

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAINE CRAWLEY,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Nov 12 2020 02:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 81011

RESPONDENT'S APPENDIX

CARL E.G. ARNOLD, ESQ.
Nevada Bar #008358
1428 S. Jones Blvd.
Las Vegas, Nevada 89146
(702) 358-1138

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

AARON D. FORD
Nevada Attorney General
Nevada Bar # 007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 12th day of November, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

CARL E.G. ARNOLD, ESQ.
Counsel for Appellant

JOHN T. NIMAN
Deputy District Attorney

/s/ J. Garcia

Employee, Clark County
District Attorney's Office

JTN/Maggie Christiansen/jg

C-19-341735-1 State of Nevada
 vs
 DAINÉ CRAWLEY

July 15, 2019 10:00 AM Initial Arraignment

HEARD BY: Wittenberger, Shannon **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Brown, Kristen

RECORDER: Nichols, Sharon

REPORTER:

PARTIES PRESENT:

DAINÉ ANTON CRAWLEY	Defendant
Erika D. Ballou	Attorney for Defendant
Public Defender	Attorney for Defendant

JOURNAL ENTRIES

Deputized Law Clerk, John Torre appearing for the State.

NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. CRAWLEY ARRAIGNED AND PLED GUILTY TO CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (F). Court ACCEPTED plea and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. Pursuant to negotiations, COURT FURTHER ORDERED, Deft. GRANTED Own Recognizance (OR) Release and DIRECTED Deft. to report to P & P within 24 hours of release.

O.R.

11/13/19 9:00 AM SENTENCING (DEPT. 6)

DA
PP
PD

FILED

OCT 28 2019

John L. Blum
CLERK OF COURT

27

MDC
Name: Daine Anton Crawley #7031173
Address: 330 S. Casino Center BLVD.
City/State/Zip: Las Vegas, NV 89101
Phone: N/A
DEFENDANT IN PROPER PERSON

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

The State of
Nevada

Plaintiff,

vs.

Case No.: C341735

Dept. No.: _____

Daine Anton Crawley #7031173

Defendant

MOTION TO DISMISS COUNSEL AND APPOINT ALTERNATE COUNSEL

COMES NOW, the Defendant Daine Anton Crawley #7031173, and moves this Honorable Court to dismiss Defendant's counsel, Erika Ballou, and appoint alternate counsel to represent Defendant.

This Motion is based upon all papers, pleadings, and documents on file.

POINTS AND AUTHORITIES

It is respectfully requested of this court to grant this Motion to Dismiss Counsel and Appoint Alternate Counsel for the reasons listed below:

RECEIVED
OCT 28 2019
CLERK OF THE COURT

C-19-341735-1
MDC
Motion to Dismiss Counsel
4872722



000002

I. PROCEDURAL BACKGROUND AND FACTUAL SUMMARY

Since Erika Ballou ^{or About} was appointed as counsel on June 17, 2019 Defendant

has been prejudiced and suffered manifest injustice based on counsel's refusal or failure to:

I Daine Anton Crawley, am filing a motion to dismiss counsel and appoint alternate counsel due to inappropriate representation. The defendant believes that his best interests were not expressed at his preliminary hearing(s) in Justice Court. The preliminary hearing was continued multiple times to the District Attorneys advantage without the defendants presence on June 28th, 2019, July 1st, 2019, and also would have been continued on July 11th, 2019; until the defendant reluctantly agreed to a plea agreement that was supposed to allow him to enter "The Crossroads" inpatient treatment center on July 16th, 2019. It is the defendants belief that this said program "Crossroads", along with his need for surgery of a Fractured right wrist (Scaphoid) were both used as leverage against him to sign a plea agreement since the surgery was scheduled for August 19, 2019 and the program he had been waiting for was the following Tuesday July 16th, 2019 after much anticipation. The defendant only had about 10 minutes to go over the details of the plea agreement and this being the reason the consequences of the plea agreement were not explained in its entirety at or before the District Court arraignment on July 15th, 2019. The defendants choice to enter the "Crossroads" program was of the defendants own accord prior to said charge, however as part of the plea agreement the defendant was told he would be released prior to the said entry date of July 16th, 2019. The date of signing was July 15th, 2019, though the own recognizance release did not take place until after 8pm July 16th, 2019 well after bed date. Mrs. Erika Ballou has still not ordered or requested an application for "Drug Court", or responded via mail or telephone

Gonzales vs. State, Nev. 2016

Continued

RA 000003

II. ARGUMENT

Defendant, Daine Anton Crawley asserts that he/she is being denied his/her right to effective representation due to wholly inadequate actions of his/her court-appointed counsel. Further, counsel's actions constitute a violation of the Defendant's due process rights under the following cases, statutes, and/or rules of professional conduct:

Public Defender Erika Ballou declined to review documents regarding the defendants mental Health | Substance Abuse issues during the July 11th, 2019 preliminary hearing, indicated the lack of representation in requesting Body Cam footage (The lack of), evidence and/or witnesses that may have made statements resulting in the probable cause and/or illegal search and seizure on the night in question of June 12th, 2019. It is the request to have Mrs. Erika Ballou dismissed as counsel, as it appears she maybe in cahoots with the District Attorney in not having the "motion to withdraw guilty plea / evidentiary hearing" dated October 1st, 2019, filed in District Court before sentencing date. This motion is being filed without prejudice and factual in all aspects. It is the defendants request that motion be granted with no prejudice shown by DA. Buffalo vs. State, Nev. 1995, Young vs. State, Nev. 2004 Rule 4.1, Rule 4.2, Rule 8.4, Mitchell vs. State Nev. 1993, Meyer vs State

WHEREFORE, the undersigned prays that the court grant Defendant's Motion to Dismiss Counsel and Appoint Alternate Counsel.

DATED THIS 22nd day of October, 2019.

Respectfully submitted,

Daine Anton Crawley
Defendant

7031173

RA 000004

Daine Crawley #7031173
CDC
330 S. Casino Center Blvd
Las Vegas, NV 89101

SENT FROM CCDC

Clerk of The District Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160



23 OCT 2015 PM 4:11
LAS VEGAS NV 89101



000009-10158

© USPS 2013

THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT



"LEGAL MAIL"

RA 000005



1 **NOTC**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **SHANON CLOWERS**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #010008**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **DAINE ANTON CRAWLEY,**
13 **#7031173**

14 **Defendant.**

CASE NO: C-19-341735-1

DEPT NO: VI

15 **STATE'S NOTICE OF INTENT TO SEEK PUNISHMENT AS**
16 **A HABITUAL CRIMINAL**

17 **TO: DAINÉ ANTON CRAWLEY, Defendant; and**

18 **TO: PUBLIC DEPUTY PUBLIC DEFENDER, Counsel of Record:**

19 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS**
20 **207.010, the STATE OF NEVADA will seek punishment of Defendant DAINÉ ANTON**
21 **CRAWLEY, as a habitual criminal in the event of a felony conviction in the above-entitled**
22 **action.**

23 **That in the event of a felony conviction in the above-entitled action, the STATE OF**
24 **NEVADA will ask the court to sentence Defendant DAINÉ ANTON CRAWLEY as a habitual**
25 **criminal based upon the following felony convictions, to-wit:**

26 **1. That on or about 2010, the Defendant was convicted in the State of**
27 **Virginia, for the crime of Conspiracy to Commit Felony (felony) in CR10F01924.**

28 **2. That on or about 2010, the Defendant was convicted in the State of**
Virginia, for the crime of Grand Larceny (felony) in CR10F01926.

RA 000006

1 3. That on or about 2010, the Defendant was convicted in the State of
2 Virginia, for the crime of Grand Larceny (felony) in CR10F01925.

3 4. That on or about 2014, the Defendant was convicted in the State of
4 Virginia, for the crime of Possess Schedule I or II (felony) in CR14F03523.


