

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 05 2020 09:20 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

JAMES HOWARD HAYES, JR.,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-16-315718-1

Docket No: 81076

RECORD ON APPEAL VOLUME 3

ATTORNEY FOR APPELLANT
JAMES HAYES # 1175077,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 240
2	241 - 480
3	481 - 720
4	721 - 831

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	02/24/2020	"MOTION FOR RULING" FOR "MOTION TO CORRECT AN ILLEGAL SENTENCE"; HEARING REQUESTED	704 - 709
3	09/09/2019	"MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS"	595 - 601
3	12/16/2019	"MOTION TO CORRECT AN ILLEGAL SENTENCE"	674 - 681
4	06/01/2020	"MOTION TO VACATE SENTENCE" (CONVICTION INVALID)	763 - 771
3	10/17/2019	"REPLY" TO THE STATE'S OPPOSITION" MOTION FOR A WRIT OF CORAM NOBIS	631 - 636
4	05/04/2020	"RULE 60B MOTION" FOR RELIEF FROM THE MARCH 18, 2020 ORDER WHICH DENIED MR. HAYES MOTION TO "CORRECT ILLEGAL SENTENCE"	745 - 760
3	10/28/2019	AFFIDAVIT OF " NO MATERIAL DISPUTE AS TO THE MISTAKE OF FACT" "MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS"	637 - 663
3	01/06/2020	AFFIDAVIT OF GRANTING "MOTION TO CORRECT AN ILLEGAL SENTENCE" OF THE WRONGFULLY CONVICTED"	691 - 694
3	09/26/2019	AFFIDAVIT OF GRANTING MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS	612 - 615
2	04/06/2018	AMENDED COURTESY FILING OF DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS	390 - 398
2	11/07/2018	AMENDED INFORMATION	425 - 426
2	08/29/2017	AMENDED NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL	367 - 368
2	10/10/2018	CASE APPEAL STATEMENT	423 - 424
3	04/12/2019	CASE APPEAL STATEMENT	488 - 489
3	08/09/2019	CASE APPEAL STATEMENT	592 - 593
3	12/11/2019	CASE APPEAL STATEMENT	672 - 673

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
4	04/23/2020	CASE APPEAL STATEMENT	742 - 743
2	06/01/2017	CERTIFICATE OF MAILING	365 - 365
3	06/14/2019	CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED	533 - 533
4	06/05/2020	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
2	03/01/2018	COURTESY FILING OF DEFENDANT'S PRO PER PETITION	381 - 389
1	06/14/2016	CRIMINAL BINDOVER (CONFIDENTIAL)	1 - 52
1	11/18/2016	DEFENDANT'S MOTION FOR DISCOVERY	101 - 113
2	05/07/2018	DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234	405 - 406
2	05/07/2018	DEFENDANT'S SUPPLEMENTAL NOTICE OF WITNESSES PURSUANT TO NRS 174.234	407 - 408
3	11/19/2019	DESIGNATION OF RECORD ON APPEAL	668 - 668
4	06/05/2020	DISTRICT COURT MINUTES	788 - 831
4	06/05/2020	DOCUMENTARY EXHIBITS (UNFILED)	773 - 787
2	11/07/2018	GUILTY PLEA AGREEMENT PURSUANT TO ALFORD	427 - 435
1	06/17/2016	INFORMATION	53 - 55
2	03/12/2019	JUDGMENT OF CONVICTION (PLEA OF GUILTY-ALFORD)	471 - 471
2	07/30/2018	MOTION TO WITHDRAW AS ATTORNEY OF RECORD	411 - 413
2	05/31/2017	MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR DEFENDANT	358 - 364
3	04/29/2019	MOTION TO WITHDRAW COUNSEL	500 - 505
3	02/25/2020	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - AFFIRMED	711 - 715
2	01/11/2019	NEVADA SUPREME COURT CLERK'S	447 - 451

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		CERTIFICATE/REMITTITUR JUDGMENT - DISMISSED	
2	09/26/2018	NOTICE OF APPEAL	419 - 422
3	03/28/2019	NOTICE OF APPEAL	483 - 487
3	11/19/2019	NOTICE OF APPEAL	664 - 667
3	03/30/2020	NOTICE OF APPEAL (CONTINUED)	716 - 720
4	03/30/2020	NOTICE OF APPEAL (CONTINUATION)	721 - 739
3	07/31/2019	NOTICE OF APPEAL (2ND)	571 - 591
3	12/04/2019	NOTICE OF CHANGE OF ADDRESS	669 - 671
2	02/10/2017	NOTICE OF DEPARTMENT REASSIGNMENT	350 - 350
2	09/18/2018	NOTICE OF ENTRY OF ORDER	416 - 418
1	11/21/2016	NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL	114 - 115
3	04/29/2019	NOTICE OF MOTION	506 - 506
3	09/09/2019	NOTICE OF MOTION	602 - 602
3	12/16/2019	NOTICE OF MOTION	682 - 682
3	02/24/2020	NOTICE OF MOTION	710 - 710
4	05/04/2020	NOTICE OF MOTION	744 - 744
4	06/01/2020	NOTICE OF MOTION	772 - 772
1	12/12/2016	NOTICE OF MOTION AND MOTION FOR JOINDER OF CASE C315718 INTO CASE C315125	140 - 234
1	12/16/2016	NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER ACTS (CONTINUED)	238 - 240
2	12/16/2016	NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER ACTS (CONTINUATION)	241 - 332

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	08/26/2016	NOTICE OF RESCHEDULING OF HEARING	99 - 100
1	11/21/2016	NOTICE OF WITNESSES [NRS 174.234(1)(A)]	116 - 118
1	12/16/2016	NOTICE OF WITNESSES [NRS 174.234(1)(A)]	235 - 237
2	08/29/2017	NOTICE TO INTRODUCE CERTIFIED COPIES [NRS 52.260(4)]	369 - 370
2	12/20/2016	OPPOSITION TO THE STATE'S MOTION TO ADMIT EVIDENCE OF OTHER ACTS	333 - 343
4	04/07/2020	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR RULING ON MOTION TO CORRECT AN ILLEGAL SENTENCE	740 - 741
3	10/17/2019	ORDER DENYING DEFENDANT'S PRO PER MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS	629 - 630
4	05/12/2020	ORDER DENYING DEFENDANT'S PRO PER MOTION TO CORRECT AN ILLEGAL SENTENCE	761 - 762
2	09/12/2018	ORDER DENYING DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS	414 - 415
2	01/20/2017	ORDER DENYING STATE'S MOTION TO ADMIT EVIDENCE OF OTHER ACTS	344 - 346
2	06/12/2018	ORDER FOR PRODUCTION OF INMATE JAMES HOWARD HAYES, AKA, JAMES HOWARD HAYES, JR., BAC #2796708	409 - 410
2	03/23/2017	ORDER FOR PRODUCTION OF INMATES	351 - 357
3	08/30/2019	ORDER FOR TRANSCRIPT	594 - 594
3	07/29/2019	ORDER GRANTING DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL	569 - 570
2	12/18/2018	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	436 - 446
2	08/29/2017	RECEIPT OF COPY	366 - 366
2	10/24/2017	RECEIPT OF COPY	371 - 371

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	01/27/2020	REPLY TO STATE'S OPPOSITION TO "MOTION TO CORRECT AN ILLEGAL SENTENCE"	695 - 703
2	04/25/2018	STATE'S NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANT'S AMENDED COURTESY FILING OF DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS	399 - 404
2	01/31/2019	STATE'S NOTICE OF MOTION AND MOTION TO REVOKE BAIL	452 - 470
3	10/01/2019	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR A WRIT OF CORAM NOBIS	616 - 624
3	12/30/2019	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO CORRECT AN ILLEGAL SENTENCE	683 - 690
1	12/05/2016	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY, AND STATE'S REQUEST FOR RECIPROCAL DISCOVERY	119 - 139
2	02/08/2017	SUBSTITUTION OF ATTORNEY	347 - 349
1	07/29/2016	TRANSCRIPT OF HEARING HELD ON JUNE 14, 2016	56 - 98
3	09/25/2019	TRANSCRIPT OF HEARING HELD ON NOVEMBER 7, 2018	603 - 611
2	03/27/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE AND NOTICE OF MOTION (CONTINUED)	472 - 480
3	03/27/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE AND NOTICE OF MOTION (CONTINUATION)	481 - 482
3	04/15/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE "ADDENDUM" AND UNFILED NOTICE OF MOTION	490 - 499
3	06/04/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL	508 - 532

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		SENTENCE AND UNFILED NOTICE OF MOTION	
3	06/18/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE AND UNFILED NOTICE OF MOTION	534 - 559
3	07/15/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO WITHDRAW PLEA "ALFORD PLEA" AND UNFILED NOTICE OF MOTION	560 - 568
2	02/07/2018	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED PETITION FOR WRIT OF HABEAS CORPUS	372 - 380
3	10/04/2019	UNFILED DOCUMENT(S) - INMATE CORRESPONDENCE W/COPY OF UNFILED DEFAULT	625 - 628
3	04/29/2019	UNSIGNED DOCUMENT(S) - ORDER	507 - 507

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to

Modify and/or Correct Illegal Sentence
(Title of Document)

filed in District Court Case number C-16-315718-1

☒ 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.

James H. Hayes
Signature

3-23-2019
Date

JAMES H. HAYES #1175077
Print Name

PROPER
Title

- 9. -

Heads #1195072
HDS.D
D.O. 01 652
Industrial Group, N
89076

INTAKE NSF 3763

0015549999

|||||

Clerk County District Courts
"Clerk of the Courts"
200 Lewis Ave. 3rd Floor
125 West, Nevada
89155

LEGAL
MAIL

ICD
HDS.D
3-25-19

MOD.077EM21N470

1 NOAS

2 Name: Hayes, James H # 1175077

3 Address: P.O. Box 650

4 City/State/Zip: Indian Springs, NV 89070

5 Phone: 323 471 7514

FILED

MAR 28 2019

Elizabeth A. Brown
CLERK OF COURT

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
7 STATE OF NEVADA IN
8 AND FOR THE COUNTY OF CLARK

9 State of Nevada

10 Plaintiff,

11 v.

CASE NO. C-16-315718-1

DEPT. NO. XIX

12 James H Hayes # 2796208

13 Defendant.

14
15 **NOTICE OF APPEAL**

16 Notice is hereby given that James H Hayes, Defendant above-named,
17 hereby appeals to the Supreme Court of Nevada from Final Judgment for
18 conviction of Attempt Grand Larceny NRS 205.222.2

19
20 entered in this action on the 20th day of March, 2019.
21 6th March

22
23 DATED this 20th day of March, 2019.

James H Hayes
Defendant's Signature

C-16-315718-1
NOASC
Notice of Appeal (criminal)
4829176



24 NOTE: list either the Final Judgment or an Order (describe it) on the lines above.

25
26 **MAR 28 2019**

27 ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

PAGE 1 of 4

Now comes the appellant, James H. Hayes, respectfully moves this Honorable Court, pursuant to the United States Const and the Nevada Const. to overrule and dismiss the judgement entered against him in the above captioned case.

WHEREAS, the state violated the United States Const. 5th, 6th, 8th and 14th amendments in the judgement of conviction for attempt grand larceny by subjecting appellant to double jeopardy through prosecution or punishment twice for the same offense. WHERE the state at preliminary hearing prosecuted appellant by the way of criminal complaint for the crimes of burglary and attempt grand larceny and at the conclusion of the hearing only the charge of burglary was bound over to district court leaving the charge of attempt grand larceny dismissed for no corpus delicti, slight or marginal evidence to proceed to district court for the first time appellant was put in jeopardy the second time appellant was subjected to jeopardy was when the burglary charge was dismissed in district court and the state proceeded by charging and convicting appellant for the crime of attempt grand larceny. Which is clearly being prosecuted or punish twice for the same offense.

WHEREAS, the state violated the United States Const. 8th amendment by adjudicating the appellant as a habitual

PAGE 2 of 4

criminal that easily "shock the conscience" as being disproportionate to the crime convicted attempt grand larceny which is a clear miscarriage of justice.

Whereas, appellant's criminal history at the time and date of the ispeduit event was credit card abuse and fraudulent use/pass of identifying information that is a state jail crime in Texas that does not carry a prison sentence, mandatory supervision, nor parole and is not a category A, B, C, D, or E felony it's a state jail crime that carries only jail time equivalent to what Nevada is a gross misdemeanor that appellant was convicted of in September 2006. In December 2010 appellant was convicted of a category E felony (attempt pass of credit or debit card without cardholders consent) here in Nevada and received a dishonorable discharge in February 2012.

Whereas, the state violated United States Const. Amendments 6 and 14 where the state breached the Guilty Plea Agreement on impalpable and highly suspect evidence that allegedly took place January 2019 that greatly prejudice the appellant, whereby, the victim testified at preliminary hearing under oath facing the penalty of perjury that the appellant was not the perpetrator who committed the alleged event and 100% sure not 80%. So there was no corpus delicti

or slight or marginal evidence leaving no causation for the state to breach the terms and spirit of agreement that does not serve the interests of justice. In addition, the sentencing Judge Kasper considered a conviction that took place after the time and date that the adjudicated crime occurred namely a burglary conviction that took place in April 2016 to the extreme detriment of appellant.

Whereas, appellant never violated a provision of a statute that would have allowed the district court to not stand by the sentence agreed upon by the parties set forth in the guilty plea agreement. Furthermore, the appellant was never given notice that the district court would seek habitual treatment if appellant violated a provision of a statute making this an illegal sentence. Finally, the 2013 conviction can not be consecutive to the 2016 conviction due to the fact that the appellant made parole in October 2018 on the 2016 conviction and released from custody and not cell parole.

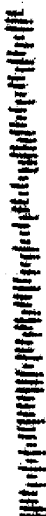
Dated this 20th day of March, 2019. I James H. Hayes, do solemnly swear, under the penalty of perjury, that the above Notice of Appeal is accurate, correct, and true to the best of my knowledge. NRS 171.02 and NRS 208.165

Respectfully submitted
James H. Hayes #1175078
appellant

FEJES + WESPER
H.D.S.D
P.O. Box 658
Indian Springs, NV
89070

INTAKE
NSF 3763

8570135993



Supreme Court of the State of Nevada
Attn: "Clerk of the Court"
Capital Complex
Carson City, Nevada
89701

Legal Mail

Hasler
03/26/2019
US POSTAGE \$000.45



ZIP 89101
011E12650764

WCD PTM21N421

105
3-25-19



1 ASTA

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK**

STATE OF NEVADA,

Plaintiff(s),

vs.

JAMES HOWARD HAYES
aka JAMES HOWARD HAYES, JR.,

Defendant(s),

Case No: C-16-315718-1

Dept No: XIX

CASE APPEAL STATEMENT

1. Appellant(s): James H. Hayes

2. Judge: William D. Kephart

3. Appellant(s): James H. Hayes

Counsel:

James H. Hayes #1175077
P.O. Box 650
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
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: June 14, 2016

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

Type of Judgment or Order Being Appealed: Judgment of Conviction

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 73436, 75173, 77151

12. Child Custody or Visitation: N/A

Dated This 12 day of April 2019.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

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

cc: James H. Hayes



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

April 15, 2019

Attorney: Michael W. Sanft
Sanft Law
Attn Michael W Sanft
324 South 3rd Street - 2nd Floor
Las Vegas NV 89101

Case Number: C-16-315718-1
Department: Department 19

Defendant: James Howard Hayes

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: Motion To Modify And Correct Illegal Sentence

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 7
Deputy Clerk of the Court

1 Hayes, James H #1175077
2 Defendant/ In Propria Person
3 Post Office Box 650
4 Indian Springs, Nevada 89018

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE
6 OF NEVADA IN AND FOR THE COUNTY OF Clerk

7
8 The State of Nevada,
9 Plaintiff,

10 VS

11 James H. Hayes,
12 Defendant.

Case No. C-16-315718-1

13
14 Dept NO. XIX

15 MOTION TO MODIFY AND/OR CORRECT

16 ILLEGAL SENTENCE

"ADDENDUM"

17 Date of hearing :

18 Time of hearing :

19
20 COMES NOW, DEFENDENT, James H. Hayes, proceeding
21 in proper person, hereby motion this Honorable Court
22 pursuant to N.R.S 176.555 and Edwards v. state.

23 This motion is made in based upon all papers and pleadings
24 on file, the points and authorities and exhibits attached
25 here to.

26
27 Dated: this 29th day of March, 2019.

28
James H. Hayes #1175077
James H. Hayes
DEFENDENT

POINTS AND AUTHORITIES

"Motion to modify sentence" is limited in scope to sentences based on mistaken assumptions about defendant's criminal record which work to defendant's extreme detriment, while " Motion to correct illegal sentence " addresses only facial legality of sentence. State v. District Court, 100 nev. 90, 97, 677 p.2d 1044 1048 (1984), and Edwards v. State, 918 p.2d 321 (nev. 1996).

Further N.R.S 176.555 Motion to Modify and/or Correct a sentence, may be filed at any time.

Defendant herein alleges that his sentence should be modified and/or corrected pursuant to the following facts.

WHEREAS, CONSECUTIVE SENTENCES IMPOSED BY THE DISTRICT COURT VIOLATES THE LEGISLATIVE INTENT OF NRS 176.035 AND DOES NOT SERVE THE INTERESTS OF JUSTICE.

WHEREAS, THE INSTANT OFFENSE ATTEMPT GREEN LARCENY TOOK PLACE ON OR ABOUT APRIL 9, 2013 AND WAS NOT SUBSEQUENT TO THE BURGLARY CONVICTION THAT OCCURRED APRIL 2, 2016 BUT PRIOR. IN WHICH, THE DISTRICT COURT ERRED BY SENTENCING THE DEFENDANT TO CONSECUTIVE SENTENCES RATHER THEN CONCURRENT. THE DEFENDANT WAS CHARGED WITH THE INSTANT OFFENSE IN 2013 AND A WARRANT HAD ISSUED SUM THREE YEARS PRIOR TO THE CONVICTION THAT THE DISTRICT COURT JUDGE KENNER IMPOSED CONSECUTIVE SENTENCES, EVEN AFTER OBJECTIONS BY DEFENDANT AND HIS COUNSEL.

WHEREAS, THE DEFENDANT'S BOND FOR THE INSTANT OFFENSE WAS EXONERATED AT THE CONCLUSION OF THE PRELIMINARY HEARING

as the instant offense Attempt ^{-CONT-} Grand Larceny was dropped / dismissed for Lack of Evidence, No corpus delicti, slight or marginal Evidence to hand over to District Court that took place in 2016. So defendant at worst should have received time credit from that point to the present towards the instant offense Att. Grand Larceny. When in fact the day the District Court Judge Kephart granted the state's motion on February 4, 2019 the defendant did not have a bond current for the Att. Grand Larceny charge as the bond was exonerated sum three years prior the defendant had a bond active for the charge of Burglary that the state had dropped / dismissed on Nov 7, 2018. This a clear miscarriage of Justice that has prejudiced the defendant to his extreme detriment that does not serve the interests of Justice.

Lack of Evidence: NO LOSS OR INJURY, NO EVIDENCE, NO VIDEO... NONE of the female occupants of said room gave testimony or extrajudicial statements that defendant did not have their permission or consent to be in said room.

Whereas, the state did not produce sufficient evidence to show that a crime was committed and the appellant committed it by slight or marginal evidence.

Whereas, the state did not have the three female occupants of said room testify or have written statements that defendant

James N. Hayes
James N. Hayes # 1175077
Defendant / In

did not have their permission or consent to be in said room.

When in fact, one of the female occupants perform fellatio on defendant in bathroom of said room on the night in question.

Furthermore, none of the three female occupants made statements that any of their belongings were missing or ~~tempered~~ with leaving NO loss or injury.

Whereas, the alleged victim Joshua Jarvis testified at preliminary hearing that he had NO valuables in said room only his used iPhone that he had on his person leaving NO valuables or property to meet the value threshold of \$650.00 for Grand Larceny.

Whereas, when the defendant was on the charge of Attempt Grand Larceny at Preliminary hearing for NO corpus delicti, slight or marginal evidence that the state predicted the intent on for the charge of Burglary then the Burglary charge to should have been dropped/dismissed.

NO Corpus Delicti: Proof of the corpus delicti is required in all criminal matters.

Whereas, proof of the corpus delicti is required in all criminal cases and there are three basic elements in the proof of a crime: (1) the occurrence of loss or injury as in the instant case there was NO loss or injury; (2) Criminal causation of that loss or injury in this instant case there was NO trespass or illegal entry; (3) the identity of the defendant as the perpetrator of the crime. However, in this state that the term "corpus delicti" embraces only the first two of these elements loss or injury and criminal causation.

Thereby, pursuant to the facts and the law stated herein,
Defendant, request that his sentence be modified/corrected as
follows: by being dismissed/ vacated for 5th Amendment
and Nevada Const Article 1 violation "Double Jeopardy"...
due to incorrect PSI and ~~less~~ No loss or injury, impalpable
and highly suspect evidence that the agreed upon Guilty
Plea Agreement by both parties be enforced and adhered
to.

Dated; this 29 DAY OF March, 2019.

James H. Hayes
James H. Hayes #1175027
Defendant/propria person

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 29
day of March, 2019 I mailed a true and correct copy of the foregoing, "Motion
to Modify and/or Correct Illegal Sentence "ADDENDUM""
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Courts
202 LEWIS AVE. 300 #1020
LEWIS, NV 89155

District Attorney
202 LEWIS AVE
LEWIS, NV 89155

Nevada Attorney General

CC:FILE

DATED: this 29 day of March, 2019.

James H. Hayes
James H. Hayes #1175277
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to

Modify and/or Correct Illegal Sentence "ADDENDUM"
(Title of Document)

filed in District Court Case number C-16-315718-1

☒ 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.

James H. Hayes
Signature

3-29-2019
Date

James H. Hayes
Print Name

defendant
Title

1 Case No. C-16-315718-1

2 Dept. No. XIV

3
4
5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF Clark

8 The State of Nevada
9 Plaintiff,

10 vs.

11 James H. Hayes,
12 Defendant,

Case No. C-16-315718-1

Dept No. XIV

Docket _____

14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE**, that MOTION TO MODIFY AND/OR

16 CORRECT ILLEGAL SENTENCE "ADDENDUM"

17 will come on for hearing before the above-entitled Court on the _____ day of _____, 20____,
18 at the hour of _____ o'clock _____ M. In Department _____ of said Court.

19
20 CC:FILE

21
22 DATED: this 29 day of March, 2019.

23
24
25 BY:

James H. Hayes
JAMES H. HAYES # 1173072
/In Propria Personam

07068

UNIT 1 4/8

"Clerk of the Courts"

200 LEWIS AVE; 307 HOR

Les Vieux, NV

89155-1160

INTAKE
NSF 3763

STANDARD

1. The first part of the document is a list of names, each followed by a number in parentheses. The names are: "John (1)", "Mary (2)", "James (3)", "Elizabeth (4)", "Thomas (5)", "Sarah (6)", "Michael (7)", "David (8)", "Susan (9)", "Robert (10)", "Patricia (11)", "Richard (12)", "Jennifer (13)", "Christopher (14)", "Daniel (15)", "Michelle (16)", "Matthew (17)", "Ashley (18)", "Andrew (19)", "Stephanie (20)", "Joshua (21)", "Brittany (22)", "Nathan (23)", "Kayla (24)", "Aaron (25)", "Haley (26)", "Zachary (27)", "Alexis (28)", "Justin (29)", "Megan (30)", "Tyler (31)", "Samantha (32)", "Jacob (33)", "Nicole (34)", "Jonathan (35)", "Chloe (36)", "Benjamin (37)", "Kaitlyn (38)", "Ethan (39)", "Madison (40)", "Caleb (41)", "Sydney (42)", "Natalie (43)", "Austin (44)", "Danielle (45)", "Jesse (46)", "Christina (47)", "Adam (48)", "Heather (49)", "Nathan (50)", "Kayla (51)", "Zachary (52)", "Alexis (53)", "Justin (54)", "Megan (55)", "Tyler (56)", "Samantha (57)", "Jacob (58)", "Nicole (59)", "Jonathan (60)", "Chloe (61)", "Benjamin (62)", "Kaitlyn (63)", "Ethan (64)", "Madison (65)", "Caleb (66)", "Sydney (67)", "Natalie (68)", "Austin (69)", "Danielle (70)", "Jesse (71)", "Christina (72)", "Adam (73)", "Heather (74)", "Nathan (75)", "Kayla (76)", "Zachary (77)", "Alexis (78)", "Justin (79)", "Megan (80)", "Tyler (81)", "Samantha (82)", "Jacob (83)", "Nicole (84)", "Jonathan (85)", "Chloe (86)", "Benjamin (87)", "Kaitlyn (88)", "Ethan (89)", "Madison (90)", "Caleb (91)", "Sydney (92)", "Natalie (93)", "Austin (94)", "Danielle (95)", "Jesse (96)", "Christina (97)", "Adam (98)", "Heather (99)", "Nathan (100)".

15/11/2019

UCANTICMEKKE.COM

PP
DA
Hon.
Michael
Sanft

1 James H. Hayes # 1175077

2 In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED

APR 29 2019

John L. Blum
CLERK OF COURT

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE

6 STATE OF NEVADA IN AND FOR THE COUNTY OF Clerk

7 State of Nevada
8 Plaintiff

10 vs.

11 James H. Hayes
12 Defendant

Case No. C-16-315718-1

Dept. No. VIV

Docket _____

14 MOTION TO WITHDRAW COUNSEL

15 Date of Hearing: June 3 2019

16 Time of Hearing: 8:30 AM

17 'ORAL ARGUMENT REQUESTED, Yes _____ No ☒

18 COMES NOW, Defendant, James H. Hayes, proceeding in proper person,

19 moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel
20 of record in the proceeding action, namely,

21 CASE No. C-16-315718-1

22 This Motion is made and based on all papers and pleadings on file with the Clerk of the Court
23 which are hereby incorporated by this reference, the Points and Authorities herein, and attached
24 Affidavit of Defendant.

25 DATED: this 22 day of April, 2019.

BY: James H. Hayes
James H. Hayes # 1175077
In Propria Personam

RECEIVED
APR 29 2019
CLERK OF THE COURT

1 **POINTS AND AUTHORITIES**

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall upon demand and payment of the fee
4 due from the client, immediately deliver to the client all papers, documents, pleadings and items
5 of tangible personal property which belong to or were prepared for that client.
6 2. . . If the court finds that an attorney has, without just cause, refused or neglected to obey its
7 order given under this section, the court may, after notice and fine or imprison him until the
8 contempt purged. If the court finds that the attorney has, without just cause, withheld the
9 client's papers, documents, pleadings, or other property, the attorney is liable for costs and
10 attorney's fees.

11 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant
12 does not owe counsel any fees.

13 **WHEREFORE,** Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel
14 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other
15 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper
16 assistance that is needed to insure that justice is served.

17 **DATED:** this 22 day of April, 2019.

18 Respectfully submitted,

19 BY: JAMES H. NAYLES
20 James H. Nayles #1195072
21 /In Propria Personam
22 Post Office Box 650 [HDSP]
23 Indian Springs, Nevada 89018
24
25
26
27
28

NAME: James H. Hayes # 1175077

HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

DATE: 4-22-2019

TO: Clark County District
Court Dept XIX; Michael Sanft, esq.
208 Lewis Ave
Las Vegas, NV
89155-1160

SUBJECT: TERMINATION OF COUNSEL/TRANSFER OF RECORDS

CASE NO.: C-16-315718-1

DEPT. NO.: XIX

CASE NAME: _____

Please be advised that from this date forward, your authority as Attorney of Record in the above-stated action is hereby terminated. All of the professional relations of Attorney and Client do hereby cease.

Please enter your withdrawal from this action with the Court immediately.

Pursuant to NRS 7.055, I respectfully request that you deliver to me, forthwith, all documents, papers, pleadings and tangible personal property that is in your possession that relates to the above-named action.

Your prompt attention to this request is genuinely appreciated.

Respectfully,

James H. Hayes

////

////

////

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 22
day of April, 2019, I mailed a true and correct copy of the foregoing, "Motion
to Withdraw Counsel"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of Court
200 LEWIS AVE
LAS VEGAS, NV
89155-7160

Attorney General
335 WASHINGTON AVE
LAS VEGAS, NV
89101

Clerk County Dist Att
200 LEWIS AVE
LAS VEGAS, NV
89155

CC:FILE

DATED: this 22 day of April, 2019.

JAMES H. HAYES
Cornel Hayes # 1145879
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

Motion

To Withdraw Counsel

(Title of Document)

filed in District Court Case number C-16-315718-1

☒ 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.

James H Hayes
Signature

4-22-2019
Date

JAMES H HAYES
Print Name

defendant
Title

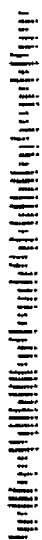
Pages #1193078
H.D.S.P
P.O. Box 650
Rochester, NY
83020

LAS VEGAS
NV 890
23 APR '19
PM 5 L

Legal
Hyll

INTAKE
NSF 3763

8910146300 0075



Clark County District Courts
Clerk of the Courts
200 Lewis Ave, 3rd Floor
Las Vegas, Nevada
89155-1160

WCD.DY773M015N4C01

1 James H. Hayes #1175077

2 / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED

APR 29 2019

John J. Williams
CLERK OF COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 State of Nevada
9 Plaintiff

10 vs.

11 James H. Hayes
12 Defendant

Case No. C-16-315718-1

Dept No. XIX

Docket _____

14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that James H Hayes

17 will come on for hearing before the above-entitled Court on the 3 day of June, 2019,
18 at the hour of 8:30 clock A. M. In Department _____, of said Court.

20 CC:FILE

22 DATED: this 22 day of April, 2019.

24 BY: James H. Hayes
25 James H. Hayes # 1175077
26 / In Propria Personam

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT
Clark COUNTY, NEVADA

State of Nevada }
vs. }
James H Hayes }
defendant }

Case No. C-16-315718-1
Dept. No. XIX
Docket _____

ORDER

Upon reading the motion of defendant, JAMES H HAYES, requesting
withdrawal of counsel, MICHAEL SANFT, 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



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

June 04, 2019

Attorney:	Michael W. Sanft Sanft Law Attn Michael W Sanft 324 South 3rd Street - 2nd Floor Las Vegas NV 89101	Case Number:	C-16-315718-1
		Department:	Department 19
Defendant:	James Howard Hayes		

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion To Modify And Or Correct Illegal Sentence**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 7
Deputy Clerk of the Court

1 JAMES H. HAYES #1125072
2 Defendant/ In Propria Person
3 Post Office Box 650
4 Indian Springs, Nevada 89018

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

7
8 The State of Nevada
9 Plaintiff,

10 VS

11 JAMES H. HAYES
12 Defendant.

Case No. C-116-315718-1

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Dept NO. 19

15 MOTION TO MODIFY AND/OR CORRECT
16 ILLEGAL SENTENCE

17 Date of hearing :

18 Time of hearing :

19
20 COMES NOW, DEFENDENT, JAMES H. HAYES, proceeding
21 in proper person, hereby motion this Honorable Court
22 pursuant to N.R.S 176.555 and Edwards v. state.

23 This motion is made in based upon all papers and pleadings
24 on file, the points and authorities and exhibits attached
25 here to.

26
27 Dated; this 30th day of JUNE, 2019.

