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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN PORTER,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)

Case No: 80738

APPELLANT’S APPENDIX
Volume VII

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WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 28 day of the month of June, 2019.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-174954 Does not contain the social security number of any person.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

I, Justin Porter, hereby certify pursuant to N.R.C.P. 5(b), that on this 28 day of the month of June, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

JUSTIN PORTER # 1042449

P.O. Box 650

INDIAN SPRINGS, NV. 89070

8th Judicial District Court

CLARK County, Nevada

JUSTIN PORTER

Petitioner

CASE NO. 6174954

DEPT. NO. 0

- VS -

WARDEN - BRIAN Williams

Respondent(s).

"MEMORANDUM WITH POINTS AND AUTHORITIES"

COMES NOW, Petitioner, AFORE-NAMED, for the above captioned cause, who submits this MEMORANDUM IN SUPPORT OF his ACCOMPANYING PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION).

PURSUANT TO N.R.S. CHAPTER 34, Article 1, Sec., 5 AND Article 1, Sec., 8 of the NEVADA CONSTITUTION, The Fifth, Sixth, AND Fourteenth Amendment to the UNITED STATES CONSTITUTION, Article 1, Sec., 9 AND Article 6 PARAGRAPH 2, OF the UNITED STATES CONSTITUTION, AND the Eighth JUDICIAL DISTRICT COURT RULE(S), Attached Points and Authorities, Exhibits, Affidavits, AND All Papers, Pleadings AND Documents ON file herein

DATED this 28 DAY OF June, 2019

Submitted by: Justin Porter

AA602

POINTS AND AUTHORITIES

A. Procedural Background, in Pertinate Part(s).

ON OR ABOUT the 26 DAY OF APRIL, 2001, Petitioner WAS ILLEGALLY charged with murder, ON OR ABOUT the 30 DAY OF APRIL, 2004 the state filed it's Third Amended Information, charging Petitioner with: COUNT 1- Burglary while in Possession of a Deadly Weapon; COUNT 2- Attempt Robbery with use of a Deadly Weapon, AND COUNT 3- murder with use of a Deadly Weapon.

ON MAY 8, 2009, A JURY ILLEGALLY found Petitioner guilty of Count 3, of second Degree murder with use of a Deadly Weapon. Petitioner was found Not Guilty of counts 1 and 2.

ON September 30, 2009 This COURT sentenced Petitioner to the Nevada Department of Corrections for 120 months to life, Plus a consecutive term of 120 months to life for the use of a Deadly Weapon, with 3,338 days credit for time served. Judgment of conviction was filed on Oct. 13, 2009.

~~On October 13, 2009, the Nevada Department of Corrections filed a Notice of Appeal with the Nevada Supreme Court.~~
Petitioner filed Notice of Appeal ON Oct. 29, 2009, ON Nov. 8, 2010. The Nevada Supreme COURT AFFIRMED the Judgment of conviction, AND ISSUED it's Remittur ON December 3, 2010.

ON Feb. 10, 2012 Petitioner filed his first Pro. Per. Post-conviction Petition for Writ of Habeas Corpus. The state filed its Response and motion to Dismiss on March 21, 2012. On April 23, 2012 the state District Court denied Petitioner's Petition as untimely. Findings of fact, conclusions of law and order were filed on June 11, 2012. Petitioner appealed the denial of his first Petition on May 8, 2012 and on March 11, 2013, the Nevada Supreme Court affirmed the denial. Remittitur issued on March 19, 2013.

On August 26, 2013 Petitioner filed his second Pro. Per. Post-conviction Petition for Writ of Habeas Corpus, and a separate motion to appoint counsel. The state filed its Response and motion to Dismiss on Jan. 3, 2014. On Jan. 13, 2014, the court denied Petitioner's Second Petition as time-barred. Petitioner filed Notice of Appeal from the Denial of His Second Petition on Feb. 7, 2014 and on June 11, 2014 the Nevada Supreme Court affirmed the denial. Remittitur issued on July 15, 2014.

On Oct. 26, 2015 Petitioner filed his third Pro. Per. Post-conviction Petition for Writ of Habeas Corpus. The state filed its Response and motion to Dismiss on Jan. 26, 2016. On March 10, 2016 the court denied Petitioner's Petition. On April 20, 2016 Petitioner filed Notice of Appeal. Pro. Per. and on Aug. 17, 2016, Court of Appeals

for the State of Nevada, ISSUES IT'S ORDER
OF AFFIRMANCE.

THAT ON OR ABOUT THE 31 DAY OF December, 2018
Petitioner met AN INMATE, who Prepared
the INSTANT Petition for Writ of Habeas
CORPUS, POST-CONVICTION.

Dated this 28 DAY OF JUNE, 2019.

BY: Justin Porter 6/28/2019
JUSTIN PORTER-Petitioner-PRO. PER.

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACT(S).

THE EVIDENCE OF ACTUAL INNOCENCE AND INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL REFERRED TO AND EVIDENCED HEREIN CONSTITUTES "GOOD CAUSE" TO OVERCOME ANY PROCEDURAL BAR., to wit:

1. N.R.S. 34.726 states the following:

(1.) unless there is good cause shown for delay, a petition that challenges the validity of a judgment or a sentence must be filed within one (1) year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within one year after the supreme court enters its remittitur.

For the purpose of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court [that]:

(A) the delay is not the fault of the petitioner; AND
(b) dismissal of the petition will unduly prejudice the petitioner.

The precedent for which to determine whether the one (1) year filing time for this petition should be waived pursuant to N.R.S. 34.726 has been decided and given by the Supreme Court of our state, in *Pellegrini v. State*, 117 Nev. 860 (2001).

Wherein it was rightly reasoned that:

TO Show good Cause, the Petitioner must demonstrate that an impediment external to the defense prevented him from raising his claims earlier. (see Pellegrini v. State at 863) AND see MARTINEZ v. RYAN, 132 S.Ct. 1309, 182 L.Ed. 2d. 272, 80 U.S.L.W. 4216 (2012).

Wherein, ON MARCH 20, 2012, the UNITED STATES SUPREME COURT decided MARTINEZ v. RYAN, SUPRA.

Therein the Court stated:

"... When a State Requires a Prisoner to Raise an Ineffective-Assistance-of-Trial-Counsel Claim in a Collateral Proceeding, a Prisoner may establish Cause for a default of an Ineffective-Assistance-Claim in two circumstances ~~one~~ is where the State Courts did NOT Appoint Counsel in the initial-Review Collateral Proceeding for a claim of Ineffective-Assistance at Trial.

" id. 132 S.Ct. at 1318, 182 L.Ed. 2d. at 286 (Emphasis added).

