charges even if they were hung on other charges; however, those undecided charges would have to be re-tried and advised the foreman to return to continue deliberations. Foreman excused at 12:15 PM tor return to jury room for further deliberations. Juror's note admitted as Court's exhibit #1.

Court advised the jury foreman was going to be brought in as the jury had not reached a verdict on all of the counts and to inquire if further deliberations would change the jury's decision. At 3:26 PM Jury Foreman brought into the courtroom. Upon Court's inquiry, Foreman stated he did not think further deliberations would change the jurors decision on the undecided charges. Foreman excused at 3:26 PM. Court noted the amount of time the Jury had deliberated and that additional deliberations would not result in the jury making a decision on the hung charges. State and Defense agreed to discontinue additional deliberations and accept the verdict as it stands at this time.

IN THE PRESENCE OF THE JURY: Upon Court's inquiry, Foreman advised further deliberations would not return a verdict as to the hung charges. At 3:31 PM this date, jury returned with the following verdicts:

COUNTS 1, 2, 3, 4, 5, 6, 7, and 8 HUNG JURY.

GUILTY of:

COUNT 9 BATTERY WITH USE OF A DEADLY WEAPON (AMNESIA FRANKLIN);
COUNT 10 BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (ANIELA HOYER);
COUNT 11 ASSAULT WITH USE OF A DEADLY WEAPON (ALLEN BURSE);
COUNT 12 ASSAULT WITH USE OF A DEADLY WEAPON (WASHINGTON THOMPSON);
COUNT 13 ASSAULT WITH USE OF A DEADLY WEAPON (MARQUETTE JENKINS);
COUNT 14 ASSAULT WITH USE OF A DEADLY WEAPON (RAMEKIN ADAMS);
COUNT 15 ASSAULT WITH USE OF A DEADLY WEAPON (SHARON POWELL);
COUNT 16 ASSAULT WITH USE OF A DEADLY WEAPON (TIFFANY TRESS);
COUNT 17 BURGLARY.

OUTSIDE THE PRESENCE OF THE JURY: Upon Court's inquiry, State requested additional time to determine whether they would like a trial set on the hung charges. Arguments by State in support of remanding Deft. Argument by Mr. Posin regarding bail. COURT ORDERED, Deft. REMANDED INTO CUSTODY; NO BAIL. COURT FURTHER ORDERED, matter SET for Status Check on setting a sentencing date and whether the state would like a re-trial set on the hung charges.

CUSTODY

9/25/13 9:00 AM - STATUS CHECK: SET SENTENCING DATE...STATE'S DECISION ON RETRYING ON REMAINING COUNTS/RESET TRIAL DATE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 25, 2013

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

September 25, 2013 9:00 AM Status Check

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Anthony, Michelle	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: SET SENTENCING DATE...STATE'S DECISION ON RETRYING ON
REMAINING COUNTS / RESET TRIAL DATE

Deft. present in custody. State advised they are not going to proceed on counts 1-8. COURT
ORDERED, CTS 1- 8 DISMISSED WITH PREJUDICE. FURTHER, matter referred to P&P and SET for
sentencing.

CUSTODY

CONTINUED TO: 12/4/13 9 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 04, 2013**

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

November 04, 2013	9:00 AM	Motion to Withdraw as Counsel	Defendant's Notice of Motion and Motion for Ineffective Assistance of Counsel and Motion for New Trial
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HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 03E**COURT CLERK:** Denise Trujillo
Andrea Natali**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Graham, Elana L.	Attorney
	Hickman, Wilburt	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S NOTICE OF MOTION AND MOTION FOR INEFFECTIVE ASSISTANCE OF COUNSEL AND MOTION FOR NEW TRIAL