28
James H. Hayes
JAMES H. HAYES
DEFENDENT/ 1125072

RECEIVED
JUN - 4 2019

CLERK OF THE COURT

POINTS AND AUTHORITIES

"Motion to modify sentence" is limited in scope to sentences based on mistaken assumptions about defendant's criminal record which work to defendant's extreme detriment, while " Motion to correct illegal sentence " addresses only facial legality of sentence. State v. District Court, 100 nev. 90, 97, 677 p.2d 1044 1048 (1984), and Edwards v. State, 918 p.2d 321 (nev. 1996).

Further N.R.S 176.555 Motion to Modify and/or Correct a sentence, may be filed at any time.

Defendant herein alleges that his sentence should be modified and/or corrected pursuant to the following facts.

The state violated the defendant's United States and Nevada Constitutional rights along with NRS violations...
Whereas, defendant's Pre-Sentence Investigation Report did have several material facts in error that prejudice the defendant, and untrue assumptions made by state prosecutors which work to the extreme detriment of the defendant. When in fact, the defendant and his counsel made objections to the District Court Judge regarding the clear and convincing mistakes to no avail.

Whereas, state prosecutors proffer was assumptions that was not based on any facts or evidence as prosecutors branded defendant as a career "Dope Pusher" and not one of defendant's convictions had any

1 EVIDENCE OR FACTS ~~that~~ of Door Pushing. That greatly
2 prejudice the defendant and was nothing more
3 than a inappropriate personal attack, unprofessional
4 and grossly unethical.

5 WHEREAS, the defendant's PSI had several
6 material facts in error as listed below:

7 - CONVICTIONS should read: Felony 1 NOT 4

8 Misdemeanors 2 NOT 3

9 State Jail Crimes 2

10 - INCARCERATIONS should read: Prison NOT 1

11 Jail 3 NOT 5

12 - Supervisor History should read: Current NOT 1

13 - INSTANT OFFENSE, C-16-315718-1 1. Burglary 1st (7)

14 2. All Grand Larceny < \$3500

15 should read: Dated 04-09-2013 NOT 04-02-2016

16 - Case Number C-16-315125-1 should NOT be

17 anywhere on this PSI for this instant offense as

18 it occurred sum 3 years later on 04-02-2016

19 - TEXAS CONVICTION CASE NO. 1083785 AND 1083786

20 should read: 1 event NOT 2

21 When in fact, if the Judge would have allowed

22 the corrections completed upon defendant's objection

23 defendant PSI raw score, social score, and the

24 department of Public Safety Division of parole and

25 probation recommendations would have been

26 astronomically different and would have showed that

27 defendant had never been to prison so there would not

28 have been any habitual offender recommendations.

THE STATE VIOLATED DEFENDANT'S ^{-CONT-} RIGHTS GUARANTEED BY BOTH THE U.S. CONSTITUTION AND NEVADA CONSTITUTION [FEDERAL AND STATE CONSTITUTIONAL RIGHTS]

WHEREAS, THE CLARK COUNTY DISTRICT COURT DID NOT DIVEST JURISDICTION FOR THE CHARGE CRIME OF ATTEMPT GRAND LARCENY.

WHEREAS, A CRIMINAL COMPLAINT WAS FILED IN JUSTICE COURT, LAS VEGAS TOWNSHIP CASE # 13F10723X ON 7-23-2013 CHARGING DEFENDANT HAVING COMMITTED THE CRIMES OF BURGLARY (NRS 205.060) AND ATTEMPT GRAND LARCENY (NRS 205.220.1; 205.222.2; 193.30) ON OR ABOUT THE 9TH DAY OF APRIL, 2013. THE DEFENDANT WAS ARRESTED ON APRIL 2, 2016 FOR SAID OFFENSES AND POSTED BOND ON BOTH CHARGES AND RELEASE.

WHEREAS, ON OR ABOUT THE 14TH DAY OF JUNE, 2016 THE DEFENDANT FEEC JEOPARDY ON THE CHARGES OF BURGLARY AND ATTEMPT GRAND LARCENY BY THE WAY OF PRELIMINARY HEARING IN JUSTICE COURT DEPT # 3 AND AT THE CONCLUSION OF THE HEARING THE BURGLARY CHARGE WAS BOUND OVER TO DISTRICT COURT AND THE CHARGE OF ATTEMPT GRAND LARCENY WAS DISMISSED FOR LACK OF EVIDENCE, NO CORPUS DELICTI, SLIGHT OR MARGINAL EVIDENCE TO PROCEED TO DISTRICT COURT AND DEFENDANT'S BOND FOR ATTEMPT GRAND LARCENY WAS EXONERATED. AS DEFENDANT FEEC JEOPARDY FOR THE 1ST TIME. (NRS 174.085(3)).

WHEREAS, WHEN THE CHARGE OF ATTEMPT GRAND LARCENY WAS DISMISSED THAT THE STATE PREDICTED THE INTENT ON FOR THE BURGLARY CHARGE PER THE FILED CRIMINAL COMPLAINT THEN THAT LEFT THE

James H. Hayes
James H. Hayes #1175098
Defendant / In

STATEMENT OF FACTS

charge of Burglery fetal and it to must have been dismissed, leaving No jurisdiction for the district court to proceed on the charge.

Whereas, the state proceeded to district court on the charge of burglary by the way of information in Dept. XII case # C-16-315718-1. When in fact, the description of the offense was not sufficiently full and complete to accord to the defendant his constitutional right to due process of law as the state's intent of larceny was dismissed at preliminary hearing leaving an indefinite information, where the defendant has a right to be informed of the nature of the accusation against him (NRS 173.025(1)) that prejudice the defendant and is a miscarriage of justice.

Whereas, the state dismissed the burglary charge in district court and again charge the defendant with attempt grand larceny by the way of amended information on November 7, 2018 without a grand jury indictment to put defendant in jeopardy for the 2nd time for the offense that has once previously been dismissed for lack of evidence, no corpus delicti, slight or marginal evidence to hand over to district court (NRS 174.085 (3)(5A)) after conclusion of preliminary hearing in Justice court.

Whereas, the state by notice to motion and motions to revoke bail filed on January 31, 2019 in district court that was granted by district court Judge W. Kephart had the defendant rebooked February 4, 2019 on the charge of attempt grand larceny to again have the defendant placed in jeopardy for the 3rd time. When in fact, the defendant's bond for attempt grand larceny had already been exonerated at the conclusion of preliminary hearing by the Justice court judge.

when the said charge was dismissed).

WHEREAS, the state on March 6, 2019 convicted the defendant on the dismissed charge at the conclusion of preliminary hearing of attempt grand larceny and sentence defendant to have place the defendant in jeopardy for the 4th time on the same offense that had been dismissed in Justice Court for lack of evidence, NO CORPUS DELICTI, slight or marginal evidence that has caused the defendant irreparable injury, prejudice, and is a miscarriage of justice.

*NOTE: This is a issue of first impression...

EXHIBITS ENCLOSED:

- EXHIBIT 1 - Amended Information
- EXHIBIT 2 - Information
- EXHIBIT 4 - Guilty Plea Agreement
- EXHIBIT 5 - Judgment of Conviction
- EXHIBIT 6 - Custody Record (Rebook)
- EXHIBIT 7 - Criminal Complaint
- EXHIBIT 8 - NRS 174.085

WHEREAS, the state failed to give written notice for habitual treatment for the conviction of Attempt Grand Larceny less than \$3500. When in fact, the state never filed written notice that their intention to seek to have defendant treated as a habitual offender for the negotiated charge of Attempted Grand Larceny less than \$3500. When the Judge convicts the defendant upon his Alford plea he inform the defendant that the maximum punishment he could receive was 12 to 48 months if he receive felony treatment and 364 days if he received the gross misdemeanor treatment with a possible fine that could be imposed in both instances. Not in any way did he inform defendant that he could face habitual treatment for the negotiated charge of Attempted Grand Larceny less than \$3500. As the habitual sentence imposed on defendant was a surprise when defendant's counsel informed him that he had it negotiated to gross misdemeanor treatment and concurrent with case No C-16-315125-1. So this was prejudicial and affected the defendant's rights and is a miscarriage of justice.

WHEREAS, defendant did not agree to the validity of the felony convictions used by the state to adjudicate, when in fact, the defendant objected to the validity of the assume felony convictions. As the event in Texas was not a felony but a state jail crime that doesn't carry any prison time, mandatory supervision, nor parole and is not a class A, B, C, D, or E felony and the 2016 felony conviction was 3 years after the instant offense. that the Judge considered in adjudication

WHEREAS, CONSECUTIVE SENTENCES imposed by the district court violates the LEGISLATIVE intent of NRS 216.035 and does NOT SERVE THE INTERESTS OF JUSTICE.

WHEREAS, the INSTANT OFFENSE Attempt Grand Larceny took place ON OR ABOUT April 9, 2013 and was NOT subsequent to the Burglary conviction that occurred April 2, 2016 but PRIOR. IN which, the District Court ERRED by sentencing the defendant to CONSECUTIVE SENTENCES rather than CONCURRENT. The defendant was charged with the INSTANT OFFENSE IN 2013 and warrant had issued sum three years prior to the conviction that the District Court Judge imposed CONSECUTIVE SENTENCES.

WHEREAS, the defendants bond for the INSTANT OFFENSE was EXONERATED at the conclusion of the preliminary hearing as the INSTANT OFFENSE "Attempt Grand Larceny" was dropped/ dismissed for No corpus delicti, slight or marginal evidence to bound over to District Court that took place in 2016. So defendant should have received time credit from that point to the present towards the INSTANT OFFENSE "Attempt Grand Larceny". When in fact, when the District Court Judge granted the states motion on February 4, 2019 and EXONERATED the bond the defendant was NOT ON BOND for the charge of Attempt Grand Larceny but for Burglary and the Burglary charge was dismissed in November 2018 and the BOND for Attempt Grand Larceny was EXONERATED in 2016. This is a clear miscarriage of Justice that has prejudiced the defendant.

1 WHEREAS, ONE CAN ONLY ASSUME THAT THE STATE
2 WILL CONTEND THAT THE BAILER PLEA IN THE GUILTY PLEA
3 AGREEMENT WOULD SATISFY NOTICE, WHICH WILL NOT
4 SATISFY LEGISLATIVE INTENT OF PROPER NOTICE OF HABITUAL
5 CRIMINALITY WITH THE DISTRICT COURT.

6 WHEREAS, THE DISTRICT COURT JUDGE DID NOT CONVEY
7 DEFENDANT ON HABITUAL SENTENCE NOR ISSUE A STAY
8 OUT OF TROUBLE ORDER. WHEN IN FACT, THE MAXIMUM
9 PUNISHMENT THAT THE JUDGE INFORM THE DEFENDANT
10 OF WAS 12 TO 48 MONTHS FOR FELONY TREATMENT AND
11 364 DAYS FOR GROSS MISDEMEANOR TREATMENT PLUS A
12 FINE.

13 WHEREAS, THE AFFIDAVIT REVIEW OF PROBABLE
14 CAUSE WAS BASED ON IMPULSIBLE AND HIGHLY SUSPECT
15 EVIDENCE FOR NEW CRIMINAL CHARGE IN CASE NUMBER
16 C-19-338412-1 THAT WAS DISMISSED IN DEFENDANT'S
17 FIRST COURT APPEARANCE IN DISTRICT COURT AS THE ALLEGED
18 VICTIM TESTIFIED UNDER OATH AT PRELIMINARY HEARING
19 THAT THE DEFENDANT WAS NOT THE PERPETRATOR OF
20 THE ALLEGED EVENT AND HE WAS 100% SURE OF THAT.
21 FURTHERMORE, THIS WAS NOT A LEGAL SENTENCE AS THE
22 CHARGE CRIME OF ATTEMPTED GRAND LARCENY WAS DISMISSED
23 AT THE CONCLUSION OF PRELIMINARY HEARING FOR NO
24 CORPUS DELICTI, SLIGHT OR MARGINAL EVIDENCE, AND LACK
25 OF EVIDENCE AS THE STATE RE-CHARGE DEFENDANT FOR
26 THIS SAME CRIME IN DISTRICT COURT WITHOUT GRAND
27 JURY INDICTMENT THAT IS A CLEAR MISFEASANCE

1 of justice constitutional violation U.S. and
2 Nevada, and a NRS 174.085 violation of Double
3 Jeopardy.

4 WHEREAS, THE CONVICTIONS USED BY THE STATE
5 WAS TRIVIAL AND BEYOND THE SCOPE. WHEN IN FACT,
6 THE TEXAS CONVICTIONS WAS ONE EVENT AND NOT TWO
7 AS THE JUDGE DEEMED NOT FELONIES BUT TEXAS STATE
8 JAIL CRIMES THAT DON'T CARRY PRISON TERM, MANDATORY
9 SUPERVISION, NOR PAROLE AS A FELONY WOULD IN ANY
10 OTHER STATE IN THE COUNTRY. AND THE 2016 BURGLARY
11 CONVICTION WOULD NOT BE A PRIOR FELONY AS THE
12 INSTANT CASE OCCURRED IN 2013. SO IN ESSENCE THE
13 DEFENDANT ONLY HAD ONE PRIOR FELONY AND HAD
14 NEVER BEEN TO PRISON SO THIS HABITUAL SENTENCE
15 EASILY "SHOCK THE CONSCIENCE" AS BEING DISPROPOR-
16 TIONATE TO THE CRIME CHARGED ATTEMPTED GRAND
17 LARCENY LESS THAN \$1,500.

18
19 * NOTE: THE CONVICTION IN TEXAS IS NOT A CLASS A, B, C, D,
20 OR E FELONY DOES NOT CARRY A PRISON TERM SO AT THE
21 VERY LEAST ONE WOULD HAVE TO SAY ITS AMBIGUOUS TO
22 BEING A FELONY CONVICTION. DEFENDANT HAS NEVER
23 BEEN CHARGE OR CONVICTED OF A VIOLENT OFFENSE.

1 WHEREAS, THE STATE KNOWINGLY, VOLUNTARILY, AND
2 INTELLIGENTLY FILED A FRAUDULENT UNCONSTITUTIONAL GUILTY
3 PLEA AGREEMENT AND AMENDED INFORMATION IN OPEN COURT
4 ON NOV 8, 2018 TO DEPRIVE AND MISLEAD THE DEFENDANT
5 TO HIS PREJUDICE THAT WAS MALICIOUS, UNPROFESSIONAL,
6 AND GROSSLY UNETHICAL. AS TO DEPRIVE THE DEFENDANT OF
7 THE PROTECTIONS THAT THE CONSTITUTION AFFORDED HIM
8 AND WAS DESIGNED TO PROTECT HIM OF AND DENY HIM
9 DUE PROCESS OF LAW.

10 WHEREAS, THE NEGOTIATIONS CONTAINED IN THE
11 GUILTY PLEA AGREEMENT WAS NOT KNOWINGLY AND INTELLIGENTLY
12 AGREED TO BY THE DEFENDANT AS THE GUILTY PLEA AGREEMENT
13 WAS NOT SUFFICIENTLY CLEAR AND UNAMBIGUOUS. THE
14 AMENDED INFORMATION LEFT THE DEFENDANT WITHOUT KNOW-
15 LEDGE AS TO THE NATURE OF THE CHARGE UPON WHICH HE
16 PLEADED THAT HE COULD NOT PLEAD THE CRIME WITH
17 CERTAINTY AS THE SAID CHARGE ATTEMPTED GRAND LARCENY
18 WAS DISMISSED AT THE CONCLUSION OF THE PRELIMINARY
19 HEARING FOR LACK OF EVIDENCE, NO CORPUS DELICTI, SLIGHT OR
20 MARGINAL EVIDENCE LEAVING NO CAUSATION OR JURISDICTION
21 FOR DISTRICT COURT TO PROCEED. WHEN IN FACT, THE CHARACTER
22 OF THE MATERIAL EVIDENCE IN THE AMENDED INFORMATION
23 AND GUILTY PLEA AGREEMENT IS FALSE AND DUE PROCESS OF
24 LAW INEVITABLY BEEN DENIED THE DEFENDANT AND THE
25 DISTRICT COURT PROCEEDINGS WAS CONSTITUTIONALLY
26 INADEQUATE, MISCEGEOGRAPHY OF JUSTICE THAT DOES NOT SERVE
27 THE INTERESTS OF JUSTICE

WHEREAS, defendant being adjudicated as a habitual offender is cruel and unusual punishment that shock the conscience as being disproportionate to the crime convicted Attempted Grand Larceny which is a clear miscarriage of Justice that does not serve the interests of justice.

WHEREAS, at the date the adjudicated charge of attempted grand larceny occurred the defendant had never been to prison or ever had a serious or violent crime held or charged against him.

WHEREAS, the state breach the Guilty Plea agreement on impeachable and highly suspect evidence that allegedly occurred in January 2019 that greatly prejudice the defendant that was dismissed for no corpus delicti as the alleged victim testified at preliminary hearing that defendant was not the perpetrator who committed the alleged crime and he was 100% sure of it. So the state violated terms and spirit of agreement on impeachable evidence that prejudiced defendant

WHEREAS, defendant never violated a provision of a statute that would have allowed the District Court to not stand by the sentence agreed upon by the parties set forth in the GPA.

WHEREAS, the defendant has suffered irreparable injury through the prosecution's unprofessional and grossly unethical conduct as they maliciously failed to proceed on the facts and the law

WHEREAS, there was no causation for the Judge to not adhere to the negotiated agreement that has caused a manifest injustice as the validity of the Alford Plea is faulty by the judge lack of clarification in the plea confess that has violated the defendant's rights. When in fact, the defendant still claims Actual Innocence and never admitted guilt to the elements of the crime Attempted Grand Larceny less than \$3500 that makes the GPA fatal and unconstitutional... "Failed to Confess"

Thereby, pursuant to the facts and the law stated herein,
Defendant, request that his sentence be modified/corrected as
follows: wherefore, defendant requests that the court grant
defendant such relief to which he may be entitled...
IE. Vacate conviction, Modify sentence to reflect the agree-
ment ~~made~~^{by} both parties probation with 30 days in
Clark County Detention Center with 30 days credit; Withdrawal
of guilty plea; What the law demands and dismiss
all proceedings from prelim hearing to present...

Dated; this 3RD DAY OF JUNE, 2019.

James H. Hayes
James H. Hayes # 1175077
Defendant/propria person

CERTIFICATE OF SERVICE BY MAILING

I, JAMES N. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 3
day of JUNE, 2019, I mailed a true and correct copy of the foregoing, "Modify
AND/OR CORRECT ILLEGAL SENTENCE"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Court
200 LAUREL AVE 3RD FLOOR
LAS VEGAS, NV 89155-1160

ATTORNEY GENERAL
100 N. CARSON ST
CARSON CITY, NV 89401

CC: FILE

DATED: this 3RD day of JUNE, 2019.

James N. Hayes
JAMES N. HAYES # 1123022
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

to Modify and/or Correct Illegal Sentence
(Title of Document)

filed in District Court Case number C-16-315718-1

☒ 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.

James H. Hayes
Signature

6-3-19
Date

JAMES H. HAYES
Print Name

DEFENDANT
Title

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES, aka,
13 James Howard Hayes Jr., #2796708

14 Defendant.

CASE NO. C-16-315718-1

DEPT NO. XIX

AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss:

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That JAMES HOWARD HAYES, aka, James Howard Hayes Jr., the Defendant(s)
20 above named, having committed the crime of **ATTEMPT GRAND LARCENY (Category**
21 **D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330 - NOC 56025/56026),**
22 on or about the 9th day of April, 2013, within the County of Clark, State of Nevada, contrary
23 to the form, force and effect of statutes in such cases made and provided, and against the peace
24 and dignity of the State of Nevada, did willfully, unlawfully, feloniously, and intentionally,
25 with intent to deprive the owner permanently thereof, attempt to steal, take and carry away
26 lawful money of the United States in an amount of \$650.00, or greater, owned by another

27 ///

28 ///

EXHIBIT "L"

W:\2013\2013F\10723\13F\10723-AINF-(Hayes_James)-002.docx

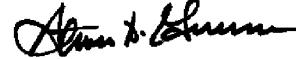
1 person, to wit: JOSHUA JARVIS, by attempting to steal lawful money of the United States,
2 an iPhone and other personal items from the said JOSHUA JAVIS.

3 STEVEN B. WOLFSON
4 Clark County District Attorney
5 Nevada Bar #001565

6 BY


7 MICHAEL DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 DA#13F10723X /cmj/L2
27 LVMPD EV#1304090843
28 (TK3)



CLERK OF THE COURT

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7 I.A. 6/23/16
8 10:00 AM
9 PD

9 THE STATE OF NEVADA,
10 Plaintiff,

CASE NO: C-16-315718-1

11 -VS-

DEPT NO: XII

12 JAMES HOWARD HAYES,
13 aka James Howard Hayes, Jr., #2796708

14 Defendant.

INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That JAMES HOWARD HAYES, aka James Howard Hayes, Jr., the Defendant(s)
20 above named, having committed the crime of BURGLARY (Category B Felony - NRS
21 205.060 - NOC 50424), on or about the 9th day of April, 2013, within the County of Clark,
22 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
23 provided, and against the peace and dignity of the State of Nevada, did then and there wilfully,
24 unlawfully, and feloniously enter, with intent to commit larceny, Room No. 17151, of the

25 ///

26 ///

27 ///

28 ///

EXHIBIT 2

W:\2013\2013F\10723\13F10723-INFM-(HAYES_JAMES)-001.DOCX

1 EXCALIBUR HOTEL & CASINO, located at 3850 South Las Vegas Boulevard, Las Vegas,
2 Clark County, Nevada, occupied by JOSHUA JARVIS.

3 STEVEN B. WOLFSON
4 Clark County District Attorney
Nevada Bar #001565

5 BY M.A. Dickerson
6 MICHAEL DICKERSON
7 Deputy District Attorney
8 Nevada Bar #013476
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

TEMPORARY CUSTODY RECORD

(* DENOTES OFFICER REQUIRED FIELD)

*PAGE 1 OF 1 ☐ UOF ☐ BODY CAM

*ID/CS# 2796708 ☐ NEW ID

☐ JUVENILE ☐ DNA SAMPLE TAKEN ☒ DNA NOT REQ'D

CO. SGT APPROVAL ☐ ABSENTIA ☐ FORM 6 ☐ NDOC

☒ REBOOK ☐ EXT TO LAS VEGAS ☐ LVC ☐ HND ☐ NLV ☐ COURTESY HOLD ☐ DETAINER

*ARREST DATE: 2/4/2019

*ARREST TIME: 1624

*EVENT #: _____

*CO-DEF: N

*INTAKE NAME (AKA, ALIAS, ETC.)		LAST		FIRST	MIDDLE	TRUE NAME		LAST		FIRST	MIDDLE
HAYES		JAMES		HOWARD		HAYES		JAMES		HOWARD JR	
*HOME ADDRESS (STREET # AND STREET NAME) 4735 E DECKOW						BLDG./APT.# 21	*CITY LAS VEGAS	*STATE NV	*ZIP 89169	*PLACE OF BIRTH TOLEDO, OHIO	
*DATE OF BIRTH 02/02/1970	*RACE B	HISP ETHN M	*SEX M	*HEIGHT 5'10"	*WEIGHT 220	*HAIR BLK	*EYES BRO	*SOCIAL SECURITY # [REDACTED]	*CITIZENSHIP USA	*ALIEN REGISTRATION # <input type="checkbox"/> US VETERAN <input type="checkbox"/> ACTIVE MILITARY	
*LOCATION OF CRIME (STREET ADDRESS, CITY, STATE, ZIP) <input checked="" type="checkbox"/> CC <input type="checkbox"/> LV						*LOCATION OF ARREST (STREET ADDRESS, CITY, STATE, ZIP) CCDC LAS VEGAS, NV 89101 > NV-2E-51-L					
REMAND DC 19 LAS VEGAS, NV 89101											
*ARR ** TYPE RM	*COURT JURIS DC	*WARRANT # / CASE # C-16-315718-1	**# CNTS 1	*NOC CODE 56025	* M GM F <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		*CHARGE LITERAL ATT GRAND LARCENY, LESS THAN \$3500		*ORD / MRS 205.222.2	*BAIL NO BAIL	*EVENT# / NIC#
							TAPP 03/06/19 @ 0830 DC# 19 FOR SENT				
*OTHER JURISDICTION:											
PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT AW - ARREST WARRANT RM - REMAND GJI - GRAND JURY INDICTMENT											

TIME STAMP AT BOOKING		TIME STAMP AT RELEASING	
2/4/2019 4:25 PM			
*ARRESTING OFFICER SIGNATURE		*PRINTED NAME	
		JOSHUA D FERRY	
		7398	
		MPD	
		*AGENCY	
		*SECTOR/BEAT OF ARREST	
		OTHER	
*TRANSPORTING OFFICER SIGNATURE		*PRINTED NAME	
		*P#	
		*AGENCY	
		AREA CHD	
*EMERGENCY CONTACT		CUSTODY RELEASED TO	
NOT GIVEN NOT GIVEN			
*RELATIONSHIP	NOT PROVIDED	NAME	
*PHONE NUMBER		POSITION	
*EMAIL ADDRESS		AGENCY	
DOC DIST P#		REL REV P#	
P# T139725		P#	
PID: 1:1 RT LT RI LI SCORE: SCORE 1:N RT LT RI LI SCORE:		FIRST APP DATE:	
<input type="checkbox"/> POLICE RECORDS COPY <input type="checkbox"/> COURTS COPY <input type="checkbox"/> DSD RECORDS COPY <input type="checkbox"/> PROCESSING COPY		TIME:	
		COURT: <input type="checkbox"/> JUSTICE	
		<input type="checkbox"/> MUNICIPAL <input type="checkbox"/> JUVENILE	
		<input type="checkbox"/> STD BAIL <input type="checkbox"/> O.R. REL	
		<input type="checkbox"/> PC <input type="checkbox"/> I.A.D.	
		JUDGE:	

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka,
James Howard Hayes, Jr. #2796708,

Defendant.

JUSTICE COURT
LAS VEGAS NEVADA

CASE NO: 13F10723X

DEPT NO: 3

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of BURGLARY (Category B Felony - NRS 205.060) and ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330), in the manner following, to-wit: That the said Defendant, on or about the 9th day of April, 2013, at and within the County of Clark, State of Nevada,

COUNT 1 - BURGLARY

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit larceny, Room No. 17151, of the EXCALIBUR HOTEL & CASINO, located at 3850 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada, occupied by JOSHUA JARVIS.

COUNT 2 - ATTEMPT GRAND LARCENY

did then and there wilfully, unlawfully, feloniously and intentionally, with intent to deprive the owner permanently thereof, attempt to steal, take and carry away, lead away or drive away personal property of a value of \$650.00 or more, lawful money of the United States, belonging to JOSHUA JARVIS, to-wit: lawful money of the United States, an iPhone and other personal items, by taking and/or moving items within the room, but was stopped before he could take all the items.

///

///

///

///

13F10723X
CRM
Criminal Complaint
2753100



PAWPDOCS\COL

EXHIBIT 7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.

S. J. Benedict
7/23/2013

13F10723X/cb
LVMPD EV# 1304090843
(TK3)

1 Case No. C-16-315718-1

2 Dept. No. 19

3
4
5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF Clark

8 The State of Nevada
9 Plaintiff,

10 vs.

11 JAMES H. HAYES
12 Defendant,

Case No. C-16-315718-1

Dept No. 19

Docket _____

14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE**, that MOTION TO MODIFY AND/OR
16 CORRECT ILLEGAL SENTENCE

17 will come on for hearing before the above-entitled Court on the _____ day of _____, 20____,
18 at the hour of _____ o'clock ____ M. In Department _____ of said Court.

19
20 CC:FILE

21
22 DATED: this 3rd day of JUNE, 2019.

23
24 BY: James H. Hayes
25 JAMES H. HAYES #1175072
/In Propria Personam

RECEIVED
JUN - 4 2019

CLERK OF THE COURT
26
27
28

Healey # 1196092
H.B.S.P
P.O. Box 4650
Indian Springs NV
89020

INTAKE
NSF 3763

89155X1160

|||||

11/21

Clerk County District Courts
"Clerk of the Court"

200 LEWIS AVE; 3RD Floor

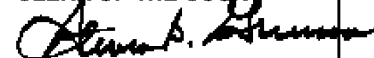
Las Vegas, Nevada

89155-1160

LEGO

W00-0777ND2N40R

UNIT 2 CID



Michael W. Sanft (8245)
SANFT LAW
2880 W. Sahara Ave
Las Vegas, Nevada 89102
(702) 497-8008 (office)
(702) 297-6582 (facsimile)
michael@sanftlaw.com

Attorneys for Defendant/Appellant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

JAMES HOWARD HAYES, JR.,

Defendant.

Case No. : C-16-315718-1

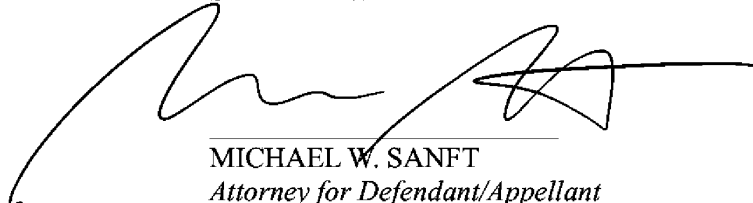
Dept. No.: 19

CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED

Notice is hereby given that Defendant/Appellant JAMES HOWARD HAYES, JR., is not requesting the preparation of transcripts for this appeal.

DATED this 14th day of June, 2019.

SANFT LAW



MICHAEL W. SANFT

Attorney for Defendant/Appellant



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

June 18, 2019

Attorney: Michael W. Sanft
Sanft Law
Attn Michael W Sanft
324 South 3rd Street - 2nd Floor
Las Vegas NV 89101

Case Number: C-16-315718-1
Department: Department 19

Defendant: James Howard Hayes

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion To Modify And Or Correct Illegal Sentence**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 7
Deputy Clerk of the Court

1 JAMES H. HAYES #1125072
2 Defendant/ In Propria Person
3 Post Office Box 650
4 Indian Springs, Nevada 89018

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE
6 OF NEVADA IN AND FOR THE COUNTY OF Clerk

7
8 The State of Nevada
9 Plaintiff,

10 VS

11 JAMES H. HAYES
12 Defendant.

Case No. C-116-315718-1

13
14 Dept NO. 19

15 MOTION TO MODIFY AND/OR CORRECT
16 ILLEGAL SENTENCE

17
18 Date of hearing :

19 Time of hearing :

20 COMES NOW, DEFENDENT, JAMES H. HAYES, proceeding
21 in proper person, hereby motion this Honorable Court
22 pursuant to N.R.S 176.555 and Edwards v. state.

23 This motion is made in based upon all papers and pleadings
24 on file, the points and authorities and exhibits attached
25 here to.

26
27 Dated; this 30th day of JUNE, 2019.

28
James H. Hayes
DEFENDENT/ 1125072

RECEIVED

RECEIVED

JUN 17 2019

JUN -4 2019

CLERK OF THE COURT

CLERK OF THE COURT

POINTS AND AUTHORITIES

"Motion to modify sentence" is limited in scope to sentences based on mistaken assumptions about defendant's criminal record which work to defendant's extreme detriment, while " Motion to correct illegal sentence " addresses only facial legality of sentence. State v. District Court, 100 nev. 90, 97, 677 p.2d 1044 1048 (1984), and Edwards v. State, 918 p.2d 321 (nev. 1996).

Further N.R.S 176.555 Motion to Modify and/or Correct a sentence, may be filed at any time.

Defendant herein alleges that his sentence should be modified and/or corrected pursuant to the following facts.