AS NOTED ANTE, Petitioner WAS NOT Appointed Counsel in His initial-Review Collateral Proceeding despite His efforts. Petitioner So Submits, see WALKER v. McCAUGHY, 72 F.Supp. 2d. 1025.

(E.D.Wis. 1999) (Denial of Appellate Counsel Resulted in Automatic Prejudice and Required Reinstatement

OF State Appeal); Wisc Ex Rel Toliver V McCaugh-
TRY, 72 F. SUPP. 960 (ED. Wisc. 1999) (Denial
OF Right to Counsel on the first direct Appeal
WARRANTED Conditionally granting The WRIT
AND ORDERING That Toliver be Released
within 120 days unless the State Re-instates
The Direct Appeal AND Providing Toliver with
Appointed Counsel (within 120 days). see Also, U.S.
V. Wadsworth, 830 F.2d. 1500 (9th. cir. 1987)
(The TRIAL Court's denial of the defendant's
Rights to Counsel, is Per Se Reversal).

Nevertheless, Failure to Properly Present
Constitutional Issues by Habeas Counsel
will Also constitute Ineffective Assistance
of Counsel as well, see GRIFFIN V. Delo,
961 F.2d 793, 794 (8th. Cir. 1992)

DEMONSTRATION OF A SUBSTANTIAL CLAIM (ReJUNICE)

In MARTINEZ, SUPRA, the Court Stated:

"To overcome the default, A Prisoner
must Also demonstrate that the underlying ineffective-
Assistance-of-TRIAL-Counsel Claim is a Substantial one,
which is to say that the Prisoner must demonstrate
that the Claim has Some merit. (citation Omitted)"
id. 132 S.Ct. At 1318, 182 L.Ed. 2d, At 286

In DOUGLAS V. CALIFORNIA, 372 U.S. 353,
357, 85 S.Ct. 814, 816 (1963) The Court Stated:

"When an indigent is forced to run this gauntlet of a preliminary showing of merit, the Right to Appeal does not comport with the Fair Procedure" id.

MARTINEZ, Also Acknowledges that the initial-Review Collateral Proceeding is in many ways the equivalent of a Prisoners First Appeal as a Right (direct Appeal), as to the Precluded ineffective-Assistance Claim. id. 132 S. Ct. at 1315-1317.

Petitioner believes that the Required Showing of "Some merit" clearly runs afoul of the Authority of Douglas, Regarding His Right to an Appeal on His ineffective-Assistance-of-Trial-Counsel-claims.

Petitioner, further states that the State Scheme of Precluding ineffective Assistance of Counsel Claims on Direct Appeal, heightening the standard to present and obtain counsel in the initial-Review Collateral Proceeding, is contrary to the Jurisprudence underlying His Right to Appeal, (direct Appeal), noted in Douglas, ante, which does not comport with a Fair Procedure.

AGAIN; Walker V. McCaughtry, 72

F. Supp. 2d 1025, _____ (E.D. Wisc. 1999) (Denial of Appellate Counsel Resulted in Automatic Prejudice and Required Reinstatement of State Appeal); Wisc. Ex Rel Toliver V. Mc CAUGHTRY, 72 F. Supp. 2d 960, _____ (E.D. Wisc. 1999) (Denial of the Right to Counsel on the First direct Appeal Warranted Conditionally granting the Writ and ordering that Toliver be Released within 120 days unless the state Reinstates the direct Appeal and Providing Toliver with Appointed Counsel within 120 days). See Also, U.S. V. Wadsworth, 830 F.2d. 1500, _____, (9th. Cir. 1987) (The TRIAL COURTS DENIAL of the defendant's Right to Counsel is Per se Reversal).

In the Case now at bar, the Petitioner, "Porter", was Found Guilty of 2nd Degree murder, on May 8th, 2009, and more than one (1) Year has Passed from his being so convicted, until the Filing of this Petition, AND the Instant Petition is a Successive Petition. However... good Cause EXISTS, For the delay of over a Year, AND For the Successive Petition, because:

The Cause of this Action is based upon

Petitioners ACTUAL INNOCENCE OF
2nd. Degree murder AND...
INEFFECTIVE ASSISTANCE OF trial
COUNSEL;

That Dismissal of this Petition will
unduly Prejudice the Petitioner,
[Porter], because:

If this Petition is dismissed, Porter
will be convicted wrongfully, for
crimes he is "ACTUALLY INNOCENT" of,
and will never have had an opportunity
to show the court his innocence.

That Petitioner's conviction will be
the result of INEFFECTIVE ASSISTANCE
OF TRIAL COUNSEL.

Wherein the INCOMPETANCE OF TRIAL
COUNSEL DID ACT AS AN IMPEDIMENT
EXTERNAL to Petitioner's defense, did deny
Petitioner's Theory of His defense to be
Presented to the JURY, in a JURY
INSTRUCTION, (INVOLUNTARY MANSLAUGHTER)

That IF this Petition is DISMISSED
Petitioner would NOT have the OPPORTUNITY

to Present the Afore-stated Claims
to the Court, AND...

Such PreJudice is BeneATH the
Dignity of this Honorable Court
to condone; AND,

Petitioner's conviction will be the
Result of MANIFEST INJUSTICE
to Petitioner, AS there is A
Sufficient basis to show good CAUSE
to excuse the "Procedural BAR(S)" OR
conclude that A "Fundamental/
MISCARRIAGE of Justice", will OCCUR
from the Failure to consider his
claims for Relief on the merits, Per.
Rule ANNOUNCED IN Pellegrini v. State,
117 Nev. 860 (2001) AND MURRAY V. CARRIER,
477 U.S. 478, 489. 91 L. Ed. 2d. 397,
106 S. Ct. 2639 AND see
MARTINEZ V. RYAN, 132 S. Ct. 1309, 182 L. Ed.
2d. 272, 80 U.S. L.W. 4216 (2012).

N.R.S. 34.810(3) states in part:
Pursuant to Subsections 1 and 2 [34.810], the
Petitioner has the burden of Pleading AND
Proving specific facts that demonstrate:
(A) GOOD CAUSE FOR... Presenting the claim AGAIN; AND
(b) Actual PreJudice to the Petitioner.

IN the foregoing Petition, Porter is now stating a colorable claim of ACTUAL INNOCENCE. The Supreme Court of our state has recognized that the standards in N.R.S. 34.810(3)(A)(b), above, can be met where the Petitioner "MAKES A colorable showing that he is ACTUALLY INNOCENT of the crime". (see Pellegrini v. State, id; at 863).

more over, binding federal Authority, as related by the Supreme Court of our UNITED STATES in Bousely v. UNITED STATES, citing MURRAY V. CARRIER, Holds:

Procedural hurdles can be overcome if the Petitioner can demonstrate either, "CAUSE AND ACTUAL Prejudice", e.g.; MURRAY V. CARRIER, or that He is "ACTUALLY INNOCENT", (see Bousely v. UNITED STATES, 523 U.S. 614 (1998)).