Deft. present in custody and Mitchell Posin, Esq., not present. COURT ADVISED, Deft. he was not allowed to file a motion when represented by counsel; noted a Motion for New Trial and Ineffective Assistance of Counsel had been filed. Statement by Deft. regarding whether his attorney was ineffective due to trial preparations and the lack of attorney client correspondence leading up to trial; whether his attorney had filed a timely motion on his behalf. COURT FURTHER NOTED, Mr. Posin would not be discharged as counsel until he had filed a proper motion and, ORDERED, Motion DENIED. FURTHER NOTED, ineffective assistance is a post trial conviction matter.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 04, 2013

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

December 04, 2013 9:00 AM Sentencing

HEARD BY: Hardcastle, Kathy

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Bonaventure, Santino	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- SENTENCING CTS 9-17

Deft. present in custody. Mr. Posin advised both sides agree to continue sentencing as Deft. wants him to withdraw as counsel. COURT ORDERED, Mr. Posin allowed to withdraw, and PD's office to interview Deft. to see if he qualifies. Mr. Bonaventure objected as it is the policy of office not to take over cases for sentencing. Court noted they are only going to see if he qualifies at this time. Deft. advised he did not fire Mr. Posin, but Mr. Posin wants more money for sentencing, and he can not pay him now as he is in custody. COURT ORDERED, matter CONTINUED.

CUSTODY

12/9/13 9 AM SENTENCING CTS 9-17...CONFIRMATION OF COUNSEL (PD)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****December 09, 2013**

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

December 09, 2013 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 03E**COURT CLERK:** Denise Trujillo**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Rue, Jeffrey T.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT'S MOTION FOR CONTINUANCE ON GROUNDS OF ABSENCES OF WITNESSES & DISCOVER EVIDENCE, REQUESTING NEW COUNSEL & NEW TRIAL TO SUBMIT NEW EVIDENCE...SENTENCING...CONFIRMATION OF COUNSEL (PUBLIC DEFENDER)

Deft. present in custody. Mr. Posin advised he withdrew on Monday. Mr. Rue objected based on office policy not to take over a case at sentencing. Mr. Posin stated Deft. wanted him to withdraw, but will do as ordered by the Court. COURT ORDERED, it is reversing Judge Hardcastle's order and Mr. Posin will NOT be allowed to withdraw as counsel. FURTHER, he will remain as counsel until he has filed fast track appeal for Deft. after sentencing. COURT noted as to Deft's Motion, it is a fugitive document that should not have been filed and ORDERED, it to be stricken. State noted there is an issue with the PSI, as it lists 6 misdemeanor's but Scope shows about 17. Court provided copies handwritten letters on Deft's behalf to State and Mr. Posin. Mr. Posin advised he gave Deft. a copy of his file, and requested sentencing be continued so he can speak to Deft. COURT ORDERED, sentencing CONTINUED. Upon request of Mr. Posin, COURT ORDERED, Deft. determined to be indigent for purposes of obtaining transcripts.

C-12-278699-1

CUSTODY

12/18/13 9 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

December 18, 2013 9:00 AM Sentencing

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Posin, Mitchell L	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- SENTENCING 9-17

Deft. present in custody. DEFT. HICKMAN ADJUDGED GUILTY OF CT 9 - BATTERY WITH USE OF A DEADLY WEAPON (F) under the SMALL HABITUAL STATUTE; CT 10 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (F) under the SMALL HABITUAL STATUTE; COUNTS 11 - 16 - ASSAULT WITH USE OF A DEADLY WEAPON (F); and CT 17 BURGLARY (F). A packet of Deft's PRIOR JOC'S provided by the State ADMITTED as State's exhibit number 1. Arguments by counsel. Statement by Deft. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and RESTITUTION total amount of \$26,272.50, payable as noted in sentence below, Deft. SENTENCED to:

CT 9 - a MAXIMUM TWO HUNDRED AND FIFTEEN (215) of MONTHS and MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC) and \$12,639.83 RESTITUTION payable to ANNEESA FRANKLIN;