The state violated the defendant's United States and Nevada Constitutional rights along with NRS violations...
Whereas, defendant's Pre-Sentence Investigation Report did have several material facts in error that prejudice the defendant and untrue assumptions made by state prosecutors which work to the extreme detriment of the defendant. When in fact, the defendant and his counsel made objections to the District Court Judge regarding the clear and convincing mistakes to no avail.

Whereas, state prosecutors proffer was assumptions that was not based on any facts or evidence as prosecutors branded defendant as a career "Dope Pusher" and not one of defendant's convictions had any

1 EVIDENCE OR FACTS ~~that~~ OF Door Pushing. That greatly
2 prejudice the defendant and was nothing more
3 than a inappropriate personal attack, unprofessional
4 and grossly unethical.

5 WHEREAS, the defendant's PSI had several
6 material facts IN ERROR as listed below:

7 - CONVICTIONS should read: Felony 1 NOT 4

8 Misdemeanors 2 NOT 3

9 State Jail Crimes 2

10 - INCARCERATIONS should read: Prison 0 NOT 1

11 Jail 3 NOT 5

12 - Supervisor History should read: Current 0 NOT 1

13 - INSTANT OFFENSE, C-16-315718-1 1. Burglary 1st (F)

14 2. All Grand Larceny < \$3500

15 should read: Dated 04-09-2013 NOT 04-02-2016

16 - CASE Number C-16-315125-1 should NOT be
17 anywhere on this PSI for this INSTANT OFFENSE as
18 it occurred sum 3 years later on 04-02-2016

19 - Texas conviction case No. 1083785 and 1083786
20 should read: 1 event NOT 2

21 When in fact, if the Judge would have allowed

22 the corrections completed upon defendant's objection

23 defendant PSI raw score, social score, and the

24 department of Public Safety Division of parole and

25 probation recommendations would have been

26 astronomically different and would have showed that

27 defendant had never been to prison so there would not

28 have been any habitual offender recommendations.

1 THE STATE VIOLATED DEFENDANT'S ^{-CONT-} RIGHTS GUARANTEED BY BOTH THE
2 U.S. CONSTITUTION AND NARADA CONSTITUTION & FEDERAL AND STATE
3 CONSTITUTIONAL RIGHTS

4 WHEREAS, THE CLACK COUNTY DISTRICT COURT DID NOT DIVEST
5 JURISDICTION FOR THE CHARGE CRIME OF ATTEMPT GRAND LARCENY.

6 WHEREAS, A CRIMINAL COMPLAINT WAS FILED IN JUSTICE
7 COURT, LAS VEGAS TOWNSHIP CASE # 13F10723X ON 7-23-2013
8 CHARGING DEFENDANT HAVING COMMITTED THE CRIMES OF BURGLARY
9 (NRS 205.060) AND ATTEMPT GRAND LARCENY (NRS 205.220.1; 205.
10 222.2; 193.30) ON OR ABOUT THE 9TH DAY OF APRIL, 2013. THE DEFENDANT
11 WAS ARRESTED ON APRIL 2, 2016 FOR SAID OFFENSES AND POSTED BOND
12 ON BOTH CHARGES AND RELEASE.

13 WHEREAS, ON OR ABOUT THE 14TH DAY OF JUNE, 2016, THE
14 DEFENDANT FEEC JEOPARDY ON THE CHARGES OF BURGLARY AND ATTEMPT
15 GRAND LARCENY BY THE WAY OF PRELIMINARY HEARING IN JUSTICE
16 COURT CASE # 3 AND AT THE CONCLUSION OF THE HEARING THE BURGLARY
17 CHARGE WAS BOUND OVER TO DISTRICT COURT AND THE CHARGE OF
18 ATTEMPT GRAND LARCENY WAS DISMISSED FOR LACK OF EVIDENCE, NO
19 CORPUS DELICTI, SLIGHT OR MARGINAL EVIDENCE TO PROCEED TO
20 DISTRICT COURT AND DEFENDANT'S BOND FOR ATTEMPT GRAND LARCENY
21 WAS EXONERATED. AS DEFENDANT FEEC JEOPARDY FOR THE 1ST TIME.
22 (NRS 174.085(3)).

23 WHEREAS, WHEN THE CHARGE OF ATTEMPT GRAND LARCENY WAS
24 DISMISSED THAT THE STATE PREDICTED THE INTENT ON FOR THE BURGLARY
25 CHARGE PER THE FILED CRIMINAL COMPLAINT THEN THAT LEFT THE

James H. Hayes
Defendant/ In #1175098

STATEMENT OF FACTS

charge of Burglary 1st and it to must have been dismissed, leaving no jurisdiction for the district court to proceed on the charge.

Whereas, the state proceeded to district court on the charge of burglary by the way of information in Dept. XII case # C-16-315718-1. When in fact, the description of the offense was not sufficiently full and complete to accord to the defendant his constitutional right to due process of law as the state's intent of larceny was dismissed at preliminary hearing leaving an indefinite information, where the defendant has a right to be informed of the nature of the accusation against him (NRS 173.075(1)) that prejudice the defendant and is a miscarriage of justice.

Whereas, the state dismissed the burglary charge in district court and again charge the defendant with attempt grand larceny by the way of amended informations on November 7, 2018 without a grand jury indictment to put defendant in jeopardy for the 2nd time for the offense that has once previously been dismissed for lack of evidence, no corpus delicti, slight or marginal evidence to hand over to district court (NRS 174.085 (3)(5A)) after conclusion of preliminary hearing in Justice court.

Whereas, the state by notice to motion and motions to revoke bail filed on January 31, 2019 in district court that was granted by district court Judge W. Kephart had the defendant rebooked February 4, 2019 on the charge of attempt grand larceny to again have the defendant placed in jeopardy for the 3rd time. When in fact, the defendant's bond for attempt grand larceny had already been exonerated at the conclusion of preliminary hearing by the Justice court judge.

1 .. when the said charge was dismissed.

2 .. WHEREAS, the state on March 6, 2019 convicted
3 the defendant on the dismissed charge at the conclusion
4 of preliminary hearing of attempt grand larceny and
5 sentence defendant to have place the defendant in
6 jeopardy for the 4th time on the same offense that had
7 been dismissed in Justice court for lack of evidence
8 NO corpus delicti, slight or marginal evidence that has
9 caused the defendant irreparable injury, prejudice,
10 and is a miscarriage of justice.

11
12 *NOTE: This is a issue of first impression...

13 EXHIBITS ENCLOSED:

14 EXHIBIT 1 - Amended Information

15 EXHIBIT 2 - Information

16 EXHIBIT 4 - Guilty Plea Agreement

17 EXHIBIT 5 - Judgment of Conviction

18 EXHIBIT 6 - Custody Record (Rebook)

19 EXHIBIT 7 - Criminal Complaint

20 EXHIBIT 8 - NRS 174.085

21

22

23

24

25

26

27

28

1 WHEREAS, THE STATE FAILED TO GIVE WRITTEN NOTICE FOR
2 HABITUAL TREATMENT FOR THE CONVICTIONS OF ATTEMPTED GRAND LARCENY
3 LESS THAN \$3500. WHEN IN FACT, THE STATE NEVER FILED WRITTEN
4 NOTICE THAT THEIR INTENTION TO SEEK TO HAVE DEFENDANT TREATED
5 AS A HABITUAL OFFENDER FOR THE NEGOTIATED CHARGE OF ATTEMPTED
6 GRAND LARCENY LESS THAN \$3500. WHEN THE JUDGE CONVESS THE
7 DEFENDANT UPON HIS ALFORD PLEA HE INFORM THE DEFENDANT THAT
8 THE MAXIMUM PUNISHMENT HE COULD RECEIVE WAS 12 TO 48 MONTHS
9 IF HE RECEIVE FELONY TREATMENT AND 364 DAYS IF HE RECEIVED
10 THE GROSS MISDEMEANOR TREATMENT WITH A POSSIBLE FINE THAT
11 COULD BE IMPOSED IN BOTH INSTANCES. NOT IN ANY WAY DID
12 HE INFORM DEFENDANT THAT HE COULD FACE HABITUAL TREATMENT
13 FOR THE NEGOTIATED CHARGE OF ATTEMPTED GRAND LARCENY LESS THAN
14 \$3500. AS THE HABITUAL SENTENCE IMPOSED ON DEFENDANT WAS
15 A SURPRISE WHEN DEFENDANT'S COUNSEL INFORMED HIM THAT HE
16 HAD IT NEGOTIATED TO GROSS MISDEMEANOR TREATMENT AND
17 CONCURRENT WITH CASE NO C-16-315125-1. SO THIS WAS PREJUDICIAL
18 AND EFFECTED THE DEFENDANT'S RIGHTS AND IS A MISFEASANCE OF
19 JUSTICE.

20 WHEREAS, DEFENDANT DID NOT AGREE TO THE VALIDITY OF
21 THE FELONY CONVICTIONS USED BY THE STATE TO ADJUDICATE, WHEN
22 IN FACT, THE DEFENDANT OBJECTED TO THE VALIDITY OF THE
23 ASSUME FELONY CONVICTIONS. AS THE EVENT IN TEXAS WAS NOT
24 A FELONY BUT A STATE JAIL CRIME THAT DOESN'T CARRY ANY PRISON
25 TIME, MANDATORY SUPERVISION, NOR PAROLE AND IS NOT A CLASS
26 A, B, C, D, OR E FELONY AND THE 2016 FELONY CONVICTION WAS 3 YEARS
27 AFTER THE INSTANT OFFENSE. THAT THE JUDGE CONSIDERED IN ADJUDICATION

1 WHEREAS, CONSECUTIVE SENTENCES imposed by the district
2 court violates the legislative intent of NRS 176.035 and does
3 NOT SERVE THE INTERESTS OF JUSTICE.

4 WHEREAS, the instant offense Attempt Grand Larceny took
5 place on or about April 9, 2013 and was NOT subsequent to
6 the Burglary conviction that occurred April 2, 2016 but prior.
7 In which, the District Court erred by sentencing the defendant
8 to consecutive sentences rather than concurrent. The defendant
9 was charged with the instant offense in 2013 and warrant
10 had issued sum three years prior to the conviction that the
11 District Court Judge imposed consecutive sentences.

12 WHEREAS, the defendant's bond for the instant offense
13 was exonerated at the conclusion of the preliminary hearing
14 as the instant offense "Attempt Grand Larceny" was dropped/
15 dismissed for No corpus delicti, slight or marginal evidence
16 to bound over to District Court that took place in 2016. So
17 defendant should have received time credit from that point
18 to the present towards the instant offense "Attempt Grand
19 Larceny" when in fact when the District Court Judge granted
20 the states motion on February 4, 2019 and exonerated
21 the bond the defendant was NOT on bond for the
22 charge of Attempt Grand Larceny but for Burglary and the
23 Burglary charge was dismissed in November 2018 and the
24 bond for Attempt Grand Larceny was exonerated in 2016.
25 This is a clear miscarriage of justice that has prejudiced
26 the defendant.

27

1 WHEREAS, ONE CAN ONLY ASSUME THAT THE STATE
2 WILL CONTEND THAT THE BOILER PLATE IN THE GUILTY PLEA
3 AGREEMENT WOULD SATISFY NOTICE, WHICH WILL NOT
4 SATISFY LEGISLATIVE INTENT OF PROPER NOTICE OF HABITUAL
5 CRIMINALITY WITH THE DISTRICT COURT.

6 WHEREAS, THE DISTRICT COURT JUDGE DID NOT CONCESS
7 DEFENDANT WAS HABITUAL SENTENCE NOR ISSUE A STAY
8 OUT OF TROUBLE ORDER. WHEN IN FACT, THE MAXIMUM
9 PUNISHMENT THAT THE JUDGE INFORM THE DEFENDANT
10 OF WAS 12 TO 48 MONTHS FOR FELONY TREATMENT AND
11 364 DAYS FOR GROSS MISDEMEANOR TREATMENT PLUS A
12 FINE.

13 WHEREAS, THE AFFIDAVIT REVIEW OF PROBABLE
14 CAUSE WAS BASED ON IMPULSIBLE AND HIGHLY SUSPECT
15 EVIDENCE FOR NEW CRIMINAL CHARGE IN CASE NUMBER
16 C-19-338412-1 THAT WAS DISMISSED IN DEFENDANT'S
17 FIRST COURT APPEARANCE IN DISTRICT COURT AS THE ALLEGED
18 VICTIM TESTIFIED UNDER OATH AT PRELIMINARY HEARING
19 THAT THE DEFENDANT WAS NOT THE PERPETRATOR OF
20 THE ALLEGED EVENT AND HE WAS 100% SURE OF THAT.
21 FURTHERMORE, THIS WAS NOT A LEGAL SENTENCE AS THE
22 CHARGE CRIME OF ATTEMPTED GRAND LARCENY WAS DISMISSED
23 AT THE CONCLUSION OF PRELIMINARY HEARING FOR NO
24 CORPUS DELICTI, SLIGHT OR MARGINAL EVIDENCE, AND LACK
25 OF EVIDENCE AS THE STATE RE-CHARGE DEFENDANT FOR
26 THIS SAME CRIME IN DISTRICT COURT WITHOUT GRAND
27 JURY INDICTMENT THAT IS A CLEAR MISFEASANCE

1 of justice constitutional violation U.S and
2 Nevada and a NRS 174.085 violation of Double
3 Jeopardy.

4 Inherently, the convictions used by the state
5 was trivial and beyond the scope. When in fact,
6 the Texas convictions was one event and not two
7 as the judge deemed not felonies but Texas state
8 Jail crimes that don't carry prison term, mandatory
9 supervision, nor parole as a felony would in any
10 other state in the country. And the 2016 Burglary
11 conviction would not be a prior felony as the
12 instant case occurred in 2013. So in essence the
13 defendant only had one prior felony and had
14 never been to prison so this habitual sentence
15 easily "Shock the Conscience" as being dispropor-
16 tionate to the crime charged Attempted Grand
17 Larceny less than \$3500.

18
19 * NOTE: The conviction in Texas is not a class A, B, C, D,
20 or E felony, does not carry a prison term so at the
21 very least one would have to say its ambiguous to
22 being a felony conviction. Defendant has never
23 been charge or convicted of a violent offense.

1 WHEREAS, THE STATE KNOWINGLY, VOLUNTARILY, AND
2 INTELLIGENTLY FILED A FRAUDULENT UNCONSTITUTIONAL GUILTY
3 PLEA AGREEMENT AND AMENDED INFORMATION IN OPEN COURT
4 ON NOV 8, 2018 TO DEPRIVE AND MISLEAD THE DEFENDANT
5 TO HIS PREJUDICE THAT WAS MALICIOUS, UNPROFESSIONAL,
6 AND GROSSLY UNETHICAL. AS TO DEPRIVE THE DEFENDANT OF
7 THE PROTECTIONS THAT THE CONSTITUTION AFFORDED HIM
8 AND WAS DESIGNED TO PROTECT HIM OF AND DENY HIM
9 DUE PROCESS OF LAW.

10 WHEREAS, THE NEGOTIATIONS CONTAINED IN THE
11 GUILTY PLEA AGREEMENT WAS NOT KNOWINGLY AND INTELLIGENTLY
12 AGREED TO BY THE DEFENDANT AS THE GUILTY PLEA AGREEMENT
13 WAS NOT SUFFICIENTLY CLEAR AND UNAMBIGUOUS. THE
14 AMENDED INFORMATION LEFT THE DEFENDANT WITHOUT KNOW-
15 LEDGE AS TO THE NATURE OF THE CHARGE UPON WHICH HE
16 PLEADED THAT HE COULD NOT PLEAD THE CRIME WITH
17 CERTAINTY AS THE SAID CHARGE ATTEMPTED GRAND LARCENY
18 WAS DISMISSED AT THE CONCLUSION OF THE PRELIMINARY
19 HEARING FOR LACK OF EVIDENCE, NO CORPUS DELICTI, SLIGHT OR
20 MARGINAL EVIDENCE LEAVING NO CAUSATION OR JURISDICTION
21 FOR DISTRICT COURT TO PROCEED. WHEN IN FACT, THE CHARACTER
22 OF THE MATERIAL EVIDENCE IN THE AMENDED INFORMATION
23 AND GUILTY PLEA AGREEMENT IS FALSE AND DUE PROCESS OF
24 LAW INEVITABLY BEEN DENIED THE DEFENDANT AND THE
25 DISTRICT COURT PROCEEDINGS WAS CONSTITUTIONALLY
26 INADEQUATE, MISCELLANEOUS OF JUSTICE THAT DOES NOT SERVE
27 THE INTERESTS OF JUSTICE

1 whereas, defendant being adjudicated as a habitual offender
2 is cruel and unusual punishment that shock the conscience as being
3 disproportionate to the crime convicted Attempted Grand Larceny which is
4 a clear miscarriage of justice that does not serve the interests of justice.

5 whereas, at the date the adjudicated charge of attempted grand
6 larceny occurred the defendant had never been to prison or ever had
7 a serious or violent crime held or charged against him.

8 whereas, the state breach the Guilty Plea agreement on im-
9 peachable and highly suspect evidence that allegedly occurred in January
10 2019 that greatly prejudice the defendant that was dismissed for no
11 corpus delicti as the alleged victim testified at preliminary hearing
12 that defendant was not the perpetrator who committed the alleged
13 crime and he was 100% sure of it. So the state violated terms and
14 spirit of agreement on impeachable evidence that prejudiced defendant

15 whereas, defendant never violated a provision of a statute
16 that would have allowed the District Court to not stand by the sentence
17 agreed upon by the parties set forth in the GPA.

18 whereas, the defendant has suffered irreparable injury
19 through the prosecution's unprofessional and grossly unethical conduct
20 as they maliciously failed to proceed on the facts and the law

21 whereas, there was no causation for the Judge to not
22 adhere to the negotiated agreement that has caused a manifest
23 injustice as the validity of the Alford Plea is faulty by the
24 judge lack of clarification in the plea canvass that has violated
25 the defendant's rights. When in fact, the defendant still claims
26 Actual Innocence and never admitted guilt to the elements
27 of the crime Attempted Grand Larceny less than \$3500 that
28 makes the GPA fatal and unconstitutional... "Failed to Canvass"

Theraby, pursuant to the facts and the law stated herein,
Defendant, request that his sentence be modified/corrected as
follows: WHEREFORE, defendant requests that the court grant
defendant such relief to which he may be entitled...
IE. Vacate conviction, Modify sentence to reflect the agree-
ment ~~between~~^{by} both parties probation with 30 days in
Clark County Detention Center with 30 days credit; Withdrawal
of guilty plea; What the law demands and dismiss
all proceedings from prelim hearing to present...

Dated; this 3RD DAY OF JUNE, 2019.

James H. Hayes
James H. Hayes # 1175079
Defendant/propria person

CERTIFICATE OF SERVICE BY MAILING

I, JAMES N. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 3
day of JUNE, 2019, I mailed a true and correct copy of the foregoing, "Modify
AND/OR CORRECT ILLEGAL SENTENCE"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Court
200 LAUREL AVE 3RD FLOOR
LAS VEGAS, NV 89155-1100

Attorney General
100 N. CARSON ST
CARSON CITY, NV 89401

CC: FILE

DATED: this 3rd day of JUNE, 2019.

James N. Hayes
JAMES N. HAYES #1193072
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

to Modify and/or Correct Illegal Sentence
(Title of Document)

filed in District Court Case number C-16-315218-1

☒ 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.

James H. Hayes
Signature

6-3-19
Date

JAMES H. HAYES
Print Name

Defendant
Title

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES, aka,
13 James Howard Hayes Jr., #2796708

14 Defendant.

CASE NO. C-16-315718-1

DEPT NO. XIX

AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss:

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That JAMES HOWARD HAYES, aka, James Howard Hayes Jr., the Defendant(s)
20 above named, having committed the crime of **ATTEMPT GRAND LARCENY (Category**
21 **D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330 - NOC 56025/56026),**
22 on or about the 9th day of April, 2013, within the County of Clark, State of Nevada, contrary
23 to the form, force and effect of statutes in such cases made and provided, and against the peace
24 and dignity of the State of Nevada, did willfully, unlawfully, feloniously, and intentionally,
25 with intent to deprive the owner permanently thereof, attempt to steal, take and carry away
26 lawful money of the United States in an amount of \$650.00, or greater, owned by another

27 ///

28 ///

EXHIBIT " L "

W:\2013\2013F10723\13F10723-AINF-(Hayes_James)-002.docx

1 person, to wit: JOSHUA JARVIS, by attempting to steal lawful money of the United States,
2 an iPhone and other personal items from the said JOSHUA JAVIS.

3 STEVEN B. WOLFSON
4 Clark County District Attorney
5 Nevada Bar #001565

6 BY



7 MICHAEL DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 DA#13F10723X /cmj/L2
28 LVMPD EV#1304090843
(TK3)


CLERK OF THE COURT

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 I.A. 6/23/16
13 10:00 AM
14 PD

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,
16 Plaintiff,

17 -vs-

18 JAMES HOWARD HAYES,
19 aka James Howard Hayes, Jr., #2796708
20 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII

INFORMATION

21 STATE OF NEVADA }
22 COUNTY OF CLARK } ss.

23 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
24 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

25 That JAMES HOWARD HAYES, aka James Howard Hayes, Jr., the Defendant(s)
26 above named, having committed the crime of BURGLARY (Category B Felony - NRS
27 205.060 - NOC 50424), on or about the 9th day of April, 2013, within the County of Clark,
28 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
provided, and against the peace and dignity of the State of Nevada, did then and there wilfully,
unlawfully, and feloniously enter, with intent to commit larceny, Room No. 17151, of the

///

///

///

///

EXHIBIT 2

W:\2013\2013F\10723\13F10723-INFM-(HAYES_JAMES)-801.DOCX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXCALIBUR HOTEL & CASINO, located at 3850 South Las Vegas Boulevard, Las Vegas,
Clark County, Nevada, occupied by JOSHUA JARVIS.

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

BY



MICHAEL DICKERSON
Deputy District Attorney
Nevada Bar #013476

*ARREST DATE: 2/4/2019 *ARREST TIME: 1624

☒ REBOOK ☐ ABSENTIA ☐ FORM 6 ☐ NDOC ☐ EXT TO LAS VEGAS ☐ LYC ☐ HND ☐ NLV ☐ COURTESY HOLD ☐ DETAINER

*CO-DEF: N

*HOME ADDRESS (STREET # AND STREET NAME) 4735 E DECKOW	BLDG./APT.# 21	*CITY LAS VEGAS	*STATE NV	*ZIP 89169	*PLACE OF BIRTH TOLEDO, OHIO
---	-------------------	--------------------	--------------	---------------	---------------------------------

"DATE OF BIRTH 02/02/1970	"RACE B	"HISP ETHNIC M	"SEX 5'10"	"WEIGHT 220	"HAIR BLK	"EYES BRO	"SOCIAL SECURITY # [REDACTED]	"CITIZENSHIP USA	"ALIEN REGISTRATION # [REDACTED]	<input type="checkbox"/> US VETERAN <input type="checkbox"/> ACTIVE MILITARY
------------------------------	------------	-------------------	---------------	----------------	--------------	--------------	----------------------------------	---------------------	-------------------------------------	---

*LOCATION OF CRIME (STREET ADDRESS, CITY, STATE, ZIP) REMAND DC 19 LAS VEGAS, NV 89101	<input checked="" type="checkbox"/> CC <input type="checkbox"/> LV
*LOCATION OF ARREST (STREET ADDRESS, CITY, STATE, ZIP) CCDC LAS VEGAS, NV 89101 > NV-2E-51-L	<input type="checkbox"/> CITIZEN'S ARREST <input checked="" type="checkbox"/> SPEAKS ENGLISH

"ARR ** TYPE	"COURT JURS	"WARRANT # / CASE #	"# CNTS	"MOC CODE	" M CM F	"CHARGE LITERAL	"ORD / MRS	"BAL	"EVENTS / INCF
-----------------	----------------	---------------------	------------	--------------	-------------	-----------------	------------	------	----------------

RM	DC	C-16-316718-1	1	56025	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	ATT GRAND LARCENY, LESS THAN \$3500	206,222.2	NO BAIL
----	----	---------------	---	-------	---	-------------------------------------	-----------	---------

[illegible][illegible][illegible][illegible]

OTHER JURISDICTION:	
PC - PROBABLE CAUSE	BS - BONDSMAN SURRENDER
BW - BENCH WARRANT	AW - ARREST WARRANT
RM - REMAND	GJ - GRAND JURY INDICTMENT

THE STAMP AT BOOKING		*ARRESTING OFFICER SIGNATURE		JOSHUA D FERRY	7398	*PRINTED NAME		*P#		MPD		*AGENCY		OT		*SECTOR/BEAT		FIRST APP DATE:		THE STAMP AT RELEASING
-------------------------	--	------------------------------	--	----------------	------	---------------	--	-----	--	-----	--	---------	--	----	--	--------------	--	-----------------	--	---------------------------

2/4/2019 4:25 PM

OF ARREST

OTHER

TIME:

*TRANSPORTING OFFICER SIGNATURE	*PRINTED NAME	*PA	*AGENCY	AREA CMO

COURT:	<input type="checkbox"/> JUSTICE
<input type="checkbox"/> MUNICIPAL	<input type="checkbox"/> DISTRICT

*EMERGENCY CONTACT NOT GIVEN NOT GIVEN	CUSTODY RELEASED TO
<input type="checkbox"/> NO WORKPL <input type="checkbox"/> JUVENILE <input type="checkbox"/> STN BAL <input type="checkbox"/> O.S. DEL	

RELATIONSHIP		NAME
NOT PROVIDED		
<input type="checkbox"/> DC	<input type="checkbox"/> I.A.D.	
<input type="checkbox"/> SIB/SON	<input type="checkbox"/> OVR. REL.	

P#	T138728	PHONE NUMBER		
		POSITION		
		<input type="checkbox"/> YES	<input type="checkbox"/> NO	
		ILLINOIS		

EMAIL ADDRESS	AGENCY	COLLUSION	1-77
---------------	--------	-----------	------

DOC DIST #	REL REV #

PID:	1:1	RT	LT	R	L	SCORE:	1:1	RT	LT	R	L	SCORE:
	<input type="checkbox"/> POLICE RECORDS COPY						<input type="checkbox"/> COURT'S COPY					
							<input type="checkbox"/> USD RECORDS COPY					
							<input type="checkbox"/> PROCESSING COPY					

211351

LVMPD 22 (Rev. 08/17) WORLD 2010

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka,
James Howard Hayes, Jr. #2796708,

Defendant.

JUSTICE COURT
LAS VEGAS NEVADA

CASE NO: 13F10723X

DEPT NO: 3

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of BURGLARY (Category B Felony - NRS 205.060) and ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330), in the manner following, to-wit: That the said Defendant, on or about the 9th day of April, 2013, at and within the County of Clark, State of Nevada,

COUNT 1 - BURGLARY

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit larceny, Room No. 17151, of the EXCALIBUR HOTEL & CASINO, located at 3850 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada, occupied by JOSHUA JARVIS.

COUNT 2 - ATTEMPT GRAND LARCENY

did then and there wilfully, unlawfully, feloniously and intentionally, with intent to deprive the owner permanently thereof, attempt to steal, take and carry away, lead away or drive away personal property of a value of \$650.00 or more, lawful money of the United States, belonging to JOSHUA JARVIS, to-wit: lawful money of the United States, an iPhone and other personal items, by taking and/or moving items within the room, but was stopped before he could take all the items.

///

///

///

///

13F10723X
CRM
Criminal Complaint
2763190



PAWPDCCSYCO

EXHIBIT 7

1 All of which is contrary to the form, force and effect of Statutes in such cases made
2 and provided and against the peace and dignity of the State of Nevada. Said Complainant
3 makes this declaration subject to the penalty of perjury.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

S. Benedict
7/23/2013

27 13F10723X/cb
28 LVMPD EV# 1304090843
(TK3)

1 Case No. C-16-315718-1

2 Dept. No. 19

3
4
5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF Clark

8 The State of Nevada

9 Plaintiff,

10 vs.

11 JAMES H. HAYES,

12 Defendant,

Case No. C-16-315718-1

Dept No. 19

Docket _____

13
14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE**, that MOTION TO MODIFY AND/OR

16 CORRECT ILLEGAL SENTENCE

17 will come on for hearing before the above-entitled Court on the _____ day of _____, 20____,
18 at the hour of _____ o'clock _____ M. In Department _____, of said Court.

19
20 CC:FILE

21
22 DATED: this 3rd day of JUNE, 2019.

23
24 BY: James Hayes

JAMES H. HAYES #1175072
/In Propria Personam

RECEIVED

JUN 17 2019

RECEIVED

JUN - 4 2019

CLERK OF THE COURT
CLERK OF THE COURT

6-12-19

Clerk of the Courts, I am writing you greatly
concerned about my motion "To modify and
or correct illegal sentence that was date
stamped received June 4, 2019 that has been
return to me unfiled due to rule 3.70. and
this was an error on your part. Whereas,
my counsel on record was dismissed on
June 3, 2019 by motion to dismiss counsel
in District Court 19 that was granted by
District Court Judge Kephart and this is why
I filed the motion on June 4, 2019 to avoid
the motion being return unfiled. So I pray
upon you that at this time you file my submitted
motion "To modify and/or correct illegal sentence
on my behalf and forward me a date stamp
filed copy

Case No: C-16-315718-1

Dept No: 19

James H. Hayes #1125077

H.D.S.P

P.O. Box 650

Indian Springs, Nevada 89070

James H. Hayes

UCANTICMELLC.COM

44445 "1175022
A.D.S.P
P.O. Box 650
Indian Springs, NV
89076

Clark County District Courts
"Clerk of the Courts"

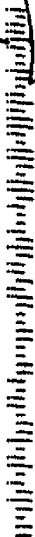
200 LEWIS AVE: 3RD Floor
Las Vegas, Nevada

3762

89155-1160

Legal Mail

89155X1160



UCANTCEMELK.COM

HIGH DESERT STATE PRISON
JUN 12 2019
UNIT 6 C/D



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

July 15, 2019

Attorney: Michael W. Sanft
Sanft Law
Attn Michael W Sanft
324 South 3rd Street - 2nd Floor
Las Vegas NV 89101

Case Number: C-16-315718-1
Department: Department 19

Defendant: James Howard Hayes

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion To Withdraw Plea**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,

DC Criminal Desk # 7

Deputy Clerk of the Court

1
2
3
4
5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF
6 NEVADA IN AND FOR THE COUNTY OF Clark
7

8
9
10 THE STATE OF NEVADA,
11 Plaintiff

CASE NO. C-16-315718-1

12 v.

DEPT. NO. 19

13 James H. Hayes
14 Defendant.

15 MOTION TO WITHDRAW PLEA "Alford Plea"

16 COMES NOW, Defendant, James H. Hayes, proceeding in proper
17 person, and moves this Honorable Court for an Order granting him permission to withdraw his Plea
18 Agreement in the the case number C-16-315718-1, on the date of 6th in the month
19 of March in the year 2019, where defendant was then represented by Michael Jentz as
20 counsel. This Motion is based on all papers and pleadings on file with the Clerk of the Court which are
21 hereby incorporated by this reference, and Points and Authorities herein and attached Affidavit of
22 Defendant.
23

24 Dated this 8th day of July, 20 19

25 Respectfully submitted,

26 James H. Hayes
27 Defendant in Proper Person
28

RECEIVED
JUL 12 2019
CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

NRS. 176.165 PROVIDES:

A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed, or imposition of sentence is suspended. To correct manifest injustice, the court, after sentencing, may set aside the judgment of conviction and permit the defendant to withdraw his or plea.