5 5. That on or about 2014, the Defendant was convicted in the State of
6 Virginia, for the crime of Grand Larceny (felony) in CR14F02472.

7 6. That on or about 2016, the Defendant was convicted in the State of
8 California, for the crime of Bring Controlled Substance/Etc. into Prison/Etc. (felony) in
9 16WF0150.

10 7. That on or about 2016, the Defendant was convicted in the State of
11 Nevada, for the crime of Attempt Grand Larceny (felony) in C-16-318889-1.

12 STEVEN B. WOLFSON
13 Clark County District Attorney
14 Nevada Bar #0015651

15 BY


16 SHANON CLOWERS
17 Chief Deputy District Attorney
18 Nevada Bar #010008

19 CERTIFICATE OF SERVICE

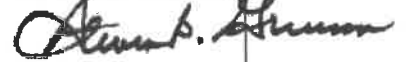
20 I certify that on the 19th day of Nov., 2019, I mailed a copy of the foregoing Notice
21 to:

22 pdclerk@clarkcountynv.gov

23 BY


24 R. JACKSON
25 Secretary for the District Attorney's Office

26
27
28 19F11843X/rmj/L3



MOT

CARL E.G. ARNOLD, ESQ.
Nevada Bar No. 8358
LAW OFFICE OF CARL E.G. ARNOLD
1428 South Jones Boulevard
Las Vegas, NV 89146
LVCEGA1@yahoo.com
P : (702) 358-1138
F: (702) 253-6997
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DAINE CRAWLEY,

Defendant

Case No.: C-19-341735-1

DEPT.: 6

**MOTION TO WITHDRAW
GUILTY PLEA**

COMES NOW, Defendant Daine Crawley, by and through his attorney of record, CARL E.G. ARNOLD, ESQ., and hereby submits the attached Memorandum of Points and Authorities in support of his motion to withdraw his guilty plea. Mr. Crawley's motion to withdraw guilty plea is made and based upon all papers on file for this case, the attached memorandum of points and authorities, and any oral argument allowed by this Honorable Court.

Dated this 31st day of January, 2020.




CARL E.G. ARNOLD, ESQ.
1428 S. Jones Blvd.
Las Vegas, Nevada 89146
(702) 358-1138

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NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing
Motion to Withdraw Guilty Plea for DAINE CRAWLEY for hearing before the Court at the
courtroom of the above-entitled Court on the ____ day of _____, 2020, at
____.m. in Department 6.

DATED this 31st day of January, 2020.


CARL E.G. ARNOLD, ESQ.
Nevada Bar No. 8358
1428 South Jones Boulevard
Las Vegas, NV 89146
(702) 358-1138

25
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MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

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On July 15, 2019, Mr. Crawley pled guilty to one count of Carrying a Concealed Firearm or Deadly Weapon. As part of the guilty plea, Mr. Crawley was to receive an own recognizance release so he could go to the Crossroads Residential Treatment Center for in patient drug treatment on the same day. Mr. Crawley was not released until July 16, 2019 at 8 p.m. and a bed was no longer available for Mr. Crawley. Accordingly, Mr. Crawley did not receive the benefit of the guilty plea agreement that he was most interested in, which was a timely release so he could be accepted to the in patient treatment program.

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Moreover, Mr. Crawley learned when he was placed back into custody after committing a new crime on August 9, 2019, that he was subject to illegal search and seizure relating to his arrest for the crime on June 12, 2019. Specifically, Mr. Crawley believes that Body Camera

1 footage, in the State's possession, will demonstrate that the police never had probable cause to
3 commence the stop and search of Mr. Crawley.

5 LEGAL ARGUMENT

7 District courts may grant a motion to withdraw a guilty plea prior to sentencing for any
9 substantial, fair and just reason. Crawford v. State, 30 P.3d 1123, 1125 (Nev. 2001).

11 Accordingly, Nevada trial and appellate courts must apply a more relaxed standard to presentence
13 motions to withdraw guilty pleas than to post-sentencing motions. Molina v. State, 87 P.3d 533,
15 537 (Nev. 2004), NRS 176.165. To determine whether the defendant advanced a substantial, fair,
17 and just reason to withdraw a plea, the district court must consider the totality of the
19 circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and
21 intelligently. State v. Freese, 116 Nev. 1097 (2000).

23
25 Mr. Crawley did not receive the benefit of the bargain by being immediately released on
27 his own recognizance after the entry of his guilty plea. Consequently, he lost his placement at the
29 in patient treatment program. Moreover, Mr. Crawley learned that the police did not have
31 probable cause to stop and search him in the first instant and that his prior counsel did not review
33 the Body Camera footage to argue the illegal search by motion to this Court. Accordingly, Mr.
35 Crawley's plea was not completely knowing and voluntary since he did not obtain all the
37 information necessary to make an informed decision regarding his guilty plea and the benefits of
39 the bargain.

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CONCLUSION

Based on the foregoing arguments, Mr. Crawley prays that this Honorable Court grant the Motion to Withdraw Guilty Plea.

Dated this 31st of January, 2020.

RESPECTFULLY SUBMITTED BY:



CARL E.G. ARNOLD, ESQ.
Nevada Bar No. 008358
LVCEGA1@yahoo.com
1428 S. Jones Blvd.
Las Vegas, Nevada 89146

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CERTIFICATE OF SERVICE

This certifies that this office has forwarded electronically a copy of **Motion to Withdraw Guilty Plea** on January 31, 2020, by sending the attached to motions@clarkcountynvda.com



Employee

Case Number: C-19-341735-1

1 POINTS AND AUTHORITIES

2 There are two fatal defects in the instant Motion. First, CRAWLEY fails to present
3 evidence to this Court to support that there was a failure to "receive the benefit of the guilty
4 plea." Second, these allegations, even if true, does not meet the legal standard to support
5 granting the relief requested, to wit, withdrawal of his voluntary plea of guilt.

6 CRAWLEY complains that he was released one date after his guilty plea and that
7 tardiness prevented him from being accepted into a treatment program. CRAWLEY offers no
8 evidence to support such an unusual claim. Proof of that claim is required before this Court
9 should even entertain the next component of CRAWLEY's argument. Thus, assuming
10 arguendo, that such a minor delay did in fact prevent his entry into a particular treatment
11 program, there is no relevant argument made how that would satisfy the legal requirements of
12 *Stevenson v. State*, 131 Nev. 598, 603, 354 P.3d 1277, 1281 (2015).

13 Next, the State did not violate the guilty plea agreement and therefore that is not a basis
14 to have the guilty plea withdrawn. No "delay" occurred in this case and as previously stated
15 *supra* there is no evidence to support the claim that any "delay" caused CRAWLEY to not be
16 admitted to a treatment program.

17 Consistent with a complete failure to present this Court with any evidence to support
18 his claim, CRAWLEY claims that his plea is involuntary because his prior counsel failed to
19 review the bodycam footage to establish that the search of his person and effects had been
20 violated by police. Attached hereto as Exhibit 1 is the police report in this case. The search
21 of CRAWLEY was based upon numerous citizen/witnesses describing to officers that
22 CRAWLEY confronted people in the Excalibur parking lot with a knife. Further, police were
23 told that CRAWLEY attempted to carjack an SUV with 3 women in the car. They were
24 successful in speeding away from CRAWLEY after he had ripped open the door to the SUV.

25 There is no issue legal/factual basis of the detention, arrest or search of CRAWLEY.

26 Finally, the words of the Nevada Supreme Court ring true in this case with the warning
27 the Court gave at the conclusion of their opinion in *Stevenson*:

28 ///

1 Considering the totality of the circumstances, we have no difficulty in
2 concluding that Stevenson failed to present a sufficient reason to permit
3 withdrawal of his plea. Permitting him to withdraw his plea under the
4 circumstances would allow the solemn entry of a guilty plea to "become a mere
gesture, a temporary and meaningless formality reversible at the defendant's
whim." *Barker*, 514 F.2d at 221. This we cannot allow.