Accordingly, it is clear by demonstrations above that:

Petitioner's claims concerning ineffective Assistance of trial Counsel, are actionable because they are being raised herein as a direct result of being denied appointed Counsel in his initial-review-collateral

Proceeding for a claim of Ineffective Assistance at Trial, MARTINEZ V. RYAN, SUPRA

Petitioner's claims of Actual Innocence ARE ACTIONABLE because they ARE beyond Procedural Bars Pursuant to state and federal binding Authorities.

These claims should be considered herein on their merits without regard to ANY Procedural bar. ("Truth is not ONLY Violated by falsehood's it MAY be EQUALLY OUTRAGED by Silence") (Henri Fredric Amiel - Swiss Philosopher, Amiel's Journal, 1883')

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS

GROUND ONE: Petitioner is ACTUALLY INNOCENT, Denial of Due Process of Law, 14th. Amendment to the U. S. C., AND Article one sec. 3 of the NEVADA CONSTITUTION.

SUPPORTING FACTS:

Petitioner Asserts that there is NO evidence in the Instant case to SUPPORT His UNLAWFUL CONVICTION For second degree murder.

That He, [Petitioner] is ACTUALLY AND FACTUALLY INNOCENT of the complained of second degree

murder conviction. That a cursory glance into the Record of this case will demonstrate, _____, that Your Petitioner did not exercise Felonious Intent, nor willful, Deliberate, nor Premeditation to murder, nor malicious Intent, nor malice Aforethought, The ESSENTIAL ELEMENTS AND... NECESSARY GRAVEMAN to obtain and sustain a second degree murder conviction, [lawfully], see Due Process of Law Clause(s) of the 5th and 14th Amendment(s) to the UNITED STATES CONSTITUTION. And see IN-Voluntary Statement of Petitioner, [JUSTIN PORTER], on file with this court, entered into the Record of this case at trial, marked as exhibit #104, attached hereto by reference, therein, Petitioner asserted, in his IN-Voluntary statement that "He entered a apartment, believed by himself, to be UNOCCUPIED, while attempting to evade Police, when out of the DARK, a person suddenly advanced towards him, Frightening Petitioner, and causing Petitioner to shoot his firearm, out of pure fear for his safety. See Bailey V. State, 100 Nev. 562, 688 P.2d. 320; 1984 Nev. Lexis 424 NO. 14 827 Oct. 4, 1984. In Bailey supra, The High COURT OF OUR Great State of NEVADA, Rightly.

Reasoned that "IN VOLUNTARY MANSLAUGHTER
IS BY DEFINITION AN UNINTENTIONAL KILLING".

see N.R.S. 200.070; see also PARSON V. STATE, 74 Nev. 302, 329 P.2d. 1070 (1958).

is That before this Honorable Court
is an UNLAWFUL CONVICTION for Second
degree murder, wherein all the evidence
adduced at TRIAL supported ONLY a
conviction for IN VOLUNTARY murder,
thus giving rise to Petitioners Lawful
claim(s) of Actual and Factual Innocent.

That this "WRIT" is the Proper Remedy
for Petitioners Actual Innocent claim,
per. SNOW V. NEVADA, 105 Nev. 521 (1989).

That although it has been more than 1 yr.
since Petitioners Remittor was filed, and
Petitioner's Instant Petition may be considered
successive, the procedural hurdles afore-
cited, can be overcome [if] the Petitioner
can demonstrate either "CAUSE AND ACTUAL
PREJUDICE", E.g.; MURRAY V. CARRIER, 477
U.S. 478, 489, 91 L.Ed 2d. 397, 106 S.Ct.
2639 OR... that he is "ACTUALLY INNOCENT".
Id.; at 496, Bousley V. UNITED STATES,
523 U.S. 614 (1998).

Therefore in the Instant Case, a
conviction obtained absent Constitutional
Guarantees of the 6th Amendment to the UNITED

states Constitution, I.E., EFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL AND THE 5th Amendment to the UNITED STATES CONSTITUTION, AND THE 14th Amendment to the UNITED STATES CONSTITUTION, THE DUE PROCESS OF LAW CLAUSES, I.E., ACTUAL INNOCENCE, "THEN"... Provides A WAIVER FOR BOTH, THE TIME AND SUCCESSIVE, PROCEDURAL BARS.

IN BOUSLEY, THE PETITIONER PLED TO A COUNT OF USING AND CARRYING A GUN DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME, UPON THE REINTERPRETATION, OF THIS LAW; IN BAILEY V. UNITED STATES, 516 U.S. 137 (1995), DEFENDANT'S PLEA WAS ALLOWED TO BE SET ASIDE, DESPITE THE FACT THAT SUCH AN ACTION WOULD BE PROCEDURAL BARRED. [THE] SUPREME COURT STATED THAT PETITIONER'S CLAIM MAY STILL BE REVIEWED IN THIS COLLATERAL PROCEEDING IF HE CAN ESTABLISH THAT THE CONSTITUTIONAL ERROR HAS; "PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT". MURRAY V. CARRIER, 477 U.S. 496.

TO ESTABLISH ACTUAL INNOCENCE, PETITIONER MUST DEMONSTRATE THAT "IN LIGHT OF ALL THE EVIDENCE, IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM". SCHUP V. DELA, 513 U.S. 298 327-328, 130 L. ED 2d. 808, 115 S. CT. 851 (1995). (QUOTING FRIENDLY); IS

INNOCENCE irrelevant Collateral Attack
ON CRIMINAL Judgment(s) 38 U. Chi.
L. Rev. 142, 160 (1970).

IN that case the Supreme Court held there
WAS NO Procedural default IF, good Cause
existed, OR there WAS error that resulted
in the conviction OF AN innocent Person.

FINALLY, THERE is NO evidence to support
the complained of, UNLAWFUL conviction for
second degree murder. TO the CONTRARY
the evidence adduced AT TRIAL clearly
ONLY supported A INVOLUNTARY
MANSLAUGHTER conviction, I.E., "A Killing
without malice aforethought"

see AGAIN, IN-VOLUNTARY statement of
Petitioner, [JUSTIN PORTER], on file with
this Court, entered into the Record of this
case AT TRIAL, MARKED AS exhibit #104, attached
Hereto by Reference.