Failure to adequately inform a defendant of the full consequences of his/her plea creates manifest injustice which could be corrected by setting aside the conviction and allowing him/her to withdraw the guilty plea. Meyer v. State, 603 P.2d 1066 (Nev. 1979), and Little v. Warden, 34 P.3d 540 (Nev.2001).

Defendant herein alleges that his/her plea is in error and must withdraw the plea pursuant to the following facts: Whereas, the guilty plea was violative of Constitutional safeguards and a NRS 174.285 (3)(5A) violation when the charge of Attempt Grand Larceny was dismissed at the conclusion of the preliminary hearing in Justice Court, Las Vegas Township Case No 13F01723X for lack of evidence, No corpus delicti, slight or marginal evidence to proceed to District Court leaving the district court no subject matter jurisdiction and the charge of Attempt Grand Larceny barred from District Court.

Whereas, the Guilty Plea was not voluntarily, knowingly, or intelligently entered as there was no substantiation to support the Attempt Grand Larceny charge and this mistake of fact worked to the extreme detriment of the defendant and this is a miscarriage of Justice. As the guilty plea was the product of ignorance that was discovered after judgment and now the defendant stands convicted of a crime he did not commit

Whereas, the State of Nevada, Clark County knowingly and intelligently filed a fraudulent unconstitutional Amended Information and guilty plea agreement in open court to deprive

1 and misled the defendant to his prejudice and its UN-
2 conscionable for the state to attempt to insulate a conviction
3 from collateral constitutional review by conditioning its
4 willingness to enter into fraudulent plea negotiations
5 on a defendant's waiver of the rights. What in fact,
6 the character of the material evidence in the Amended
7 information and Guilty Plea Agreement is false and the
8 proceedings was constitutionally inadequate.

9 WHEREAS, a adequate investigation by counsel would
10 have lead to a more favorable outcome and defendant would
11 not have entered a Alford Plea to Attempt Grand Larceny as it
12 would have lead to information for a better outcome as
13 there was no evidence slight or marginal that defendant
14 committed the crime of Attempt Grand Larceny or Burglary
15 no more evident than the charge being dismissed and
16 had counsel not been ineffective by investigating the facts
17 of the case he would have known that the charge of
18 Att. Grand Larceny was barred from all District court
19 proceedings per NRS 174.085(3)(a) and inform defendant of
20 such. And due to the fact, that counsel did not adequately
21 investigate the law and the facts relevant to the case it left
22 defendant ignorant and with no plausible options that has
23 greatly prejudice the defendant and has left him with
24 irreparable injury. as no reasonable jury would have convicted
25 defendant of Att. G.D. Larceny. So this is a clear and uncontradicted
26 showing that defendant's plea was involuntarily and unknowingly
27 that's actual prejudice and a miscarriage of justice.

Therefore, pursuant to the facts and the law stated herein, Defendant requests that his guilty plea be withdrawn.

Dated this 8th day of July, 2019.

Respectfully Submitted,

James H. Hayes

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 8th day of July, 2019, I mailed a true and correct copy of the foregoing Motion to withdraw Plea "Alford Plea", by depositing it in the High Desert State Prison legal mail service provided through the Law Library, with First class Postage prepaid, and addressed to the following:

Clerk of the Courts
200 LEWIS AVE, 3RD FL
LAS VEGAS, NV
89155-1160

Attorney General of Nevada
100 N. CARSON STREET
CARSON CITY, NEVADA
89201

CC: File

Dated this 8th day of July, 2019

BY:

James H. Hayes
James H. Hayes # 1175222

-6-

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to
Withdraw Plea "Alford Plea"
(Title of Document)

filed in District Court Case number C-16-315718-1

☒ 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.

James H. Hayes
Signature

7-8-19
Date

JAMES H. HAYES
Print Name

defendant
Title

-7-

1 JAMES H. HAYES # 1175099

2 / In Propria Personam

3 Post Office Box 650 [HDSP]

4 Indian Springs, Nevada 89018

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 State of Nevada)
9)

10 vs.

11 JAMES H. HAYES
12)
13)

Case No. C-16-315718-1

Dept No. 19

Docket _____

14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE, that** JAMES H. HAYES
16 _____

17 will come on for hearing before the above-entitled Court on the _____ day of _____, 20____,
18 at the hour of _____ o'clock ____ M. In Department _____ of said Court.

19
20 CC:FILE

21
22 **DATED:** this 8th day of July, 2019.

23
24 BY: James H. Hayes
25 JAMES H. HAYES # 1175099
26 /In Propria Personam
27
28

RECEIVED
JUL 12 2019

CLERK OF THE COURT

Aug 15 11:25 AM '72
H.D.S. 7
P.O. Box 6526
Indian Springs, NV
89406

LAS VEGAS
89406
10 JUL '72
PM 4 L

Clark County District Courts
"Office of the clerk"

200 LAVER AVE, 3rd floor
LAS VEGAS, NEVADA

3732

LEVER
MAY 1

89155-1160

69155X1160





1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 FRANK LOGRIPPO
6 Deputy District Attorney
7 Nevada Bar #013911
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 JAMES HOWARD HAYES,
14 #2796708

15 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XIX

16 **ORDER GRANTING DEFENDANT'S PRO PER MOTION TO WITHDRAW**
17 **COUNSEL**

18 DATE OF HEARING: July 15, 2019
19 TIME OF HEARING: 08:30 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 15th day of July, 2019, the Defendant not being present, in proper person, the Plaintiff being
22 represented by STEVEN B. WOLFSON, District Attorney, through FRANK LOGRIPPO,
23 Deputy District Attorney, without argument, based on the pleadings and good cause appearing
24 therefor,

25 ///

26 ///

27 ///

28 ///

W:\2013\2013F\107\23\13F10723-ORDR-(HAYES_JAMES)-002.DOCX

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Withdraw Counsel,
2 shall be, and it is GRANTED.

3 DATED this 28th day of July, 2019.

4 Walter Kyst
5 DISTRICT JUDGE

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY

10 FRANK LOGRIPPO
11 Deputy District Attorney
12 Nevada Bar #013911

13 **CERTIFICATE OF SERVICE**

14 I certify that on the 29th day of July, 2019, I mailed a copy of the foregoing Order

15 to:

16 JAMES H. HAYES, BAC #1175077
17 HIGH DESERT STATE PRISON
18 P.O. BOX 650
19 INDIAN SPRINGS, NV 89018

20 BY

21 Carina Garcia
22 C. Garcia
23 Secretary for the District Attorney's Office
24

25 cg/L2
26
27
28

NOAS

HAYES, JAMES H ID NO. 1175077

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

FILED

JUL 31 2019

CLERK OF COURT

IN the 8th Judicial District Court of the State
of Nevada and for the County of Clark

State of Nevada

Plaintiff

v.

JAMES H. HAYES

Defendant

CASE NO.: C-16-315718-1

DEPT. NO.: XIX

Supreme Ct. Case No. 78590

Notice of Appeal (2nd)

Notice is hereby given that JAMES H. HAYES, defendant above named, hereby appeals to the Supreme Court of Nevada from final judgment for conviction of Attempt Grand Larceny NRS 205.222.2 entered in the action on the 6th day of March, 2019

COMES NOW, appellant, JAMES H. HAYES, herein above respectfully moves this Honorable Court pursuant to the United States and Nevada Constitutions to vacate the judgment entered against him in the above captioned case.

This ~~motion~~ is made and based upon the accompanying Memorandum of Points and Authorities.

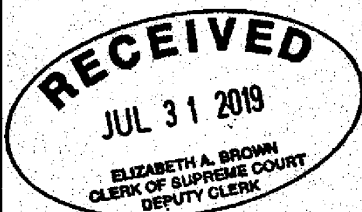
DATED: this 14th day of July, 2019

BY: James H. Hayes

JAMES H. HAYES

1175077

Defendant/In Proper Personam



C-16-315718-1
NOASC
Notice of Appeal (criminal)
4854850



- 1 of 13 -

CLERK OF THE COURT

AUG 09 2019

RECEIVED
APR 21 2019

1 WHEREAS, it would be unconscionable for the state
2 to attempt to insulate a conviction from collateral constitutional
3 review by conditioning its willingness to enter into plea
4 negotiations on a defendant's waiver of the right to pursue
5 direct appeal remedies.

6 WHEREAS, it is Black Letter Law in the State of Nevada
7 as stated in NRS 174.085 that once the defendant was
8 placed in jeopardy upon the filed criminal complaint in
9 Justice Court and proceeded to preliminary hearing on the
10 said charge and charge dismissed at the conclusion of the
11 hearing by the Magistrate that said charge is barred from
12 any subsequent proceedings and the law is clear and
13 unambiguous.

14 WHEREAS, neither NRS 123.095 or NRS 174.145 permits
15 the court to amend an information to restate a charge
16 that has been dismissed by the Magistrate at the preliminary
17 examination no matter how erroneous.

18 WHEREAS, defendant is not schooled in the letter of the
19 law that's why counsel adequate and zealous representation
20 is a must and had counsel not been ineffective by
21 investigating the facts of the case he would have known
22 that the charge of Attempt Grand Larceny was barred from
23 all proceedings in District Court per NRS 174.085(3a) and
24 informed defendant of such. Due to the fact that counsel did
25 not adequately investigate the law and the facts relevant to
26 the case it left defendant ignorant and with no plausible
27 options that prejudice defendant with irreparable injury.

1 THE STATE VIOLATED DEFENDANT'S ^{CONT} RIGHTS GUARANTEED BY BOTH THE
2 U.S. CONSTITUTION AND NEVADA CONSTITUTION [FEDERAL AND STATE
3 CONSTITUTIONAL RIGHTS]

4 WHEREAS, THE CLACK COUNTY DISTRICT COURT DID NOT DIVEST
5 JURISDICTION FOR THE CHARGE CRIME OF ATTEMPT GRAND LARCENY.

6 WHEREAS, A CRIMINAL COMPLAINT WAS FILED IN JUSTICE
7 COURT, LAS VEGAS TOWNSHIP CASE # 13F10823X ON 7-23-2013
8 CHARGING DEFENDANT HAVING COMMITTED THE CRIMES OF BURGLARY
9 (NRS 205.060) AND ATTEMPT GRAND LARCENY (NRS 205.220, 205.
10 222.2, 193.30) ON OR ABOUT THE 9TH DAY OF APRIL, 2013. THE DEFENDANT
11 WAS ARRESTED ON APRIL 2, 2016, FOR SAID OFFENSES AND POSTED BOND
12 ON BOTH CHARGES AND RELEASE.

13 WHEREAS, ON OR ABOUT THE 14TH DAY OF JUNE, 2016, THE
14 DEFENDANT FEE JERPERDY ON THE CHARGES OF BURGLARY AND ATTEMPT
15 GRAND LARCENY BY THE WAY OF PRELIMINARY HEARING IN JUSTICE
16 COURT DEPT # 3 AND AT THE CONCLUSION OF THE HEARING THE BURGLARY
17 CHARGE WAS BOUND OVER TO DISTRICT COURT AND THE CHARGE OF
18 ATTEMPT GRAND LARCENY WAS DISMISSED FOR LACK OF EVIDENCE, NO
19 CORPUS DELICTI, SLIGHT OR MARGINAL EVIDENCE TO PROCEED TO
20 DISTRICT COURT AND DEFENDANT'S BOND FOR ATTEMPT GRAND LARCENY
21 WAS EXONERATED. AS DEFENDANT FEE JERPERDY FOR THE 1ST TIME.
22 (NRS 174.085(3)).

23 WHEREAS, WHEN THE CHARGE OF ATTEMPT GRAND LARCENY WAS
24 DISMISSED THAT THE STATE PREDICTED THE INFLUENCE ON FOR THE BURGLARY
25 CHARGE PER THE FILED CRIMINAL COMPLAINT THEN THAT LEFT THE

James H. Hayes
Defendant/ In James H. Hayes #1195078

3. of 13 -

charge of Burglary Felony and it must have been dismissed, leaving no jurisdiction for the district court to proceed on the charge.

Whereas the state proceeded to district court on the charge of burglary by the way of information in Dept. XII case # C-16-315718-1. When in fact the descriptions of the offense was not sufficiently full and complete to accord to the defendant his constitutional right to due process of law as the state's intent of larceny was dismissed at preliminary hearing leaving an indefinite information, where the defendant has a right to be informed of the nature of the accusation against him (NRS 173.075(1)) that prejudice the defendant and is a miscarriage of justice.

Whereas the state dismissed the burglary charge in district court and again charge the defendant with attempt grand larceny by the way of amended information on November 7, 2018 without a grand jury indictment to put defendant in jeopardy for the 2nd time for the offense that has once previously been dismissed for lack of evidence, no corpus delicti, slight or marginal evidence to hand over to district court (NRS 174.085 (3)(5A)) after conclusion of preliminary hearing in Justice Court.

Whereas the state by notice to motion and motion to revoke bail filed on January 31, 2019 in district court that was granted by district court Judge W. Keppert had the defendant rebonded February 4, 2019 on the charge of attempt grand larceny to again have the defendant placed in jeopardy for the 3rd time when in fact, the defendant's bond for attempt grand larceny had already been exonerated at the conclusion of preliminary hearing by the Justice Court judge.

1 when the said charge was dismissed.
2 WHEREAS, the state on March 6, 2019 convicted
3 the defendant on the dismissed charge at the conclusion
4 of preliminary hearing of attempt grand larceny and
5 sentence defendant to have place the defendant in
6 jeopardy for the 4th time on the same offense that had
7 been dismissed in Justice court for lack of evidence
8 No corpus delicti, slight or marginal evidence that has
9 caused the defendant irreparable injury, prejudice,
10 and is a miscarriage of justice.
11

12 *NOTE: This is a issue of first impression...

13 EXHIBITS ENCLOSED:

14 EXHIBIT 1 - Amended Information

15 EXHIBIT 2 - Information

16 EXHIBIT 4 - Guilty Plea Agreement

17 EXHIBIT 5 - Judgment of Conviction

18 EXHIBIT 6 - Custody Record (Rebook)

19 EXHIBIT 7 - Criminal Complaint

20 EXHIBIT 8 - NRS 174.085

21

22

23

24

25

26

27

28

1 WHEREAS, THE STATE FAILED TO GIVE WRITTEN NOTICE FOR
2 HABITUAL TREATMENT FOR THE CONVICTIONS OF ATTEMPT GRAND LARCENY
3 LESS THAN \$3500. WHEN IN FACT, THE STATE NEVER FILED WRITTEN
4 NOTICE THAT THEIR INTENTION TO SEEK TO HAVE DEFENDANT TREATED
5 AS A HABITUAL OFFENDER FOR THE NEGOTIATED CHARGE OF ATTEMPTED
6 GRAND LARCENY LESS THAN \$3500. WHEN THE JUDGE CONVESS THE
7 DEFENDANT UPON HIS ALFORD PLEA HE INFORM THE DEFENDANT THAT
8 THE MAXIMUM PUNISHMENT HE COULD RECEIVE WAS 12 TO 48 MONTHS
9 IF HE RECEIVE FELONY TREATMENT AND 364 DAYS IF HE RECEIVED
10 THE GROSS MISDEMEANOR TREATMENT WITH A POSSIBLE FINE THAT
11 COULD BE IMPOSED IN BOTH INSTANCES NOT IN ANY WAY DID
12 HE INFORM DEFENDANT THAT HE COULD FACE HABITUAL TREATMENT
13 FOR THE NEGOTIATED CHARGE OF ATTEMPTED GRAND LARCENY LESS THAN
14 \$3500. AS THE HABITUAL SENTENCE IMPOSED ON DEFENDANT WAS
15 A SURPRISE WHEN DEFENDANT'S COUNSEL INFORMED HIM THAT HE
16 HAD IT NEGOTIATED TO GROSS MISDEMEANOR TREATMENT AND
17 CONCURRENT WITH CASE NO C-116-315125-1. SO THIS WAS PREJUDICIAL
18 AND EFFECTED THE DEFENDANT'S RIGHTS AND IS A MISFEASANCE OF
19 JUSTICE.

20 WHEREAS, DEFENDANT DID NOT AGREE TO THE VALIDITY OF
21 THE FELONY CONVICTIONS USED BY THE STATE TO ADJUDICATE, WHEN
22 IN FACT, THE DEFENDANT OBJECTED TO THE VALIDITY OF THE
23 ASSUME FELONY CONVICTIONS. AS THE EVENT IN TEXAS WAS NOT
24 A FELONY BUT A STATE JAIL CRIME THAT DOESN'T CARRY ANY PRISON
25 TIME, MANDATORY SUPERVISION, NOR PEROLE AND IS NOT A CLASS
26 A, B, C, D, OR E FELONY AND THE 2016 FELONY CONVICTION WAS 3 YEARS
27 AFTER THE INSTANT OFFENSE. THAT THE JUDGE CONSIDERED IN ADJUDICATION

1 WHEREAS, CONSECUTIVE SENTENCES imposed by the district
2 court violates the legislative intent of NRS 176.035 and does
3 NOT serve the interests of Justice.

4 WHEREAS, the instant offense Attempt Grand Larceny took
5 place on or about April 9, 2013 and was NOT subsequent to
6 the Burglary conviction that occurred April 2, 2016 but prior.
7 As which, the District Court erred by sentencing the defendant
8 to consecutive sentences rather than concurrent. The defendant
9 was charged with the instant offense in 2013 and warrant
10 had issued just three years prior to the conviction that the
11 District Court Judge imposed consecutive sentences.

12 WHEREAS, the defendant's bond for the instant offense
13 was exonerated at the conclusion of the preliminary hearing
14 as the instant offense "Attempt Grand Larceny" was dropped/
15 dismissed for No corpus delicti, slight or marginal evidence
16 to hand over to District Court that took place in 2016. So
17 defendant should have received time credit from that point
18 to the present towards the instant offense "Attempt Grand
19 Larceny" when in fact, when the District Court Judge granted
20 the states motion on February 4, 2019 and exonerated
21 the bond the defendant was NOT on bond for the
22 charge of Attempt Grand Larceny but for Burglary and the
23 Burglary charge was dismissed in November 2018 and the
24 bond for Attempt Grand Larceny was exonerated in 2016.
25 This is a clear miscarriage of Justice that has prejudiced
26 the defendant.

27

-7-04-13-

1 Whereas, one can only assume that the state
2 will contend that the bailer plea in the Guilty Plea
3 Agreement would satisfy Notice, which will not
4 satisfy legislative intent of proper Notice of habitual
5 criminality with the District Court.

6 Whereas the District Court Judge did not sentence
7 defendant on habitual sentence nor issue a stay
8 out of trouble order. When in fact the maximum
9 punishment that the Judge inform the defendant
10 of was 12 to 48 months for felony treatment and
11 30 days for gross misdemeanor treatment plus a
12 fine.

13 Whereas, the affidavit review of probable
14 cause was based on impalpable and highly suspect
15 evidence for new criminal charge in case number
16 C-19-338412-1 that was dismissed in defendant's
17 first court appearance in District Court as the alleged
18 victim testified under oath at preliminary hearing
19 that the defendant was not the perpetrator of
20 the alleged event and he was 100% sure of that.
21 Furthermore, this was not a legal sentence as the
22 charge crime of Attempted Grand Larceny was dismissed
23 at the conclusion of preliminary hearing for no
24 corpus delicti, slight or marginal evidence, and lack
25 of evidence as the state re-charge defendant for
26 this same crime in District Court without grand
27 jury indictment that is a clear miscarriage

1 of justice constitutional/violation U.S. and
2 Nevada, and 2 NRS 174.085 violation of Double
3 Jeopardy.

4 WHEREAS the convictions used by the state
5 was trivial and beyond the scope. When in fact,
6 the Texas convictions was one event and not two
7 as the judge deemed not felonies but Texas state
8 Jail crimes that don't carry prison term, mandatory
9 supervision, nor parole as a felony would in any
10 other state in the country. And the 2016 Burglary
11 conviction would not be a prior felony as the
12 instant case occurred in 2013. So in essence the
13 defendant only had one prior felony and had
14 never been to prison so this habitual sentence
15 easily "Shock the Conscience" as being dispropor-
16 tionate to the crime charged Attempted Grand
17 Larceny less than \$3500.

18
19 *NOTE: the conviction in Texas is not a class A, B, C, D,
20 or E felony does not carry a prison term so at the
21 very least one would have to say its ambiguous to
22 being a felony conviction. Defendant has never
23 been charge or convicted of a violent offense.

1 WHEREAS, THE STATE KNOWINGLY, VOLUNTARILY, AND
2 INTELLIGENTLY FILED A FRAUDULENT UNCONSTITUTIONAL GUILTY
3 PLEA AGREEMENT AND AMENDED INFORMATION IN OPEN COURT
4 ON NOV 8, 2018 TO DEPRIVE AND MISLEAD THE DEFENDANT
5 TO HIS PREJUDICE THAT WAS MALICIOUS, UNPROFESSIONAL,
6 AND GROSSLY UNETHICAL. AS TO DEPRIVE THE DEFENDANT OF
7 THE PROTECTIONS THAT THE CONSTITUTION AFFORDED HIM
8 AND WAS DESIGNED TO PROTECT HIM OF AND DENY HIM
9 DUE PROCESS OF LAW.

10 WHEREAS, THE NEGOTIATIONS CONTAINED IN THE
11 GUILTY PLEA AGREEMENT WAS NOT KNOWINGLY AND INTELLIGENTLY
12 AGREED TO BY THE DEFENDANT AS THE GUILTY PLEA AGREEMENT
13 WAS NOT SUFFICIENTLY CLEAR AND UNAMBIGUOUS. THE
14 AMENDED INFORMATION LEFT THE DEFENDANT WITHOUT KNOW-
15 LEDGE AS TO THE NATURE OF THE CHARGE UPON WHICH HE
16 PLEADED THAT HE COULD NOT PLEAD THE CRIME WITH
17 CERTAINTY AS THE SAID CHARGE ATTEMPTED GRAND LARCENY
18 WAS DISMISSED BY THE CONCLUSION OF THE PRELIMINARY
19 HEARING FOR LACK OF EVIDENCE, NO CORPUS DELICTI, SLIGHT OR
20 MARGINAL EVIDENCE LEAVING NO QUESTION OR JURISDICTION
21 FOR DISTRICT COURT TO PROCEED. WHEN IN FACT, THE CHARACTER
22 OF THE MATERIAL EVIDENCE IN THE AMENDED INFORMATION
23 AND GUILTY PLEA AGREEMENT IS FALSE AND DUE PROCESS OF
24 LAW INEVITABLY BEEN DENIED THE DEFENDANT AND THE
25 DISTRICT COURT PROCEEDINGS WAS CONSTITUTIONALLY
26 INADEQUATE, MISCEGENATION OF JUSTICE THAT DOES NOT SERVE
27 THE INTERESTS OF JUSTICE

1 whereas, defendant being adjudicated as a habitual offender
2 is cruel and unusual punishment that shock the conscience as being
3 disproportionate to the crime convicted Attempted Grand Larceny which is
4 a clear miscarriage of Justice that does not serve the interests of justice.

5 whereas, at the date the adjudicated charge of attempted grand
6 larceny occurred the defendant had never been to prison or ever had
7 a serious or violent crime held or charged against him.

8 whereas, the state breach the Guilty Plea agreement on im-
9 palpable and highly suspect evidence that allegedly occurred in January
10 2019 that greatly prejudice the defendant that was dismissed for no
11 corpus delicti as the alleged victim testified at preliminary hearing
12 that defendant was not the perpetrator who committed the alleged
13 crime and he was 100% sure of it. So the state violated terms and
14 spirit of agreement on palpable evidence that prejudiced defendant

15 whereas, defendant never violated a provision of a statute
16 that would have allowed the District Court to not stand by the sentence
17 agreed upon by the parties set forth in the GPA.

18 whereas, the defendant has suffered irreparable injury
19 through the prosecutions unprofessional and grossly unethical conduct
20 as they maliciously failed to proceed on the facts and the law

21 whereas, there was no causation for the Judge to not
22 adhere to the negotiated agreement that has caused a manifest
23 injustice as the validity of the Alford Plea is faulty by the
24 judge lack of clarification in the plea confess that has violated
25 the defendant's rights. When in fact, the defendant still claims
26 Actual Innocence and never admitted guilt to the elements
27 of the crime Attempted Grand Larceny less than \$3500 that
28 makes the GPA fatal and unconstitutional... "Failed to Confess"

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HOGES, hereby certify, pursuant to NRCP 5(b), that on this 14th
day of July, 2019, I mailed a true and correct copy of the foregoing, "Notice of
Appeal (2nd)"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Supreme Court of Nevada
201 S. Carson St. Ste 201
Carson City, NV
89401

CC:FILE

DATED: this 14th day of July, 2019.

James H. Hoges
JAMES H. HOGES # 1125892
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

-12 of 13-

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice of

Appeal (2nd)

(Title of Document)

filed in District Court Case number C-16-315718-1 ; Supreme Ct Case No. 78590

☒ 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.

James H. Hayes
Signature

7-14-19
Date

JAMES H. HAYES
Print Name

defendant
Title

- 13 of 13 -

1 JUSTICE COURT, LAS VEGAS TOWNSHIP
2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

5 -vs-

6 JAMES HOWARD HAYES, aka,
7 James Howard Hayes, Jr. #2796708,

8 Defendant.

JUSTICE COURT
LAS VEGAS, NEVADA

CASE NO: 13F10723X

DEPT NO: 3

CRIMINAL COMPLAINT

9 The Defendant above named having committed the crimes of BURGLARY (Category
10 B Felony - NRS 205.060) and ATTEMPT GRAND LARCENY (Category D Felony/Gross
11 Misdemeanor - NRS 205.220.1, 205.222.2, 193.330), in the manner following, to-wit: That
12 the said Defendant, on or about the 9th day of April, 2013, at and within the County of
13 Clark, State of Nevada,

14 COUNT 1 - BURGLARY

15 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit
16 larceny, Room No. 17151, of the EXCALIBUR HOTEL & CASINO, located at 3850 South
17 Las Vegas Boulevard, Las Vegas, Clark County, Nevada, occupied by JOSHUA JARVIS.

18 COUNT 2 - ATTEMPT GRAND LARCENY

19 did then and there wilfully, unlawfully, feloniously and intentionally, with intent to
20 deprive the owner permanently thereof, attempt to steal, take and carry away, lead away or
21 drive away personal property of a value of \$650.00 or more, lawful money of the United
22 States, belonging to JOSHUA JARVIS, to-wit: lawful money of the United States, an iPhone
23 and other personal items, by taking and/or moving items within the room, but was stopped
24 before he could take all the items.

25 ///

26 ///

27 ///

28 ///

13F10723X
CRIM
Criminal Complaint
2796708

EXHIBIT 7

FWFDOCNCOL

1 All of which is contrary to the form, force and effect of Statutes in such cases made
2 and provided and against the peace and dignity of the State of Nevada. Said Complainant
3 makes this declaration subject to the penalty of perjury.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

S. D. Benedict
7/23/2013

27 13F10723X/cb
28 LVMPD EV# 1304090843
(TK3)


CLERK OF THE COURT

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 I.A. 6/23/16
13 10:00 AM
14 PD

15 THE STATE OF NEVADA,
16 Plaintiff,

CASE NO: C-16-315718-1

17 -vs-

DEPT NO: XII

18 JAMES HOWARD HAYES,
19 aka James Howard Hayes, Jr., #2796708
20 Defendant.

INFORMATION

21 STATE OF NEVADA }
22 COUNTY OF CLARK } ss.

23 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
24 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

25 That JAMES HOWARD HAYES, aka James Howard Haycs, Jr., the Defendant(s)
26 above named, having committed the crime of BURGLARY (Category B Felony - NRS
27 205.060 - NOC 50424), on or about the 9th day of April, 2013, within the County of Clark,
28 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
provided, and against the peace and dignity of the State of Nevada, did then and there wilfully,
unlawfully, and feloniously enter, with intent to commit larceny, Room No. 17151, of the

///

///

///

///

EXHIBIT 2

W:\2013\0613\F1\0702\13F10723-INFO-(HAYES_JAMES)-001.DOCX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXCALIBUR HOTEL & CASINO, located at 3850 South Las Vegas Boulevard, Las Vegas,
Clark County, Nevada, occupied by JOSHUA JARVIS.

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

BY



MICHAEL DICKERSON
Deputy District Attorney
Nevada Bar #013476

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES, aka,
13 James Howard Hayes Jr., #2796708

14 Defendant.

CASE NO. C-16-315718-1

DEPT NO. XIX

AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss:

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That JAMES HOWARD HAYES, aka, James Howard Hayes Jr., the Defendant(s)
20 above named, having committed the crime of ATTEMPT GRAND LARCENY (Category
21 D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330 - NOC 56025/56026),
22 on or about the 9th day of April, 2013, within the County of Clark, State of Nevada, contrary
23 to the form, force and effect of statutes in such cases made and provided, and against the peace
24 and dignity of the State of Nevada, did willfully, unlawfully, feloniously, and intentionally,
25 with intent to deprive the owner permanently thereof, attempt to steal, take and carry away
26 lawful money of the United States in an amount of \$650.00, or greater, owned by another

27 ///

28 ///


EXHIBIT "1" ss

W:\001312013\0110723\13710723-AINF-01000-002.docx

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

person, to wit: JOSHUA JARVIS, by attempting to steal lawful money of the United States,
an iPhone and other personal items from the said JOSHUA JAVIS.

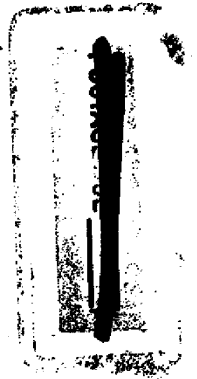
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY 
MICHAEL DICKERSON
Deputy District Attorney
Nevada Bar #013476

DA#13F10723X /cmj/L2
LVMPD EV#1304090843
(TK3)

[illegible]

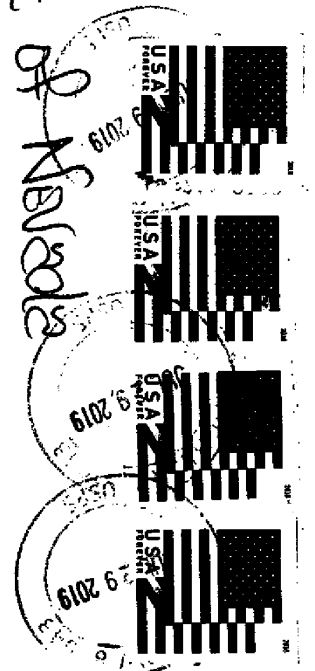
4445 #1125692
PCE
P.O. Box 509
Poeche, Nevada 89043



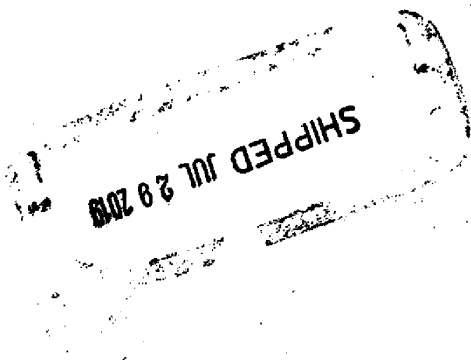
Supreme Court of Nevada
"Office of the clerk"

201 South Carson Street, Suite 201
Carson City, Nevada

89701



LEGAL
Mail





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
13 JAMES HOWARD HAYES
14 aka JAMES HOWARD HAYES, JR.,

15 Defendant(s),

Case No: C-16-315718-1

Dept No: XIX

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): James H. Hayes

19 2. Judge: William D. Kephart

20 3. Appellant(s): James H. Hayes

21 Counsel:

22 James H. Hayes #1175077
23 P.O. Box 509
24 Pioche, NV 89043

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: June 14, 2016

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

Type of Judgment or Order Being Appealed: Judgment of Conviction

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 73436, 75173, 78590, 77151, 78622

12. Child Custody or Visitation: N/A

Dated This 9 day of August 2019.