5 *Stevenson v. State*, 354 P.3d 1277, 1281-82 (Nev. 2015).

6 DATED this 14th day of February, 2020.

7 Respectfully submitted,

8 STEVEN B. WOLFSON
9 Clark County District Attorney
Nevada Bar #801565

10 BY 
11 DAVID STANTON
12 Chief Deputy District Attorney
13 Nevada Bar #003202

14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of State's Opposition to Defendant's Motion to Withdraw
16 Guilty Plea, was made this 14th day of February, 2020, by Electronic Filing to:

17 CARL E. ARNOLD, ESQ.
18 lvcegal@yahoo.com

19 
20 Secretary for the District Attorney's Office
21
22
23
24
25
26
27

28 19F11843X/DS/rmj/L3

EXHIBIT “1”

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST REPORT**

TCR1026989

☐ County Jail ☐ City Jail ☐ Adult ☐ Juvenile Bureau: CCAC

ID# 7031173		EVENT # LLV190800056903		ARRESTEE'S NAME (LAST) CRAWLEY		(FIRST) DAINE		(MIDDLE) ANTON		SSN# 610-07-0540	
RACE W	SEX M	DOB 3/21/1986		HGT 5'08"	WGT 130	HAIR BLK	EYES BRO	POB RIVERSIDE			
ARRESTEE'S ADDRESS TRANSIENT						CITY LAS VEGAS		STATE NV		ZIP CODE 89109	
OCCURRED DATE: 6/12/2019		-TIME: 21:01		ARREST DATE: 6/12/2019		TIME: 21:01		LOCATION OF ARREST (NUMBER, STREET, CITY, STATE, ZIP CODE) 3850 LAS VEGAS BLVD S LAS VEGAS NEVADA 891			
LOCATION OF CRIME (NUMBER, STREET, CITY, STATE, ZIP CODE) 3850 LAS VEGAS BLVD S LAS VEGAS NEVADA 89109											
CHARGES / OFFENSES PC - JC - 50201 - F - ASSAULT, W/DW											
CONNECTING REPORTS (TYPE OR EVENT NUMBER) FELONY ARREST PACKET											

The undersigned makes the following declarations subject to the penalty of perjury and says: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of approximately 1 year(s).

That I learned the following facts and circumstances which lead me to believe that the above named subject committed or was committing the offenses above at the location of 3850 LAS VEGAS BLVD S LAS VEGAS NEVADA 89109 and that the offense(s) occurred at approximately 21:01 hours on the 12th day of June, 2019.

Details for Probable Cause:

On 6/12/19 at approximately 2101 hours I, Officer J. Curry P#17371 while operating as marked patrol unit 3M16 and Officer D. Westhead P#14467 while operating as marked patrol 9M32, were dispatched to 3850 S Las Vegas Blvd Las Vegas, NV 89109 in reference to a person with a knife between the Excalibur and Luxor threatening pedestrians.

I made contact with Matthew Hawkins DOB 01/19/1983 in between the Excalibur and Luxor who made the following statements. Hawkins and his friend, Travis Duun DOB 06/18/85, were walking through the Excalibur hotel parking lot and were approached by a unknown male who was later identified as Daine Crawley DOB 03/21/86. Hawkins stated that Crawley got in his face and started uttering something to him that could not be made out. Crawley reached for something from his back pack while still in the face of Hawkins and as he looked down he saw that Crawley had retrieved a knife in his right hand with the blade exposed. Hawkins stepped away from Crawley to get to a safe distance and felt threatened and in fear. Crawley then approached a silver Mercedes SUV occupied with three females in the parking lot and attempted to open the door and the car was seen accelerating to get away. Crawley then walked up to a another vehicle in the parking lot and hit the window. Hawkins notified police and security, who later took Crawley into custody.

I made contact with Travis Duun who stated that himself and Hawkins were walking through the Excalibur parking lot and Crawley approached him mumbling something that could not be made out. Duun avoided Crawley and walked passed him, while doing so he looked back and saw Crawley stop Hawkins by getting in his face. Duun observed Crawley reach for something and Hawkins jumped back stating he's got a knife. Duun called the police and observed Crawley walk towards a silver Mercedes SUV in the parking lot and attempted to get into the vehicle by opening the door, failing to do so because the vehicle accelerated to get away from Crawley. Crawley then approached another unknown vehicle and hit the window.

Officer's took Crawley into custody and while conducting a pat down a pink knife with a assisted blade was found in his right rear pocket after Crawley made statements that he did not have a knife.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Arresting Officer: J CURRY

P#: 17371

LVMPD 002 (Rev 02/16) Word 2013

RA 000016

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

CONTINUATION REPORT

SCOPE ID: 7031173 EVENT #: LLV190600056903

Page 2 of 2

Based on the facts and circumstances of Crawley being in the face of Hawkins while holding a knife with the blade exposed causing Hawkins to jump back in fear that he was going to cause bodily harm, Crawley was charged with Assault, W/Dw(F)-NRS 200.471.2B and booked into CCDC accordingly.

***** End *****

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Arresting Officer: J CUPRY

PI: 17371

LVMPD 602 (Rev 02/18) Word 2013

RA 000017

Felony/Gross Misdemeanor

COURT MINUTES

February 19, 2020

C-19-341735-1 State of Nevada
 vs
 Daine Crawley

February 19, 2020 09:30 AM All Pending Motions

HEARD BY: Bluth, Jacqueline M. COURTROOM: RJC Courtroom 10C

COURT CLERK: Reed, Keith

RECORDER: Takas, De'Awna

REPORTER:

PARTIES PRESENT:

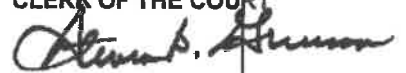
Carl E. Arnold	Attorney for Defendant
Daine Anton Crawley	Defendant
Robert B. Turner	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIESARGUMENT: DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA AGREEMENT
...SENTENCING

Argument in support of motion by Mr. Arnold, and in opposition by Mr. Turner. Court stated findings, noted there's no valid reason to withdraw the plea and ORDERED, Defendant's Motion To Withdraw Guilty Plea Agreement DENIED. Continued argument in regards to withdrawal of plea by Defendant. Court stated those issues were not before the Court, found there was an insufficient basis to withdraw the plea and ORDERED, motion DENIED. Mr. Turner stated Mr. Stanton would like a continuance to prepare a sentencing memorandum; Defendant's eligible for habitual treatment; counsel was informed time is needed for its preparation. Mr. Arnold stated he was appointed to look at the plea withdrawal, but has no issues assisting with sentencing and stated he's not seen a Presentence Investigation Report (PSI) from this case. Deputy Public Defender Erika Ballou stated she has it. Defendant stated there's an error in the PSI. COURT ORDERED, sentencing CONTINUED; if there's an error in the PSI to be corrected after speaking with the Defendant, e-mail the Court and State. Mr. Arnold stated a sentencing memorandum in regards to the error in the PSI will be prepared. Continued argument by Defendant.

CUSTODY

3-4-20 9:30 AM SENTENCING



1 ASTA

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 STATE OF NEVADA,

10 Plaintiff(s),

11 vs.

12 DAINÉ ANTON CRAWLEY,

13 Defendant(s),
14
15

Case No: C-19-341735-1

Dept No: VI

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Daine Crawley

19 2. Judge: Jacqueline M. Bluth

20 3. Appellant(s): Daine Crawley

21 Counsel:

22 Daine Crawley #7031173
23 330 S. Casino Center Blvd.
24 Las Vegas, NV 89101

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: July 11, 2019

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Judgment of Conviction

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 13 day of April 2020.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Daine Crawley

FILED

JUN 04 2020

Alvin L. Johnson
CLERK OF COURT

Case No.: C341735

Dept. No.: District VI

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

Daine Anton Crawley # 1167447

Petitioner,

v.