CT 10 - a MAXIMUM TWO HUNDRED AND FIFTEEN (215) of MONTHS and MINIMUM of

SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC) and \$3,263.73 RESTITUTION payable to ANYLA HOYE, to run CONSECUTIVE to CT 9;
CT 11 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 10;
CT 12 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 11;
CT 13 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 12;
CT 14 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 13;
CT 15 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 14;
CT 16 - a MAXIMUM SEVENTY TWO (72) MONTHS and MINIMUM of SIXTEEN (16) MONTHS in the NDC to run CONCURRENT with CT 15;
CT 17 - a MAXIMUM NINETY SIX (96) MONTHS and MINIMUM of TWENTY TWO (22) MONTHS in the NDC, and \$10,369.04 RESTITUTION payable to ANTIOCH CHURCH OF LAS VEGAS, INC A NON-PROFIT CORP dba ANTIOCH CHURCH, to run CONCURRENT with CT 16 with 731 DAYS credit for time served.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 29, 2014

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

January 29, 2014 9:00 AM Hearing

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Di Giacomo, Marc P. Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- HEARING DEFT. - DIRECT APPEAL

Deft. nor his counsel present. COURT NOTED this motion was filed in properly in State Court, however, his counsel properly filed direct appeal with Supreme Court. FURTHER, this Court does not have jurisdiction to hear direct appeal and ORDERED, appeal is stricken as moot.

CCDC (NDC)

CLERK'S NOTE: Clerk mailed copy of minutes to Deft. this date./dt

Wilbert Hickman #0905481
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 12, 2014

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

**February 12, 2014 9:00 AM Motion For
Reconsideration**

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Di Giacomo, Marc P. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- DEFT'S PRO PER MOTION FOR RECONSIDERATION OF MOTION FOR A NEW TRIAL DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL AND CONFLICT OF ANSWER

Deft. nor his counsel present. COURT ORDERED, Motion DENIED, this type of motion must be filed by way of a post conviction relief writ of habeas corpus.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 18, 2014

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

August 18, 2014 9:00 AM Appointment of Counsel

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Jones, Tierra D. Attorney
 State of Nevada Plaintiff
 Wildeveld, Kristina M. Attorney

JOURNAL ENTRIES

- APPOINTMENT OF COUNSEL

Deft. not present. Ms. Wildeveld confirmed as counsel and Order to Appoint Counsel signed in open court. Upon Ms. Wildeveld inquiry, Court advised she can put matter back on calendar if she has trouble getting file.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 01, 2016

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

February 01, 2016 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT: Craggs, Genevieve C. Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- DEFT'S PRO PER MOTION TO WITHDRAW COUNSEL...DEFT'S PRO PER MOTION FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFT.

Deft. not present. Without benefit of argument, COURT finds both motions have identical points and authorities, an attached affidavit is mentioned, however, there is not affidavit attached. FURTHER, there is nothing in motion indicating he has tried to obtain his file and counsel refused to send it to him. COURT ORDERED, Motion to withdraw counsel is GRANTED and Motion for Pro Per Motion for Production is DENIED WITHOUT PREJUDICE, unless or until he can show Court that he has/had requested said documents and counsel refused. State to prepare the order.

NDC

CLERK'S NOTE: A copy of minute order mailed to Deft. on 2/2/16./dt

WILBER HICKMAN
NDOP #62150
P.O. BOX 208

C-12-278699-1

INDIAN SPRINGS, NV 89070

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 14, 2016

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

March 14, 2016 9:00 AM Motion to Compel

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Mishler, Karen Attorney
 State of Nevada Plaintiff
 Wildeveld, Kristina M. Attorney

JOURNAL ENTRIES

- DEFT'S MOTION TO COMPEL

Deft. not present. Ms. Wildeveld advised she has sent Deft. 2 copies, the latest one was 1/14/16, and showed Court proof. Further, she brought another copy in case someone else wanted to send it and see if it got to Deft. COURT ORDERED, Motion to Compel is DENIED, and had Ms. Wildeveld provide Court with the copy for her staff to send to Deft.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 15, 2016