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: James H. Hayes



1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHARLES W. THOMAN
6 Chief Deputy District Attorney
7 Nevada Bar #012649
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO: C-16-315718-1

10 -VS-

DEPT NO: XIX

11 JAMES HAYES,
12 #2796708

13 Defendant.

ORDER FOR TRANSCRIPT

14 Upon the ex-parte application of the State of Nevada, represented by STEVEN B.
15 WOLFSON, Clark County District Attorney, by and through, CHARLES W. THOMAN,
16 Chief Deputy District Attorney, and good cause appearing therefor,

17 IT IS HEREBY ORDERED that a transcript of the Calendar Call - Guilty Plea
18 Agreement heard on the 7 day of November, 2018, be prepared by Christine Erickson, Court
19 Recorder for the above-entitled Court.

20 DATED this 30th day of August, 2019.

21 
22 DISTRICT JUDGE 

23 STEVEN B. WOLFSON
24 Clark County District Attorney
25 Nevada Bar #001565

26 BY 

27 CHARLES W. THOMAN
28 Chief Deputy District Attorney
Nevada Bar #012649

28 jg/CAU

W:\2013\2013F\107\23\13F10723-ORDR-(HAYES_JAMES)-003.DOCX

1 Hayes James #1175077

2 In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED

SEP 09 2019 7

John J. Blum
CLERK OF COURT

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 State of Nevada

9 Plaintiff,

10 vs.

11 JAMES H. HAYES

12 defendant

October 7, 2019
8:30 AM

Case No. C-16-315718-1

Dept. No. 19

Docket _____

13
14 "Motion in the Nature of a Writ of Coram Nobis"
15
16
17
18

19 COMES NOW, James H. Hayes defendant herein above respectfully
20 moves this Honorable Court for an Granting of a "motion in the Nature
21 of a Writ of Coram Nobis" to redress an injury done to the
22 defendant who pleaded "Alibi" to a crime he did not commit.

23 This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

24
25
26
27
28
RECEIVED

SEP 09 2019

CLERK OF THE COURT

DATED: this 10 day of September 20 19.

BY:

James H. Hayes

JAMES HAYES

#1175077

Defendant/In Propria Personam

Points and Authorities

Statement of the Case

The relevant procedural history is as follows. In a July 23, 2013 criminal complaint, the state charged defendant with the crimes of Burglary (NRS 205.060) and Attempt Grand Larceny (NRS 205.220.1; 205.222.2)

On or about the 14th day of June 2016 the state held a preliminary examination against the defendant on the charges of Burglary and Attempt Grand Larceny in Justice Court Dept 3 and at the conclusion of the prelim. examination the Burglary charge was bound over to District Court and the charge of Attempt Grand Larceny was dismissed by the magistrate.

In a June 17, 2016 information, the state charged defendant with Burglary.

On November 7, 2018, defendant pleaded guilty pursuant to North Carolina v Alford, 400 U.S. 25 (1970) to Attempt Grand Larceny and the charge of Burglary was dismissed, by the way of Amended information.

On January 31, 2019 the state rebook the defendant on the charge of Attempt Grand Larceny and Revoked Bail.

Argument:

I. An information cannot be amended so as to charge an offense not shown by the evidence taken at the preliminary examination. (Snyder v. State, 738 P.2d 1303) Where, as here, the charge of Attempt Grand

1 Larceny was not bound over to District Court at the
2 conclusion of the preliminary examination for lack of
3 evidence, no corpus delicti, slight or marginal evidence
4 to proceed to District Court leaving no subject matter
5 jurisdiction for the District Court to proceed on the
6 charge.

7 II. A court cannot order an amendment of
8 an information to restate a charge which had been
9 dismissed by a magistrate at a preliminary examination
10 (Martin v. Sheriff, Clark County) 469 P 2d 754 where, as here
11 the charge of Attempt Grand Larceny was dismissed
12 at the conclusion of the preliminary examination by
13 the magistrate for lack of evidence, no corpus delicti,
14 slight or marginal evidence, leaving the state no
15 jurisdiction to proceed on the charge in District Court.
16 Whereas, the state knowingly and intelligently filed a
17 fraudulent unconstitutional amended information in
18 District Court to the defendant's prejudice.

19 III. A charge already dismissed may not be
20 added by amendment neither NRS 174.145 nor NRS 34.520
21 permit the court the amendment of an information to
22 restate a charge that has been dismissed by the magistrate
23 at the preliminary examination. where, as here, the
24 state's amended information and Guilty Plea Agreement
25 was violative of constitutional safeguards that has
26 resulted in a miscarriage of Justice and have prejudiced
27 the defendant in respect to a substantial right.

1 IV. When the defendant was once placed in jeopardy
2 upon criminal complaint and the charge dismissed by
3 magistrate the jeopardy is a bar to another information
4 or complaint for the offense charged in the former of
5 which the defendant might have been convicted NRS
6 174.085(3). Where, as here, there is no material dispute
7 as to the mistake of fact when the state has conceded
8 that the charge of Attempt Grand Larceny was dismissed
9 at conclusion of preliminary examination and that the
10 Amended information restated the charge of Attempt Grand
11 Larceny. In which, this is the proper case for correction of
12 the error in the judgment because the defendant stands
13 convicted of a crime he did not commit.

14 Wherefore, defendant requests that the court grant
15 this motion and set aside the judgment of conviction
16 to correct manifest injustice
17
18
19
20
21

22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT ESP

this 6 day of September 2049

24 IN FRONT OF:

BY James H. [Signature]
NDOC # 1195672

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 6
day of September, 2019, I mailed a true and correct copy of the foregoing, "Motion in
the nature of a writ of Coram Nobis"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

CLERK OF THE COURT
200 LEWIS AVE 3RD FL
LAS VEGAS, NV 89103-1160

ATTORNEY GENERAL
100 N. CROWN ST
CARSON CITY, NV 89401

CC:FILE

DATED: this 6 day of September, 2019.

James H. Hayes
JAMES HAYES #1175297
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion IN
the Nature of a Writ of Coram Nobis
(Title of Document)

filed in District Court Case number C-16-315218-1

☒ 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.

James H. Hayes
Signature

9-6-19
Date

James H. Hayes
Print Name

defendant
Title

J. Hayes #1125022
ESP
P.O. Box 1989
ELY, NV 89301



Clark County District Courts
"Clerk of the Courts"

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada

Letzel
Neil



9510136300-0075

ELY STATE PRISON

SEP 05 2019

U12

1 Case No. C-16-315718-1

2 Dept. No. 19

FILED

SEP 09 2019

John J. Blum
CLERK OF COURT

3
4
5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF Clark

8 State of Nevada

9 Plaintiff

10 vs.

11 James H. Noyes

12 Defendant

Case No. C-16-315718-1

Dept No. 19

Docket _____

14 **NOTICE OF MOTION**

15 YOU WILL PLEASE TAKE NOTICE, that _____

16
17 will come on for hearing before the above-entitled Court on the _____
18 at the hour of _____ o'clock _____ M. In Department _____ of said Court

October 7, 2019
8:30 AM

19
20 CC:FILE

21
22 DATED: this 6 day of September, 20 19

23
24 BY:

James H. Noyes

Noyes, James H.

#1183079

/In Propria Personam



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,
7 Plaintiff,

CASE#: C-16-315718-1
DEPT. XIX

8 vs.

9 JAMES HAYES,
10 Defendant.

11
12 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT JUDGE
13 WEDNESDAY, NOVEMBER 07, 2018

14 **RECORDER'S TRANSCRIPT OF HEARING:**
15 **CALENDAR CALL**

16
17 APPEARANCES:

18 For the State:

MICHAEL DICKERSON
Deputy District Attorney

19
20
21 For the Defendant:

MICHAEL SANFT, ESQ.

22
23
24
25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY NOVEMBER 07, 2018

2 [Hearing began at 10:01 a.m.]

3 THE COURT: State of Nevada versus James Hayes; this is
4 C315718. Mr. Hayes is present; he's out of custody. This is time set for
5 calendar call. Where we at on this, Mr. Sanft?

6 MR. SANFT: Your Honor, the matters been resolved.

7 THE COURT: Oh, okay.

8 MR. SANFT: I believe the State of Nevada is presenting the Court
9 with the guilty plea agreement. With the Court's permission today my
10 client will be pleading guilty pursuant to *Alford* to an attempt grand
11 larceny, which is a wobbler.

12 The State will agree not to make any recommendations upon
13 the sentencing. The State will have no opposition to probation with the
14 only condition being 30 days in the Clark County Detention Center with
15 30 days credit for time served.

16 THE COURT: Is that correct?

17 MR. DICKERSON: That's correct, Your Honor.

18 THE COURT: Mr. Hayes, I've been handed a copy of an amended
19 information in this case. Have you received a copy of that?

20 THE DEFENDANT: Yes sir.

21 THE COURT: Do you have any objection of it being filed here
22 today?

23 THE DEFENDANT: No, sir.

24 THE COURT: Did you have an opportunity to read it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: When you read through it was your attorney available
2 to answer any questions you may have had?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You believe you understand the charges contained in
5 the amended information?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you waive a formal reading of it now?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Or do you want me to read it to you?

10 THE DEFENDANT: No. Waive.

11 THE COURT: Did you hear the representations made by your
12 attorney with regards to the negotiations here?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you in agreeance with that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I have a copy of the guilty plea agreement here. It's
17 dated November 7th, 2018. And on page six of the guilty plea agreement
18 there's a signature above the name of James Howard Hayes. Did you
19 sign this, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Before you signed it did you read it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: When you read through it was your attorney available
24 to answer any questions you may have had?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions of your attorney about the
2 guilty plea agreement now?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you have any questions of the Court about the
5 guilty plea agreement?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you believe you understand what's contained in
8 the guilty plea agreement?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand the rights that you're waiving by
11 this plea here today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand the type of plea that you're
14 entering here today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Can you tell me what your understanding is
17 that you're facing as a form of punishment for the charge of attempt
18 grand larceny here in the State of Nevada?

19 THE DEFENDANT: One to four in the Nevada Department of
20 Corrections.

21 THE COURT: Okay.

22 THE DEFENDANT: Or a gross misdemeanor of 364 days.

23 THE COURT: Okay. You can also be fined up to \$5,000 if I treat it
24 as a felony. And you could be fined up to \$2,000 if I treat it as a gross
25 misdemeanor?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. You understand that no one's in a position to
5 offer you any type of special treatment, leniency, or probation, as
6 sentencing is entirely up to the Court?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And although the parties have made -- will be making
9 somewhat of a recommendation here, the Court's not bound by that.

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: With that being said do you want to go forward with
14 this today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. So how do you plead to the amended
17 information that charges you with attempt grand larceny that took place
18 on or about the 9th day of April, 2013 while you're here in Las Vegas,
19 Clark County, Nevada, where you willfully and lawfully and feloniously
20 and intentionally deprived the owner permanently, thereof, by attempting
21 to steal, take or carry away lawful money of the United States, \$650 or
22 greater, owned by a Joshua Jarvis. And you -- by doing this you were
23 attempting to steal lawful money and an iPhone from Joshua Jarvis.
24 How do you plead to that?

25 THE DEFENDANT: Guilty by the way of *Alford*.

1 THE COURT: Okay. Sir, do you believe this is in your best interest
2 to enter this type of negotiation?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you're not asking the Court for a trial in this
5 matter?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. Sir, you understand that I'm going to ask the
8 State to provide me with a set of facts that they believe that they could
9 prove if this were to go to trial and I'm going to accept those for purposes
10 of determining whether or not there's sufficient information to support the
11 charge. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Mr. Dickerson?

14 MR. DICKERSON: Your Honor, if this case were to go to trial the
15 State would prove beyond a reasonable doubt that on or about April 9th,
16 2013, in the early morning hours, the Defendant entered the hotel room
17 of Joshua Jarvis, that being the hotel room 17151 at the Excalibur hotel
18 with the intent to commit larceny, thereby, proving the greater crime of
19 burglary.

20 Once inside that room, the Defendant was found by Mr. Jarvis,
21 who was sleeping at the time, to be rummaging through Mr. Jarvis and
22 his guest's luggage. Ultimately, Mr. Jarvis grabbed onto the Defendant,
23 sat him down on the bed, and pulled out the Defendant's ID and took a
24 picture of it before letting the Defendant leave.

25 When the Defendant left, multiple items, personal property,

1 including money of the guest of that room, were missing and it was
2 determined that they were nowhere to be found other than likely with Mr.
3 Hayes here in this case.

4 With that, Your Honor, the State would have proved the crime
5 of attempt grand larceny, is that's what Mr. Hayes was attempting to do
6 there at the luggage, and the crime of burglary upon his entry into the
7 room.

8 THE COURT: Mr. Sanft, do you agree with those facts?

9 MR. SANFT: Yes, Your Honor.

10 THE COURT: Okay. All right. Mr. Hayes, I'm going to accept
11 those. I do believe that they're sufficient to support the crime that's
12 charged here.

13 Now, sir, do you understand that by pleading by way of *Alford*
14 is for the purpose of avoiding a harsher penalty if you were to go to trial
15 on the original charges? Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And that's why you're entering it this way?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: So you're not admitting guilty here, you're just saying,
20 Judge, I don't want to be convicted if we go to trial of the higher offense
21 and face a further -- a harder -- a harsher sentence?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So for that reason I'm entering my plea here --

24 THE DEFENDANT: Yes, sir.

25 THE COURT: -- to avoid that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. And that's what you want to do?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you believe under the circumstances that it's in
5 your best interest?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Sir, I'm going to accept your plea. I do believe
8 it's freely and voluntarily entered into. I do believe you understand the
9 nature and the consequences of your plea; therefore, I'm going to accept
10 your plea.

11 I'm going to vacate the trial that was scheduled for the 13th of
12 November. And I'm going to refer this over to the Department of Parole
13 and Probation for preparation of a presentence investigation report and
14 I'll set a sentencing date. Okay?

15 MR. SANFT: Your Honor, can we just sentence him today based
16 upon the fact that we're asking for credit for time served in this matter?

17 MR. DICKERSON: We would ask for a PSI, Your Honor.

18 THE COURT: I'm going to get a PSI done on him; okay?


19 MR. SANFT: Yes, Your Honor.

20 THE COURT: I'm not -- that -- please don't read that I'm not going
21 to accept that you're offering here.

22 MR. SANFT: No. Of course not.

23 THE COURT: Yeah. I'm just saying I want to see if there's
24 something crazy behind it then I may not --

25 MR. SANFT: Okay.

1 THE COURT: -- go with this. Okay?
2 All right, so here's the date.
3 THE COURT CLERK: March 6th at 8:30.
4 THE COURT: Okay. Mr. Hayes, I ask that you speak with your
5 attorney about how you take care of this. You have to go over to the
6 Department of Parole and Probation and go through an interview. Okay?
7
8 [Hearing concluded at 10:07 a.m.]
9 * * * * *
10 ATTEST: I do hereby certify that I have truly and correctly transcribed the
11 audio/video proceedings in the above-entitled case to the best of my ability.
12
13 
14 _____
15 Christine Erickson,
16 Court Recorder
17
18
19
20
21
22
23
24
25

CASE Number: C-16-315718-1

Dept. No. 19

Clark County District Courts

AFFIDAVIT OF Granting Motions in the Nature of a writ
of Coram Nobis

STATE OF NEVADA)

COUNTY OF CLARK)

SS: Submit the matter for DECISION

FILED

SEP 26 2019

TO WHOM IT MAY CONCERN:

Alan J. Johnson
CLERK OF COURT

I, JAMES H. HAYES, the undersigned, do hereby swear that all the following statements and description of events, are true and correct, of my own knowledge, information, and belief, and to those I believe to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT JAMES H. HAYES (defendant), is the efficient in this Affidavit and is currently incarcerated at Piche Correctional Camp. WHEREAS, defendant filed a motion "IN the nature of a writ of coram nobis" on Sept 9, 2019, under case No. C-16-315718-1 IN DEPT. 19 THE COURT has set a date of Oct. 7 2019 for the parties to appear in court, on this matter for a ruling. However, the allowed 10 day deadline has passed (EDCR 3.20) and defendant has not received a response to the motion. And, the court doesn't indicate that any response was ever filed.

Points and Authorities

U.S. constitution 5th Amend. "DUE PROCESS OF LAW"; U.S. constitution 14th Amend. "Equal protection of Law"; EDCR # 3.400; EDCR # 3.80; Hillis v. State; DERANI v. ^{KORNI} AGOR (2018); Bates v. Christopher (180 NRS 625); NRS 34.390; NRS 34.390; NRS 34.350

Legal Arguments

I. Failure to respond to an argument within the litigation must be taken as "Confession of Error"

II. Failure to respond to any litigation within a case is a procedural bar to that issue. Also known as "Default" or "Procedural Default"

WHERE, AS HERE, THE STATE HAS FAILED TO APPEAR TO DISTRICT COURT

RECEIVED

SEP 16 2019

CLERK OF THE COURT

1 Rule #13 by failing to respond to defendant's motion in the allotted
2 10 day period by rule and this failure is an admission that its
3 meritorious and consent to grant motion. And since the state didn't
4 respond within the allotted time frame that it is apparent that
5 the state can't justify imprisoning Mr. Hayes and his confinement
6 is illegal and unconstitutional. Because had it been justifiable
7 then the state would've justified it. Instead the state had no
8 rebuttal, and voluntarily chose to go into "default".

9
10 WHEREFORE, MR. HAYES URGES THIS HONORABLE COURT TO GRANT HIS
11 MOTION "IN THE NATURE OF A WRIT OF HABEAS CORPUS" AND SET ASIDE
12 THE JUDGMENT OF CONVICTION TO CORRECT A MANIFEST INJUSTICE
13 AND TO REDRESS AN INJURY DONE TO THE DEFENDANT.

14
15
16
17
18
19
20
21
22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT Piche Conservation Camp this 24 day of September 2019

24 IN FRONT OF:

BY James H. Hayes
NDOC # 1175672

UNDER PENALTY OF PERJURY

I, the undersigned, certify, declare, or state that the foregoing is true and correct, to the best of my knowledge and belief, in accordance with NRS 208.165 and 28 USCA § 1746.

Excuted on the 24 day of September, 2019

James H. Hayes JAMES H. HAYES # 1175077
Name and Prison BAC#, printed

4445 #1125032

P.O.C.

P.O. Box 509

Proche, NV 89203

LAS VEGAS NV 890

24 SEP 2019 PM 5 L

Clark County District Courts
ATTN: Clerk of the Courts

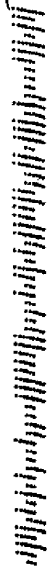
200 Lewis Ave : 3rd Floor

Las Vegas, Nevada

Legal
Mail

89115-1160

89101\$6300 0075



SHIPPED SEP 24 2019



1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TALEEN PANDUKHT
6 Chief Deputy District Attorney
7 Nevada Bar #05734
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-16-315718-1

12 JAMES HOWARD HAYES,
13 aka James Howard Hayes Jr.,
14 #2796708

DEPT NO: XIX

14 Defendant.

15
16 **STATE'S OPPOSITION TO DEFENDANT'S
MOTION FOR A WRIT OF CORAM NOBIS**

17 DATE OF HEARING: OCTOBER 7, 2019
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and
21 hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for a
22 Writ of Coram Nobis.

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

26 ///

27 ///

28 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On or about July 23, 2013, James H. Hayes (hereinafter, "Defendant") was charged by
4 way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS
5 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross
6 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in
7 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound
8 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

9 On June 17, 2016, the State filed an Information with the District Court, charging
10 Defendant with one count of BURGLARY. On August 29, 2017, the State filed an Amended
11 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant
12 to a Guilty Plea Agreement ("GPA"), Defendant entered a plea of Guilty pursuant to North
13 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY. The
14 terms of the GPA are as follows:

15 The State has agreed to make no recommendation at the time of sentencing. The
16 State has no opposition to probation with the only condition being thirty (30)
17 days in the Clark County Detention Center (CCDC), with thirty (30) days credit
18 for time served.

19 GPA at 1:22-24. The GPA further includes, in pertinent part, the following acknowledgement:

20 I understand and agree that, if...an independent magistrate, by affidavit review,
21 confirms probable cause against me for new criminal charges including reckless
22 driving or DUI, but excluding minor traffic violations, the State will have the
23 unqualified right to argue for any legal sentence and term of confinement
24 allowable for the crime(s) to which I am pleading guilty, including the use of
25 any prior convictions I may have to increase my sentence as a habitual criminal
to five (5) to twenty (20) years, Life without the possibility of parole, Life with
the possibility of parole after ten (10) years, or a definite twenty-five (25) year
term with the possibility of parole after ten (10) years.

26 ///

27 ///

28 ///

1 GPA at 2: 1-9. An Amended Information reflecting the new charge of ATTEMPT GRAND
2 LARCENY was filed in conjunction with the GPA. Defendant was adjudged Guilty pursuant
3 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

4 On January 31, 2019, the State filed a State's Notice of Motion and Motion to Revoke
5 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace
6 had found probable cause to charge Defendant with Burglary for acts committed on or around
7 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February
8 4, 2019.

9 At the sentencing hearing on March 6, 2019, the State argued that it had regained the
10 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that
11 Defendant should be punished under NRS 207.010 (the "Small Habitual Statute"). The Court
12 agreed, and Defendant was sentenced to sixty (60) to one hundred seventy-four (174) months
13 in the Nevada Department of Corrections (NDOC), consecutive to Defendant's sentence in
14 another case (C315125). The Court also awarded Defendant ten (10) days credit for time
15 served. The Judgment of Conviction in this case was filed on March 12, 2019.

16 Defendant filed a Notice of Appeal on March 28, 2019. Defendant's Case Appeal
17 Statement was filed on August 9, 2019. Defendant's Appeal of the instant case is still pending
18 before the Nevada Supreme Court (Case Number 78590).

19 On September 9, 2019, Defendant filed the instant "Motion in the Nature of a Writ of
20 Coram Nobis." On September 26, 2019, Defendant filed an "Affidavit of Granting Motion in
21 the Nature of a Writ of Coram Nobis."

22 ARGUMENT

23 **I. DEFENDANT'S AFFIDAVIT OF GRANTING MOTION IN THE NATURE OF** 24 **A WRIT OF CORAM NOBIS IS WITHOUT MERIT**

25 Defendant's stylized Affidavit, filed on September 26, 2019, fails to consider the facts
26 and circumstances of the instant Motion, and is therefore without merit. Defendant asserts, in
27 sum, that the State's failure to respond to his Motion within 10 days is an admission that

28 ///

1 Defendant's Motion is meritorious, and consent to the granting thereof. However, Defendant
2 overlooks the requirements for initiating the time period within which a party must respond.

3 Contrary to Defendant's assertions that the State is untimely in its response, the State
4 contends that Defendant's Motion was never properly served on the State. In the Certificate
5 of Service affixed to the instant Motion, Defendant certified that the Motion was sent to the
6 Attorney General in Carson City, Nevada. There is no certification that the instant Motion was
7 sent to, or properly served upon, the Office of the Clark County District Attorney. Therefore,
8 the time for the State's response never began to run and cannot be deemed to have passed.

9 Due to the lack of proper service, this Court should reject Defendant's representations
10 in his Affidavit, and should consider the merits of the instant Opposition.

11
12 **II. DEFENDANT'S PENDING APPEAL DIVESTS THIS COURT OF**
13 **JURISDICTION**

14 The Nevada Supreme Court has declared, "[j]urisdiction in an appeal is vested solely
15 in the supreme court until the remittitur issues to the district court." Buffington v. State, 110
16 Nev. 124, 126, 868 P.2d 643, 644 (1994). While an appeal is pending, district courts do not
17 have jurisdiction over that case until remittitur has issued. Id. The Nevada Supreme Court "has
18 repeatedly held that the timely filing of a notice of appeal 'divests the district court of
19 jurisdiction to act and vests jurisdiction in [the appellate] court.'" Foster v. Dingwall, 126 Nev.
20 49, 52, 228 P.3d 453, 454-55 (2010) (quoting Mack-Manley v. Manley, 122 Nev. 849, 855,
21 138 P.3d 525, 529 (2006)). Pursuant to NRS 177.155, the supreme court retains control and
22 supervision of a case "from the filing of the notice of appeal until the issuance of the certificate
23 of judgment." Buffington, 110 Nev. at 126, 868 P.2d at 644.

24 Only a remittitur will return jurisdiction from an appellate court of competent
25 jurisdiction to the district court. See NRS 177.305 ("After the certificate of judgment has been
26 remitted, the appellate court...shall have no further jurisdiction of the appeal or of the
27 proceedings thereon, and all order which may be necessary to carry the judgment into effect
28 shall be made by the court to which the certificate is remitted."). Until such remittitur is

1 received, a district court lacks jurisdiction over a particular case. Buffington, 110 Nev. at 126,
2 868 P.2d at 644.

3 Here, the instant case is on appeal, pending before the Nevada Supreme Court.
4 Defendant timely filed a Notice of Appeal on March 28, 2019, thereby divesting this Court of
5 jurisdiction to entertain the current motion. The Fast Track Briefing on the appeal was
6 completed on July 24, 2019, and no Opinion, Order, or Certificate of Judgment has been
7 entered as of the time of filing the instant Opposition. Therefore, the State respectfully submits
8 that this Court lacks the jurisdiction necessary to address Defendant's Motion on its merits.

9 Because this Court lacks jurisdiction to address the substance of Defendant's Motion,
10 this Court should deny the same.

11 **III. DEFENDANT IS NOT ENTITLED TO A WRIT OF CORAM NOBIS**

12 In the case that this Court disagrees and finds that it has jurisdiction to address the
13 instant Motion on its merits, Defendant does not make a showing that he is entitled to a writ
14 of *coram nobis*.

15 Although a writ of *coram nobis* is an available remedy in Nevada, it is limited in its
16 application and scope. Trujillo v. State, 129 Nev. 706, 716-17, 310 P.3d 594, 600-601 (2013).
17 The Nevada Supreme Court has explained that a writ of *coram nobis* is not applicable to a
18 person who is in custody on the conviction being challenged. Id. at 716, 310 P.3d at 600. To
19 such a person seeking to challenge his conviction, habeas corpus "must be sought as the
20 exclusive remedy." Id. Pursuant to NRS 34.724(2)(b), a post-conviction petitioner for writ of
21 habeas corpus "takes the place of all other common-law, statutory or other remedies which
22 have been available for challenging the validity of the conviction or sentence, and must be
23 used exclusively in place of them."

24 For those petitioners who are no longer in custody on the conviction being challenged,
25 a writ of *coram nobis* is available only to address errors of fact outside the record that were
26 not known to the court entering judgment, that could not have been raised earlier, and that
27 affect the validity and regularity of the decision itself and would have precluded the judgment
28 from being rendered. Trujillo, 129 Nev. at 717, 310 P.3d at 601. "[L]egal errors fall entirely

1 outside the scope of the writ.” Id. (citing People v. Hyung Joon Kim, 90 Cal.Rptr.3d 355, 202
2 P.3d at 446; State v. Diaz, 283 Neb. 414, 808 N.W.2d 891, 896 (2012)).

3 In Trujillo, the Court articulated the history of *coram nobis*, noting it was a common
4 law remedy stretching back to the sixteenth century and existed in the common law “as a
5 means of reviewing errors of fact outside the record that affected the validity and regularity of
6 the decision itself and would have precluded the judgment from being rendered had they been
7 known.” Id. at 710, 310 P.3d at 597. Examples of the scope of *coram nobis* as it existed in
8 sixteenth-century England included: clerical errors, the infancy or death of a party, coverture,
9 the insanity of a defendant at the time of trial, a guilty plea procured by extrinsic fraud, and a
10 valid defense that was not made due to fraud, duress, or excusable neglect on behalf of a
11 defendant. Id. Further, in order to qualify for *coram nobis* relief, the factual errors could not
12 have been known or reasonably discoverable prior to the filing of the Petition. Id. The Trujillo
13 Court adopted the common-law definition of *coram nobis*, limiting the writ to claims of factual
14 error, and declined to adopt the more liberal approach that a minority of states, as well as the
15 federal government, have adopted. At 710, 310 P.3d at 598.

16 **A. A Writ of *Coram Nobis* is not Available to Defendant while in Custody.**

17 In the instant case, Defendant is still in custody on the conviction Defendant seeks to
18 challenge. Defendant’s bail status was revoked following a hearing on February 4, 2019, and
19 Defendant remains in custody serving the sixty (60) to one hundred seventy-four (174) month
20 sentence pronounced in this case on March 6, 2019.

21 Therefore, pursuant to Trujillo and NRS 34.724(2)(b), a writ of *coram nobis* is not
22 available to Defendant. To the extent Defendant seeks to challenge the validity of his
23 conviction, the proper remedy would be through a petition for writ of habeas corpus. No such
24 petition is before the Court, and there is nothing in the Motion that would allow this Court to
25 construe it as such.

26 Because Defendant is still in custody on the conviction he seeks to challenge, this Court
27 should find that a writ of *coram nobis* is not available to Defendant and should deny the instant
28 Motion.

1 **B. Defendant fails to show he is entitled to a Writ of *Coram Nobis*.**

2 In the instance that this Court determines that a writ of *coram nobis* is available as a
3 remedy to Defendant, Defendant fails to demonstrate that he is entitled to such relief. The
4 limited scope of *coram nobis* relief requires a conjunctive showing of (1) facts not known to
5 the Court at the time of conviction, (2) that were not withheld by the defendant, (3) that would
6 have prevented entry of judgment. Trujillo, 129 Nev. at 717, 310 P.3d at 601.

7 Defendant does not acknowledge his three-part burden, and his arguments do not meet
8 that burden. Defendant first references Snyder v. State, 103 Nev. 275, 738 P.2d 1303 (1987),
9 in support of his argument that a court cannot amend an Information to include an offense that
10 was not shown by evidence at a preliminary hearing. See “Motion in the Nature of a Writ of
11 *Coram Nobis*,” filed on September 9, 2019 (“Defendant’s Motion”), at 2:24-26. Defendant’s
12 reliance on that case is misplaced. Snyder treated an appeal based on the defendant’s assertion
13 that his speedy trial rights and his Fourth Amendment right against unreasonable searches and
14 seizures were violated. Snyder did not treat a criminal defendant’s voluntary entry of a guilty
15 plea, much less a petition for writ of *coram nobis*.