Warden Williams, High Desert State Prison

Respondent.

A-20-816041-W
Dept. VI

PETITION FOR WRIT OF
HABEAS CORPUS

(Post-conviction)

(NRS 34.720 et seq.)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

RA 000021

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty:

High Desert State Prison Indian Springs, Nevada

2. Name and location of court which entered the judgment of conviction under attack:

Eighth Judicial District Court of the State of Nevada, Clark County

3. Date of judgment of conviction: April 1st, 2020

4. Case number: C-19-341735-1

5. (a) Length of sentence:

84 to 240 months

b) If sentence is death, state any date upon which execution is scheduled:

N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes X No _____

If "yes," list crime, case number and sentence being served at this time: Grand Larceny /
C342881 / 12 to 30 months

7. Nature of offense involved in conviction being challenged:

Carry Concealed Weapon, Firearm or other deadly weapon: To
with multi purpose knife, one count

8. What was your plea? (check one)

- (a) Not guilty _____
- (b) Guilty X
- (c) Guilty but mentally ill _____
- (d) Nolo contendere _____

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

A plea of guilty was plead for a negotiated 1 to 5 year probationable sentence for case C341735 and a negotiated plea for 1 to 5 year probationable sentence to run concurrently for case C42881 in which the State agreed to not seek habitual criminal treatment.

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

- (a) Jury _____
- (b) Judge without a jury _____

11. Did you testify at the trial? Yes _____ No _____

12. Did you appeal from the judgment of conviction? Yes X No _____

13. If you did appeal, answer the following:

- (a) Name of court: Eighth Judicial District for Clark County / notice of appeal
- (b) Case number or citation: C-19-341735-1
- (c) Result:

A notice of appeal was filed to the Eighth Judicial District for Clark County to be appealed to the Supreme Court of Nevada, still pending

(d) Date of result: _____

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not:

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes _____ No X

16. If your answer to No. 15 was "yes," give the following information:

(a) (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes: _____ No: X

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes _____ No X

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes X No _____

Citation or date of decision: Still pending

(2) Second petition, application or motion? Yes _____ No _____

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes _____ No _____

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.):

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same:

A notice of appeal was filed only

(b) The proceedings in which these grounds were raised:

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes X No _____

If yes, state what court and the case number:

A notice of appeal for Judgment of conviction case C341735 NV Supreme Court

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

Attorney Carl Arnold

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No X

If yes, specify where and when it is to be served, if you know:

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground one: Violation of 14th Amendment, Equal Protection Clause / Due process of law
Violation of NRS 171.174, NRS 171.104, NRS 171.196

Supporting FACTS (Tell your story briefly without citing cases or law.):

On June 12th, 2019. The Defendant Daine A. Crawley was unlawfully detained for possible involvement in Assault w/ Deadly weapon case. Despite numerous requests for Body Cam footage and/or other related exculpatory evidence including Discovery / filing of motion to inspect all evidence favorable to defense none was provided by District Attorney David Stanton or Public Defender Erika Ballou. Defendant Crawley was stopped between the Luxor and Excalibur parking lots adjacent to the Luxor Hotel and Casino. A multi purpose tool / with Razor blade attached was retrieved from Daine A. Crawley's belt body cam footage will show. Upon seizure Mr. Crawley was booked for Assault with Deadly Weapon on June 12th 2019 at 21:01 hours. The property inventory sheet at Clark County Detention Center shows discrepancies in description of clothing in police report and lack of weapon other than said tool / tools listed. On June 17th 2019 Mr. Crawley was brought before the Judge for an initial arraignment. This now being "5 days" after arrest violating 14th amendment right and NRS 171.174 exceeding "72 hour hearing". After court the morning of June 17th 2019, Mr. Crawley was formally booked at 1600 / 4:00pm according to Temporary Custody Record on June 17th 2019 by an officer Joshua D. Ferry despite being hours after initial court appearance violating NRS. 171.104. In addition to these due process rights violations the preliminary hearing for both charges were scheduled to be on July 1st 2019, but were continued until July 11th 2019 for unknown reason by David Stanton despite Defendant being in custody and not being brought before the court. Violating Amendments 4 and 6, NRS 171.196 and Federal Rules for criminal procedure. It was later used as a tactic by District Attorney David Stanton and Public Defender Erika Ballou to entice a Guilty Plea agreement of a 1 to 5 year probationable sentence which in turn was used to adjudicate Mr. Crawley as an habitual offender, and sentence of 84 to 240 months.

(b) Ground two: Violation of Amendment 6, Amendment 7, Amendment 5
Blankenship vs. State, Supreme Court of Nevada July 21, 2016.

Supporting FACTS (Tell your story briefly without citing cases or law:

Prosecutorial misconduct was exercised at both March 4th, 2020 and April 1st 2020 sentencing hearings regarding Mr. Crawley's Mental Health / physical Handicap. Mr. Crawley's attempts to seek adequate counsel in dismissing Public Defender Erika Ballou for inappropriate representation involving violation of Due process rights and withdrawal of guilty plea in November of 2019 resulted in malicious vindictive prosecution. Mr. Crawley was unable to speak on his own behalf during the hearing related to the withdrawal of guilty plea prior to the withdrawal being denied in January 2020. An evidentiary hearing was never held to weigh exculpatory evidence and/or mental health issues. Mr. Crawley has suffered from bouts of PTSD / Social Anxiety disorders since 2004, these mental health issues were the basis of the withdrawal of guilty plea. The stability of his mental health during the signing of the guilty plea in July 2019 are in question due to not being on his medication during that time due to incarceration. Mr. Crawley believed he was signing a 1 to 5 year probationable sentence with 18 to 60 months recommended by PNP, This mislead plea agreement led to an 84 to 240 month sentence. Issues with PSI were addressed through multiple hearings from November 2019 through April 1st 2020 sentencing. The most notable discrepancies are with the PSP Scoring sheet regarding mental health and physical Handicap. The pre sentence adjustment section is in error and can be seen in difference with PSI for case number C342081. A supplemental PSI report was brought into question in that the same issues remained unclarified. On the 7th page it states issue with contacting Attorney Carl Arnold, and not being able to receive response. A response from Defendant is stated via Email although Defendant was in custody "260" days at this point and could not of responded in this manner.

(c) Ground three: Violation of Administrative order 20-06 filed
March 18th, 2020

Supporting FACTS (Tell your story briefly without citing cases or law.):

Communication with Counsel has been futile due to the Covid 19, Corona Virus pandemic. The Administrative order : 20-06 In the administrative matter of court operations of criminal matters in response to Covid-19 clearly states from lines 8-12 dated March 18th, 2020, that "attorneys are cautioned that it will be absolutely necessary to prepare clients for guilty pleas, Sentencings, and probation revocations prior to court". This lack of contact due to social distancing with Attorney Carl Arnold in turn led to extreme Sentencing. Mr. Crawley asked for continuance to address issues in probation success probability score page "7" but was denied right to consult with counsel due to Coronavirus / Covid 19 pandemic. The Defendant is requesting that the sentence be challenged due to these errors and lack of contact with court appointed Attorney Carl Arnold amid the COVID 19 / corona virus pandemic. Mr. Crawley signed a 1 to 5 year probationable sentence, and the above errors were used to adjudicate Mr. Crawley to Habitual offender status by District Attorney David Stanton and Judge Jacqueline Bluth despite various attempts to withdraw guilty plea and/or dismiss Counsel.


(d) Ground four: 8th Amendment cruel and unusual punishment, 7th amendment Right to Jury trial.