The Administration of Justice, will Require
that the INSTANT conviction be VACATED, OR
IN the ALTERNATIVE, Remand the same for AN
"EVIDENTIARY HEARING", to give Petitioner A
lawful OPPORTUNITY to Prove the facts
supporting his claim(s).

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS

GROUND TWO: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL. (Denial of the 6th Amendment to the U.S.C.)

SUPPORTING FACTS.

The HIGH COURT... of our Great COUNTRY, has articulated the meritorious ineffective Assistance of Counsel claim has two components; First, the Petitioner must show that the Counsel's Performance was deficient, falling well below a Professional Standard of Reasonableness... Second, the Petitioner must show that the deficient Performance Prejudiced Petitioner.

ON the deficiency Prong, because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that Counsel's conduct falls within the wide range of Reasonableness, Professional Assistance" I.E.; The Petitioner must overcome the Presumption that under the circumstances, the Challenged Action(s) might be considered Sound Strategy.

" HERE THE FACT(S), AS ALLEGED BY PETITIONER, OVERCOME THAT PRESUMPTION."

I d, EST;

A. Petitioner's Attorney(s) of Record, CLARK County Public Defender Philip J. Kohn, did, by and through his Deputy(s), Curtis BROWN, ESQ, AND

JOSEPH ABOOD, ESQ., DELIBERATELY, AND KNOWINGLY, ACT AS AN IMPEDIMENT EXTERNAL TO PETITIONER'S DEFENSE, DID REFUSE AND OR FAILED TO INSTRUCT THE JURY ON PETITIONER'S THEORY OF THE CASE.

THAT THE FAILURE OF TRIAL COUNSEL TO PROFER THE JURY INSTRUCTION OF/ON IN VOLUNTARY MANSLAUGHTER, IS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

YOUR PETITIONER MAINTAINS THAT THERE IS NOTHING PROFESSIONAL OR STRATEGIC ABOUT FAILING AND OR REFUSING TO PROFER PETITIONER'S THEORY OF THE CASE, TO THE JURY IN AN JURY INSTRUCTION, WHICH WAS/IS SUPPORTED BY CONVINCING EVIDENCE IN THE CASE. (SEE PETITIONER'S JUSTIN PORTER'S, IN-VOLUNTARY STATEMENT).

ON THE PREJUDICE PRONG, THE FACTS ALLEGED BY PETITIONER HEREIN, SHOW THAT THERE IS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL, UNETHICAL, DEFICIENT, INEFFECTIVE ASSISTANCE OF COUNSEL, THE RESULTS OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT.

PETITIONER ASSERTS THAT HE IS ACTUALLY AND FACTUALLY INNOCENT OF SECOND DEGREE MURDER AND WOULD NOT HAVE THE ILLEGAL CONVICTION COMPLAINED OF HEREIN, ABSENT INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, SEE Williams V. State, 99 NEV. 530; 663 P.2d. 260; 1983 NEV. LEXIS 481 NO. 13911 JUNE 22, 1983

Petitioner PRAYS this Honorable Court VACATE the Illegal CONVICTION(S) complained of Herein, OR IN the ALTERNATIVE, Remand this CAUSE FOR AN Evidentiary HEARING, to Give Petitioner a lawful OPPORTUNITY to Prove the Facts Supporting His CLAIMS.

B. Petitioner's Attorney(s) of Record, CLARK COUNTY Public Defender, Philip J. Kohn, did, by AND through his Deputy(s), Curtis BROWN, ESQ., AND Joseph Aboud, ESQ., deliberately, AND KNOWINGLY, ACT AS AN IMPEDIMENT EXTERNAL to Petitioner's defense, did Relieve the state of its Duty, to Prove Petitioner's Guilt of second Degree murder, beyond A Reasonable Doubt, by CONCESSING to, AND Directing the JURY to find Petitioner Guilty of Second Degree murder. See TRIAL Transcripts, DAY 5 OF TRIAL, Pg. NO. 33 LINE 16 AND see ALSO Pg. NO. 43 LINE(S) 3 thru 5. , Attached Hereto by Reference. Thus... Petitioner WAS deprived of Due Process of Law AND A FAIR TRIAL.

That the Performance evidenced Herein by Petitioner's TRIAL Counsel, Philip J. Kohn, His DEPUTIES, Fall well below AN objective standard of Reasonableness, AND but for the complained

OF UNPROFESSIONAL, INEFFECTIVE ASSISTANCE OF COUNSEL, SUFFERED BY PETITIONER DURING HIS TRIAL, THE OUTCOME OF TRIAL WOULD HAVE BEEN DIFFERENT, THAT NO RATIONAL TRIER OF FACT WOULD HAVE FOUND PETITIONER GUILTY BEYOND A REASONABLE DOUBT OF SECOND DEGREE MURDER.

PETITIONER PRAYS THIS HONORABLE COURT VACATE THE ILLEGAL CONVICTION(S) COMPLAINED OF HEREIN, OR IN THE ALTERNATIVE, REMAND THIS CAUSE FOR AN EVIDENTIARY HEARING, TO GIVE PETITIONER A LAWFUL OPPORTUNITY TO PROVE THE FACTS SUPPORTING HIS CLAIMS.

C. PETITIONER'S ATTORNEY(S) OF RECORD, CLARK COUNTY PUBLIC DEFENDER, PHILIP J. KOHN, DID BY AND THROUGH HIS DEPUTY(S), CURTIS BROWN, ESQ. AND JOSEPH ABOOD, ESQ., DELIBERATELY AND KNOWINGLY, ACT AS AN IMPEDIMENT EXTERNAL TO PETITIONER'S DEFENSE, DID RELIEVE/FAILED TO SUBJECT PROSECUTION'S CASE TO A MEANINGFUL ADVERSE TESTING PROCESS. SEE TRIAL TRANSCRIPTS, DAY NO. 5, FRIDAY, MAY 8TH, 2009, PG. NO. 33 LINE NO. 16 "THEY SUPPORT SECOND DEGREE MURDER," AND ALSO SEE TRIAL TRANSCRIPTS, DAY NO. 5, FRIDAY, MAY 8TH, 2009 PG. NO. 43, LINE(S) 3 THRU 5 "PORTER DESERVES A THOROUGH DELIBERATION PROCESS AND AS TRAGIC

AS this is, the FACTS SUPPORT second degree murder and second degree murder Should be Your VERDICT."

see U.S. V. CRONIC, 466 U.S. 648, 80 L.Ed. 2d. 657, 104 S.Ct. 2039 (1984).

IN CRONIC SUPRA, the HIGH COURT stated that "TRIAL Counsel's failure to subject the Prosecution's case to a meaningful adversary testing process MAY constitute a denial of Due Process and establish a Per se Violation of defendant's right to effective Assistance of Counsel."