16 Defendant next cites to Martin v. Sheriff, Clark County, 88 Nev. 303, 496 P.2d 754
17 (1972) in support of the notion that a court cannot reinstate a criminal charge that was
18 dismissed at a preliminary hearing. See Defendant’s Motion at 3:7-10. Defendant further cites
19 to language from Martin to argue that courts do not have the authority to reinstate charges
20 dismissed at a preliminary hearing. Defendant’s Motion at 3:19-23. Defendant fails to
21 acknowledge that the Nevada Supreme Court in Martin was dealing with the erroneous
22 dismissal of a criminal charge by a magistrate at a preliminary hearing. In Martin, the Court
23 reversed the district court’s order, and further authorized the district attorney to refile the
24 previously-dismissed criminal charge under NRS 173.035(2) and NRS 178.562(2). 88 Nev. at
25 307, 496 P.2d at 756. Also, contrary to Defendant’s assertions regarding statutory authority,
26 and directly pertinent to the instant case, NRS 173.035(4) specifically allows an information
27 containing a charge to be filed, without a preliminary examination, if a defendant has agreed
28 to plead guilty to that charge. In the instant case, Defendant agreed to plead guilty to

1 ATTEMPT GRAND LARCENY; therefore, the requirement of a preliminary hearing on that
2 charge was waived, and Defendant was properly charged and convicted. Furthermore, NRS
3 178.562(2) specifically states that the discharge of an offense at a preliminary hearing does
4 not bar the filing of an information. Therefore, the dismissal of ATTEMPT GRAND
5 LARCENY at the preliminary hearing in this case did not bar the filing of a subsequent
6 amended information containing that charge for the purposes of Defendant's guilty plea
7 pursuant to Alford.

8 Finally, Defendant claims that his conviction of ATTEMPT GRAND LARCENY after
9 such a count was dismissed at the preliminary hearing violates NRS 174.085(3)'s protections
10 against double jeopardy. Defendant's Motion at 4:1-6. Defendant thereby asks this Court to
11 find a legal error in his conviction. The Trujillo Court specifically excluded legal error from
12 the limited scope of writs of *coram nobis*. Because the Nevada Supreme Court has specifically
13 excluded legal error from the purview of a motion for writ of *coram nobis*, the State
14 respectfully argues that this Court may not consider any potential legal error as a basis for
15 granting the relief Defendant seeks.

16 Defendant, in his Motion, has failed to address the standard set forth for a writ of *coram*
17 *nobis*. Furthermore, Defendant has failed to substantively meet his burden in seeking that
18 relief. Therefore, this Court should deny Defendant's Motion.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests that this Court deny Defendant
3 James H. Hayes's "Motion in the Nature of a Writ of Coram Nobis" in its entirety.

4 DATED this 1st day of October, 2019.

5 Respectfully submitted,

6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY

10 TALEEN PANDUKHT
11 Deputy District Attorney
12 Nevada Bar #05734
13
14
15
16

17 CERTIFICATE OF MAILING

18 I hereby certify that service of the above and foregoing was made this 1st day of
19 October, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

20 JAMES H. HAYES, BAC #1175077
21 HIGH DESERT STATE PRISON
22 P.O. BOX 650
23 INDIAN SPRINGS, NV, 89018

24 BY

25 Corina Garcia
26 C. Garcia

27 Secretary for the District Attorney's Office

28 TP/jj/cg/L2



LEFT SIDE
OF FILE PLEASE

**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

INMATE CORRESPONDENCE

October 04, 2019

Re: C-16-315718-1 / Department 19

State of Nevada

vs

James Hayes, Defendant

- ☐ A court order is required to complete the request.
- ☐ Documents are sealed. Court order is required to reproduce. (PSI)
- ☐ Documents requested are not in court file at this time.
- ☐ Transcripts have not been filed. Court order required.
- ☐ Copies are \$.50 per page or by court order.
- ☐ Consult your law library for this information.
- ☐ District Court does/does not show any outstanding warrants under the above referenced defendant name.
- ☒ Other: Your Default is being returned to you as deputy clerk does not issue defaults on criminal cases.

Cordially yours,
DC Criminal Desk #27
Deputy Clerk of the Court

C-16-315718-1
LSF
Left Side Filing
4867422



8th Judicial
DISTRICT COURT
Clark COUNTY, NEVADA

State of Nevada, Plaintiff,

Case No. C-16-315218-1

Dept. No. 19

Docket No. _____

v.

DEFAULT

JAMES H. HAYES, Defendant,

It appearing from the files and records in the above entitled action that the state of Nevada, Clark County ^{Motion "in the nature of a writ of Ceream Nobis"} ~~defendant(s)~~ [or plaintiff] herein, being duly served with a copy of the ~~Summons and Complaint~~ on the 9th day of September, 2019 more than 20 days, exclusive of the day of service, having expired since service upon the ~~defendant(s)~~ ^{plaintiff}; that no answer or other appearance having been filed and no further time having been granted, the default of the above-named ~~Defendant(s)~~ ^{Plaintiff} for failing to answer or otherwise plead to ~~Plaintiff's Complaint~~ ^{Defendant's Motion} is hereby entered.

The undersigned hereby requests
and directs the entry of default

James H. Hayes

_____, **CLERK OF COURT**

By: _____

DEPUTY CLERK

Date _____

RECEIVED
OCT - 2 2019
CLERK OF DISTRICT COURT

AFFIRMATION PURSUANT TO NRS 239B.030

I, James H Hayes, NDOC# 1175077,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Default

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 29 DAY OF September, 2019.

SIGNATURE: James H Hayes

INMATE PRINTED NAME: James H. Hayes

INMATE NDOC # 1175077

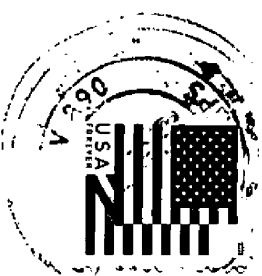
INMATE ADDRESS: ~~ELY STATE PRISON~~
~~P.O. BOX 1989~~
~~ELY, NV 89301~~

PCC
P.O. Box 509
Roche, NV. 89043

Hayes #1123024
PCC
P.O. Box 509
Rochester, NY 89043

Clerk County District Courts
Attn: Clerk of the Courts

200 Lewis Ave, 3rd Floor
Las Vegas, Nevada
89155-1160



Legal
Mail



1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 BERNARD ZADROWSKI
6 Chief Deputy District Attorney
7 Nevada Bar #006545
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 HOWARD HAYES, aka
14 James Howard Hayes,
#2796708

15 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XIX

16 **ORDER DENYING DEFENDANT'S PRO PER MOTION IN THE NATURE OF A**
17 **WRIT OF CORAM NOBIS**

18 DATE OF HEARING: October 7, 2019
19 TIME OF HEARING: 08:30 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 7th day of October, 2019, the Defendant not being present, in proper person, the Plaintiff
22 being represented by STEVEN B. WOLFSON, District Attorney, through BERNARD
23 ZADROWSKI, Chief Deputy District Attorney, without argument, based on the pleadings
24 and good cause appearing therefor,

25 ///

26 ///

27 ///

28 ///

W:\2013\2013F\10723\13F10723-ORDR-(HAYES__JAMES)-004.DOCX

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion in the Nature of a
2 Writ of Coram Nobis, shall be, and it is DENIED.

3 DATED this 14 day of October, 2019.

4
5 [Signature]
DISTRICT JUDGE

6 STEVEN B. WOLFSON
7 Clark County District Attorney
Nevada Bar #001565

For Judge William Kephart

8
9 BY

[Signature]
10 BERNARD ZADROWSKI
11 Chief Deputy District Attorney
12 Nevada Bar #006545

13
14
15
16 **CERTIFICATE OF SERVICE**

17 I certify that on the 17th day of October, 2019, I mailed a copy of the foregoing Order

18 to:

19 JAMES HAYES, BAC #1175077
20 HIGH DESERT STATE PRISON
21 P.O. BOX 650
INDIAN SPRINGS, NV 89018

22
23 BY

[Signature]
24 C. Garcia
25 Secretary for the District Attorney's Office

26
27
28 cg/L2

1 FILES #1175077
2 P.O. Box 509
3 Roche, NV 89043

FILED
OCT 17 2019

Alvin J. Johnson
CLERK OF COURT

4
5 8th Jud. District Court
6 Clark County, Nevada

7
8 NAME, State of Nevada

9 Plaintiff(s),

10 -vs-

11 NAME, James H. Hayes

12 Defendant(s).

CASE NO.

C-16-315718-1

DEPT NO: 19

13
14 "REPLY" To the State's Opposition
15 Motion for A Writ of Coram Nobis

16
17 COMES NOW, James Hayes, in PRO PER and herein above respectfully

18 Moves this Honorable Court for a granting of his filed Motion "IN
19 the Nature of a Writ of Coram Nobis"

20
21
22
23 The above is made and based on the following Memorandum of Points and Authorities.

24 RECEIVED

25 OCT 17 2019

26 CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

Statement of the Case

ON or about October 14, 2019, I, James H. Hayes received the state's opposition to his filed "Motion in the Nature of a Writ of Coram Nobis" at Piche Conservation Camp that was 2 weeks after the court date for hearing.

Argument

I. Defendant properly filed his Motion "In the Nature of a Writ of Coram Nobis" Contrary to state's assertions that defendant never properly served the state when in fact, all the requirements were met, And the state's time for response began to run ^{when} this honorable court filed the instant motion.

II. The state's argument that this court did not divest jurisdiction is without merit and belied by the record when this court granted defendant's motion "To withdraw counsel" after the Notice of appeal was filed in the Nevada Supreme Court. Moreover, the Supreme Court of Nevada has stated many times over that trial courts have inherent jurisdiction that when a mistake in rendering a judgment, which works to the extreme detriment of the defendant, will not allow it to stand uncorrected as in this instant case.

III. Defendant is entitled to relief through the writ of Coram Nobis because the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ as

1 defendant is not schooled in the letter of the law and
2 defendant's counsel failed to provide adequate and zealous
3 representation that has cause defendant irreparable injury.
4 What in fact, this is a manifest injustice and the underlying
5 purpose of this motion is to redress an injury done to defendant
6 who pleaded guilty to a crime he did not commit. Whereas,
7 for the purposes of this proceeding the term "jurisdiction" is
8 not limited to its traditional meaning, and in such proceedings
9 judicial acts may be annulled if as here there is no material
10 dispute as to the mistake of fact relating to his conviction
11 where, as here the state has many times over agreed that
12 the charge of Attempt Grand Larceny was dismissed at the
13 conclusion of the preliminary examination and cannot be
14 reinstated and NRS 174.085(3) violation has occurred.

15 III. Contrary to state's assertions the defendant without
16 a doubt has demonstrated that he is entitled to relief as
17 he has clearly showed a conjunctive showing of the
18 requirement for a writ of Coram Nobis by a preponderance
19 of evidence. Finally, the leeches of NRS 173.035 do not apply in this
20 instant case as the charge of Attempt Grand Larceny was dismissed by
21 Magistrate for lack of evidence, no corpus delicti, and no slight or
22 marginal evidence. and no hearing was waived.

23
24 Dated this 14 day of October, 2019.

25
26 By: James H. Hayes
27
28

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein
and that on this 14 day of October, 2019, I mailed a true and correct copy of this
foregoing Reply to state's opposition to the following:

Clerk of the Court
200 HOWES AVE
LAS VEGAS, NV 89155

Atty General of Nevada
100 N. CARSON ST
CARSON CITY, NV 89401

BY: James H. Hays

AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, Reply to State's

Opposition

(Title of Document)

Filed in case number: C-16-315718-1

☒ Document does not contain the social security number of any person

Or

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

☐ A Specific state or federal law, to wit

Or

☐ For the administration of a public program

Or

☐ For an application for a federal or state grant

Or

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 125b.055)

DATE: 10-14-19

James H. Hayes
(Signature)

James H. Hayes #1175077
(Print Name)

Pro per
(Attorney for)

JAMES H. HAYES #1175077

P.C.C

P.O. Box 509

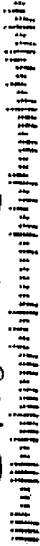
Pioche, NV 89043

Reges #1175027
PCC
P.O. Box 509
Picache, NV 89043

Clark County District Courts
"Office of the Clerk"
200 Lewis Ave, 3rd Floor
Las Vegas, Nevada

89155-1160

8910136300 0075



Legal
Mail



SHIPPED OCT 15 2019

FILED

OCT 28 2019

27

AFFIDAVIT OF No material dispute as to the mistake of fact

STATE OF NEVADA) Motion in the Nature of a Writ of Coram Nobis
COUNTY OF CLARK) SS: Clerk County Nevada
CASE NO: C-16-315718-1 DEPT NO: 19
TO WHOM IT MAY CONCERN:

I, James H. Hayes, the undersigned, do hereby swear that all the following statements and description of events, are true and correct, of my own knowledge, information, and belief, and to those I believe to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT James H. Hayes is the Affiant in this affidavit and is currently incarcerated at Elko State Prison (ESP)

Whereas Justice requires that when a court errs in its adjudication of a defendant, it must be vacated if the guilty plea is the product of ignorance as it is ~~not~~ violative of constitutional safeguards. Where, as here, this is a proper case for correction of the error in the judgment, because defendant stands convicted of a crime he did not commit. It is worthwhile to note that Rule 32(d) of the FRCP expressly incorporates this concept to set aside the judgment of conviction after sentence in order "to correct manifest injustice. Where, as here, the error complained of has resulted in a miscarriage of justice and has prejudiced the defendant in respect to a substantial right.

Whereas, the Nevada Constitution Art. 6, §6 provides "the District Courts, and the Judges thereof shall have power to issue writ of Coram Nobis, and all other writs proper and NECESSARY to the complete exercise of their jurisdiction, for judicial wrongs for which there was no remedy, Where, as here, defendant has no clear remedy of appeal

C-16-315718-1

Affidavit
4872981



RECEIVED

OCT 28 2019

SEE EXHIBITS 7, 8, 9, 213

1 or habeas corpus because his plea of guilty. Thus he has
2 No other clear or adequate remedy by statute or other
3 proceeding. ^{SEE EXHIBITS 10, 113} Although, the fact remains that courts which
4 make a mistake in rendering a judgment which works
5 to the extreme detriment of the defendant, will not allow
6 it to stand uncorrected as trial court has inherent
7 jurisdiction to vacate or modify its orders and
8 judgments. Where, as here, the underlying purpose in
9 this motion is to redress an injury done to a defendant
10 who pleaded guilty to a crime he did not commit
11 through clear and convincing evidence.

12 WHEREAS, there is no colorable argument that the
13 state can make to overcome the fact that jeopardy
14 attach to the charge of Attempt Grand Larceny at
15 the conclusion of preliminary examination when
16 it was dismissed by magistrate for lack of evidence,
17 no corpus delicti, slight or marginal evidence in
18 violation of NRS 174.085(3) and any argument fails
19 because jeopardy has attach and any other
20 claim would be belied and repelled by the

21
22
23
24 Dated this 18 day of October, 2019

25
26 By: James H. Hayes

27
28 - 2 of 4 -

1 record. Where, as here, the charge of Attempt
2 Grand Larceny was barred from all District Court
3 proceedings as the Clark County District courts
4 did not divest subject matter jurisdiction.

5 Where, it would be unconscionable for the state to
6 attempt to insulate a conviction from collateral constitutional
7 review by conditioning its willingness to enter into
8 plea negotiations on a defendant's "waiver of the
9 Right". Where, as here, the state knowingly, voluntarily
10 and intelligently filed a fraudulent, unconstitutional
11 guilty plea agreement and entered information in open
12 court on Nov. 7, 2018 to deprive and mislead defendant
13 to his prejudice that was malicious, unprofessional,
14 and grossly unethical. As to deprive the defendant
15 of the protections that the constitution afforded
16 him and was designed to protect him of and
17 deny him due process of law.

18 Where, the negotiations contained in the GPA was
19 not knowingly and intelligently agreed to by the defendant
20 as the guilty plea agreement was not sufficiently clear
21 and unambiguous. Plea was involuntarily and unknowingly.

22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT Ely State Prison

this 18 day of October 2019

24 IN FRONT OF:

BY James H. Hays

NDOC # 1175077

25 ESP

26 P.O. Box 1989

27 Ely, Nevada 89301

UNDER PENALTY OF PERJURY

I, the undersigned, certify, declare, or state that the foregoing is true and correct, to the best of my knowledge and belief, in accordance with NRS 208.165 and 28 USCA § 1746.

Excuted on the 10 day of October, 2019

JAMES H. HAYES #1175072

Name and Prison BAC#, printed

EXHIBITS # 7 Motion To Modify & Correct Illegal Sentence
"Papers which May Not be filed 4-15-19"

#8 Motion To Modify & Correct Illegal Sentence
"Papers which May Not be filed 6-18-19"

#9 Motion To Withdraw Plea
"Papers which may not be filed" 7-15-19

#21 Memorandum to the Court
"Supreme Court of Nevada"

#10 Reply to State's Response "Writ of Habeas"

#11 STATE'S RESPONSE "Writ of Habeas"

- 4 of 4 -



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

April 15, 2019

Attorney: Michael W. Sanft
Sanft Law
Attn Michael W Sanft
324 South 3rd Street - 2nd Floor
Las Vegas NV 89101

Case Number: C-16-315718-1
Department: Department 19

Defendant: James Howard Hayes

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion To Modify And Correct Illegal Sentence**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 7
Deputy Clerk of the Court

Exhibit 7

EXHIBIT 8



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3RD FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

June 18, 2019

Attorney:	Michael W. Sanft Sanft Law Attn Michael W Sanft 324 South 3rd Street - 2nd Floor Las Vegas NV 89101	Case Number:	C-16-315718-1
		Department:	Department 19
Defendant:	James Howard Hayes		

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: Motion To Modify And Or Correct Illegal Sentence

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 7
Deputy Clerk of the Court



EXHIBIT 9

**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

July 15, 2019

Attorney: Michael W. Sanft
Sanft Law
Attn Michael W Sanft
324 South 3rd Street - 2nd Floor
Las Vegas NV 89101

Case Number: C-16-315718-1
Department: Department 19

Defendant: James Howard Hayes

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion To Withdraw Plea**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 7
Deputy Clerk of the Court

"Exhibit 21" Supreme Court of the State of Nevada

RETURNED
UNFILED

AFFIDAVIT OF Memorandum to the Court

JUL 17 2019

STATE OF NEVADA)

SS: Fast Track Criminal Appeal

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

COUNTY OF CLARK)

BY _____
DEPUTY CLERK

TO WHOM IT MAY CONCERN:

I, James H. Hayes, the undersigned, do hereby swear that all the following statements and description of events, are true and correct, of my own knowledge, information, and belief, and to those I believe to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT, James Hayes is the Affiant in this Affidavit and is currently incarcerated at High Desert State Prison.

Comes Now, Appellant in a "Memorandum to the Court" to show cause that counsel, Michael W. Janft has failed to raise material issues and arguments in his Fast track statement and has failed to be accurate in stating the facts:

Whereas, in his prepared statement (Page 3 at 22-23) at 17 "Pending and Prior proceedings in this Court" should include the following Supreme Court case numbers 73436, 75173, 77151, and 78622 for filed writ of habeas corpus and writ of prohibition; at 18 (page 4 at 1-8) "Pending and prior proceedings in other courts" should include writs of habeas corpus, A-19-793315-W, 8th Jud. District Court, Department 19 and Exclude State of Nevada v. James Hayes, C-19-338412-1, Dept 19, 8th Jud. Dist Court as that case has been dismissed.

Whereas, the State of Nevada, Clark County knowingly and voluntarily filed a fraudulent unconstitutional and false information in open court to deprive and

RECEIVED

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

1 misled the appellant to his prejudice and its un-
2 conscionable for the state to attempt to insulate a conviction
3 from collateral constitutional review by conditioning its
4 willingness to enter into fraudulent plea negotiations on a
5 appellant's waiver of the right to pursue a direct appeal.

6 WHEREAS, the GPA was violative of constitutional safe-
7 guards and NRS 174.085(3)(5A) violation when the charge
8 of Attempt Grand Larceny was dismissed at the conclusion
9 of the preliminary hearing in Justice Court for lack of
10 evidence, no corpus delicti, slight or marginal evidence to
11 proceed to District Court leaving no subject matter jurisdiction
12 for District Court.

13 WHEREAS, there was NO ^{EVIDENCE slight or marginal} ~~substantial~~ to support the Att. Gro.
14 Larceny charge and this mistake of fact worked to the
15 extreme detriment of the appellant. As the guilty plea was the
16 product of ignorance that was discovered after judgment
17 and now the appellant stands convicted of a crime he did
18 not commit. When in fact, the character of the material
19 evidence in the Amended Information and Guilty Plea
20 Agreement is false, and the proceedings was constitutionally
21 inadequate. (SEE ENCLOSED EXHIBITS 7 and 8)

22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT High Desert State Prison this 8 day of July 2019

24 IN FRONT OF: Under Penalty of Perjury

BY James H. Hayes
NDOC # 1175077

25 I, James Hayes, certify, declare, or state that
26 the foregoing is true and correct, to the best
27 of my knowledge and belief, in accordance
28 with NRS 208.165 and 28 USC § 1746.

7-8-2019

James H. Hayes

-2-

1 whereas even if the state alleged contentions
2 were true that petitioner "waived all constitutional
3 claims based on events occurring prior to the entry
4 of the plea" that would not satisfy the violation
5 of substantial rights that occurred after plea.
6 What in fact, petitioner was rebroked on the
7 charge of Attempt Grand Larceny on February 4,
8 2019 ~~to~~ ONCE again violate petitioner's constitutional
9 rights and NRS 174.085(3)(a) violation as the
10 guilty plea was entered on November 7, 2018
11 well before the rebrook on the charge of Attempt
12 Grand Larceny that was barred from District
13 Court proceedings. So it is without contention
14 that the state knowingly violated petitioner's
15 substantial rights and no colorable argument
16 that would allow them to overcome this
17 manifest injustice.

18
19 NRS 174.085(3) provides: "When the defendant is
20 convicted or acquitted or has been once placed in
21 jeopardy upon an indictment, information or complaint,
22 the conviction, acquittal or jeopardy is a bar to another
23 indictment, information or complaint for the offense
24 charged in the former, or for an attempt to commit
25 the same, or for an offense necessarily included
26 therein, of which he might have been convicted under
27 that indictment, information or complaint"

28

FILED

JUL 05 2019

John J. Williams
CLERK OF COURT

Case No. A-19-793315-W
Dept. No. XIX

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

James H. Hayes
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

State of Nevada; Warden B. Williams
Respondent.

Reply to
STATE'S RESPONSE

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
2. Name and location of court which entered the judgment of conviction under attack: Clark County District Court Dept 19; Clark County, Nevada
3. Date of judgment of conviction: March 12, 2019
4. Case number: C-16-315718-1
5. (a) Length of sentence: 60 - 274 months

A-19-793315-W
RPLY
Reply
4847109



EXHIBIT 10

1 (a) Ground ONE: Violation of United States and Nevada

2 CONSTITUTION & Federal and State Constitutional
3 Violations & NRS Violations...

4
5 Supporting FACTS (Tell your story briefly without citing cases or law.): The state's ENTIRE
6 response filed 6-26-19 is MERITLESS and each claim fails because
7 the charge of Attempt Grand Larceny was dismissed at the conclusion
8 of the preliminary hearing in Justice Court for lack of evidence,
9 NO CORPUS DELICTI, NO SLIGHT OR MARGINAL EVIDENCE for the charge
10 to be bound over to District Court. Leaving the District Court
11 to NEVER have jurisdiction for the charge of Attempt Grand
12 Larceny or the ground(s) to proceed on the said charge against
13 petitioner and all the state's claims are belied by the ~~record~~ RECORD,
14 the law, and the facts.

15 ① WHEREAS, it is black letter law in the State of Nevada as
16 stated in NRS 174.085 that once the petitioner was placed
17 in jeopardy upon the filed criminal complaint in Justice Court
18 and proceeded to preliminary hearing on the said charge and charge
19 dismissed at the conclusion of the hearing that said charge
20 is barred from any subsequent proceedings and the law
21 is clear and unambiguous.

22 WHEREAS, the state's own admissions that the charge
23 Attempt Grand Larceny was dismissed in Justice Court at
24 the conclusion of the preliminary hearing (Page 3 at 24-25).
25 So without a doubt it is clear and uncontradicted that
26 petitioner was placed in jeopardy at the preliminary hearing
27 under the charge's criminal complaint for the charge of
28 Attempt grand larceny. Leaving the charge of Attempt Grand

1 CONTINUE: Violation of United States and Nevada
2 (b) ~~CONFIDENTIAL~~ CONSTITUTION & Federal and State Constitutional
3 VIOLATIONS & NRS VIOLATIONS...

4
5 Supporting FACTS (Tell your story briefly without citing cases or law.): LARCENY barred from any
6 subsequent proceedings. Moreover, from the Amended information
7 filed in open court November 2, 2018 making the Guilty Plea
8 invalid, involuntary, unknowingly, and unintelligently
9 that was actual prejudice to petitioner.

10 Whereas, the state knowingly and voluntarily filed
11 a fraudulent UNCONSTITUTIONAL amended information in
12 open court to deprive and mislead petitioner to his prejudice,
13 that was malicious, unprofessional, and grossly unethical.
14 As to deprive the petitioner of the protections that the
15 constitution was designed to protect him of and denied
16 him due process of law. The amended information left the
17 petitioner without knowledge as to the nature of the charge
18 upon which he pleaded that he could not plead the crime
19 with certainty as the said charge attempt grand larceny
20 was dismissed at the conclusion of preliminary hearing
21 in Justice court leaving no causation or jurisdiction for
22 District court to proceed when in fact the character of
23 the material evidence in the Amended information is false,
24 due process inevitably been denied the petitioner and the
25 proceedings was constitutionally inadequate.

26 Whereas, when the charge of Attempted Grand Larceny
27 was dismissed that the state predicated its intent on for the
28 charge of Burglary in the filed criminal complaint in Justice Court,

1 CONTINUE: Violation of United States and Nevada
2 (c) ~~Grand Jury~~ Constitution 2 Federal and State Constitutional
3 Violations 3 NRS Violations...

4
5 Supporting FACTS (Tell your story briefly without citing cases or law.): Then the Burglary charge was
6 fetal and it to must be dismissed leaving no charge and no
7 jurisdiction for the District Court to proceed at all. Making
8 the Guilty Plea invalid, involuntary, unknowingly, and un-
9 intelligently that was actual prejudice to the petitioner.

10 WHEREAS, petitioner is not schooled in the law
11 that's why counsel is a must and had counsel not been ineffective
12 by failing to investigate the facts of the case he would have
13 known that the charge of attempted grand larceny was barred
14 from all proceedings in District Court per NRS 174.085 and
15 inform petitioner of such. But due to the fact, counsel failed to
16 adequately investigate the law and the facts relevant to the
17 case it left petitioner ignorant and with no plausible options
18 that has greatly prejudice the petitioner and left him with
19 irreparable injury. When in fact, a adequate investigation
20 would have lead to a more favorable outcome and petitioner
21 would not have entered a Alford Plea to attempt grand larceny
22 as it would have lead to information for a better outcome as
23 there was no evidence slight or marginal that petitioner committed
24 the crime of att grand larceny and no more evident than
25 the charge being dismissed at the conclusion of the preliminary
26 hearing in Justice Court. So it's without question that counsel
27 failed to inform petitioner regarding the details of the GPA.
28 As petitioner still maintains Actual Innocence as he had permission

1 ~~CONTRADICTORY~~ ^{CONTRADICTORY} Violations of United States and Nevada
2 Constitution & Federal and State Constitutional
3 Violations & NRS Violations...

4
5 Supporting FACTS (Tell your story briefly without citing cases or law.): to be in said room on night
6 in question and there was no loss or injury, no causation
7 of that loss or injury and no reasonable jury would have
8 convicted petitioner of attempt grand larceny nor the charge
9 of Burglary. So this is a clear and convincing showing that
10 petitioner's plea was involuntarily and unknowingly that
11 was actual prejudice to petitioner and a miscarriage of justice.

12 Whereas, the sentence imposed was unreasonably disproportionate
13 to the charge crime All grand larceny that easily shock the
14 conscience as it was based on impalpable and highly suspect
15 evidence. As the state's amended notice to seek punishment
16 as a habitual criminal was for the charge of burglary (2nd offense)
17 not 24 grand larceny & wobbler. In addition, the credit card
18 abuse in Texas was one count not ~~two~~ ^{two} and a state jail crime
19 that doesn't carry any prison time, mandatory supervision, nor
20 parole not a category A, B, C, D, or E felony, but a state jail crime
21 that is only punishable by jail time as a gross misdemeanor
22 here in Nevada so its trivial and shall not have been used in
23 adjudication and the Burglary conviction used was not
24 a prior felony as it occurred in 2016 and the instant
25 offense All grand larceny occurred in 2013. Furthermore, petitioner
26 did object to validity of felony convictions used to adjudicate.
27 So this is a clear and convincing showing that the guilty plea
28 was involuntarily and unknowingly that was actual prejudice.

CONTINUE:

Whereas, petitioner and his counsel objected to errors in the PSI prior to sentencing. When in fact, petitioner's counsel made oral motion to the court to continue sentencing hearing until corrections were made to petitioner's PSI to no avail.

Whereas, the petitioner must understand the consequences of a guilty plea and the record must affirmatively show that the petitioner understands that a habitual criminal determination may be a consequence of his plea. In the instant case petitioner was never conversed on the possibility of a habitual sentence and was surprised by the habitual treatment as there was no written notice for the negotiated charge of 1st. grand larceny that the state would seek habitual treatment and the judge inform petitioner that the maximum punishment would be 19 to 48 months. And petitioner's counsel inform petitioner that he had it negotiated to gross-misdemeanor with time credit served.

Wherefore, petitioner requests that due to the invalid Guilty plea and the Guilty Plea being involuntarily and unknowingly entered and counsel ineffective assistance that this Honorable court grant petitioner's writ of Habeas Corpus and allow such relief to which petitioner is entitled. As a writ must issue when the jurisdiction of the court has been exceeded and when the process is defective in some matter of substance required by law NRS 34.500

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 July, 2019.

James H. Hayes

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.

James H. Hayes

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 A-19-793315-W Does not contain the social security number of any person.

James H. Hayes

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

CERTIFICATE OF SERVICE BY MAIL

I, James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 2nd day of the month of July, 2019, 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

James H. Hayes

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

-7-

Steven B. Wolfson

1 RSPN
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHARLES W. THOMAN
6 Chief Deputy District Attorney
7 Nevada Bar #012649
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES,
13 #2796708

14 Defendant.

CASE NO: A-19-793315-W

DEPT NO: XIX

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

17 DATE OF HEARING: AUGUST 12, 2019
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through CHARLES W. THOMAN, Chief Deputy District Attorney, and
21 hereby submits the attached Points and Authorities in Response to Defendant's Petition For
22 Writ Of Habeas Corpus (Post-Conviction).

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

26 ///

27 ///

28 ///

///

W:\2013\2013F\10723\13F10723-RSPN-(HAYES__JAMES)-001.DOCX

EXHIBIT 11

Case Number: A-19-793315-W

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 The relevant procedural history is as follows. In a June 17, 2016 Information, the State
4 charged Petitioner with Burglary (Category B Felony). It filed a Notice of Intent to Seek
5 Punishment as a Habitual Criminal on November 21, 2016. It filed an Amended Notice on
6 August 29, 2017.

7 On November 7, 2018, Petitioner pleaded guilty pursuant to North Carolina v. Alford,
8 400 U.S. 25 (1970) to Attempt Grand Larceny (Category D Felony/Gross Misdemeanor). The
9 State agreed to make no recommendation at the time of sentencing. GPA at 1. It did, however,
10 reserve the right to argue for habitual treatment if "an independent magistrate, by affidavit
11 review, confirms probable cause against [Petitioner] for new criminal charges." Id. at 2.

12 On January 29, 2019, Justice of the Peace De La Garza found probable cause existed
13 that Petitioner had committed another count of Burglary in what eventually became Case No.
14 C-19-338412-1, which is currently before this Court. CASE HAS BEEN DISMISSED.