Supporting FACTS (Tell your story briefly without citing cases or law.):

It is the prosecutorial misconduct in previous years known by District Attorney David Stanton and the inappropriate representation throughout the duration of case C341735 that led to guilty plea coercion through fear of life imprisonment due to false police report that was withheld by Public Defenders office. Court transcripts of both case C341735 and C342881 show the malice and vindictive prosecution by David Stanton due to the Defendants attempt and eventual acceptance into The Drug Court program. It is a well known fact according to the website Appeal.Org, that Mr. David Stanton's anger and vindictive prosecution tactics have led him to be fired from Reno, Nevada's DA's office in 1999. He was arrested for resisting arrest and has taken Anger management counseling related to his career. Mr. Stanton has been involved in a tradition in Clark County of paying witnesses for testimony from a secret checking account. In light of this information Mr. Crawley attempted to enlighten appointed Attorney Carl Arnold of these facts, but was told to not disclose them in open Court in relation to the withdrawal of guilty plea. It is the defendants belief that this is why Mr. Arnold did not attend April 1st 2020 rendition of sentencing and Mr. Crawley was denied a continuance to consult with substitute counsel or Mr. Arnold in relation to PSI/PSP Scoring issues. The result being 84 to 240 months for Carry concealed weapon / To wit multi purpose tool / Knife. The website is as follows <https://theappeal.org/lessons-and-legal-pads-the-cowboy-culture-of-the-clark-county-nevada>.

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

EXECUTED at 5:00pm on the 29th day of the month of April of the year 2020



Signature of petitioner

HDSP P.O Box 650 Indian Springs NV 89070

Address

Signature of attorney (if any)

Attorney for petitioner

Address

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.



Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, Daine Crawley hereby certify, pursuant to N.R.C.P. 5(b), that on this 29th day of the month of April of the year 2020, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden Williams | High Desert State Prison
Respondent prison or jail official

P.O Box 650 Indian Springs, NV 89070
Address

Aaron Ford
Attorney General

100 North Carson Street Carson City, NV 89701
Address

Steven B. Wolfson
District Attorney of County of Conviction

200 Lewis Avenue Las Vegas, NV 89155-2212
Address

Re: *State of Nevada v. Daine Crawley*

Case No. C341735

Dear Mr./Ms. _____:

Nev. Rev. Stat. 7.055, provides that:

An attorney who has been discharged by his client shall, upon demand...Immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.

See also Nev. Sup. Ct. Rule 166(4):

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as ... surrendering papers and property to which the client is entitled..."

I hereby formally make demand that you provide my entire file, including, but not limited to all papers, documents, pleading and items of tangible personal property which belong to or were prepared on my behalf to me at the address set forth on this letter.

As you know pursuit of post-conviction claims are governed by strict deadlines. Therefore, I cannot stress enough the importance of your providing my file to me as soon as possible. Your prompt attention to this very important matter is greatly appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daine Crawley", written in a cursive style.

RA 000034

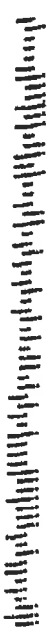
HDJ
P.O. BOX 0
Indian Springs, NV 89070

RECEIVED
MAY 17 2020
NV 89070

District Court Clerk
200 Lewis Avenue
Las Vegas, NV 89155

NON
MACHINABLE MAIL
PLEASE HAND CANCEL

8810136300 0075



LEGAL MAIL

UNIT 1 C/D

APR 29 2020

HIGH DESERT STATE PRISON

FILED

JUN 12 2020

CLERK OF COURT

Case No. C341735
Dept. No. VT

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

Daine Anton Crawley
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

Warden Williams, HDSP
Respondent.

A-20-816041-W
Dept. 6

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison Indian Springs, NV
2. Name and location of court which entered the judgment of conviction under attack: Clark County District Court 300 Lewis Avenue Las Vegas, NV 89155
3. Date of judgment of conviction: April 1st, 2020
4. Case number: C341735
5. (a) Length of sentence: 84 to 240 months

(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes X No

If "yes," list crime, case number and sentence being served at this time: Grand Larceny C342881
12 to 30 months to run-concurrently with case C341735

7. Nature of offense involved in conviction being challenged: Carrying Concealed Firearm
or other Deadly Weapon To wit: Knife or multipurpose tool

8. What was your plea? (check one)

(a) Not guilty

(b) Guilty X

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was

negotiated, give details: A plea negotiation was agreed to a 1 to 5 year probationable sentence
for case C341735 and a 1 to 5 year probationable sentence for case C342881 to run-
concurrently with case C341735 and the state would not seek habitual if C342881 is

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one) Signal

(a) Jury

(b) Judge without a jury

11. Did you testify at the trial? Yes No

12. Did you appeal from the judgment of conviction? Yes X No

13. If you did appeal, answer the following:

(a) Name of court: Clark County District Court

(b) Case number or citation: C341735

(c) Result: No reply by courts

(d) Date of result:

(Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not:

2
3
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: Clark County District Court

8 (2) Nature of proceeding: A notice of appeal was filed, and a Habeas

9 Corpus, but no response on either or notice of receipt of Habeas Corpus

10 (3) Grounds raised: Due process rights violations, incorrect PSI/PSP
11 information

12
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No ☒

14 (5) Result:

15 (6) Date of result:

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:
17

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court:

20 (2) Nature of proceeding:

21 (3) Grounds raised:

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

23 (5) Result:

24 (6) Date of result:

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:
26

27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
28 them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes X No

Citation or date of decision: no response

(2) Second petition, application or motion? Yes No

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions? Yes No

Citation or date of decision:

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: The court has not notified receipt of Habeas Corpus, the grounds 1 to 3 are similar.

(b) The proceedings in which these grounds were raised:

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ☒ No

If yes, state what court and the case number: Hopefully, an appeal and Habeas Corpus for Clark County District Court Case # C341735 if properly filed

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: District Court Sentencing Attorney Carl Arnold, and Roger Bailey has been appointed 5/27/20

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No ☒

If yes, specify where and when it is to be served, if you know:

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground ONE: Violation of 14th Amendment - equal protection clause / Due process of Law, Violation of NRS 171-174, NRS 171.104, and NRS 171.196, Violation of 4th Amendment and 6th Amendment - The accused has the right to hear and question all witnesses and call witnesses

Supporting FACTS (Tell your story briefly without citing cases or law.): On June 12th, 2019, An arrest was made detaining Daine Anton Crawley for possible involvement in an assault w/ deadly weapon on Las Vegas BLVD, between the Luxor and Excalibur adjacent parking lots. Body Cam footage will show that a multi purpose tool w/ razor blade attached was retrieved from Mr. Crawley's belt. Upon seizure Mr. Crawley was booked for Assault w/ deadly weapon on June 12th, 2019 at 21:01 hours without proper explanation or discovery given until PSI was provided for this case. On June 17th, 2019 Mr. Crawley was brought before the court for an initial arraignment and notified of additional charge "Five days" after arrest exceeding 72 hour hearing. It wasn't until later that day of June 17th, 2019 that Mr. Crawley was formally given the rebooking charge at 16:00 / 4:00 pm according to the temporary Custody record from June 17th, 2019 by an officer Joshua D. Ferry, this being hours after the initial court appearance. This new rebook charge for Carry Concealed Weapon was used as leverage to obtain guilty plea agreement even though the Assault w/ deadly weapon charge held no merit. Mr. Crawley was never positively identified by any witnesses, no witnesses were ever brought before the court. The incorrect facts of the police report were used to obtain a habitual sentence of 84 to 240 months. No additional fingerprints, mugshots, etc. were taken which in turn also led to the miscalculation of "Credit Time Served" at time of April 1st, 2020 sentencing. The credited time at sentencing should have been "261 days". The preliminary hearing for both charges were

1 scheduled to be on July 1st, 2019, but were continued until July
2 11th, 2019 without the Defendant Mr. Crawley being brought before
3 the court despite being in custody at CCDC during that
4 time. It is also noted on "PSI" that a June 28th, 2019
5 appearance, or "Failure To Appear" is now on Defendants
6 record that he was never brought before the court for
7 nor did he initially even have a June 28th, 2019 court
8 date. This is a procedural tactic used by District Attorney
9 David Stanton to obtain the desired "Guilty Plea agreement"
10 or finance the "prosecution witnesses" vacation expenses
11 for their appearance or testimonies in many cases he
12 has prosecuted over the years according to the appeal.org
13

14 DATED THIS 2nd day of June, 2020

15 I Daine Anton Crawley, do

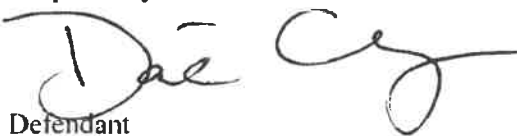
16 solemnly swear, under the penalty of perjury, that

17 the above Grand I Hears Corpus is accurate,

18 correct, and true to the best of my knowledge.