FURTHER, Defense Counsel's Performance was NOT ONLY ineffective, but Counsel's abandonment OF the Required duty of Loyalty to His Client was also Abridged; Counsel did NOT simply make poor strategic or tactical choices; He acted with Reckless disregard for His Client's best interest, AND... There is because of which, no need for a showing of Prejudice as ineffective Assistance of TRIAL counsel has been/is/was herein the Record of this cause, established, PER SE.

The Same Requires REVERSAL of conviction, or in the Alternative, AN EVIDENTIARY Hearing wherein Petitioner CAN establish His Factual Allegations.

1
2 D. Petitioner's Attorney(s) of Record, Clark
3 County Public Defender, Philip J. Kohn, did by
4 and through his Deputy(s), Curtis Brown, Esq.
5 AND Joseph Abood, Esq. deliberately, AND
6 knowingly, Act AS AN IMPEDIMENT External
7 to Petitioner's DEFENSE. COUNSEL'S Failed
8 to PROTECT and PRESERVE Petitioner's 4th, 5th
9 6th AND 14th U.S. Const. Amendment Rights,
10 When Counsel's Allowed the prosecution to
11 use inadmissible evidence, Petitioner's
12 INVOLUNTARY STATEMENT, the coerced
13 Confession is the result of A warrantless
14 Arrest of MR. Porter your Petitioner.

15 ON the day of August 12, 2000, Chicago Police
16 Dept ARRESTED the Petitioner at his home,
17 by violating Petitioner Fourth Amendment
18 Right. Because of the Police entered
19 Petitioner's dwelling without A WARRANT,
20 the Petitioner was "ILLEGALLY SEIZED"
21 without Probable Cause. PAYTON V. NEW YORK,
22 445 U.S. 573, 63 L Ed 2d 639, 100 S Ct 1371 (1980).
23 The arrest warrant procedure serves to insure
24 that the deliberate, impartial judgment of a
25 judicial officer will be interposed between
26 the citizen and the Police, to assess the
27 weight and credibility of the information

1 which the complaining officer adduces as Probable
2 Cause. A vague suspicion cannot be transformed
3 into Probable cause for arrest by reason of
4 the suspect's ambiguous conduct which the
5 arresting officers themselves have provoked.
6 The essence of the constitutional provision
7 prohibiting unreasonable searches and seizures
8 is not merely - that evidence so acquired
9 shall not be used before a court but that it
10 shall not be used at all. The rule excluding
11 evidence obtained by an unlawful search
12 bars from trial not only physical, tangible materials
13 obtained either during or as a direct result
14 of an unlawful invasion, but also verbal
15 evidence, such as declarations made by accused.
16 *WONG SUN V. UNITED STATES*, 371 US 471, 9 L Ed 2d
17 441, 83 S Ct 407 (1963); *ARTERBURN V. STATE*, 111
18 Nev, 1121; 901 P.2d 668, (1995).

19 Petitioner PRAYS this Honorable Court vacate
20 the illegal conviction(s) complained of herein, OR
21 in the Alternative, Remand this cause for an
22 Evidentiary Hearing, to give Petitioner A
23 lawful opportunity to PROVE the FACTS
24 supporting his claims.

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS

GROUND THREE: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. (DENIAL OF THE 6th Amendment to the U.S.C.) SUPPORTING FACTS.

Herein Your Petitioner asserts that Appellate's counsel, MR. Howard S. BROOKS, rendered INEFFECTIVE ASSISTANCE OF COUNSEL, ON APPEAL / DIRECT APPEAL. IN degradation to long standing, well established law. See EVITTS V. LUCEY, 469 U.S. 387, 83 L. Ed. 2d. 821, 105 S.Ct. 830 (1985).

That MR. Howard S. BROOKS, (Appellate Counsel), did Refuse and/or did fail to RAISE ISSUE(s) OF Prosecutorial misconduct in Petitioner's Direct Appeal.

That before this Honorable Court is A "VAST" AMOUNT OF EVIDENCE, TESTIMONIAL EVIDENCE, witnessing the UN-questionable fact(s) that the Prosecution did ACQUIRE Admission(s) / Confession(s), from "Petitioner" / JUSTIN PORTER, who, at that time was just 17yrs. old, who was/is "BORDERLINE RETARDED", UNDENIABLY "SEVERELY IMPAIRED", that He, "DR. PAGLINI", (Forensic Psychologist) also administered Achievement tests to "PORTER" and discovered his Reading Skills were equivalent to a second grader's skills. See transcripts OF HEARINGS TO SUPPRESS Admissions OR Confessions,

(VII:1403) AND...

AT SAME AFORE-SAID HEARING(S), DR. GREGORY BROWN, A FORENSIC PSYCHIATRIST, TESTIFIED THAT, AFTER EVALUATING THE TESTS PERFORMED BY DR. PAGLINI AND THE TRANSCRIPTS OF THE INTERVIEWS PORTER HAD WITH POLICE, AND THE TESTS HE ADMINISTERED TO ASCERTAIN WHETHER PORTER COULD COMPREHEND AND UNDERSTAND MIRANDA RIGHTS, WHICH WERE ALLEGEDLY ADMINISTERED TO HIM (VII:1426), DR. BROWN OPINED THAT PORTER HAD "SIGNIFICANT DIFFICULTIES WITH VOCABULARY, READING, VERBAL PROCESSING" (VII:1433). DR. BROWN CONCLUDED BY STATING, "TO A REASONABLE DEGREE OF PSYCHIATRIC CERTAINTY IT'S MY PROFESSIONAL OPINION THAT HE [PORTER] WOULD HAVE HAD SIGNIFICANT DIFFICULT UNDERSTANDING THE MIRANDA RIGHTS, BOTH WITH REGARDS TO THE VOCABULARY AND THE COMPREHENSIONS," (VII:1434)

HERE, YOUR PETITIONER DID NOT UNDERSTAND HIS MIRANDA RIGHTS, THEREFORE HE COULD NOT MAKE A "VOLUNTARY, KNOWING, AND INTELLIGENT" WAIVER OF THOSE RIGHTS, SEE UNITED STATES V. MALE JUVENILE, 121 F.3d. 34 (2d. CIR. NY 1997).

CLEARLY, THE "TOTALITY OF THE CIRCUMSTANCES" [TEST] SEE DAVIS V. UNITED STATES, 512 U.S. 452 (1994), HAS BEEN ABANDONED AND... REDRESS OF THE SAME BY THE HIGH COURT

OF OUR GREAT STATE OF NEVADA,
[IS], WAS, REQUIRED in order to
Preserve and Protect our "Fifth
AMENDMENT Privileges AGAINST SELF-
INCRIMINATION."