15 Based on that finding of probable cause, the State filed a Motion to Revoke Bail on
16 January 31, 2019. Further, as contemplated in the Guilty Plea Agreement, it argued for habitual
17 treatment in a March 6, 2019 sentencing. This Court found that the State met the statutory
18 requirements of NRS 207.010 and accordingly sentenced Petitioner to between sixty and one
19 hundred seventy-four months in the Nevada Department of Corrections.

20 The Judgment of Conviction was filed on March 12, 2019. On March 28, 2019,
21 Petitioner filed a Notice of Appeal. That appeal is currently pending before the Supreme Court.

22 Petitioner filed the instant post-conviction habeas petition on April 15, 2019. The State
23 herein responds.

24 ARGUMENT

25 **I. PETITIONER'S SUBSTANTIVE CLAIMS ARE PROCEDURALLY**
26 **BARRED.**

27 NRS 34.810(1)(a) reads:

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

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

5 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims
6 of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction
7 proceedings...[A]ll other claims that are appropriate for a direct appeal must be pursued on
8 direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State,
9 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other
10 grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a
11 habeas petition if it presents claims that either were or could have been presented in an earlier
12 proceeding, unless the court finds both cause for failing to present the claims earlier or for
13 raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-
14 47, 29 P.3d 498, 523 (2001).

15 Here, Petitioner does not challenge the effectiveness of his counsel or the validity of
16 his guilty plea. Instead, Petitioner raises four claims which are suitable only for direct appeal.
17 His failure to raise them at that juncture waives them for purposes of this petition. Moreover,
18 each claim is meritless. It is well established that jeopardy does not attach until either the jury
19 is sworn or, in a bench trial, the first witness is called. Downum v. United States, 372 U.S.
20 734, 83 S.Ct. 1033 (1963); Wheeler v. District Court, 82 Nev. 225, 415 P.2d 63 (1966); Hylton
21 v. Eighth Judicial Dist. Court of State of Nev., Dep't IV, 103 Nev. 418, 421 n.1, 743 P.2d 622,
22 624 n.1 (1987); Crist v. Bretz, 437 U.S. 28, 37 n.15, 98 S. Ct. 2156, 2162 n.15 (1978) ("In
23 nonjury trials jeopardy does not attach until the first witness is sworn."). Here, no jury was
24 ever sworn and no witness was ever called in a non-jury trial. Ground 1, which alleges a
25 Double Jeopardy violation, necessarily fails because jeopardy never attached. Pet. 6-7.

26 Ground 2, the probable clause claim similarly fails. Although Petitioner's motion to
27 dismiss was originally granted in Justice Court regarding that ground, the Amended
28 Information which reintroduced the count was only filed after Petitioner agreed to plead guilty
to the charge. In similar circumstances, the Nevada Supreme Court has declined to find error
when a fair trial resulted in a conviction for a crime after inadequacies in the grand-jury

1 proceedings. Hill v. State, 124 Nev. 546, 552, 188 P.3d 51, 54–55 (2008). Here, Petitioner
2 pleaded guilty to Attempt Grand Larceny, thereby nullifying any potential probable-cause
3 related issue at the preliminary hearing. Even if the State lacked probable cause at the time of
4 the hearing, there is no colorable argument that it lacks it now. Petitioner admitted that he
5 committed the crime. GPA at 1.

6 In Ground 3, Petitioner claims that the Cruel and Unusual Punishment Clause of the
7 Eighth Amendment was violated when he was sentenced as a habitual criminal, but his
8 sentence is appropriate considering his criminal history. The Eighth Amendment to the United
9 States Constitution, as well as Article 1, Section 6 of the Nevada Constitution, prohibits the
10 imposition of cruel and unusual punishment. The Nevada Supreme Court has stated that “[a]
11 sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute
12 fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to
13 the offense as to shock the conscience.’” Allred v. State, 120 Nev. 410, 420, 92 P.2d 1246,
14 1253 (2004) (quoting Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting
15 Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

16 Additionally, the Nevada Supreme Court has granted district courts “wide discretion”
17 in sentencing decisions, and these are not to be disturbed “[s]o long as the record does not
18 demonstrate prejudice resulting from consideration of information or accusations founded on
19 facts supported only by impalpable or highly suspect evidence.” Allred, 120 Nev. at 410, 92
20 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A
21 sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of
22 discretion, the district court's determination will not be disturbed on appeal. Randell v. State,
23 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)).
24 As long as the sentence is within the limits set by the legislature, a sentence will normally not
25 be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950 (1994).

26 Here, NRS 207.010(1)(a) governs the sentencing of habitual criminals:

27 1. Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a
28 person convicted in this State of:

1 (a) Any felony, who has previously been two times convicted, whether in this
2 State or elsewhere, of any crime which under the laws of the situs of the
3 crime or of this State would amount to a felony is a habitual criminal and
4 shall be punished for a category B felony by imprisonment in the state prison
5 for a minimum term of not less than 5 years and a maximum term of not more
6 than 20 years.

7 In its Notice of Intent to Seek Punishment as a Habitual Criminal,¹ the State alleged that
8 Petitioner had been previously convicted of two counts of Fraudulent Use/Possession of
9 Personal Identification Information, two counts of Credit Card Abuse, and one count of
10 Attempt Possession of Credit or Debit Card Without Cardholder's Consent. Notice (Nov. 21,
2016) at 2. Each of those counts is a felony in the State where the crime was committed.

11 Then, in an Amended Notice of Intent to Seek Punishment as a Habitual Criminal, the
12 State alleged that Petitioner had been convicted of Credit Card Abuse, a Texas felony, Attempt
13 Possession of Credit or Debit Card Without Cardholder's Consent (Category E Felony), and
14 Burglary (Category B Felony). At sentencing, this Court found that the State carried its burden
15 of proving each. Accordingly, the State was free to argue for habitual treatment under NRS
16 207.010(1)(a). CARRY NO PRISON TERM

17 Petitioner argues that the State breached the guilty plea agreement, but the agreement
18 itself contemplated that the State would be free to argue for habitual treatment if a magistrate
19 found probable cause that he committed another crime. Pet. 12; GPA at 1-2. Justice of the
20 Peace De La Garza found probable cause² that he committed another Burglary on January 29,

21
22 ¹ Because the State filed its Notice, Petitioner's claim that his sentence was illegal because he
23 was never given notice is belied by the record. Pet. 12. "Bare" and "naked" allegations are not
24 sufficient to warrant post-conviction relief, nor are those belied and repelled by the record.
25 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it
is contradicted or proven to be false by the record as it existed at the time the claim was made."
Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

26 ² Petitioner argues that this was based on impalpable and highly suspect evidence, but this
27 ignores the full reason why probable cause was ultimately found, as not only was Petitioner
28 identified with 80% certainty initially, but he also had a hotel key that did not belong to him
in his pocket when he was detained. See State's Notice of Motion and Motion to Revoke
Bail (Jan. 31, 2019) at Exhibit 3; Tr. Preliminary Hearing, 19F01534X (Feb. 26, 2019) at 25,
31 (filed on Odyssey as case C-19-338412-1).

CASE FILED
JAN 10 2019

2019. Accordingly, the State was free to argue for habitual treatment. That case, C-19-338412-1, is currently pending before this Court. Once probable cause was found, the State was free to argue for habitual treatment under the plain terms of the GPA. Because Petitioner's ultimate sentence fell within the parameters of the small habitual statute, the Eighth Amendment was not violated.

Finally, in Ground 4, Petitioner's claim that his Presentence Investigation Report contained errors is nothing more than a bare and naked allegation. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Further, challenges to the Presentence Investigation Report are not cognizable after sentencing. NRS 176.135(1) requires the Division of Parole and Probation to prepare a Presentence Investigation Report for any defendant who pleads guilty of a felony. This Court has previously addressed the importance of a factually accurate PSI at sentencing:

A PSI contains information about the defendant's prior criminal record, the circumstances affecting the defendant's behavior and the offense, and the impact of the offense on the victim. NRS 176.145(1). Because the sentencing court will rely on a defendant's PSI, the PSI must not include information based on "impalpable or highly suspect evidence." Goodson v. State, 98 Nev. 493, 495-96, 654 P.2d 1006, 1007 (1982).

Stockmeier v. Bd. of Parole Comm'rs, 127 Nev. 243, 248, 255 P.3d 209, 212-13 (2011).

If a PSI does have errors, a defendant can object. He cannot, however, object in perpetuity. Instead, this Court has limited the time in which a defendant can object to factual or methodological errors in a presentence investigation report. A defendant can only object to errors "so long as he or she objects before sentencing." Sasser v. State, 130 Nev. 387, 394, 324 P.3d 1221, 1226 (2014). Once sentencing has occurred, neither the "Division of Parole and Probation nor the district court" have the "authority to amend ... [a] PSI." Stockmeier, 127 Nev. at 245, 255 P.3d at 211 (2011).

Petitioner claims that an objection was raised about the alleged errors in his PSI, and he enumerates those errors without any attempt to support his bare and naked claims. Pet. 14. Accordingly, this claim lacks merit.

///

1 In sum, each of Petitioner's claims has been waived for purposes of the instant petition
2 under NRS 34.810 and is otherwise meritless. The petition should be denied.

3 **II. BY ENTERING A GUILTY PLEA AGREEMENT, PETITIONER**
4 **WAIVED ANY PRIOR CONSTITUTIONAL DEFECTS.**

5 In this case, Petitioner entered a guilty plea. By doing this, he "waived all constitutional
6 claims based on events occurring prior to the entry of the pleas, except those involving the
7 voluntariness of the pleas themselves." Warden, Nevada State Prison v. Lyons, 100 Nev. 430,
8 432, 683 P.2d 504, 505 (1984); Kirksey v. State, 112 Nev. 980, 1002, 923 P.2d 1102, 1116
9 (1996).

10 Petitioner raises two claims which occurred prior to the entry of his guilty plea in the
11 instant petition. First, he claims that the State violated the Double Jeopardy Clause by adding
12 a charge of Attempt Grand Larceny at district court after it had been dismissed in justice court.
13 Second, he claims that there was no probable cause to bind his case over. Petitioner's guilty
14 plea waived both of those claims.

15 For these reasons, Petitioner waived Grounds 1 and 2 when he entered his guilty plea,
16 and they are barred by the plea in addition to NRS 34.810.

17 **III. THIS COURT SHOULD STRIKE PETITIONER'S ADDENDA.**

18 After filing his first Petition for Writ of Habeas Corpus on April 15, 2019, Petitioner
19 filed two addenda to his petition without first requesting leave of this Court. Each should be
20 stricken.

21 NRS 34.750(3) allows appointed counsel to file a supplemental petition after
22 appointment. "No further pleadings may be filed except as ordered by the court." Id. (5). The
23 Nevada Supreme Court has addressed when the district courts can allow a litigant to file a
24 supplemental petition, holding that leave can be granted only if the petitioner shows good
25 cause to explain the delay in raising a claim. Barnhart v. State, 122 Nev. 301, 303-04, 130 P.3d
26 650, 652 (2006). Any finding of good cause must be made "explicitly on the record" and
27 enumerate "the additional issues which are to be considered." Id. at 303, 130 P.3d at 652.
28 Barnhart affirmed a district court's decision to deny leave to expand the issues because

1 "[c]ounsel for petitioner provided no reason why that claim *could* not have been pleaded in the
2 supplemental petition. *Id.* at 304, 130 P.3d at 652 (emphasis added).

3 This Court should strike each of the addenda filed by Petitioner in proper person.
4 Petitioner never sought leave from this court to file supplements to his timely first petition.
5 Although counsel would be entitled to file a supplement by NRS 34.750(3), that entitlement
6 to file a supplement is explicitly a right of appointed counsel.

7 Furthermore, none of Petitioner's pro-per addenda make any attempt to show good
8 cause for failing to raise the issue in the initial petition. *Barnhart* precludes Petitioner from
9 filing supplemental petitions in perpetuity without good cause for neglecting to include the
10 new claims in the initial petition, and the record is void of any explicit findings of this court
11 to allow for the rogue filings.

12 Because Petitioner was not entitled to supplement his initial petition and never sought
13 this Court's leave, his two addenda should each be stricken.³

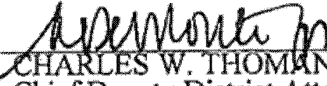
14
15 **CONCLUSION**

16 For these reasons, the instant petition should be denied.

17 DATED this 26th day of June, 2019.

18 Respectfully submitted,

19 STEVEN B. WOLFSON
20 Clark County District Attorney
Nevada Bar #001565

21 BY 
22 CHARLES W. THOMAN
23 Chief Deputy District Attorney
Nevada Bar #012649

24
25
26
27
28 ³ To the extent that this Court decides to address the issues raised in the addenda, the State
reserves the right to respond to each on the merits.

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 26th day of June, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JAMES HOWARD HAYES, BAC #1175077
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV, 89070

BY C. Garcia
C. Garcia
Secretary for the District Attorney's Office

CWT/jp/cg/L-2

Pages # 1195039
EOP
J.D. Box 1989
Las Vegas, Nevada 89301

Clerk County District Courts
"Office of the Clerk"

200 Lewis Ave; 3rd Floor

Las Vegas, Nevada

Legal Mail

57
402 E 2 100
NOSIDE 2000 200

CONFIDENTIAL
89155-1440
8910136300 CO'S



1 Hayes, James #1175077
2 In Propria Personam
3 Post Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

FILED

NOV 19 2019

~~Office of the~~
CLERK OF COURT

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF Clerk

7
8 State of Nevada

9 Plaintiff,

10 vs.

11 JAMES H. HAYES

12 Defendant.

Case No. C-16-315418-1

Dept. No. 19

Docket _____

13
14
15
16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
18 JAMES H. HAYES, in and through his proper person, hereby
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or
20 dismissing the

21 Motion IN the Nature of a writ of CORAM NOBIS

22
23 ruled on the 16 day of October, 20 19.

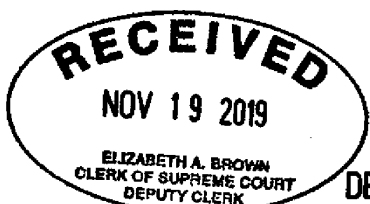
C-16-315718-1
NOASC
Notice of Appeal (original)
4881186



24
25 Dated this 14 day of November, 20 19.

26 Respectfully Submitted.

27 James H. Hayes



28 RECEIVED
APPEALS

DEC 11 2019

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 14
day of November 20 19, I mailed a true and correct copy of the foregoing, "Notice
of Appeal"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Supreme Court of Nevada
201 J. Carson St.
Carson City, NV
89701

CC:FILE

DATED: this 14 day of November 20 19.

James H. Hayes
JAMES H. HAYES

1175097

/In Propria Personam

Post Office Box 208, S.D.C.C.

Indian Springs, Nevada 89018

IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

Notice

of Appeal

(Title of Document)

filed in District Court Case number _____



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.

James H. Hayes
Signature

11-14-19
Date

James H. Hayes
Print Name

pro per
Title

11/15/2019

3000

P.O. Box 208

Medical Springs, NV
89090

1460984
3763

US VEGAS
NV 890
15 NOV '19
PM 4 L

Hasler
11/15/2019
FIRST-CLASS MAIL
US POSTAGE \$000.50



ZIP 89101
01E12650516

Supreme Court of Nevada
"Office of the Clerk"
201 South Carson Street, Ste 201
Carson City, Nevada
89701

89701-478051



James H. Hayes, 1175077

Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

FILED

NOV 19 2019

[Signature]
CLERK OF COURT

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

State of Nevada

Plaintiff,

vs.

James H. Hayes

Defendant.

CASE No. C-16-315718-1

DEPT. No. 19

DESIGNATION OF RECORD ON APPEAL

TO:

C-16-315718-1
DROA
Designation of Record on Appeal
4881186



The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this _____ day of _____, 20____.

RESPECTFULLY SUBMITTED BY:

Plaintiff/In Propria Persona

RECEIVED
APPEALS

DEC 11 2019

CLERK OF THE COURT

Heather L. Hemin
CLERK OF THE COURT

COA

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada

Plaintiff(s),

-vs-

James D. Hayes

Defendant(s).

CASE NO. *C-16-715718-1; A-19-78315-W*

DEPT. NO. *19*

NOTICE OF CHANGE OF ADDRESS

To: Clerk of Court; and

To: Opposing Counsel or Litigant

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT:

☒ Plaintiff or ☒ Defendant has a new mailing address.

New address: *SDCC, P.O. Box 208, Indian Springs, NV 89070*

Telephone number: *N/A*

DATED this *26* day of *Nov.*, 20 *19*.

James D. Hayes #1175097
Name

CLERK OF THE COURT

RECEIVED
DECEMBER 4, 2019

RECEIVED

SDCC Law Library
Southern Desert Correctional Center
P.O.Box 208
Indian Springs, Nevada 89070 - 0208

Date: Nov. 26, 2019.

To: Clerk, 8th Judicial District Court
200 LAWS AVE. 3RD FL
LAS VEGAS, NEVADA
89155-1160

From: JAMES H. HOPES # 1175077
Southern Desert Correctional Ctr.
P.O. Box 208
Indian Springs, Nevada 89070 - 0208

Subject: REQUEST FOR RECORDS/COURT CASE DOCUMENTS

Case No. C-16-315718-1

Dept. No. 19

The above named Inmate has requested the assistance of the SDCC Law Library while he is incarcerated here. But in order to better assist him, we are in need of the following Court Case Documents.

1). ~~JUDGMENT OF CONVICTION~~

2). CRIMINAL COURT MINUTES

James H. Hopes
Inmate

Special Instructions: Transcript for Nov. 7, 2017 court
proceedings

Please send a correspondence directly to Inmate

Pages * 1125022

58cc

P.O. Box 208

Indian Springs NV

89070

LAS VEGAS NV 890

02 DEC 2019 PM 4 L



Clark County District Courts
"Office of the Clerk"

200 Lewis Ave; 3rd Floor

Las Vegas, Nevada

89155-1160

~~Attn: [unclear]~~

~~Clark County Sheriff~~

~~Clark County Sheriff~~

~~[unclear]~~

Legal Mail



1 ASTA

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK**

STATE OF NEVADA,

Plaintiff(s),

vs.

JAMES HOWARD HAYES
aka JAMES HOWARD HAYES, JR.,

Defendant(s),

Case No: C-16-315718-1

Dept No: XIX

CASE APPEAL STATEMENT

1. Appellant(s): James H. Hayes

2. Judge: William D. Kephart

3. Appellant(s): James H. Hayes

Counsel:

James H. Hayes #1175077
P.O. Box 208
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
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: June 14, 2016

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

Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 73436, 75173, 77151, 78590, 78622

12. Child Custody or Visitation: N/A

Dated This 11 day of December 2019.

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: James H. Hayes

1 HALES, James H # 1175077
2 P.O. Box 208, SDCC
3 JACKSON SPRINGS, WY 83020

FILED

DEC 16 2019

John J. Blum
CLERK OF COURT

4
5 In the 8th Judicial District Court
6 County of Clark

7
8 NAME, State of Nevada

January 6, 2020
8:30 AM

9 Plaintiff(s),

10 -vs-

11 NAME, James H. Hales

CASE NO.

C-16-315718-1

12 Defendant(s).

Dept 19

13
14 "Motion to Correct an Illegal Sentence"

15
16
17 COMES NOW, James H. Hales, in PRO PER and herein above respectfully

18 Moves this Honorable Court for a granting of "Motion to Correct Illegal
19 Sentence" to correct Manifest Injustice and redress
20 injury done to defendant.

21
22
23 The above is made and based on the following Memorandum of Points and Authorities.

RECEIVED

DEC 16 2019

CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

NRS. 176.555 provides that the district court "may correct an illegal sentence at any time" the motion is considered to be incident to the trial court proceedings and therefore is not affected or abolished by the statutory provisions governing post-conviction petitions for writ of habeas corpus. "Motion to correct illegal sentence" addresses only facial legality of sentence. *State v. District Court*, 100 Nev. 90, 97 and *Edwards v. State* 918 p.2d 321. The facial legality of a sentence depends on two factors: whether the district court was without jurisdiction to impose a sentence; whether the sentence imposed exceeds the statutory maximum.

Whereas, jurisdiction of the subject matter is derived from the LAW, it neither can be waived nor conferred by consent of accused. *Burris v. Supreme Court* 43 Cal. App 3d. 530. Arguments attacking a court's subject matter jurisdiction can neither be waived or forfeited *In re: Dept. of Corrections v. Schacht* 118 S.Ct. 2047.

Where, as here, the court that rendered the judgment lacked jurisdiction Rule 11 FRCP "Jurisdictional Defect" the state by prosecuting its case without first establishing that jurisdiction exists committed fraud upon the court. State had lack of admissible evidence when preliminary examination showed lack of evidence, no corpus delicti, no slight nor marginal evidence to proceed to District Court on charge of

MEMORANDUM OF POINTS AND AUTHORITIES

Attempt Grand Larceny against defendant. The state's lack of jurisdiction over defendant, MR. HAYES as NRS 174.085(3), NRS 178.562(1) provides the authority by which defendant was immune from prosecution of this charge in Clark County District Courts.

Whereas there is no material dispute as to a mistake of fact relating to his conviction (2RCP 32(d)) that the charge of Attempt Grand Larceny was dismissed at the conclusion of preliminary examination by magistrate against defendant leaving the district court no subject matter jurisdiction to proceed with charge against defendant.

Where, as here, the state may not convict defendant "No matter how validly his factual guilt is established" MENSA 423 U.S. 27 63. As his plea of "Afford" to the charge of "Attempt Grand Larceny", judged on its face the charge was one which the state may not constitutionally prosecute and the district court had no power to enter the conviction or impose the sentence. (WENT OF PROSECUTION)

Where, as here the state did violate NRS 178.562(1) by bringing another prosecution following dismissal of an action to constitute "another prosecution" without another pending vehicle for the prosecution of the charge of attempt grand larceny that runs afoul of the provisions of NRS 178.562(1) and BARS further

1 prosecution of the defendant on that charge.

2 WHEREAS, the state's guilty plea agreement filed in
3 open court November 2, 2018 was a subsequent prosecution
4 for the same offense "Attempt Grand Larceny" that was
5 dismissed at the conclusion of preliminary examination
6 by magistrate without another pending vehicle for
7 prosecution leaving the charge BARRED from all district
8 court proceedings against defendant and this
9 jurisprudence set forth by Nevada legislation is
10 perfectly clear and unambiguous.

11 WHEREAS the state did violate NRS 174.085(3) when
12 the defendant was once placed in jeopardy upon the
13 criminal complaint filed in Justice Court, Las Vegas
14 Township det. No. 3 on the 23rd day of July, 2017
15 and proceeded to the preliminary examination and
16 at the conclusion of the examination the charge
17 of Attempt Grand Larceny was dismissed by magistrate
18 for lack of evidence, no corpus delicti, slight or marginal
19 evidence, that is a BAR to another indictment, information
20 or complaint for the offense charged in the former. Thus
21 the state triggered the protections of NRS 174.085(3)(5)
22 to BAR the subsequent prosecution of the charge of
23 Attempt Grand Larceny against the defendant in all
24 district court proceedings when the dismissal occurred
25 before the subsequent form of prosecution was obtained
26 and no good cause shown to the court or court
27 order. ~~in~~

1 WHERE AS HERE THERE IS NO MATERIAL DISPUTE
2 OF FACT THAT THE CHARGE OF ATTEMPT GRAND LARCENY WAS
3 DISMISSED AGAINST DEFENDANT AT THE CONCLUSION OF
4 PRELIMINARY EXAMINATION AND BARRED FROM ANY
5 SUBSEQUENT PROCEEDINGS LEAVING THE DISTRICT COURT
6 WITH NO SUBJECT MATTER JURISDICTION AGAINST DEFENDANT
7 FOR THE CHARGE OF ATTEMPT GRAND LARCENY

8 WHEREAS, THE FACT REMAINS THAT COURTS WHICH
9 MAKE A MISTAKE IN RENDERING A JUDGMENT WHICH
10 WORKS TO THE EXTREME DETRIMENT OF THE DEFENDANT WILL
11 NOT ALLOW IT TO STAND UNCORRECTED AS JUSTICE REQUIRES
12 THAT WHEN A COURT ERRS IN ITS ADJUDICATION OF THE
13 DEFENDANT THE VACATION OF THAT JUDGMENT OF CONVICTION
14 MUST OCCUR. WHERE, AS HERE, THE DEFENDANT STANDS
15 CONVICTED OF A CRIME HE DID NOT COMMIT.

16 WHEREFORE, DEFENDANT REQUESTS THAT THE COURT
17 GRANT DEFENDANT SUCH RELIEF TO WHICH DEFENDANT
18 MAY BE ENTITLED...

19
20 James H. Hayes
21 JAMES H. HAYES # 1175072
22 P.O. Box 208 SDCC
23 Indian Springs, NV 89070
24
25
26
27
28

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the ~~Petitioner~~/Defendant named herein
and that on this 10 day of December, 2019, I mailed a true and correct copy of this
foregoing Motion to Correct an Illegality to the following:

Clerk of the Courts
200 Lewis Ave. 3rd Fl
Las Vegas, NV 89155-1160

District Attorney
200 Lewis Ave
Las Vegas, NV 89155

Nevada Atty General
200 N Carson Street
Carson City, NV 89701

BY: Carson H. Hays

AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, Motion to

Correct an Illegal Sentence

(Title of Document)

Filed in case number: C-16-315218-1

☒ Document does not contain the social security number of any person

Or

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

☐ A Specific state or federal law, to wit

Or

☐ For the administration of a public program

Or

☐ For an application for a federal or state grant

Or

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 125b.055)

DATE: 12-10-19

James L. Hayes
(Signature)

JAMES L. HAYES #1175077
(Print Name)

PRO PER
(Attorney for)

Steps # 1125022

SDCC

P.D. Box 208

Indian Springs, NV

89020

LAS VEGAS NV 890

12 DEC 2019 AM 5 L

FOREVER USA 100

Clerk County District Courts
"Office of the Clerk"

200 LEWIS AVE, 3RD FLOOR

LAS VEGAS, NEVADA

89155-1160

Legal
Mail

1 Hayes James H #1175077
2 / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED

DEC 16 2019

John L. Blum
CLERK OF COURT

5 In the 8th Judicial District Court
6 County of Clark

7 State of Nevada
8 Plaintiff(s)

9 vs.

10 James H. Hayes
11 defendant

Case No. C-16-315718-1

Dept No. 19

Docket _____

14 **NOTICE OF MOTION**

January 6, 2020
8:30 AM

15 **YOU WILL PLEASE TAKE NOTICE, that** _____

16 _____
17 will come on for hearing before the above-entitled Court on the ____ day of _____, 20____,
18 at the hour of ____ o'clock ____ M. In Department ____, of said Court.

19
20 CC:FILE

21
22 DATED: this 10 day of DECEMBER, 2019.

23
24 BY: James H. Hayes
25 James H. Hayes # 1175077
26 /In Propria Personam
27
28



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TALEEN PANDUKHT
6 Chief Deputy District Attorney
7 Nevada Bar #05734
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES,
13 aka James Howard Hayes Jr.,
14 #2796708

Defendant.

CASE NO: C-16-315718-1

DEPT NO: XIX

15 **STATE'S OPPOSITION TO DEFENDANT'S**
16 **MOTION TO CORRECT AN ILLEGAL SENTENCE**

17 DATE OF HEARING: JANUARY 6, 2020
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and
21 hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to
22 Correct an Illegal Sentence.

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

26 ///

27 ///

28 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 23, 2013, James H. Hayes (hereinafter, "Defendant") was charged by way of
4 Criminal Complaint with one count of BURGLARY (Category B Felony – NRS 205.060) and
5 one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor –
6 NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in Justice Court, Las
7 Vegas Township on June 14, 2016, the charge of BURGLARY was bound over to District
8 Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

9 On June 17, 2016, the State filed an Information with the District Court, charging
10 Defendant with one count of BURGLARY. On August 29, 2017, the State filed an Amended
11 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant
12 to a Guilty Plea Agreement ("GPA"), Defendant entered a plea of Guilty pursuant to North
13 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY. The
14 terms of the GPA are as follows:

15 The State has agreed to make no recommendation at the time of sentencing. The
16 State has no opposition to probation with the only condition being thirty (30)
17 days in the Clark County Detention Center (CCDC), with thirty (30) days credit
18 for time served.

19 GPA at 1:22-24. The GPA further includes, in pertinent part, the following acknowledgement:

20 I understand and agree that, if...an independent magistrate, by affidavit review,
21 confirms probable cause against me for new criminal charges including reckless
22 driving or DUI, but excluding minor traffic violations, the State will have the
23 unqualified right to argue for any legal sentence and term of confinement
24 allowable for the crime(s) to which I am pleading guilty, including the use of
25 any prior convictions I may have to increase my sentence as a habitual criminal
to five (5) to twenty (20) years, Life without the possibility of parole, Life with
the possibility of parole after ten (10) years, or a definite twenty-five (25) year
term with the possibility of parole after ten (10) years.

26 ///

27 ///

28 ///

1 GPA at 2:1-9. An Amended Information reflecting the new charge of ATTEMPT GRAND
2 LARCENY was filed in conjunction with the GPA. Defendant was adjudged Guilty pursuant
3 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

4 On January 31, 2019, the State filed a State's Notice of Motion and Motion to Revoke
5 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace
6 had found probable cause to charge Defendant with Burglary for acts committed on or around
7 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February
8 4, 2019.

9 On March 6, 2019, at the sentencing hearing, the State argued that it had regained the
10 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that
11 Defendant should be punished under NRS 207.010 (the "Small Habitual Statute"). The Court
12 agreed, and Defendant was sentenced to sixty (60) to one hundred seventy-four (174) months
13 in the Nevada Department of Corrections (NDOC), consecutive to Defendant's sentence in
14 another case (C315125). The Court also awarded Defendant ten (10) days credit for time
15 served. The Judgment of Conviction in this case was filed on March 12, 2019.

16 On March 28, 2019, Defendant filed a Notice of Appeal. Defendant's Case Appeal
17 Statement was filed on August 9, 2019. Defendant's Appeal of the instant case is still pending
18 before the Nevada Court of Appeals (Case Number 78590).

19 On September 9, 2019, Defendant filed a "Motion in the Nature of a Writ of Coram
20 Nobis." On September 26, 2019, Defendant filed an "Affidavit of Granting Motion in the
21 Nature of a Writ of Coram Nobis." The State filed its Opposition to Defendant's Motion for a
22 Writ of Coram Nobis on October 1, 2019. The Court conducted a hearing on October 7, 2019,
23 at which it denied Defendant's Motion. The Order reflecting the denial was filed on October
24 17, 2019.

25 On November 19, 2019, Defendant filed a second Notice of Appeal, appealing the
26 denial of his Coram Nobis motion. His Case Appeal Statement was filed on December 11,
27 2019. That appeal is still pending before the Nevada Supreme Court (Case Number 80222).
28

1 On December 16, 2019, Defendant filed the instant "Motion to Correct an Illegal
2 Sentence."

3 ARGUMENT

4 **I. DEFENDANT'S PENDING APPEALS DIVEST THIS COURT OF** 5 **JURISDICTION**

6 The Nevada Supreme Court has declared, "[j]urisdiction in an appeal is vested solely
7 in the supreme court until the remittitur issues to the district court." Buffington v. State, 110
8 Nev. 124, 126, 868 P.2d 643, 644 (1994). While an appeal is pending, district courts do not
9 have jurisdiction over that case until remittitur has issued. Id. The Nevada Supreme Court "has
10 repeatedly held that the timely filing of a notice of appeal 'divests the district court of
11 jurisdiction to act and vests jurisdiction in [the appellate] court.'" Foster v. Dingwall, 126 Nev.
12 49, 52, 228 P.3d 453, 454-55 (2010) (quoting Mack-Manley v. Manley, 122 Nev. 849, 855,
13 138 P.3d 525, 529 (2006)). Pursuant to NRS 177.155, the supreme court retains control and
14 supervision of a case "from the filing of the notice of appeal until the issuance of the certificate
15 of judgment." Buffington, 110 Nev. at 126, 868 P.2d at 644.