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

June 15, 2016

9:00 AM

All Pending Motions

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Heap, Hilary Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- PETITIONER'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...PETITIONER'S PRO PER
MOTION FOR APPOINTMENT OF COUNSEL

Deft. not present. Court noted as to ground 1, it should have been brought up on initial appeal. As to
general allegations of ineffective assistance of trial counsel, COURT ORDERED, matter referred to
Mr. Christensen's office for appoint of counsel to review Deft's allegations. FURTHER, Matter
CONTINUED.

NDC

6/20/16 9 AM CONFIRMATION OF COUNSEL ...RESET WRIT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 20, 2016

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

June 20, 2016

9:00 AM

Confirmation of Counsel

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Debbie Winn

REPORTER:

PARTIES

PRESENT:	Heap, Hilary	Attorney
	Hickman, Wilburt	Defendant
	Shell, Alina	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- CONFIRMATION OF COUNSEL / RESET WRIT

Deft. present in custody. Ms. Shell advised she can accept appointment for post-conviction relief and request this be continued for 30 days before setting briefing schedule so she can try to get file from trial lawyer. COURT ORDERED, matter CONTINUED.

NDC

7/20/16 9 AM STATUS CHECK: SET BRIEFING SCHEDULE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 20, 2016

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

July 20, 2016 9:00 AM Status Check

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Pandukht, Taleen R Attorney
 Shell, Alina Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RECEIPT OF FILE...SET BRIEFING SCHEDULE

Deft. not present. Ms. Shell advised she is still waiting for records and requested until early January to file her supplemental petition. COURT ORDERED, briefing schedule as follows: Deft's Supplemental brief due January 9, 2017; State to respond by 3/13/17; Deft. to reply by 5/3/17 with matter being set for hearing thereafter. Court noted after hearing, she will decide if evidentiary hearing is needed with Deft. present.

NDC

5/3/17 9 AM HEARING: WRIT OF HABEAS CORPUS (POST-CONVICTION)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 28, 2016

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

July 28, 2016	3:00 AM	Motion to Disqualify Judge	Petitioner's Pro Per Motion to Disqualification of Judge Carolyn Ellsworth, Dept. No. V
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HEARD BY: Barker, David

COURTROOM: No Location

COURT CLERK: Alan Castle

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT NOTES no record of proper service of the motion upon Judge Ellsworth. As a result, Judge Ellsworth's obligation to file an answer in response to the motion pursuant to NRS 1.235(5) has not been triggered.

COURT FURTHER NOTES Defendant filed the motion to disqualify in proper person but he is now represented in this matter by attorney Alina Shell. COURT ORDERED, the clerk is directed to forward a copy of Defendant's motion and this minute order to attorney Alina Shell for review. Upon review of Defendant's motion and after consultation with Defendant, Ms. Shell as Defendant's attorney to decide whether to file and properly serve a motion for disqualification of Judge Ellsworth. It is FURTHER ORDERED, Defendant's Motion for Disqualification of Judge Carolyn Ellsworth Dept. No. 5, FILED, May 4, 2016, OFF CALENDAR.

CLERK'S NOTE: The above minute order has been distributed to: McLetchie Shell, LLC (Alina Shell,

Esq.). ac/07/28/16.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 22, 2016

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

August 22, 2016 9:00 AM Motion for Order

HEARD BY: Bixler, James **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Debbie Winn

REPORTER:

PARTIES

PRESENT:	Pandukht, Taleen R	Attorney
	Shell, Alina	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- PETITIONER'S MOTION FOR ORDER FOR PRODUCTION OF RECORDS FROM PRIOR COUNSEL

Deft. not present. Court noted he received a letter by fax this morning about sending file to Deft. in 2014. Ms. Shell advised Court of the problems she has had trying to obtain the file. She did receive a file, but it has no work product, such as interviews with witnesses, etc., and this was a long case with multiple charges, so there has to be more than what was presented. COURT ORDERED, Mr. Posin to provide everything he has on the case and provide Court with written verification to Court and counsel. FURTHER, matter CONTINUED for status check.