19 NRS 171.102 and NRS 208.165.
20

21 Respectfully submitted.

22 
23 Defendant

24
25 NRS 208.165 A prisoner may execute any instrument by signing his name immediately
26 following a declaration "under penalty of perjury" with the same legal effect as if he had
27 acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in
28 this section, "prisoner" means a person confined in any jail or prison, or any facility for the
detention of juvenile offenders in this state.

(b) Ground TWO: Violation of Amendment 5 and 6, Violation of 8th Amendment, Violation of 7th Amendment in relation to evidentiary hearing to amend errors within PSI/PSP score, Violation of NRS 176.145, NRS 213.10988, Blankenship vs. State July 21st, 2016

Supporting FACTS (Tell your story briefly without citing cases or law.): The Defendants Probation Success Probability form used at sentencing for Carrying Concealed Firearm or other Deadly weapon: To wit Knife/multi purpose tool failed to properly account for defendants mental health, physical handicap in scoring his ability to be employed under the psych or medical impact section of the present offense section of the PSP score, and Financial section of social history. The Defendants sentence was prejudiced because the District Court did not correct the errors in the PSP prior to sentencing despite defendants objections, and lack of contact with court appointed counsel due to restrictions amid the COVID 19/corona virus pandemic. The difference in score raised the sentencing recommendations significantly. Mr. Crawleys mental disability affected his behavior and was relevant when weighing recidivism probability in reference to Habitual Criminality recommendations. Sentencing forms were required to include considerations for legitimate mental disabilities and physical handicap. The current PSP categories improperly penalized defendant as a result of a disability. In addition to Mr. Crawleys attempts to correct these errors, the dismissal of Public Defender Erika Ballou for inappropriate representation involving the initial violation of Due process rights and Withdrawal of Guilty Plea from August 2019 through

November 2019 resulted in malicious prosecution. No evidentiary hearing was ever conducted in relation to the withdrawal of guilty plea. Mr. Crawley has suffered from bouts of PTSD / Social Anxiety disorders since 2004, he has not been properly medicated since the June 12th, 2019 arrest. The Defendant believed he was signing a 1 to 5 year probationable sentence. The Supplemental PSI report was brought into question on April 1st 2020, the same issues remain unaddressed. On the 7th page it states issue with contacting Attorney Carl Arnold, and not being able to receive a response. A response from Defendant is stated via email, although Defendant was in custody "260 days" at that point and could not of responded in that manner. If neither the defendant, or Attorney were contacted who then could of possibly given a response. In turn these errors were never corrected or properly addressed. As you may know, PSP'S are Separated into four broad categories. Prior Criminal History, Present Offenses, Social History, and Community Impact. These four Categories include a total of 35 independent considerations. The 35 considerations are independently scored in the PSP, using a separate form to guide the division when assigning points (the Scoring Sheet). The points assigned to the 35 Considerations are then added to arrive at

an offender overall score or "PSP". When an overall PSP score warrants a recommendation of prison, a raw score is computed consisting of the scores from the considerations in the prior criminal history and present offense categories. The raw score is translated into a sentencing range using the Sentencing Scale. NAC 213.600. In this instance Mr. Crawley was interviewed for case C341735 and case C342881 by the PNP office, only a matter of weeks apart while in custody. However, the social history varies substantially between the two, as well as the pre sentence adjustment section. Most notably under the Attitude/supervision, Attitude/offense, Honesty/cooperation categories of the pre sentence adjustment. Also most importantly the psych or medical impact and weapon categories of the present offense section. The charge is concealed weapon, though -2 points are deducted for brandished on a "victimless" crime, for example. It is believed that these errors would have put Mr. Crawley in the borderline candidate recommendation range if a new PSI would have been ordered as was intended on March 4th, 2020 to be used at April 1st, 2020 rendition of sentencing. It is stated that a

Defendant has the right to object to factual or methodological errors in sentencing forms, so long as he or she objects before sentencing and allows the District Court to strike information that is based on impalpable or highly suspect evidence. It is clear that any objections that the defendant has must be resolved prior to sentencing. In this case however, this remains an issue in that the defendant was not given a new PSI interview, or ample time to review the Supplement PSI dated March 24th, 2020 prior to April 1st, 2020 Sentencing. The Supplemental PSI was never reviewed with the defendant by the defense Attorney. Under NRS 207.016 Procedure; 'trial of primary offense; prior convictions; it clearly states that if such a Supplement or amendment is filed the sentence must not be imposed, or the hearing required by subsection 3 held, until 15 days after the separate filing. Mr. Crawley was not given time to review the Supplemental PSI with counsel prior to April 1st, 2020 Sentencing due to restrictions amid the COVID 19/Corona Virus pandemic. Although, prosecution

1 retains the right to argue for prison versus probation, the
2 additional 5 to 8 points that Mr. Crawley was penalized
3 would have protected a lower sentencing
4 recommendation. The errors also affect classification
5 and parole eligibility in the Department of Corrections.
6 In conclusion Mr. Crawley's PSI was tainted as a
7 result of the error, and the division failed to
8 contact Attorney Carl Arnold prior to April 1st,
9 2020 sentencing to clarify issue, or give new
10 PSI interview for the defendant. Therefore, the
11 sentencing forms constituted palpable or highly
12 suspect evidence.

13
14 DATED THIS 2nd day of June, 2020

15 I Daine Anton Crawley, do

16 solemnly swear, under the penalty of perjury, that

17 the above Ground 2 Habeas Corpus is accurate.

18 correct, and true to the best of my knowledge.

19 NRS 171.102 and NRS 208.165.

20
21 Respectfully submitted.

22 
23 Defendant

24
25 NRS 208.165 A prisoner may execute any instrument by signing his name immediately
26 following a declaration "under penalty of perjury" with the same legal effect as if he had
27 acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in
28 this section, "prisoner" means a person confined in any jail or prison, or any facility for the
detention of juvenile offenders in this state.

(c) Ground THREE: Violation of Administrative order 20-06 filed March 18th, 2020 titled in the Administrative matter of Court operations of Criminal matters in response to COVID 19, 5th Amendment violation. No person shall be deprived of due process law, or be witness against himself.