16 Only a remittitur will return jurisdiction from an appellate court of competent
17 jurisdiction to the district court. See NRS 177.305 ("After the certificate of judgment has been
18 remitted, the appellate court...shall have no further jurisdiction of the appeal or of the
19 proceedings thereon, and all order which may be necessary to carry the judgment into effect
20 shall be made by the court to which the certificate is remitted."). Until such remittitur is
21 received, a district court lacks jurisdiction over a particular case. Buffington, 110 Nev. at 126,
22 868 P.2d at 644.

23 However, the Nevada Supreme Court has recognized concurrent jurisdiction when a
24 defendant files a Petition for Writ of Habeas Corpus (Post Conviction). See, Varwig v. State,
25 104 Nev. 40, 42, 752 P.2d 760, 761 (1988); see also, Daniels v. State, 100 Nev. 579, 580, 688
26 P.2d 315, 316 (1984).

27 Here, the instant case is on appeal, pending before the Nevada Supreme Court.
28 Defendant timely filed a Notice of Appeal on March 28, 2019, thereby divesting this Court of

1 jurisdiction to entertain the current motion. The Fast Track Briefing on the appeal was
2 completed on July 24, 2019, and no Opinion, Order, or Certificate of Judgment has been
3 entered as of the time of filing the instant Opposition. Therefore, the State respectfully submits
4 that this Court lacks the jurisdiction necessary to address Defendant's Motion on its merits.

5 Defendant cites to NRS 176.555 for the proposition that this Court may entertain the
6 instant Motion despite the pending appeal. Motion at 3:3-4. However, the Nevada Supreme
7 Court has clarified that a motion to correct a facially illegal sentence is not a petition for a writ
8 of habeas corpus and is therefore excepted from the provisions of the habeas statutes. Edwards
9 v. State, 112 Nev. 704, 707, 918 P.2d 321, 323-24 (1996). Therefore, pursuant to Buffington
10 and Varwig, because the instant Motion is not a petition for habeas relief, it is not excepted
11 from the general rule that an appeal divests the district court of jurisdiction until remittitur
12 issues.

13 Because this Court lacks jurisdiction to address the substance of Defendant's Motion,
14 this Court should deny the same.

15 **II. THIS COURT LACKS JURISDICTION TO MODIFY DEFENDANT'S** 16 **SENTENCE**

17 The Nevada Supreme Court has explained:

18 A district court judge's pronouncement of judgment and sentence from the bench
19 is not a final judgment and does not, without more, oust the district court of
20 jurisdiction over the defendant. Only after a judgment of conviction is 'signed
21 by the judge and entered by the clerk,' as provided by NRS 176.105, does it
become final and does the defendant begin to serve a sentence of imprisonment.

22 Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979); see also, NRS 176A.100.

23 Even should this Court consider Defendant's Motion on the merits, a sentencing judge
24 retains the power to reconsider a sentence only in certain limited situations. Under the
25 provisions of NRS 176.555, the court may at any time correct an illegal sentence. In addition,
26 NRS 176.565 provides, "Clerical mistakes in judgments, orders or other parts of the record
27 and errors in the record arising from oversight or omissions may be corrected by the court at
28 any time and after such notice, if any, as the court orders."

1 Additionally, if substantial and material mistakes of fact were relied upon in rendering
2 judgment, a judge may reconsider a sentence. State v. District Court, 100 Nev. 90, 677 P.2d
3 1044 (1984); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967). When the sentencing court
4 “makes a mistake in rendering a judgment which works to the extreme detriment of the
5 defendant,” the district court has jurisdiction to vacate or modify the suspect sentence or
6 judgment. Id. at 95, 677 P.2d at 1047 (citing Warden v. Peters, 83 Nev. 298, 429 P.2d 549
7 (1967)).

8 The United States Supreme Court has expressly held that where a defendant is
9 sentenced on the basis of materially untrue assumptions concerning his criminal record, “[the]
10 result, whether caused by carelessness or design, is inconsistent with due process of law.” Id.
11 at 96, 677 P.2d at 1048 (citing Townsend v. Burke, 334 U.S. 736, 741, 68 S.Ct. 1252, 1255,
12 92 L.Ed. 1690 (1948) (modification in original). A sentencing judge’s misapprehension of a
13 defendant’s criminal record may result in a violation of the defendant’s right to due process of
14 law. Id. However, not every mistake or error which occurs during sentencing gives rise to a
15 due process violation. The cases implicitly recognize this point: a due process violation arises
16 only when the errors result in “materially untrue” assumptions about a defendant’s record. Id.
17 (citing Townsend, 334 U.S. at 741, 68 S.Ct. at 1255).

18 Defendant does not allege that clerical mistakes or reliance on materially untrue
19 assumptions about Defendant’s criminal record resulted in an illegal sentence. Rather,
20 Defendant argues that his conviction itself is invalid. See generally, Motion at 3-6. Therefore,
21 pursuant to State v. District Court, Defendant’s Motion does not raise claims that qualify the
22 Motion for the limited review prescribed by NRS 176.555 and 176.565.

23 Because Defendant fails to state claims that fall within the limited statutory scheme for
24 modification or correction of a sentence, the State respectfully submits that there is no statutory
25 basis for review and that this Court lacks jurisdiction to grant Defendant the relief he seeks.

26 **III. DISTRICT COURTS HAVE WIDE DISCRETION AT SENTENCING**

27 The sentencing judge has wide discretion in imposing a sentence, and that
28 determination will not be overruled absent a showing of abuse of discretion. Houk v. State,

1 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987); see also, Silks v. State, 92 Nev. 91, 93-94,
2 545 P.2d 1159, 1161 (1976). Further, the Nevada Supreme Court has repeatedly declined to
3 interfere with sentencing when the sentence is legal and within the statutory limits. Cameron
4 v. State, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

5 The Eighth Amendment to the United States Constitution, as well as Article 1 §6 of the
6 Nevada Constitution, prohibits the imposition of cruel and unusual punishment. The Nevada
7 Supreme Court has ruled that this prohibition “forbids [an] extreme sentence that [is] ‘grossly
8 disproportionate’ to the crime.” Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004)
9 (citing Harmelin v. Michigan, 510 U.S. 957, 1001, 111 S.Ct. 2680 (1991)). A sentence within
10 the statutory limits is not “cruel and unusual punishment unless the statute fixing punishment
11 is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to
12 shock the conscience.” See, e.g., Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996)
13 (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)). A punishment
14 is constitutionally impermissible only if it is so disproportionate to the crime for which it is
15 inflicted that it shocks the conscience and offends fundamental notions of human dignity.
16 Schmidt v. State, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978).

17 In the instant case, Defendant was convicted of Burglary and Attempt Grand Larceny
18 pursuant to his knowing and voluntary entry of a guilty plea. Defendant violated the terms of
19 his GPA, at which time the State regained its right to argue for any statutory sentence,
20 including for habitual treatment. See, GPA at 2:1-9. The Court adjudged Defendant guilty as
21 a habitual criminal under NRS 207.010, which allows for a term of imprisonment “in the state
22 prison for a minimum of not less than 5 years and a maximum term of not more than 20 years.”
23 The Court then sentenced Defendant to sixty (60) to one hundred seventy-four (174) months,
24 which falls clearly within the statutory limits.

25 Furthermore, Defendant does not argue that his sentence is “grossly disproportionate”
26 or that it “shocks the conscience.” Instead, Defendant bases his Motion entirely on the
27 argument that his conviction itself was invalid. See generally, Motion at 3-6.

28 ///

1 Because Defendant's sentence falls within the statutory limits, and because Defendant
2 does not argue that his sentence is cruel and unusual, the State submits that the Court did not
3 abuse its discretion when sentencing Defendant.

4 **CONCLUSION**

5 For the foregoing reasons, the State respectfully requests that this Court deny Defendant
6 James H. Hayes's "Motion to Correct an Illegal Sentence" in its entirety.

7 DATED this 30th day of December, 2019.

8 Respectfully submitted,

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001565

11 BY 
12 TALEEN PANDURHT
13 Deputy District Attorney
14 Nevada Bar #05734

15
16
17 **CERTIFICATE OF MAILING**

18 I hereby certify that service of the above and foregoing was made this 30th day of
19 December, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

20 JAMES H. HAYES, BAC #1175077
21 SOUTHERN DESERT CORRECTIONAL CENTER
22 P.O. BOX 208
INDIAN SPRINGS, NV, 89070-0208

23 BY 
24 C. Garcia
25 Secretary for the District Attorney's Office

26
27
28 TP/jj/cg/L2

IN the 8th Judicial Court of the State of Nevada for the
County of Clark:

AFFIDAVIT OF granting "Motion to Correct an Illegal
SENTENCE" of the Wrongfully Convicted
STATE OF NEVADA)
COUNTY OF CLARK) SS: CASE NO: C-16-315718-1
DEPT: 19
TO WHOM IT MAY CONCERN:

FILED

JAN 06 2020

CLERK OF COURT

I, JAMES H. HAYES, the undersigned, do hereby swear that all the
following statements and description of events, are true and correct, of my own
knowledge, information, and belief, and to those I believe to be true and
correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT JAMES H. HAYES is the affiant in this affidavit and
is currently incarcerated at Southern Desert Correctional
Center.

Whereas, the state being duly served with a copy of
the "Motion to Correct an Illegal Sentence" on the 16th day of
DECEMBER 2019 more than 10 days, exclusive of the day of
service, having expired since service upon the state, that
no answer been filed and no further time having been
granted the state's failure is an admission that defendant's
Motion is meritorious, and consent to the granting thereof.
(EDCR 3.2d)

Whereas, it would be an affront to Justice and
Due Process to hold defendant to his plea when the
conduct upon which the plea was entered did not
occur and defendant received no consideration
whatsoever in exchange for his Alford plea to a crime
he did not commit.

Where, as here, the state has committed fraud upon
the court by its failure to establish that jurisdiction
exists over defendant for the charge of Attempt

1 grand larceny and a guilty plea is nothing without
2 jurisdiction even if the plea is knowing and
3 voluntary it does not supersede errors by the court

4 whereas, when the state opts to act in a field
5 where its actions has significant discretionary elements,
6 it must nonetheless act in accord with the dictates
7 of the U.S. Constitution, Nevada Constitution, and
8 the laws of the state of Nevada (NRS).

9 where, as here, the effects of the states and
10 courts error served to deprive defendant of important
11 protections under the United States & Nevada consti-
12 tutions and Nevada law by knowingly and
13 intelligently convicting defendant of a crime
14 he did not commit when preliminary examination
15 showed no probable cause, no corpus delicti, no
16 slight or marginal evidence that defendant committed
17 the crime of Attempt Grand Larceny.

18 wherefore, because there is no retractions of
19 commencement, the courts lack of subject matter and
20 personam jurisdiction. I motion the court to vacate
21 the conviction and release me forthwith and posthaste.
22 FURTHER, AFFLIANT SAYETH NAUGHT. from NDOC for I am being unlawfully detained

23 EXECUTED AT SDCC this 30 day of December 2019

24 IN FRONT OF:

25 Southern Desert Correctional Center

26 P.O. Box 208

27 Indian Springs, NV 89070

28 BY James Hughes
NDOC # 1175672

2 of 3

UNDER PENALTY OF PERJURY

I, the undersigned, certify, declare, or state that the foregoing is true and correct, to the best of my knowledge and belief, in accordance with NRS 208.165 and 28 USCA § 1746.

Excuted on the 30 day of December, 2019

JAMES H. HAYES # 1175077 James H Hayes
Name and Prison BAC#, printed

*** It's worthwhile noting that the state exceeded the statutory maximum sentence prescribed by Nevada legislation for the crime of ~~Attempt~~ Gross Larceny of four (4) years as there was no probable cause for the Burglary charge the state used to breach guilty plea agreement. When in fact, the alleged victim gave sworn testimony that he was 100% sure that defendant was not the perpetrator of ISPE div 7 crime... and further states that "allege perpetrator never entered room just stood in doorway!!"
3 of 3

4245 #1175077

50cc

P.O. Box 208

Indian Springs, NV

89020

LAS VEGAS NV 890

03 JAN 2020 PM 3:11



Clerk County District Courts
"Office of the Clerk"

200 Lewis Ave, 3rd Floor
Las Vegas, Nevada

LEGA
Mail

89155-1160

8910133300

1 Hayes James H #1175072
2 Defendant/ In Propria Personam
3 Post Office Box 208
4 Indian Springs, Nevada 89010

FILED
JAN 27 2020
John T. Williams
CLERK OF COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 State of Nevada

8 Plaintiff,

9 vs.

10 James H. Hayes

11 Defendant.

Case No. C-16-315718-1

Dept. No. 19

Docket _____

12
13
14 Reply to State's opposition to "Motion to Correct
15 AN ILLEGAL SENTENCE"

16
17
18
19 COMES NOW, defendant, James H. Hayes, herein above respectfully

20 moves this Honorable Court for an granting of this motion to correct

21 AN ILLEGAL SENTENCE. and correct this manifest injustice AND
22 and vacate this illegal sentence...

23 This Motion is made and based upon the accompanying Memorandum of Points and Authorities .

24
25 DATED: this 10 day of January, 2020

BY: James H. Hayes

James H. Hayes #1175072
Defendant/In Propria Personam

1 of 8

CLERK OF THE COURT

JAN 27 2020

RECEIVED

Points and Authorities

Statement of the Case

ON January 6, 2020, James H. Hayes (defendant) received the state's opposition to his filed Motion to Correct an Illegal Sentence.

ON November 7, 2018 the state filed a fraudulent Amended information and GUILTY PLEA Agreement in open court knowingly and intelligently to commit fraud upon the court.

ON January 29, 2019 Justice of the Peace De La Garza found probable cause when there was NO probable cause for a count of Burglary in what eventually was dismissed in the first District Court Appearance.

ON January 31, 2019 the state filed a Motion to Revoke Bail on the charge of "Attempt Grand Larceny" when the Bail for "Attempt Grand Larceny" was exonerated at conclusion of preliminary examination in 2016 when that charge was dismissed for lack of evidence, ^{no} corpus delicti, no slight or marginal evidence.

ON March 6, 2019 when the state argued for habitual treatment on impeachable and highly suspect evidence by the way of the dismissed Burglary charge in case NO C-19-338412-1 due to the fact the alleged victim testified under oath that

1 he was 100% sure the defendant James H. Hayes was
2 not the perpetrator of said crime and that alleged
3 perpetrator did not enter room only stood in door
4 way and said "SORRY" and closed door. Furthermore
5 the state did not meet the statutory requirements of
6 NRS 202.010 as the states Amended Notice to Seek
7 Punishment as a habitual criminal was for the
8 charge of Burglary (2nd offense) Not the "wobbler"
9 "Attempt Grand Larceny". In addition, the Texas crime
10 of Credit Card Abuse was a state jail crime that
11 doesn't carry any prison term, mandatory supervision,
12 nor parole and the crime of Burglary was not a
13 prior felony so in essence defendant had one prior
14 felony and had never been to prison when he was
15 adjudicated a habitual criminal.

16 ARGUMENT -

17 I. There was no probable cause for the
18 state to breach guilty Plea Agreement.

19 Whereby the Burglary case NO. C-19-338412-1
20 was dismissed at the first District court appearance
21 as the alleged victim testified under oath at
22 preliminary hearing that defendant was not the
23 perpetrator of alleged crime and he was 100%
24 sure of that he further stated that the perpetrator
25 did not enter said room only stood in doorway and
26 said "SORRY" closed door and left without incident.
27

1 So Justice of the Peace DeLoGerza did not make the
2 correct ruling as the facts were clear there was
3 no slight or marginal evidence that defendant James
4 M. Hayes committed the alleged events. ^{the state argues the defendant} the state
5 used the language in guilty plea agreement boilerplate
6 to justify their breach and the boilerplate does not
7 explicitly refer to a loss of stipulation agreed to by
8 the parties involved, but only that "the state will
9 have the unqualified right to argue for any legal
10 sentence¹ and term of confinement allowable for
11 the crime to which I am pleading guilty, including
12 the use of any prior convictions²." I may have to
13 increase my sentence as an habitual criminal to 5
14 to 20 years.

15 Where as here it is undisputed that the boilerplate
16 language does not explicitly refer the right to argue
17 for consecutive time with another case or make any
18 reference to any ability for a due process to challenge
19 an agreement of a material breach. It was inappropriate
20 for the state to pepper the record with content that it
21 cannot rightfully assign to defendant Mr. Hayes namely
22 the ispe dixit charge of Burglary case No C-19-338412-1.

23 Whereas the sentencing court both improperly allowed
24 the state to argue for a sentence that breached the
25 stipulations in the case and proceed with a harsher
26 sentence than necessary without adequately considering
27 mitigation and/or its duty to independently determine

ADDITIONAL FACTS OF THE CASE:

1 the appropriateness of habitual offender adjudication
2 where, as here, MR HAYES is arguing that the
3 sentencing court knew that there were viable reasons
4 that the evidence used was implausible and highly
5 suspect but declared a breach without any significant
6 analysis or even inquiry as to the reason. That is
7 the mandatory evidentiary hearing required when the
8 state is looking to avoid its obligations under the
9 guilty plea agreement and the court's decision to
10 declare a breach and relieve the state of its duty
11 based on that record (Burglary charge C-18-338412-1) is
12 instantly reversible because that is a violation of
13 Due Process (Gamble v. State 604 P.2d 335 (1979))

14 FOOTNOTES:

15 1. The sentence argued for was not a legal
16 sentence, as it violated state law NRS 174.085(1) and
17 NRS 178.562 and the district court had no subject
18 matter jurisdiction for the charge of "Attempt Grand Larceny"
19 against defendant.

20 2. The state used a felony conviction that was
21 not prior conviction a 2016 Burglary conviction and
22 the Texas crime of Credit Card Abuse was not a
23 felony but a state jail crime that carries no prison
24 term, mandatory supervision nor parole.

ADDITIONAL FACTS OF THE CASE:

II. Motion to Modify Sentence

1 this is not a motion to "Modify Sentence" as
2 the state has argued this is a "Motion to
3 correct an illegal sentence. And a court at
4 any time may correct an illegal sentence and
5 has jurisdiction to vacate a judgment when
6 as here, the judgment worked to the
7 extreme detriment of the defendant.
8

9
10 III this illegal sentence is a result of
11 Manifest error and malicious prosecution,
12 and a unconstitutional and fraudulent
13 Guilty Plea Agreement.

14 Moreover, the state initiated and continued the
15 criminal proceedings on the charge of "Attempted
16 grand larceny without probable cause knowingly
17 and intelligently to defendant's extreme prejudice
18 this error is plain and indisputable and a complete
19 disregard of the controlling law.
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 10 day of January, 2020 I mailed a true and correct copy of the foregoing, "Reply to Act's opposition to "Motion to Correct an Illegal Sentence"" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clark County Dist Courts
Office of the Clerk
200 LAUDIS AVE. 308 91
LAS VEGAS, NEVADA
89155-1160

District Atty
200 LAUDIS AVE
LAS VEGAS, NV
89155

Atty General of Nevada
100 N. LASCA ST
CARSON CITY, NV
89401

CC:FILE

DATED: this 10 day of January, 2020.

James H. Hayes
JAMES H. HAYES # 1175089
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

2 of 8

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Reply to State's
opposition to Motion to Correct an Illegal Sentence
(Title of Document)

filed in District Court Case number C-16-315718-1

☒ 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.

James H. Hayes
Signature

1-10-20
Date

JAMES H. HAYES
Print Name

PRO PER
Title

8 of 8

Pages # 11250 99
5000
P.O. Box 208
Indren Springs, NV 89701

Clerk County District Courts
"Office of the Clerk"
208 Lewis Ave: 3rd floor
Las Vegas, Nevada
89155-1160

3763
R.S. 2469940

LEGAL
MAIL

1 Hayes, James H ID NO. 1175077

2 SOUTHERN DESERT CORRECTIONAL CTN.
3 20825 COLD CREEK RD.
4 P.O. BOX 208
5 INDIAN SPRINGS, NV 89070

FILED

FEB 24 2020

Alvin L. Williams
CLERK OF COURT

6 In the 8th Judicial District Court of the
7 State of Nevada in and for the County of
8 Clark

9 State of Nevada

Plaintiff

v.

11 James H. Hayes

Defendant

HEARING REQUESTED:

CASE NO.: C-16-315718-1

DEPT. NO.: 19

DOCKET:

March 18, 2020
8:30 AM

13 "Motion for Ruling" for "Motion to Correct an
14 Illegal Sentence"

17 COMES NOW, defendant James H. Hayes, herein above respectfully
18 moves this Honorable Court for an granting of his "Motion for Ruling"
19 for "Motion to Correct an Illegal Sentence" and order an
20 Expedition ruling

21 This Motion is made and based upon the accompanying Memorandum of Points and
22 Authorities,

23 DATED: this 12 day of February, 2020

24 BY: James H. Hayes

25 James H. Hayes # 1175077
Defendant In Proper Personam

CLERK OF THE COURT

26
27
28
FEB 24 2020

ADDITIONAL FACTS OF THE CASE:

Points and Authorities
Statement of the Case

ON DECEMBER 16, 2019, DEFENDANT JAMES H. HAYES
FILED THE ~~WRIT~~ "MOTION TO CORRECT AN ILLEGAL
SENTENCE."

ON DECEMBER 30, 2019, STATE FILED ITS OPPOSITION
TO DEFENDANT'S "MOTION TO CORRECT AN ILLEGAL SENTENCE"
WITH A HEARING DATE OF JANUARY 6, 2020.

ON JANUARY 6, 2020, DEFENDANT FILED AN
AFFIDAVIT OF "GRANTING MOTION TO CORRECT AN ILLEGAL
SENTENCE" OF THE WRONGFULLY CONVICTED, AND RECEIVED
THE STATE'S OPPOSITION TO HIS FILED MOTION TO CORRECT
AN ILLEGAL SENTENCE.

ON JANUARY 27, 2020, DEFENDANT FILED HIS REPLY
TO STATE'S OPPOSITION TO "MOTION TO CORRECT AN ILLEGAL
SENTENCE"

ARGUMENT:

I. DEFENDANT'S DIRECT APPEAL HAS BEEN DECIDED
BY THE NARADA COURT OF APPEALS ^{court of Appeals}

ON JANUARY 14, 2020 THE NARADA, HANDLED DOWN ITS
ORDER OF AFFIRMANCE TO DEFENDANT'S FIRST TRACK APPEAL
SO NOW THAT THE APPEAL IS FINAL, DISTRICT COURT DOES
HAVE JURISDICTION TO MAKE RULING ON DEFENDANT'S
FULLY BRIEFED MOTION TO "CORRECT AN ILLEGAL SENTENCE."
WHEN IN FACT, JURISDICTION HAS RETURN TO THE DISTRICT

1 court, and the appellate court has no further jurisdiction
2 of the appeal or the proceedings thereon.

3 Conclusion

4 For the foregoing reasons, the defendant respectfully
5 requests that this court grant defendant, James
6 H. Hayes "Motion for Ruling" for "Motion to Correct an
7 Illegal sentence."

8 Respectfully submitted,

9 James H. Hayes #1125077

10 SDCC

11 P.O. Box 208

12 Indian Springs, NV 89090

13 James H. Hayes

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 12
day of February, 2020 I mailed a true and correct copy of the foregoing, "Motion for
Ruling for Motion to Correct an Illegal Sentence"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clerk County Dist. Courts
Office of the Clerk
205 LEWIS AVE. 3RD FL
Las Vegas, NV
89155-1160

Office of the District Attorney
205 LEWIS AVE
P.O. Box 552212
Las Vegas, NV
89155-2212

*Electronic service requested

CC:FILE

DATED: this 12 day of February, 2020.

James H. Hayes
James H. Hayes # 1175077
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding "Motion for Ruling"

for Motion to correct an illegal sentence"
(Title of Document)

filed in District Court Case number C-16-315718-1

☒ 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.

James H. Hayes
Signature

2-12-20
Date

JAMES H. HAYES
Print Name

PRO PER
Title

-6-

44945, James #1195094
3800
P.O. Box 208
Indian Springs, NV
89020

128 2K

LAS VEGAS NV BOX
21 FEB 2020 PM 5:11



Clerk County District Courts
Office of the Clerk

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada

89155-1160

8910136300



LEGO
Mail

1 Hayes James #1195699

2 / In Propria Personam

3 Post Office Box 208 S.D.C.C.

4 Indian Springs, Nevada 89018

FILED

FEB 24 2020

John J. Blum
CLERK OF COURT

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7 State of Nevada
8 Plaintiff

9 v.

10 James H. Hayes
11 defendant

Case No. C-16-315718-1

Dept No. 19

Docket _____

13 **NOTICE OF MOTION**

14 YOU WILL PLEASE TAKE NOTICE, that "Motion for Ruling" for
15 Motion to Correct an Illegal Sentence

16 will come on for hearing before the above-entitled Court on the ____ d

17 at the hour of ____ o'clock ____ M. In Department ____, of said Court.

March 18, 2020
8:30 AM

18
19
20 CC:FILE

21
22 DATED: this 12 day of February, 2020

23
24 BY: James H. Hayes # 1195699

25 /In Propria Personam

26
27
28
CLERK OF THE COURT

RECEIVED
FEB 24 2020

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78590
District Court Case No. C315718

FILED

FEB 25 2020

CLERK'S CERTIFICATE

Elizabeth A. Brown
CLERK OF COURT

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

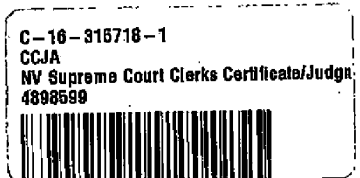
"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 14 day of January, 2020.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this February 10, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Danielle Friend
Administrative Assistant



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78590-COA

FILED

JAN 14 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

James Howard Hayes, Jr., appeals from a judgment of conviction entered pursuant to an *Alford*¹ plea of attempted grand larceny. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Hayes argues his sentence is cruel and unusual because his sentence is disproportionate to his crime. Regardless of its severity, “[a] sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.’” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).


Hayes’ sentence of 60 to 174 months in prison is within the parameters provided by the relevant statute, see NRS 207.010(1)(a), and

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

Hayes does not allege that statute is unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crime and Hayes' history of recidivism. *See Ewing v. California*, 538 U.S. 11, 29 (2003) (plurality opinion) ("In weighing the gravity of [the defendant's] offense, we must place on the scales not only his current felony, but also his long history of felony recidivism."). Therefore, Hayes' sentence does not constitute cruel and unusual punishment. Accordingly, we

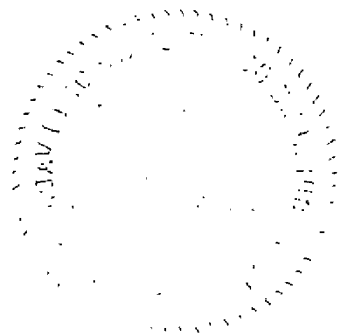
ORDER the judgment of conviction AFFIRMED.


Gibbons C.J.


Tao J.


Bulla J.

cc: Hon. William D. Kephart, District Judge
Sanft Law, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk



CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE:

February 10, 2010
Supreme Court Clerk, State of Nevada

By

Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78590
District Court Case No. C315718

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: February 10, 2020

Elizabeth A. Brown, Clerk of Court

By: Danielle Friend
Administrative Assistant

cc (without enclosures):

Hon. William D. Kephart, District Judge
Sanft Law, P.C.
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on FEB 25 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

FEB 25 2020

CLERK OF THE COURT

FILED

MAR 30 2020

CLERK OF COURT

1 Hayes, James H #1175077

2 In Propria Personam
3 Post Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF Clark

9 State of Nevada
10 Plaintiff,

11 vs.

12 James H. Hayes
13 Defendant.

Case No. C-16-315718-1

Dept. No. 19

Docket _____

16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
18 JAMES H. HAYES, in and through his proper person, hereby
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or
20 dismissing the

21 MOTION to CORRECT ILLEGAL SENTENCE

22 _____
23 ruled on the 18 day of March, 20 20.

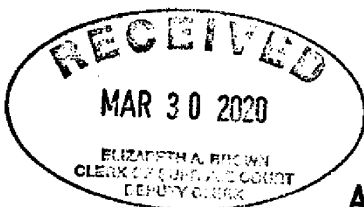
C-16-315718-1
NOASC
Notice of Appeal (criminal)
4916182



24
25 Dated this 26 day of March, 20 20.

26 Respectfully Submitted,

27 James H. Hayes



28 RECEIVED
APPEALS

APR 23 2020

CLERK OF THE COURT

James James H. 1175077
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

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

State of Nevada
Plaintiff,

vs.

James H. Hayes
Defendant.

CASE No. C-116-315218-1
DEPT.No. 19

DESIGNATION OF RECORD ON APPEAL

TO:

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this _____ day of _____, 20____.

RESPECTFULLY SUBMITTED BY:

Plaintiff/In Propria Persona

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 26
day of March, 2020 I mailed a true and correct copy of the foregoing, "Notice
of Appeal"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Supreme Court of Nevada
CLERK OF THE COURT
201 S. MORGAN ST. STE 201
CARSON CITY, NV 89401

Clerk of the Court
200 LAUREL AVE. 3RD FLOOR
LAS VEGAS, NEVADA
89133-1120

CC:FILE

DATED: this 26 day of March, 2020.

James H. Hayes
In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

Notice of
Appeal

(Title of Document)

filed in District Court Case number C-16-315718-1

☒ 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.

James N. Hayes
Signature

3-26-20
Date

JAMES N. HAYES
Print Name

PRO PER
Title

-4-

1
2
3 ■ (a) GROUND ONE: MR. HOLES (petitioner) was denied his
4 Constitutionally guaranteed right to effective
5 assistance of counsel. Federal and State Constitutional
6 rights 3rd 6th and 14th Amendment Violations:

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

8 WHEREAS, trial counsel failed to provide zealous and
9 quality representation at all stages of the criminal
10 process. Counsel's performance was deficient and representation
11 fell below the objective standard of reasonableness as
12 counsel failed to do appropriate investigation and study
13 of the case, including an analysis of controlling law
14 (NRS 174.085(a); NRS 178.522) and had counsel use due
15 diligence and investigated the facts and the law he
16 would have known that the charge of Attempt Grand
17 Larceny was barred from District Court against the
18 petitioner as NRS 174.085(a) and NRS 178.522 provides
19 the authority that made petitioner immune from
20 prosecution on charge of Attempt Grand Larceny in
21 District Court. Counsel failed to make certain that the
22 petitioner fully and completely understood the conditions
23 and limits of the plea agreement and the maximum
24 punishment and other consequences the petitioner
25 would be exposed to by entering his "Alford plea"
26 as petitioner was surprised by the habitual criminal
27 sentence. When in fact, even though petitioner signed
28

**PLEADING
CONTINUES
IN NEXT
VOLUME**