NDC

9/25/16 9 AM STATUS CHECK: RECORDS

CLERK'S NOTE: Law clerk called and left message on Mr. Posin's voicemail./ dt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 19, 2016

C-12-278699-1	State of Nevada
	vs
	Wilburt Hickman

September 19, 2016 9:00 AM Motion

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Flinn, William W.	Attorney
	Shell, Alina	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT'S MOTION FOR PARALEGAL FEES

Deft. not present. State opposes motion. COURT finds that \$50.00 per hour for a paralegal is preferable to paying for attorney to do some of the work needed on this case. Upon Court's inquiry, Ms. Shell stated she could probably use 60 - 80 hours. COURT ORDERED, Motion GRANTED for 40 hours, and if she needs more time, she can bring matter back on calendar.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 28, 2016

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

September 28, 2016 9:00 AM Status Check

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Craggs, Genevieve C. Attorney
 Shell, Alina Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RECORDS

Deft. not present. Ms. Shell advised she believes she has received Mr. Posin's entire file. COURT ORDERED, matter OFF CALENDAR.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 07, 2016

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

November 07, 2016 9:00 AM Motion

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Pandukht, Taleen R	Attorney
	Shell, Alina	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT'S MOTION FOR SUPPLEMENTAL FEES

Deft. not present. Statement by Ms. Shell. COURT stated findings and ORDERED, Motion DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 24, 2017**

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

July 24, 2017**9:00 AM****Status Check**

**Status Check:
Request for Briefing
Schedule Extension**

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Andrea Natali**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Hickman, Wilburt	Defendant
	Pandukht, Taleen R	Attorney
	Shell, Alina	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present, incarcerated in the Nevada Dept. of Corrections (NDC). COURT NOTED, it was concerned that there was a request for a briefing schedule extension for the Reply, there was no request for an evaluation and there would be new matters raised. Ms. Shell stated when she took on this case in November she had started requesting records, but she didn't receive the social security records until June, which was after she had filed the supplement on this matter; additionally, she had issues getting hold of her investigator and she wanted to give the State time to respond. Ms. Pandukht stated she had concerns that the 90 day request seemed lengthy, mental health was not brought up to prior counsel, or in the plea, there was an evaluation done four months prior to the incident and he did not have any issues; argued this was irrelevant and no matter what the Deft. s mental state was now it was irrelevant. COURT NOTED, it had this type of matter come up before, where a psychiatrist or psychologist couldn't say whether the Deft. had a mental health issue at the time; therefore, it wanted to make sure first there was a basis and the expert the Defense wanted to hire, could say he would be able to opine on what the Deft.'s mental health state was at the time and

that request would need to be made upon the Court. Ms. Shell stated the Deft. was receiving treatment from Southern Nevada Adult Mental Health Services (SNAMHS) at the time of the offense and several years prior to, and that was included with her supplement; advised she needed an expert to look at the voluminous records. COURT DIRECTED, the defense to send those records for in camera review this week and ORDERED, matter CONTINUED three weeks to allow it to review the records, then it would look at the State's documents and determine how much time for the supplement, the States response, and the Defense reply. COURT FURTHER ORDERED, the matter currently set on July 31, 2017 is VACATED.