Supporting FACTS (Tell your story briefly without citing cases or law.): Administrative order 20-06 filed March 18th, 2020 titled "In the administrative matter of court operations of criminal matters in response to COVID-19" lines 8-17 clearly state "Attorney client conversations will be facilitated if needed, however attorneys are cautioned that it will be absolutely necessary to prepare clients for guilty pleas, sentencing and probation violations/revocations prior to court." However, in case number C341735 Attorney Carl Arnold was not present at the April 1st, 2020 sentencing hearing. Mr. Crawley's attempts to have PSI/PSP Score issues amended, and a Continuance to discuss matters with Substitute Counsel were denied by both Judge Jacqueline Bluth and District Attorney David Stanton. Restrictions within the Clark County Detention Center involving Attorney/Client privileges left the defendant unable to discuss any related information prior to sentencing due to the COVID-19 pandemic. In relation to the March 4th, 2020 Continuance to have new PSI Conducted, as noted in Court transcripts for April 1st, 2020 Sentencing, a new PSI was never conducted at all and Page 7 of the supplemental PSI Dated March 24th, 2020 by acting Supervisor M. Leavitt discloses this error. In addition to these

restrictions; Due to the COVID 19/Corona Virus pandemic the defendants acceptance to Drug Court was not granted by Judge Bluth despite being approved for the program for District 18 case number C342881 in which a plea agreement was reached to run that case concurrent with case C341735 and not seek habitual treatment. Entry into the Drug Court program were previously an option or consideration prior to sentencing, as court records will show. It is believed that District Attorney David Stanton never intended to acknowledge the 1 to 5 year probationable plea agreement to begin with at all. Prosecutorial misconduct has been an issue with Mr. David Stanton in past and his anger has led him to be fired from the Reno, Nevada DA's office in 1999. Mr. Stanton has been involved in paying witnesses for testimony from a secret checking account, and has also been arrested for resisting arrest himself. The PSI reflects that the crime is "victimless" under the PSP present offense section, yet Mr. Stanton used the incorrect police report to obtain a "guilty

1 plea agreement". This in turn led Mr. Crawley to accept
2 a 1 to 5 year probationable sentence or a recommended
3 12 to 36 month sentence. The lack of adequate counsel
4 throughout case number C341735 led to 84 to
5 240 months in the Department of Corrections.

6 It is stated per the Nevada Revised Statutes, any changes
7 to factual allegations in the Pre Sentence Investigation
8 Report may be ordered by the court within 180 days
9 of the entry of Judgement of Conviction. Please
10 order new "PSI" to amend PSP Score errors for
11 rehabilitation purposes, and Post Conviction relief.

12
13
14 DATED THIS 2nd day of June, 2020

15 I Daine Anton Crawley do

16 solemnly swear, under the penalty of perjury, that

17 the above Ground 3 Habeas Corpus is accurate.

18 correct, and true to the best of my knowledge.

19 NRS 171.102 and NRS 208.165.

20
21 Respectfully submitted.

22 
23 Defendant

24
25 NRS 208.165 A prisoner may execute any instrument by signing his name immediately
26 following a declaration "under penalty of perjury" with the same legal effect as if he had
27 acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in
28 this section, "prisoner" means a person confined in any jail or prison, or any facility for the
detention of juvenile offenders in this state.

BEFORE, 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 2nd day of the month of June, 2020

Daine Anton Crawley #1167447

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.

Daine Anton Crawley #1167447

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 C341735 Does not contain the social security number of any person.

Daine Anton Crawley #1167447

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

CERTIFICATE OF SERVICE BY MAIL

I, Daine Anton Crawley, hereby certify pursuant to N.R.C.P. 5(b), that on this 2nd day of the month of June, 2020 I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

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

Daine Anton Crawley #1167447

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

Daine Anton Crawley #1167447

-10-

D. A. Crawley RA 000051

Vaine Cravney
#DSP
P.O. BOX 650
Indian Springs, NV 89070

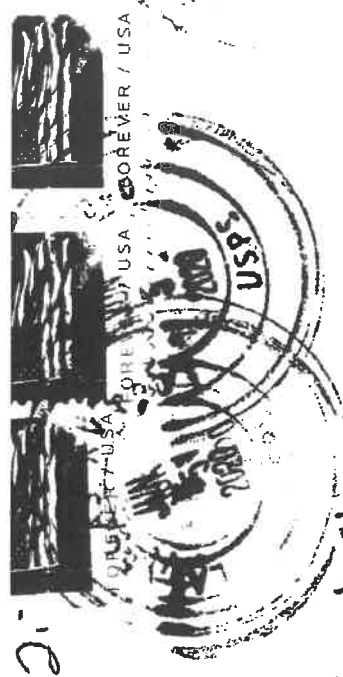
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RECEIVED

JUN 04 2020

MAIL ROOM
HIGH DESERT STATE PRISON

Clark County District Court Clerk
200 Lewis Avenue
Las Vegas, NV 89155



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HIGH DESERT STATE PRISON UNIT 1 C/D

JUN 04 2020 JUN 02 2020

HIGH DESERT STATE PRISON UNIT 1 C/D

RA 000052



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN NIMAN
Deputy District Attorney
Nevada Bar #14408
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAINE ANTON CRAWLEY,
#7031173

Defendant.

CASE NO: A-20-816041-W

C-19-341735-1

DEPT NO: VI

STATE'S RESPONSE TO DEFENDANT'S PETITIONS FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)

DATE OF HEARING: AUGUST 19, 2020
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
District Attorney, through JOHN NIMAN, Deputy District Attorney, and hereby submits the
attached Points and Authorities in Response to Defendant's Petitions for Writ of Habeas
Corpus (Post-Conviction).

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

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RA 000053

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 12, 2019, Daine Crawley (hereinafter ("Crawley" and/or "Defendant") was
4 charged by way of Information for having committed the crime of Carrying Concealed Firearm
5 or Other Deadly Weapon (Category C Felony- NRS 202.350 (1)(d)(3)- NOC 51459).

6 On July 15, 2019, Crawley entered a plea of guilty to the crime as listed in the
7 Information at Initial Arraignment. The Guilty Plea Agreement ("GPA") was filed the same
8 day in open court.

9 On October 28, 2019, Crawley filed a Motion to Dismiss Counsel and Appoint
10 Alternate Counsel. On November 13, 2019, defense counsel moved for the withdrawal of the
11 GPA and advised there was incorrect information in the Presentence Investigation Report
12 ("PSI") and that another evaluation has to be done. The Court ordered Carl Arnold, Esq., to
13 be appointed as counsel for the limited basis of the Motion to Withdraw Plea. On November
14 19, 2019, the State filed its Notice of Intent to Seek Punishment as a Habitual Criminal

15 On January 31, 2020, Crawley filed a Motion to Withdraw Plea. The State filed its
16 Opposition on February 14, 2020. On February 19, 2020, the District Court heard oral
17 arguments on the motion. The Court concluded that there was an insufficient basis to withdraw
18 the plea and denied the motion.

19 On March 4, 2020, Crawley's sentencing hearing took place. At the hearing, the State
20 argued in support of Habitual Treatment since he violated his agreement. Defense counsel
21 provided that there were errors within Crawley's PSI. The Court ordered that the sentencing
22 proceedings be continued to correct the PSI. On April 1, 2020, Crawley was sentenced
23 pursuant to the Small Habitual Criminal Statute. Crawley was sentenced to a minimum of
24 eighty-four (84) months and a maximum of two hundred-forty (240) months in the Nevada
25 Department of Corrections (NDC). Defendant stated he had two hundred sixty-one (261) days
26 credit. The District Court ordered sixty-seven (67) days credit for time served.

27 On April 6, 2020, Crawley filed a Notice of Appeal. The Judgment of Conviction
28 ("JOC") was filed on April 7, 2020. Crawley's Case Appeal Statement was filed on April 13,

1 2020. On May 11, 2020, Carl Arnold was appointed as appellate counsel. Crawley's appeal is
2 currently pending under Nevada Supreme Court case number 81011, but no Opening Brief has
3 yet been filed.

4 On June 4, 2020, Crawley filed a Petition for Writ of Habeas Corpus (Post-Conviction)
5 (First Petition) and on June 12, 2020, Crawley filed another Petition for Writ of Habeas Corpus
6 (Post-Conviction) (Second Petition). The State responds as follows.

7 **STATEMENT OF THE FACTS**

8 This Court relied on the following factual summary in sentencing Defendant:

9 On June 12, 2019, officers were dispatched to a location
10 between the Excalibur and the Luxor in reference to a person
11 threatening pedestrians with a knife. Upon arrival, contact was
12 made with a witness who stated he was walking with his friend
13 through the hotel parking lot when they were approached by a
14 male, later identified as defendant Daine Anton Crawley, who got
15 in his face and made unintelligible comments while retrieving a
16 knife from his backpack. The witness felt threatened by the
17 defendant who held the knife in his hand with the blade exposed.
18 He stepped away from the defendant who then approached a
19 vehicle with three occupants and attempted to open the door
20 before the car drove away. As the defendant walked to another
21 vehicle and hit the window, the witness notified police and
22 security.

23 Officers also spoke to witness' friend who relayed the same
24 events as described by the witness. While the defendant was being
25 detained, he stated that he did not have a knife; however, officers
26 located a knife in his pocket.

27 Based on the above facts, Mr. Crawley was arrested,
28 transported to the Clark County Detention Center, and booked
accordingly.

Presentence Investigation Report, August 27, 2019, at 7-8.

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ARGUMENT

I. DEFENDANT'S CLAIMS ARE PROCEDURALLY BARRED

NRS 34.810(1) reads:

The court shall dismiss a petition if the court determines that:

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

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

(2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief.

The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be *considered waived in subsequent proceedings.*" Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a habeas petition if it presents claims that either were or could have been presented in an earlier proceeding, unless the court finds both cause for failing to present the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001).

Further, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

A defendant may only escape these procedural bars if they meet the burden of establishing good cause and prejudice:

3. Pursuant to subsections 1 and 2, the petitioner has the burden of pleading and proving specific facts that demonstrate:

(a) Good cause for the petitioner's failure to present the claim or for presenting the claim again; and

1 (b) Actual prejudice to the petitioner.

2 NRS 34.810(3). Where a defendant does not show good cause for failure to raise claims of
3 error upon direct appeal, the district court is not obliged to consider them in post-conviction
4 proceedings. Jones v. State, 91 Nev. 416, 536 P.2d 1025 (1975).

5 Here, the grounds Defendant raises in his First Petition are proper only for a direct
6 appeal, and thereby, waived. Specifically, Defendant presents four (4) grounds to this Court:
7 (1) violation of his due process rights; (2) claims of prosecutorial misconduct; (3) violation of
8 a court administrative order; and (4) allegations of cruel and unusual punishment. First
9 Petition, at 8-11. Defendant does not challenge the validity of a guilty plea and/or raise claims
10 of ineffective assistance of counsel. See generally, Id. Indeed, the issues Defendant does raise
11 in this First Petition are improperly brought before this Court. As such, these substantive
12 claims are proper only on direct appeal and are barred in this Petition.

13 Even still, Defendant does not attempt to demonstrate good cause or prejudice for
14 raising these claims for the first time in the instant proceedings. See First Petition. Thus, such
15 claims should be denied.

16 **II. DEFENDANT'S SECOND PETITION FOR WRIT OF HABEAS CORPUS**
17 **IS SUCCESSIVE AND/OR AN ABUSE OF THE WRIT**

18 The Second Petition was filed eight (8) days after his First Petition is procedurally
19 barred because it is successive. NRS 34.810(2) reads:

20 A second or successive petition *must* be dismissed if the judge or
21 justice determines that it fails to allege new or different grounds
22 for relief and that the prior determination was on the merits or, if
23 new and different grounds are alleged, the judge or justice finds
24 that the failure of the petitioner to assert those grounds in a prior
25 petition constituted an abuse of the writ.

26 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
27 different grounds for relief and the grounds have already been decided on the merits or that
28 allege new or different grounds but a judge or justice finds that the petitioner's failure to assert
those grounds in a prior petition would constitute an abuse of the writ. Second or successive
petitions will only be decided on the merits if the petitioner can show good cause and

1 prejudice. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

2 The Nevada Supreme Court has stated: "Without such limitations on the availability of
3 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
4 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
5 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
6 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
7 a careful review of the record, successive petitions may be dismissed based solely on the face
8 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995). In other words,
9 if the claim or allegation was previously available with reasonable diligence, it is an abuse of
10 the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467, 497-498 (1991).
11 Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev. at 231, 112 P.3d at 1074.

12 Here, Defendant acknowledges that this is his Second Petition, and it is therefore
13 successive and an abuse of the writ under NRS 34.810(2) and should be denied. Further,
14 Defendant attempts to assert substantive claims that cannot be raised in a petition. Therefore,
15 Defendant's pleadings are successive and subject to dismissal absent a showing of good cause
16 and prejudice. NRS 34.810(2). Defendant does not argue good cause nor prejudice. See
17 generally, Second Petition. Thus, pursuant to statute, Defendant's pleadings "*must be*
18 *dismissed*." NRS 34.810(2) (emphasis added).

19 **III. DEFENDANT'S FAILURE TO RAISE CLAIMS ON DIRECT APPEAL**
20 **CONSTITUTE WAIVER**

21 Defendant's Second Petition additionally presents three (3) issues: (1) violation of his
22 Equal Protect and/or Due Process rights; (2) allegations of errors within his PSI; and, (3)
23 violation of this Court's Administrative Order. Second Petition, at 6-15. None of the claims
24 raised in this Second Petition challenge the voluntariness of Defendant's guilty plea, nor does
25 it allege ineffective assistance of counsel. Therefore, this claim should have been pursued on
26 direct appeal, rather than in a petition. NRS 34.810(1); Franklin, 110 Nev. at 752, 977 P.2d at
27 1059.

1 Defendant does not attempt to argue good cause or prejudice for raising these claims in
2 the instant proceedings. Such an argument would be meritless, as Defendant specifically and
3 unconditionally waived any protentional constitutional defect by entering his guilty plea.
4 Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 431, 683 P.2d 504, 505.

5 Because Defendant waived all constitutional issues prior to the entry of his plea, and
6 because his claim does not challenge the voluntariness of Defendant's plea, these claims must
7 be summarily denied.¹

8 **CONCLUSION**

9 Based on the foregoing the State respectfully requests that Defendant's Petitions for
10 Writ of Habeas Corpus (Post-Conviction) be DENIED.

11 DATED this 16th day of July, 2020.

12 Respectfully submitted,

13 STEVEN B. WOLFSON
14 Clark County District Attorney
Nevada Bar #001565

15
16 BY /s/JOHN NIMAN
17 JOHN NIMAN
18 Deputy District Attorney
Nevada Bar #14408

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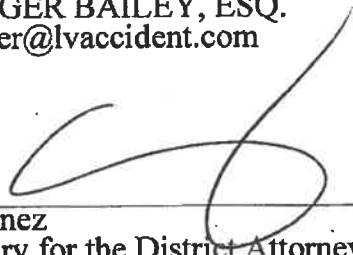
27 ///

28 ¹ The State asserts that Defendant's claims are waived as to his Petitions. If he raises these claims on direct appeal, we
will respond in our Answering Brief to the appellate court.

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of STATE'S RESPONSE TO DEFENDANT'S PETITIONS FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) , was made this 28 day of July, 2020, by Electronic Filing to:

ROGER BAILEY, ESQ.
roger@lvaccident.com


C. Jimenez
Secretary for the District Attorney's Office

JH/cmj/L3

A-20-816041-W Daine Crawley, Plaintiff(s)
vs.
Warden Williams, HDSP, Defendant(s)

August 19, 2020 10:15 AM Petition for Writ of Habeas Corpus

HEARD BY: Bluth, Jacqueline M. COURTROOM: RJC Courtroom 10C

COURT CLERK: Lord, Rem

RECORDER: Takas, De'Awna

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

PETITION FOR WRIT OF HABEAS CORPUS

COURT stated findings and ORDERED, Petition GRANTED, status check SET for appointment of counsel.

8/26/2020 10:15 AM STATUS CHECK: APPOINTMENT OF COUNSEL

CLERK'S NOTE: District Attorney Drew Christensen emailed [christdr@ClarkCountyNV.gov] regarding appointment of counsel on 8/19/2020 . /rl 8/21/2020