APPELLATE COUNSEL'S FAILURE TO
RAISE AND ARGUE THE PROSECUTORIAL
MISCONDUCT EVIDENCED HEREIN
PETITIONER'S UNLAWFUL CONVICTION
ACQUIRED THROUGH PLAIN, OVERT VIOLATIONS
OF THE 6th AND 5th AMENDMENTS TO
THE U.S.C., IS THE PROXIMATE CAUSE
OF THE ILLEGAL CONVICTION(S) AND
SUBSEQUENT INSTANT PETITION FOR WRIT
OF HABEAS CORPUS.

THAT A REVERSAL OF PETITIONER'S CONVICTION(S)
IS REQUIRED OR IN THE ALTERNATIVE,
AN EVIDENTIARY HEARING, TO EXPAND
THE RECORD, AND PROVE PETITIONER'S
FACTUAL ALLEGATIONS.

1
2 Further, Appellate Counsel is also
3 INEFFECTIVE ON APPEAL, IN THAT [HE] Refused
4 AND OR FAILED TO RAISE AND ARGUE
5 INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
6 Claims, Where TRIAL Counsel;
7 1. Omitted his Professional Duty(ies), to Profer
8 A JURY INSTRUCTION ON Petitioners Theory of His
9 Defense Which Was/IS INVOLUNTARY manslaughter.
10 See INVOLUNTARY STATEMENT OF Petitioner
11 [Justin Porter], ON File with this Court, Entered
12 into the Record of this Case At trial, MARKed
13 as EXHIBIT #104, Attached Hereto by Reference,
14 Therein Petitioner Asserted that "He Entered A
15 Apartment, believed by Himself, to be UNOCCUPIED,
16 While attempting to Evade Police, When Out of
17 the DARK, A person suddenly Advanced towards
18 Him, Frightening Petitioner, and Causing him to
19 Shoot his firearm, out of Pure Fear for his safety.
20 The same is an Articulation by Petitioner OF
21 INVOLUNTARY manslaughter. see BAILEY SUPRA, and
22 see U.S. EX REL. BARNARD V. LANE, 819 F.2d, 798
23 (7th. Cir. 1987).

24
25 2. Further, Appellate Counsel, MR. HOWARD S.
26 BROOKS, Failed to Protect and Preserve Petitioner's
27 4th, 5th, 6th and 14th U.S. Const. Amendment Rights,

1 When Appellate Counsel did Refuse and OR did
2 Fail to Raise Issue of Petitioner being
3 "ILLEGALLY SEIZED" without Probable Cause,
4 and the inadmissible evidence allowed to
5 be used by prosecution by TRIAL Counsel's.
6 ARTERBURN V. STATE, 111 Nev, 1121, 901 P.2d 668 (1995).
7 Petitioner Prays this Court vacate the illegal convictions
8 Herein, OR in the alternative, Remand this cause for
9 an Evidentiary Hearing, to give Petitioner A lawful
10 Opportunity to Prove the Facts supporting his Claims.
11

12 3. Relieved the state of its Duty to Prove to the
13 Jury beyond A Reasonable Doubt that Petitioner
14 was Guilty of second degree murder, By...
15 conceding to, AND Directing the Jury to Find
16 Petitioner Guilty of Second Degree murder. See
17 Trial Transcripts, Day NO. 5 OF TRIAL, Pg. NO. 33 Line
18 NO. 16 ALSO see Pg. NO. 43 Line(s) 3 thru 5, Attached
19 Hereto by Reference.

20 That Appellant's Counsel's Failure to RAISE
21 Ineffective Assistance of trial Counsel Claim(s)
22 ON _____

DIRECT APPEAL APPEAL CONSTITUTES "CAUSE" FOR
PROCEDURAL DEFAULT(S). SEE MARTINEZ SUPRA,

Here, PETITIONER HAS ARTICULATED
SEVERAL COLORABLE INEFFECTIVE ASSISTANCE
OF APPELLATE COUNSEL CLAIMS, WHICH ARE
TRUE AND ENTITLE HIM TO, AT A
MINIMUM, AN EVIDENTIARY HEARING
WHEREIN PETITIONER CAN EXPAND THE
RECORD AND PROVE HIS FACTUAL
ALLEGATIONS.

POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS.

GROUND FOUR: PROSECUTORIAL
MISCONDUCT, (VIOLATION(S) OF THE 5th, 6th AND 14th AMENDMENTS TO THE U.S.C.)

SUPPORTING FACTS,

HEREIN YOUR PETITIONER ASSERTS THAT THE
STATE OF NEVADA, ITS AGENT(S), THE CLARK
COUNTY DISTRICT ATTORNEY, HIS AGENT(S),
DET. CHRIS KATO, DET. BARRY JENSEN AND
DET. JAMES LAROCHELLE, DID UNLAWFULLY OBTAIN,
A "IN-VOLUNTARY" STATEMENT/ADMISSION(S)/CONFESSION,
FROM A 17 YR OLD, MENTALLY CHALLENGED, JUVENILE, UNDER
THE THREAT OF DEATH, BEATING(S), INTIMIDATION AND
THROUGH COERCION, IN DEGRADATION TO FUNDAMENTAL
FAIRNESS, IN VIOLATION TO WELL ESTABLISHED LAW

see HOLYFIELD V. TOWNSELL, 101 Nev.
793, 711 P.2d. 845 (1985), AND see
MIRANDA V. ARIZONA, 384 U.S. 436 (1966).

That the Afore-stated Illegally
obtained, IN Voluntary Statement / admission /
CONFESSIO^N, WAS TAKEN FROM YOUR PETITIONER
AUGUST 12, 2000, Illegally Admitted into
evidence, AT PETITIONER'S TRIAL ON DAY
NO. 4.

That Appellate Counsel's Failure to RAISE AND
ARGUE PROSECUTORIAL MISCONDUCT AMOUNTS TO
VIOLATIONS OF THE 6th amendment to the
U.S.C., AND THE DUE PROCESS OF LAW CLAUSES
OF THE 5th AND 14th amendments to the
U.S.C., ALSO see AFFIDAVIT OF PETITIONER
JUSTIN PORTE, ATTACHED HERETO BY REFERENCE.

That Absent the complained of
INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL,
THE OUTCOME OF PETITIONER'S DIRECT APPEAL
WOULD HAVE BEEN DIFFERENT.

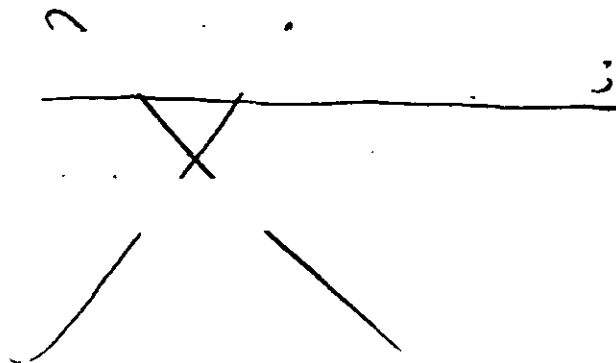
Here Your Petitioner Requests the Reversal of
His UNLAWFUL CONVICTION, ACQUIRED BY UNLAWFUL
MEANS, OR IN THE ALTERNATIVE, AN ORDER
FOR AN EVIDENTIARY HEARING, WHEREIN THE
FACTS ALLEGED HEREIN CAN BE PROVEN.



xx

2. Herein your Petitioner Asserts that the District Attorney Violated Petitioner's 4th, 5th, 6th and 14th U.S. Const. Amendment Rights, When Using at trial inadmissible evidence, Petitioner's INVOLUNTARY STATEMENT Obtained by an UNLAWFUL Searches and Seizures. *WONG SUN V. UNITED STATES*, 371 US 471, 9 L Ed 2d 441, 83 S Ct 407 (1963); *ARTERBURN V. STATE*, 111 Nev, 1121, 901 P.2d 668, (1995). Petitioner was arrested on the day of August 12, 2000, Without A Warrant.

Petitioner Prays this Honorable Court Vacate the illegal Conviction(s) complained of herein, OR in the alternative, Remand this Cause for an Evidentiary Hearing, to give Petitioner A lawful Opportunity to Prove the FACTS Supporting his Claims.



POINTS AND AUTHORITIES

B. GROUNDS AND SUPPORTING FACTS

GROUND FIVE: TRIAL COURT

ABUSED IT'S DISCRETION, (VIOLATING the 5th AND 14th Amendment(s) to the U.S.C.)

SUPPORTING FACTS,

That ON OR ABOUT the 19th DAY OF Dec. 2006, THE DISTRICT COURT, (8th JUDICIAL DISTRICT COURT), CLARK COUNTY, NEVADA, DEPT. NO.

DID, BY AND THROUGH the Honorable Judge JOHN MCGROARTY, ABUSE IT'S DISCRETION, DID UNLAWFULLY DENY Petitioner's "MOTION TO SUPPRESS DEFENDANT'S CONFESSIO(N)S,

AND ADMISSIO(N)S).

That At the time Petitioner IN-VOLUNTARILY GAVE the Respondent(s), the Admissio(n)s, AND/OR CONFESSIO(N)S in Question, [HE],

Petitioner WAS ONLY 17 years old - A Juvenile, NOT LEGALLY ABLE TO WAIVE HIS MIRANDA RIGHTS,

FURTHER...

AS EVIDENCED IN the INSTANT CASE, Your Petitioner WAS THEN AND WAS THEREAFTER, 6 1/2 YEARS LATER, "OPINIONED" BY EXPERT, DR. JOHN PAGLINI, A FORENSIC PSYCHOLOGIST, WHO TESTED Petitioner, THAT, "HE [PORTER] HAD A VERBAL I.Q. OF 78, WHICH PLACED Him in the 7th Percentile of People His AGE. (VII:1402). His Perception I.Q. WAS 80 (9th Percentile) AND His Full Scale I.Q. WAS

77 (6th Percentile), (VII:1402). DR. Paglini ALSO OPINED that "Porter" WAS NOT MENTALLY RETARDED, but... HAD "SEVERELY IMPAIRED" SCORES which evidenced A BORDERLINE INTELLIGENCE.

EXPERT TESTIMONIAL EVIDENCE
BY DR. GREGORY BROWN, A FORENSIC PSYCHIATRIST, who EVALUATED the tests PERFORMED by DR. PAGLINI AND the transcripts of the interviews "Porter" had with Police, AND the tests He, DR. BROWN Administered, to ASCERTAIN whether Porter could comprehend AND understand the MIRANDA Rights which were ALLEGEDLY Administered to Porter, I.E. DR. BROWN concluded by stating "TO A REASONABLE degree of PSYCHIATRIC CERTAINTY it's MY PROFESSIONAL OPINION that He [PORTER] would HAVE HAD SIGNIFICANT difficulty understanding the MIRANDA Rights, BOTH with REGARDS to the VOCABULARY AND the comprehension"
PETITIONER [JUSTIN PORTER] DID NOT "VOLUNTARY, KNOWING, NOR INTELLIGENTLY WAIVE HIS MIRANDA Rights, because... He, [JUSTIN PORTER] could NOT

"VOLUNTARILY, KNOWINGLY, NOR INTELLIGENTLY WAIVE HIS MIRANDA RIGHTS".

AGAIN PLEASE SEE TESTIMONIAL EVIDENCE OF DR. PAGLINI "HIS [PORTER] READING SKILLS WERE EQUIVALENT TO A SECOND GRADER'S SKILLS (VII:1402). WITH SPELLING, HE SCORED IN THE ONE FIFTH OF ONE PERCENTILE AND HAD THE SKILLS OF A BEGINNING FIRST GRADER".

CHICAGO DETECTIVES NEVER DISCUSSED THE MIRANDA RIGHTS OR WARNINGS WITH PETITIONER [PORTER] AND... HAS VEGAS DETECTIVES MAY "HAVE READ THE MIRANDA WARNINGS TO HIM BUT... HE DID NOT UNDERSTAND WHAT IT MEANT." (VII:1450) HE DID NOT KNOW HE HAD A RIGHT TO AN ATTORNEY, NOR DID HE UNDERSTAND HE DID NOT HAVE TO TALK TO THE DETECTIVES. (VII:1451).

UNDER THE AFORE-STATED CIRCUMSTANCES, THE DISTRICT COURT ERRORED, BY DENYING DEFENDANT (PETITIONERS), "MOTION TO SUPPRESS THE STATEMENTS MADE TO POLICE OFFICERS".

STATE COURTS, EQUALLY WITH FEDERAL COURTS, ARE UNDER AN OBLIGATION TO GUARD AND ENFORCE EVERY RIGHT SECURED BY THE FEDERAL CONSTITUTION, SEE 5TH AND 14TH AMEND.(S) TO THE U.S.C.

THE DISTRICT COURT VIOLATED PORTER'S FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION, BY ALLOWING THE STATE TO PRESENT EVIDENCE OF INVOLUNTARY STATEMENTS ALLEGEDLY MADE BY PORTER TO POLICE DETECTIVES. see MIRANDA SUPRA.

THE STATE'S ENTIRE CASE WAS built ON THE ALLEGED STATEMENTS OF JUSTIN PORTER TO LAS VEGAS POLICE DETECTIVES. AND... ABSENT THOSE UNLAWFULLY ACQUIRED AND ILLEGALLY ADMITTED STATEMENTS - NO RATIONAL TRIER OF FACT WOULD HAVE FOUND PETITIONER GUILTY BEYOND A REASONABLE DOUBT OF SECOND DEGREE MURDER.

FUNDAMENTAL FAIRNESS REQUIRES THAT THE COMPILED OF STATEMENTS, MADE UNDER EXTREME DURESS, INVOLUNTARILY, UNKNOWINGLY, AND UNINTELLIGENTLY BE SUPPRESSED, AND... BE CAUSE THE SUBSEQUENTLY ILLEGAL CONVICTION UNDER ATTACK HEREIN IS... THE FRUIT OF A POISONOUS TREE, HERE PETITIONER ALSO PRAYS THE VACATION OF HIS UNLAWFUL CONVICTION, OR... IN THE ALTERNATIVE, AN EVIDENTIARY HEARING, TO GIVE PETITIONER A LAWFUL AND FAIR OPPORTUNITY TO PROVE THE FACTS SUPPORTING HIS CLAIMS.

"AFFIDAVIT OF Justin Porter"

STATE OF NEVADA)

COUNTY OF CLARK)

ss.

I, Justin Porter, being First duly Sworn upon Oath, deposes And Swears to the Following:

That I Am the Affiant Herein, that I Am of Sound mind, good Physical Health and Above the Age of 21 yrs. old, therefore Qualified to testify to ALL matters Herein.

That I MAKE this AFFIDAVIT in support of ANY motion, Pleading, Petition, OR Document Filed by OR ON behalf of the STATE OF NEVADA. That ON OR About the 12 DAY OF August, 2000 Police Officers ILLEGALLY search and seized ME From My home, And did threaten to take me to the Dock's AND OR Beat me with A Phone Book.

That I was in Fear of my life From Officers.

THAT I ASKED OFFICERS severial times to Let me talk to my mother. That ON OR About the 12 DAY OF August 2000, OFFICERS From Las Vegas, Did manipulate Coerce and Force me to speak in violation of my 4th U.S. Const. Amendment Right to them AGAINST my will, without my mother, Legal GUARDIAN being Present.

FURTHER AFFIANT SAYS NOUGHT

SUBSCRIBED AND SWORN TO UNDER THE
PENALTIES AND PAINS OF PERJURY, WITHOUT THE
BENEFIT OF NOTARY PUBLIC, PURSUANT TO
N.R.S. 208.165

DATED THIS 28 DAY OF JUNE, 2019

By: Justin Porter 6-28-19
JUSTIN PORTER - PETITIONER - PRO. PER.

EVIDENTIARY HEARING

Petitioner herein maintains that he has Presented Several Colorable Claims in his Post-conviction Petition for a Writ of Habeas Corpus.

That he has Alleged Specific Facts, that if true, would entitle Petitioner to Relief, Requiring, At a minimum, AN evidentiary hearing.

INCORPORATION BY REFERENCE

Petitioner INCORPORATES by Reference, the following, All Supporting document(s), INCLUDING All Supporting exhibits Previously filed and ~~or~~ Received by this Court, and All document(s) Submitted contemporaneously by Reference herein Petitioner's Petition for Writ of Habeas Corpus - Post Conviction.

PRAYER FOR RELIEF

Wherefore, the reasons set forth herein, AND in the documents INCORPORATED by Reference, Petitioner Respectfully Requests that the COURT: (1) GRANT Petitioner's Writ of Habeas Corpus - Post Conviction, Reverse Petitioner's conviction(s), and ORDER A NEW TRIAL

(2) ORDER AN EVIDENTIARY HEARING; AND

(3) GRANT All other Appropriate relief. AA640

DATED THIS ²⁸ DAY OF June, 2019 BY: Justin Porter JUSTIN PORTER - PETITIONER-PROVER.

Case No. C-174954

Dept. No. 6

IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

Justin D. Porter, et al
Petitioner,

**MOTION FOR THE APPOINTMENT
OF COUNSEL**

-VS-

Brian Williams-Warden
Respondents.

REQUEST FOR EVIDENTIARY HEARING

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

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

II. STATEMENT OF THE FACTS

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

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

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

II. ARGUMENT

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

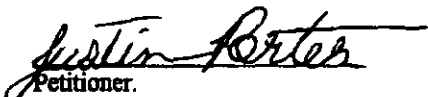
such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination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

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

III. CONCLUSION

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

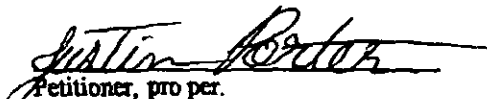
Dated this 28 day of June, 20 19


Petitioner.

VERIFICATION

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

Dated this 28 day of June, 20 19


Petitioner, pro per.

Case No. C-174954

Dept. No. 6

IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK.

Justin D. Porter
Petitioner,

-vs-

Brian Williams-Warden
Respondents.

ORDER APPOINTING COUNSEL

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

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

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

Dated this _____ day of _____, 20____.

Submitted by:

DISTRICT COURT JUDGE

Justin Porter
Petitioner, In Proper Person

AA644

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs. Justin D. Porter,
Defendant,

Case No. C-174954
Dept. No. 66
Docket _____

ORDER

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

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

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

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

DISTRICT COURT JUDGE

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for

the Appointment of Counsel / Request for Evidentiary Hearing.
(Title of Document)

filed in District Court Case No. C-174954

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

-OR-

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

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

(State specific law)

-OR-

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

Justin Porter
(Signature)

6-28-19
(Date)

CERTIFICATE OF SERVICE BY MAILING

I, Justin Porter, hereby certify, pursuant to NRCP 5(b), that on this 28
day of June, 2019, I mailed a true and correct copy of the foregoing, "Petition
For writ of Habeas Corpus (Post-conviction)"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Steven D Grierson,
200 Lewis Ave, 3rd Fl.
Las Vegas, NV 89155-1160

Steven D. Grierson
200 Lewis Ave
Las Vegas, NV 89155-2212

CC:FILE

DATED: this ___ day of ___, 2019.


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

Justin Porter #1042449
P.O. Box 650 (HDSB)
Indian Springs, NV 89670

3762

EGAL MAIL

CONFIDENTIAL

Steven Grierson, Clerk
200 Lewis Ave, 3rd Floor
Las Vegas, NV 89155-1160



AA648

RECEIVED
JUN 28 2019
HIGH DESERT STATE PRISON
LAW LIBRARY

AA649