NDC

8/17/17 - 9:00 AM - STATUS CHECK: REQUEST FOR BRIEFING SCHEDULE EXTENSION ...
STATUS CHECK: RESET HEARING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 14, 2017**

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

August 14, 2017 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Pandukht, Taleen R	Attorney
	Shell, Alina	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RESET HEARING ... STATUS CHECK: REQUEST FOR BRIEFING SCHEDULE EXTENSION

Deft. not present, incarcerated in the Nevada Dept. of Corrections (NDC). COURT NOTED, it had the ex parte motion to retina the expert and the order to file under seal for all the records, which it had reviewed and there were a lot of records. FURTHER NOTED, the social security was messed up as in 2008 the evaluator indicated the Deft. was a malingerer, but two years later after reviewing the same documentation another evaluator approved and gave the Deft. benefits; therefore, ORDERED, the ex parte motion to appoint an expert GRANTED; DIRECTED, counsel to provide the documents to the State, the new evaluator will have to look at the documents, and the defense will have to show how this matter fits into Strickland. As to providing the documents, Ms. Shell requested to prepare an order as medical records were protected. COURT SO AGREED. Further, Ms. Shell requested the status checks be CONTINUED one week. COURT SO ORDERED and DIRECTED Ms. Shell to send the Widdis order over as it had approved fees to obtain an expert. Order related to filing documents under seal SIGNED IN OPEN COURT and provided to Ms. Shell to file.

C-12-278699-1

NDC

CONTINUED TO: 8/21/17 - 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 21, 2017

C-12-278699-1 State of Nevada
vs
Wilburt Hickman

August 21, 2017 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Patti Slattery

REPORTER:

PARTIES

PRESENT: Luong, Vivian Attorney
 Shell, Alina Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RESET HEARING ... STATUS CHECK: REQUEST FOR BRIEFING SCHEDULE EXTENSION

Deft. not present incarcerated in the Nevada Dept. of Corrections. Ms. Shell stated she spoke with the expert and based on his schedule he will be able to go out to do the assessment in October; therefore, requested the briefing schedule be set to begin in later December. COURT ORDERED, matter SET for hearing and counsel advised of following briefing schedule:
Defendant's supplemental brief DUE BY 12/18/17,
State's response DUE BY 2/16/18,
Defendant's reply DUE BY 3/2/18.

NDC

3/19/18 - 9:00 AM - HEARING: SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 28, 2018

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

February 28, 2018 9:00 AM At Request of Court

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Hickman, Wilburt	Defendant
	Pandukht, Taleen R	Attorney
	Shell, Alina	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present. CONFERENCE AT THE BENCH. COURT NOTED this matter was placed on calendar because there was another stipulation to extend the petition dates and it wanted to make sure this was the last extension; therefor, ADVISED, it would sign the order and figure out the appropriate date and have its JEA indicate the date within the order. COURT ORDERED, matter CURRENTLY set for June 11, 2018 is VACATED and TO BE RESET sometime after July 20, 2018.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 10, 2018

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

September 10, 2018 9:00 AM Hearing

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Pandukht, Taleen R	Attorney
	Shell, Alina	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present, incarcerated in the Nevada Dept. of Corrections (NDC). COURT ORDERED, matter SET for evidentiary hearing on whether the Deft. was mentally ill at any time counsel had dealt with the Deft. Colloquy regarding the other attorneys who represented the Deft. Ms. Pandukht stated she was ready to argue the matter and opposed an evidentiary hearing from being set. CONFERENCE AT THE BENCH.

NDC

11/30/18 - 9:00 AM - EVIDENTIARY HEARING: SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****September 27, 2019**

C-12-278699-1 State of Nevada
 vs
 Wilburt Hickman

September 27, 2019 9:00 AM Evidentiary Hearing

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Andrea Natali**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Hamner, Christopher S.	Attorney
	Hickman, Wilburt	Defendant
	Shell, Alina	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. present at liberty. Upon Court's inquiry, Deft. ACKNOWLEDGED his attorney client privilege would have to be WAIVED. Mr. Hamner INVOKED the exclusionary rule. Testimony and Exhibit presented (see worksheets). Argument by Ms. Shell in support of the Petition, noting that the Deft.'s trial and sentencing counsel had a duty, to ask the Deft. about his Mental Health (MH). Further argument by Ms. Shell regarding how it prejudiced the Deft. at sentencing, as the Court may not have imposed the small habitual criminal provision, if it had known the Deft. had MH issues. COURT ADVISED, knowing what it knew now, that the Deft. intentionally went off his medications and he had been grossly intoxicated, it more than likely would have sentenced the Deft. for a longer time, as it would have felt the Deft. was a danger. COURT NOTED, even in a controlled environment, the Deft. refused to take his medications, FURTHER ADVISED, the Deft. was a hazard to society and it would not have sentenced the Deft. to a lesser time, as all those things wouldn't have mitigated, they would have enhanced. Ms. Shell submitted. Argument by Mr. Hamner in opposition to the petition, noting why Mr. Posin would not have asked about the Deft.'s MH status, as the Deft. did not show any external symptoms of having a MH illness. COURT FURTHER NOTED, based upon the testimony, it didn't think the Deft.'s attorney would have thought the Deft. had a MH issue, as the

Deft. stated he concealed it. COURT FINDS there was no showing that trial counsel was ineffective, there was no prejudice to the Deft., as it didn't think it would have made a difference, and considering the evidence today, it was better for the Deft. to be in prison. FURTHER FINDS, trial counsel did good at trial, there was no prejudice at sentencing, and all the other things were without merit. COURT DIRECTED, the State to prepare the Findings of Fact and Conclusions of Law, and provide to Ms. Shell, before submission to the Court.

NDC

STATE'S EXHIBITS

CASE NO. C 278699

		Date Offered	Objection	Date Admitted
1)	Photo - overhead of church	9/3/13	no	9/3/13
2)	" "	↓	↓	↓
3)	" "	↓	↓	↓
4)	" Streetview of church	↓	↓	↓
5)	" "	9/3	no	9/3
6)	" Frontview of entrance with car in it	↓	↓	↓
7)	" "	↓	↓	↓
8)	" Side view of car in church	↓	↓	↓
9)	" "	↓	↓	↓
10)	" Hood of car in church	9/3/13	no	9/3/13
11)	" "	↓	↓	↓
12)	" "	9/3/13	↓	↓
13)	" treadmarks from car	↓	↓	↓
14)	" "	↓	↓	↓
15)	" "	9-5-13	NONE	9-5-13
16)	" firemark from on street	9/4	no	9/4
17)	" "	9-5-13	NONE	9-5-13
18)	" "	9-5-13	NONE	9-5-13
19)	" tire marks on Street	9-5-13	NONE	9-5-13
20)	" car being towed away	9-5-13	NONE	9-5-13
21)	" Aniya Hoge at church	9/4/13	no	9/4/13
22)	" Aniya Hoge's Foot	↓	↓	↓
23)	" "	↓	↓	↓

STATE'S EXHIBITS

CASE NO. C 278699

[illegible]

VAULT EXHIBIT FORM

JURY FEES: \$

COUNSEL FOR PLAINTIFF
R. Scow & C. Hamner
COUNSEL FOR DEFENDANT
M. Posin

[illegible]

VAULT EXHIBIT FORM

JURY FEES: \$

COUNSEL FOR PLAINTIFF
Chris Hamner
COUNSEL FOR DEFENDANT
Mitchell Posin

EXHIBIT(S) LIST

Case No.: C278699 Hearing Date: 9-27-19
Dept. No.: 5 Judge: CAROLYN ELLSWORTH
Court Clerk: ANDREA NATALI
Plaintiff: State of Nevada Recorder: Rubina Feda
Counsel for Plaintiff: Christopher Hamner,
Chf. Dep. D.A.
Defendant: Wilburt Hickman Counsel for Defendant: Alina Shell, Esq.

Hearing

BEFORE THE COURT

Defendant's EXHIBITS

[illegible]

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF
ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT
MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

WILBURT HICKMAN
aka WILLIAMS HICKS,

Defendant(s).

Case No: C-12-278699-1

Dept No: V

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 12 day of February 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk