

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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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 4

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1 the guilty plea agreement he was ignorant to the potential
2 outcome as counsel had informed petitioner that he was
3 agreeing to a gross-misdemeanor with time served credit
4 and concurrent to case NO C-16-315125-1. Counsel failed
5 to file a motion to withdraw guilty plea pre-sentencing
6 and post-sentencing when sentencing was not in
7 accordance with the negotiated agreement and a
8 determination of habitual criminal was adjudicated
9 when in fact, what alleged Attempt Grand Larceny occurred
10 on or about April 1, 2013 petitioner had never served a
11 prison term or been to prison and had only one prior
12 felony conviction for a Class E felony "Attempt possession
13 of credit or debit card without cardholder's consent" as
14 Texas crime was one event for credit card abuse and
15 fraudulent use/possession of identifying information that
16 did not and does not carry a prison term mandatory
17 supervision, nor parole. Counsel failed to challenge alleged
18 breach that was founded on improbable and highly
19 suspect evidence as the Burglary charge used was
20 dismissed and the finding of probable cause was
21 misplaced as alleged victim testified under oath that
22 petitioner was not the perpetrator of alleged event and
23 he was 100% sure and further testified that alleged
24 perpetrator did not enter said room only stood in doorway
25 said "sorry" and closed door without incident so this is
26 a clear and convincing showing that no probable cause
27 existed against petitioner. Counsel failed to challenge
28 probable cause and subject matter jurisdiction for

1 THE BURGLARY CHARGE IN CASE NO C-16-315718-1 THAT HAD
2 COUNSEL CHALLENGE THE BURGLARY CHARGE WAS FILED AS THE
3 STATE'S INTENT FOR THE CHARGE OF BURGLARY OF ATTEMPT
4 GRAND LARCENY WAS DISMISSED FOLLOWING A PRELIMINARY
5 HEARING IN JUSTICE COURT LAS VEGAS TOWNSHIP ON JUNE 14,
6 2016 AND THE BURGLARY CHARGE ALSO MUST HAVE BEEN
7 DISMISSED LEAVING NO JURISDICTION FOR THE DISTRICT COURT
8 TO PROCEED WITH THE FILED INFORMATION DATED JUNE 12, 2016.
9 NOR THE REMANDED INFORMATION OF ATTEMPT GRAND LARCENY
10 FILED NOVEMBER 7, 2018. WHERE, AS HERE, COUNSEL FAILURES
11 ARE A CLEAR AND CONVINCING SHOWING OF PRONG ONE
12 OF THE TWO PRONG TEST OF STRICKLAND THAT HAS GREATLY
13 PREJUDICE PETITIONER AND THAT PETITIONER'S AFFIDAVIT
14 WAS NOT KNOWINGLY, INTELLIGENTLY, OR VOLUNTARILY ENTERED.

15 WHEREAS, COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED
16 PETITIONER TO HIS EXTREME DETRIMENT CAUSING IRREPARABLE
17 INJURY, AND IF NOT FOR COUNSEL'S UNPROFESSIONAL ERRORS
18 AND LACK OF DUE DILIGENCE OF FAILURE TO INVESTIGATE
19 THE FACTS AND THE LAW, THE RESULTS OF THE PROCEEDINGS
20 WOULD HAVE BEEN DIFFERENT. WHERE AS HERE, PETITIONER
21 WOULD NOT HAVE ENTERED AN "AFFIDAVIT" AS THE CHARGE(S)
22 OF ATTEMPT GRAND LARCENY WAS BARRED FROM DISTRICT COURT
23 FOR LACK OF JURISDICTION, LACK OF ADMISSIBLE EVIDENCE,
24 AND VIOLATION OF STATE LAW PURSUANT TO NRS 174.085(3)
25 AND NRS 178.562 AND THE BURGLARY CHARGE CASE NO.
26 C-16-315718-1 WAS FILED AS THE STATE HAD NO INTENT.

27 WHAT IN FACT NO REASONABLE JURY WOULD HAVE CONVICTED
28 PETITIONER OF ATTEMPT GRAND LARCENY NOR THE CHARGE

1 of Burglary as the state's intent for the Burglary charge
2 of larceny in the filed information on June 17, 2016
3 was dismissed following preliminary hearing for NO
4 slight or marginal evidence, NO corpus delicti, and
5 lack of admissible evidence. As counsel's failures are
6 shown by a preponderance of the evidence, the record
7 and state law. In addition, counsel failed to file a
8 Notice of appeal and failed to inform petitioner of the
9 right to appeal. Wherefore, this is a clear and convincing
10 showing of prong two of the two prong test of Strickland
11 that has greatly prejudiced petitioner and a valid
12 showing that petitioner's Afford plea to the charge
13 of Attempt Grand Larceny was not knowingly,
14 intelligently, or voluntarily entered. When in fact, the
15 petitioner stands convicted of a crime he did not commit
16 due to counsel failures. Furthermore, this is an affront
17 to justice and due process to hold petitioner to his
18 Afford plea when the conduct upon which the plea
19 was entered did not occur. Finally, for the above
20 reasons, but for counsel's errors and failures, petitioner
21 would not have entered an Afford plea and went
22 to trial on the charge of Burglary and ~~Grand Larceny~~ ^{Assault}
23 Wherefore, appellate counsel failed to provide zealous and
24 quality representation at all stages of appeal process.
25 Counsel's performance was deficient and representation
26 fell below the objective standard of reasonableness as
27 appellate counsel failed to do appropriate investigation
28 of potentially meritorious claims of error and ~~error~~

1 claims of error that are supported by facts and the
2 law and failed to assert claims that were complex,
3 unique, and issues of first impression. Counsel did
4 not thoroughly research the issues in the case and
5 set forth all viable issues in his prepared and
6 sanctioned "fast track" statement. Appellate counsel failed
7 to raise meritorious claims of failure of the state
8 to properly notice its intent to seek habitual treatment
9 at sentencing for the wobbler charge of Attempt
10 Grand Larceny. When in fact, State's Amended Notice
11 of intent to seek punishment as a habitual criminal
12 was for the charge of Burglary. Counsel failed to
13 raise the claim that District Court lacked jurisdiction
14 for the charge of Attempt Grand Larceny, when in fact,
15 jurisdiction is derived by the law and Nevada
16 State law NRS 174.085(a) and NRS 178.562 is the
17 authority that State's Amended information for the
18 charge of Attempt Grand Larceny was without subject
19 matter jurisdiction and was ~~BARRED~~ from district
20 court proceedings against petitioner. Counsel did not
21 challenge the habitual criminal adjudication pursuant
22 to NRS 207.010. When in fact, petitioner is not a
23 habitual criminal and his prior criminal ^{history} proves it
24 as petitioner had only the Texas state jail crime(s)
25 that was one event and not felonies as they did
26 not carry any prison term and not any category
27 of felony and only carries jail time and the

1 Burglary conviction was not a prior, so in essence
2 petitioner ~~was~~ first time in prison and ^{was} one prior
3 felony has been treated as a habitual criminal ~~that~~
4 is easily deemed cruel and unusual punishment
5 and violates the legislative intent of NRS 207.010.
6 In addition, petitioner was deprived of effective
7 assistance of counsel on direct appeal when district
8 court Judge William Kennerly dismissed petitioner's
9 appellate counsel on July 15, 2019. Pursuant to
10 motion to withdraw counsel that was granted as
11 District court Judge William Kennerly stated his reason
12 for granting and dismissing counsel was that
13 the Supreme Court of Nevada had issued a remittitur
14 where, as here, counsel failures are a clear and
15 convincing showing of the prejudice prong of
16 Strickland.

17 Whereas, petitioner requested many times over
18 that counsel file appeal and express to counsel on
19 several occasions his dissatisfaction with the
20 conviction and sentence and counsel failed to do
21 so that easily satisfies the deficient performance
22 of Strickland and shows the prejudice against
23 petitioner cause had counsel use ^{due} diligence
24 and raised the meritorious claims and not been
25 withdrawn as counsel prior to the perfection of
26 the appeal, petitioner appeal (direct) would have
27 been successful.

23. (b) GROUND TWO: The state violated Mr. Hayes right to Due Process as guaranteed by both the Due Process Clause of the United States Constitution and the Nevada Constitution. "Breach of guilty plea agreement on impolite evidence"

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Whereas, the breach at issue was not material nor volitional, when in fact, the court was required to hold an evidentiary hearing on the alleged breach which has resulted in dire consequences to petitioner and an additional five(5) to fourteen (and a half) (14 1/2) years in prison in violation of the bargained for stipulations that the state entered in BAD FAITH with petitioner as the agreement was unconstitutional, malicious, and a manifest injustice. Indeed, in relating the factual and procedural history of the case, the state has taken great liberties to continue the sort of narrative that has likely fueled inconsistent and unfair mass incarceration in Nevada.

Whereas, the petitioner knows the record and has tried to contextualize this actual record to reveal that an manifest injustice was done in his specific case.

Although his counsel's proffered a very unconvincing argument worthy of sanctions and a Bar complaint and is blatant ineffective assistance of counsel that has greatly prejudice petitioner to his extreme detriment causing petitioner irreparable injury.

Whereas, in other words, the state's claim of breach that petitioner was found to have probable cause for

1 a New Burglary charge is absurd when the alleged victim
2 of alleged Burglary testified under oath facing the penalty
3 of perjury that he was 100% sure petitioner was not the
4 perpetrator of the ispe divit crime and that this alleged
5 charge crime was without probable cause against petitioner
6 as the Justice court Judge ruling of probable cause was
7 misplaced and essentially the charge was dismissed in the
8 first district court appearance. Furthermore, the guilty plea
9 agreement in this case did not explicitly provide for the
10 abdication of stipulation for a mere run into the law
11 for a allege crime he had no part of, let alone for a
12 charge that was dismissed to further solidify his non-
13 participation in the ispe divit Burglary charge lodged
14 against him without due process considerations.

15 Whereas, petitioner's case of "Attempt Grand Larceny"
16 is the one ostensibly before us in this petition which
17 allegedly occurred on April 14, 2013 and was formally
18 charged by way of Criminal Complaint on July 23, 2013
19 that was dismissed following a preliminary hearing in
20 Justice court, Las Vegas township on June 14, 2016 for
21 lack of admissible evidence, no corpus delicti, no slight
22 or marginal evidence to proceed to district court.
23 leaving the District court 8th Judicial District with no
24 subject matter jurisdiction for the charge of Attempt
25 Grand Larceny as it was BARRED from subsequent
26 prosecution against petitioner as mandated by state
27 law pursuant to NRS 174.085(3) and NRS 178.562

1 Making the state's amended information for Attempt Grand
2 Larceny unconstitutional, in BAD FAITH, and fraud upon
3 the court by not first establishing jurisdiction before
4 prosecution that has prejudice petitioner to his extreme
5 detriment causing petitioner irreparable injury.

6 Whereas the unconstitutional guilty plea agreement
7 at issue here for the "Noble" charge of Attempt Grand
8 Larceny indicated that there was a stipulated sentence
9 of probation with the only condition to be 30 days in
10 the Clark County Detention Center with 30 days credit
11 for time served with no suspended prison term and
12 no time period of probation to be served that solidifies
13 petitioner's position that the agreement was for gross
14 misdemeanor treatment and further stipulated that
15 it was to run concurrently to case NO C-116-315125-1.
16 This stipulation is unique to this case and do not contain
17 any boilerplate language and do not explicitly rely upon
18 or even reference the loss of stipulation in their language.

19 Where as here, indeed, the boilerplate language
20 regarding "Magistrate to find probable cause" does not
21 explicitly refer to loss of stipulation, but only that "the
22 state will have the unqualified right to argue for any
23 legal sentence and term of confinement allowable
24 for the crime to which I am pleading guilty, including
25 the use of any prior convictions I may have to
26 increase my sentence as an habitual criminal to five
27 to twenty (20) years. which in fact, there could not

1 be a legal sentence in the instant offense as the charge
2 of Attempt Grand Larceny was barred from subsequent
3 prosecution against petitioner and the District Court had
4 no subject matter jurisdiction for instant offense Attempt
5 Grand Larceny. In addition, the 2016 Burglary charge used
6 in adjudication was not a prior conviction as the instant
7 offense occurred in 2013.

8 Where, as here, it is also undisputed that the ~~voluntary~~ ^{incomplete}
9 language does not explicitly refer to a right to argue for
10 consecutive sentence. It should also be noted that the
11 ~~voluntary~~ ^{incomplete} language of the guilty plea agreement does not
12 refer in any way to what would constitute (or not constitute)
13 an exculpatory ruling of probable cause by magistrate or
14 make any reference to any right for a "due process" to
15 challenge an overruling of a material breach. Furthermore,
16 petitioner received no consideration whatsoever in exchange
17 for his "Alford plea" to a crime that petitioner did not commit.

1 23. (c) GROUND THREE: State violated Mr. Hayes Right to "Due
2 Process" when it failed to adhere to State law (NRS
3 174.085(3) and NRS 178.522 making conviction
4 invalid and unconstitutional)

5 23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law) Whereas,
6 petitioner has explicitly reserved his right not to be
7 compelled to perform under any contract or agreement
8 that I have not entered into knowingly, voluntarily,
9 and intelligently and that my valid reservation of
10 Rights has preserved all my Rights and prevented
11 the loss of any such Rights by application of the
12 concepts of waiver or estoppel as in the instant
13 case.

14 Whereas, it is unconscionable for the state to
15 attempt to insulate a conviction from collateral
16 constitutional review by conditioning its willingness
17 to enter into plea negotiations on petitioner's
18 "waiver of the Rights" to pursue post-conviction
19 remedies.

20 Where, as here, petitioner is entitled to habeas
21 corpus if there is no material dispute as to a mistake
22 of fact relating to his conviction (7.R.C.P 32.6))
23 and this court must set aside the judgment of
24 conviction after sentence in order to correct
25 this manifest injustice. As here, both parties agree
26 to the mistake of fact that the charge of Attempt
27 Grand Larceny was dismissed following preliminary

1 hearing by Justice Court Magistrate for lack of admissible
2 evidence, no corpus delicti, no slight or marginal evidence
3 to be further prosecuted in district court, and this is
4 clear and convincing showing of dismissal of an
5 action.

6 Whereas, the state did violate NRS 178.562(4) by bringing
7 another prosecution following dismissal of an action to
8 constitute "another prosecution" without another pending
9 vehicle for the prosecution of the charge of Attempt Grand
10 Larceny that runs afoul of the provisions of NRS 178.562(4),
11 and BARS further prosecution of the petitioner on that
12 charge. When in fact the state held the preliminary hearing
13 June 14, 2016 pursuant to the filed criminal complaint
14 as the vehicle for prosecution of the instant offense
15 and no other vehicle was filed for the instant offense
16 Attempt Grand Larceny until November 7, 2018 by the
17 way of an amended information ~~that~~ and there is
18 no colorable argument that would allow them to over-
19 come the violation of state law NRS 178.562.

20 Where as here, the state's amended information
21 filed in open court November 7, 2018 was a subsequent
22 prosecution for the same offense in the former "Attempt
23 Grand Larceny" that was dismissed following preliminary
24 hearing by magistrate without another pending vehicle
25 for prosecution leaving the instant offense barred
26 from all district court proceedings against petitioner
27 and this jurisprudence set forth is perfectly clear.

1 and unambiguous.

2 WHEREAS, the state did violate NRS 174.085(a) when the petitioner
3 was once placed in jeopardy upon the criminal complaint and
4 proceeded to the preliminary hearing and following the preliminary
5 hearing the charge of Attempt grand larceny was dismissed by
6 magistrate, that is a bar to another indictment, information or
7 complaint for the offense charged in the former. Thus the state
8 triggered the protections of NRS 174.085 (a) to bar the subsequent
9 prosecution of the instant offense Attempt grand larceny against
10 the petitioner in all district court proceedings ~~which the state~~
11 ~~cannot take the subsequent line of prosecution~~

12 WHERE, as here, there is no material dispute of fact that
13 the charge in the instant offense Attempt grand larceny was
14 dismissed following the preliminary examination and ~~BARRED~~
15 from any subsequent prosecution against petitioner in
16 district court leaving no subject matter jurisdiction for
17 prosecution in district court. In addition, the state may not
18 convict petitioner no matter how validly his factual guilt
19 is establish without subject matter jurisdiction and the
20 court that rendered the judgment had no subject matter
21 jurisdiction and left the court with no power to enter
22 the conviction or impose the sentence.

23 WHEREAS, subject matter jurisdiction is not waivable
24 as the state has control as jurisdiction is derived from
25 the law and it neither can be waived nor conferred
26 by consent of the petitioner. As there is no colorable argu-
27 ment to overcome the lack of subject matter jurisdiction.

1 23. (d) GROUND FOUR: Violation of Mr. Jones right to Due
2 Process Material mistakes of fact regarding criminal

3 record in PSI that work to his extreme detriment.
4

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

6 Inheres, the court made material mistakes of fact
7 about petitioner's criminal record, as the petitioner's
8 PSI had several material facts in error that
9 work to his extreme detriment.

10 Where, as here, petitioner and his counsel
11 objected to the mistakes at sentencing hearing
12 and sentencing judge continued the proceedings
13 without allowing the corrections to be made. When,
14 in fact, if the judge would have allowed the corrections
15 to be completed in the instant case upon petitioner's
16 objections petitioner's raw score, social score, and
17 the Department of Public Safety Division of parole
18 and probation recommendation would have been
19 astronomically different and would have showed
20 that petitioner had never been to prison so there
21 would not have been any habitual offender
22 recommendation for the instant offense of Attempt
23 Grand Larceny. As the instant offense occurred
24 in the year 2013 and at that time petitioner
25 had one felony conviction not four as the PSI
26 read, no prison incarcerations not one as the
27 PSI read; No current supervisor history not one

1 as the PST read; the instant offense should be dated
2 April 9, 2013. Not April 2, 2016 as the PST reads;
3 Burglary conviction case NO C-116-315125-1 should NOT
4 be included anywhere on petitioner's PST for the instant
5 offense as it occurred sum three years later on April
6 2, 2016; Finally the Texas conviction(s) case NO(s)
7 1083285 and 1083286 was ONE event not two as it
8 reads on PST. Not two felony convictions but ONE
9 state jail conviction for Credit Card Abuse and ~~retained~~
10 use/possession of identifying information. Whereas, the
11 numerous material mistakes of facts about petitioner's
12 criminal record that have worked to his extreme detriment
13 has rise to a manifest injustice and due process
14 violation that cannot stand uncorrected. Furthermore,
15 the Texas crime(s) would not constitute a felony under
16 Nevada law.

23. (d) GROUND ~~ONE~~ ^{FIVE}: State Violated Mr. Hughes Right to "Due Process" as guaranteed by both the "DUE PROCESS CLAUSE of the United States Constitution and the Nevada Constitution: "DUE PROCESS VIOLATION guilty plea was NOT equally voluntary, knowing and intelligent."
28

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): ~~Whereas~~,
waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences. As here, petitioner's "waiver of his fundamental rights" was not knowingly and intelligently made as the court failed to adequately inform petitioner of the full consequences of his Atford plea that has created a manifest injustice, because the trial court did not straightforwardly explain consequences of petitioner's breach of the agreement while awaiting sentencing that the state would unilaterally impose an enhanced sentence as the ambiguous language was ambiguous and had imprecisions that did not explicitly state loss of stipulation. Most significantly, petitioner did not intelligently and knowingly waive his constitutional rights with full knowledge of the consequences. Nor was he told that his Atford plea would stand regardless of whether he was re-arrested for a Burglary charge that was dismissed after alleged victim testified at preliminary hearing under oath facing the penalty of perjury that petitioner was not the perpetrator of alleged event and 100% sure of it. So petitioner has raised sufficient doubt as whether his

1 Alford plea was ever accepted, and even if it was, whether
2 he was fully and fairly apprised of its consequences.

3 Whereupon, the state interpreted the court's statement to
4 mean "do you understand that if you breach any of
5 the conditions in guilty plea agreement, this court will
6 sentence you". Yet, that is not what the trial court said.
7 When it is surely equally plausible explanation of the
8 plea colloquy that petitioner would -- were here to breach
9 the agreement -- face trial on the Burglary charge. In
10 particular, it is impossible to conclude that petitioner
11 truly understood that he was waiving his right to be
12 tried on the original charge of Burglary, and agreed
13 instead that were he arrested the state trial court could
14 unilaterally impose a habitual criminal sentence upon him.
15 So it is without question that whatever waiver petitioner
16 agreed to was without adequate knowledge of the
17 consequences flowing from his breach of the plea agreement.
18 If in fact there was a material breach that in the
19 instant case was in question as the facts of the alleged
20 breach was based on compelling and highly suspect
21 evidence of an alleged Burglary charge that was
22 dismissed after alleged victim testified that petitioner
23 was not the perpetrator of alleged event.

"No factual statements on the record which
AFFIDAVIT OF: would constitute an admission of "Guilt"

STATE OF NEVADA)

COUNTY OF CLARK)

ss: CASE No: A-19-793315
DEPT: 19

TO WHOM IT MAY CONCERN:

I, James N. Hayes the undersigned, do hereby swear that

all statements, facts and events within my foregoing Affidavit are
true and correct of my own knowledge, information and belief, and

as to those, I believe them to be True and Correct. Signed under the

penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state

the following: Whereas, In Alford, the court held a plea contain

a protestation of innocence was constitutionally acceptable

when "a defendant intelligently concludes that his interests

require entry of guilty plea and the record before the judge

contains strong evidence of guilt" (400 U.S. at 37). In the instant

case, there was, of course, no evidence of actual guilt of the crime

of Attempted Grand Larceny, as the sentencing judge and the State to

Mr. Hayes had no involvement in such a crime. Moreover, when a pre

examination showed no criminal act of Attempted Grand Larceny,

it is clear that no evidence of actual guilt existed on the under

lying criminal conduct that may have justified accepting Mr. Hayes

plea, therefore Mr. Hayes did not waive his right to complain of the

acceptance of an unconstitutional plea. Mr. Hayes neither made free

statements regarding an admission to the Attempted Grand Larceny

charge nor admitted facts constituting the elements of Attempted Grand

Larceny. So Mr. Hayes did not understand the elements of the crime that he

pleaded to.

EXECUTED At: Indian Springs, Nevada, this 1st day of March

2020.

BY:

James N. Hayes
Post Office Box-203 (SDCC)
Indian Springs, Nevada 89070
Affiant, In Propria Personam:

Alvarez, J # 1175097
JBC
P.O. Box 208
Indian Springs, Nevada
89070

Supreme Court of Nevada
"Office of the clerk"
201 South Carson Street, Suite 201
Carson City, Nevada
89701

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US POSTAGE
ZIP 89101
01E12650516



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1 **ORDER**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 PARKER BROOKS
6 Deputy District Attorney
7 Nevada Bar #11927
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, aka,
14 James Howard Hayes, Jr., #2796708
15 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XIX

16 **ORDER DENYING DEFENDANT'S PRO PER MOTION FOR RULING ON**
17 **MOTION TO CORRECT AN ILLEGAL SENTENCE**

18 DATE OF HEARING: March 18, 2020

19 TIME OF HEARING: 8:30 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 18th day of March, 2020, the Defendant not being present, represented in PROPER
22 PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney,
23 through PARKER BROOKS, Deputy District Attorney, and the Court having heard without
24 argument, based on the pleadings and good cause appearing therefor,

25 ///

26 ///

27 ///

28 ///

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(DENY_ILL_SENT)-001.DOCX

1 ///

2 Court FINDS, Defendant's claims are similar to those filed in the appeal; however,
3 Defendant fails to provide any statutory basis and/or authority to support the motion;
4 Defendant's additional claims are substantive and should have been raised on appeal;
5 therefore, IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Ruling on
6 Motion to Correct an Illegal Sentence, shall be, and it is DENIED.

7 DATED this 6th day of April, 2020.

8 Will Kephart
9 DISTRICT JUDGE

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

12
13 BY

Parker Brooks
14 PARKER BROOKS
15 Deputy District Attorney
Nevada Bar #11927

16
17
18 CERTIFICATE OF SERVICE

19 I certify that on the 7th day of April, 2020, I mailed a copy of the foregoing
20 Order to:

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

24
25 BY

Secretary for the District Attorney's Office



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 208
24 Indian Springs, NV 89070

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: Misc. Order

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 73436, 75173, 77151, 78590, 78622, 80222

12. Child Custody or Visitation: N/A

Dated This 23 day of April 2020.

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

Steven D. Grierson

1 James H. Hayes # 1175072
2 / In Propria Personam
3 Post Office Box 208 S.D.C.C.
4 Indian Springs, Nevada 89018

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. 19

Docket _____

13
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 1 day of JUNE, 2020
18 at the hour of 8:30 A o'clock A M. In Department _____, of said Court.

19
20 CC-FILE

21
22 DATED: this 21 day of March, 2020.

23
24 BY: James H. Hayes # 1175072
25 / In Propria Personam
26
27
28

Hayes, James H. ID NO. 1175077

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

State of Nevada
(Plaintiff)

v.

James H. Hayes
(Defendant)

CASE NO.: C-16-315718-1

DEPT. NO.: 19

DOCKET:

"Rule 60b Motion for Relief from the March 18, 2020
Order which denied Mr. Hayes motion to 'Correct an
Illegal Sentence'"

COMES NOW, ~~defendant~~ James H. Hayes, herein above respectfully
moves this Honorable Court for an granting of "Rule 60b motions" to render
a decision on the merits of Mr. Hayes motion to
"Correct an Illegal Sentence"

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

DATED: this 21 day of March, 2020

BY: James H. Hayes
JAMES H. HAYES # 1175077
Defendant In Proper Personam

RECEIVED
APR 02 2020
CLERK OF THE COURT

Points And Authorities
STATEMENT OF THE CASE

ON December 16, 2019, defendant, JAMES J. HOPES filed the "Motion to Correct an Illegal Sentence" in District Court Clark County, Nevada.

ON January 6, 2020, defendant filed an affidavit of "Granting Motion to Correct an Illegal Sentence of the Wrongfully convicted". In addition, defendant received the state's opposition to defendant's motion to "correct an illegal sentence" that was filed December 30, 2019.

ON January 6, 2020, court ordered matter off calendar as defendant had a pending appeal which divests the court of jurisdiction.

ON February 24, 2020, defendant filed a "Motion for Ruling" for "Motion to Correct an Illegal Sentence".

ON March 18, 2020 a hearing was held on defendant's "Motion to Correct an Illegal" that this said court DENIED...

ARGUMENT:

I. Defendant's substantive rights claims are NOT WAIVED or procedurally barred.

WHEREAS, NRS 126.555 states that a "Motion to correct illegal sentence" is appropriate vehicle for raising claim that sentence is facially illegal when the court lacks subject-matter jurisdiction at any

1 time.

2 Whereas an "illegal sentence" for purposes of a
3 statute identical to NRS 174.555 was defined by the
4 District of Columbia Court of Appeals as one at
5 variance with the controlling sentencing statute,
6 or "illegal" in the sense that the court goes beyond
7 its authority by acting without subject-matter
8 jurisdiction, and procedural defaults do not
9 apply.

10 Whereas, Jurisdiction of the subject matter is
11 derived from the LAW and it ~~can~~ Neither can be
12 waived nor conferred by consent of accused (Burris
13 v. Superior Court) 43 Cal. App. 3d 530. Arguments attacking
14 a court's subject matter jurisdiction can neither
15 be waived or forfeited (Wisconsin Dept. of Corrections
16 v. Schecht) 118 S.Ct 2047

17 Where, as here, NRS 174.085(3); NRS 178.52(2),
18 and NRS 178.391 provides the authority that
19 defendant is immune from prosecution for the
20 charge of Attempt Grand Larceny in District Court
21 Clark County, Nevada. So there is no colorable
22 argument that the state can make to overcome the
23 fact that the District Court Clark County, Nevada
24 did not have subject matter jurisdiction and that
25 the charge of Attempt Grand Larceny was barred
26 against the defendant. What in fact any argument
27 by the state would be belied and repelled by the

ADDITIONAL FACTS OF THE CASE:

1 record and state law of Nevada.

2 WHEREAS, the state may not convict defendant
3 no matter how validly his factual guilt is established
4 without subject matter jurisdiction and the guilty
5 plea did not waive or bar the challenge (MAYNE)
6 423 N.S. 2d 163. If the court that rendered the
7 judgment lack jurisdiction there is a jurisdictional
8 defect (RULE 11 FRCP). A guilty plea is nothing without
9 court having subject matter jurisdiction (IN RE
10 ALEXANDER DICKSON) 133 P. 393. A guilty plea does not
11 waive substantive rights (GIESE V. CHIEF OF POLICE)
12 489 P. 2d 1163.

13 WHEREAS, as here, by defendant entering a guilty
14 plea agreement, he did not waive any prior constitutional
15 defects, IN THIS SPECIFIC CASE defendant entered a
16 Alford plea by doing this to a charge of Attempt Grand
17 Larceny that this said court District Court Clark County,
18 Nevada had no subject matter jurisdiction for operation
19 to deprive defendant of DUE PROCESS OF LAW and
20 judged on its face the charge is ONE which the state
21 may not constitutionally prosecute defendant.

22 II. The state has committed FRAUD

23 WHEREAS, as here, the state has committed fraud
24 upon the court by its failure to establish that
25 jurisdiction exists over defendant for the instant
26 charge of Attempt Grand Larceny and its unconstitutional
27

1 guilty plea agreement that is nothing without
2 jurisdiction. When in fact, the state opt to act in
3 a field where its actions has significant discretionary
4 elements, it must nonetheless act in accord with the
5 dictates of the U.S. constitution, Nevada constitution,
6 and the laws of the state of Nevada and the state's
7 failures have cause irreparable damage to defendant
8 as the evidence was false, and the state and the
9 convicting judge know that the evidence was false
10 as the instant charge Attempt Grand Larceny was
11 dismissed at conclusion of preliminary examination
12 by magistrate for lack of admissible evidence, no
13 corpus delicti, no slight or marginal evidence that
14 defendant committed the crime of Attempt Grand Larceny.
15 So there was, of course, no evidence of actual guilt of
16 the crime of Attempt Grand Larceny, and the sentencing
17 judge and the state know defendant had no
18 ~~criminal~~ ~~any~~ involvement in such a crime and it is
19 clear that no evidence of actual guilt existed on the
20 underlying criminal conduct of defendant. In addition,
21 defendant neither made factual statements regarding
22 an admission to the Attempt Grand Larceny charge
23 nor admitted facts constituting the elements of
24 Attempt Grand Larceny. So in essence, defendant's
25 sentence was based on speculation, not based on
26 the acts he committed leaving no factual basis for
27 the plea entered by defendant.

1 CONCLUSION:

2
3 that my explicit reservation of Rights has preserved
4 all my Rights and prevented the loss of any such
5 Rights by application of the concepts of waiver
6 or estoppel. So I pray upon this court to render
7 a decision on the merits of Mr. Hayes' motion
8 to "correct an illegal sentence".

9 For the foregoing reasons, the defendant
10 respectfully requests that this court grant defendant
11 James H. Hayes "Rule 60b Motion" for relief from the
12 March 18, 2020 order which denied Mr. Hayes' motion
13 to "correct an illegal sentence" in its entirety.

14 Respectfully submitted
15 James H. Hayes #1125899
16 JDCG
17 P.O. Box 208
18 Indian Springs, NV
19 89070
20
21
22
23
24
25
26
27

1 AFFIDAVIT OF: Substantive claims Not waived nor
2 STATE OF NEVADA) BARTED..
3 COUNTY OF CLARK) ss:

4 TO WHOM IT MAY CONCERN:

5 I, James H. Hayes the undersigned, do hereby swear that
6 all statements, facts and events within my foregoing Affidavit are
7 true and correct of my own knowledge, information and belief, and
8 as to those, I believe them to be True and Correct. Signed under the
9 penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state
10 the following:

11 that, James H. Hayes is the affiant in this affidavit
12 and is currently incarcerated at Southern Desert Correctional
13 center. (see the attach)
14
15
16
17
18
19
20
21
22
23
24

25 FURTHER YOUR AFFIANT SAYETH NAUGHT.

26 EXECUTED At: Indian Springs, Nevada, this 29 day of March

27 2020.

28 BY: James H. Hayes
James H. Hayes # 1195272
Post Office Box-203 (SDCC)
Indian Springs, Nevada 89070..
Affiant, In Propria Personam:

Argument:

I. Petitioner substantive claims are NOT procedurally barred.

Whereas, subject matter jurisdiction is not waivable and can be raised for the first time on appeal. (Colwell v. State) 118 N.W. 807. Jurisdiction of the subject matter is derived from the LAN and 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 (Wisconsin Dept. of Corrections v. Schecht) 118 S.Ct. 2047. The state may not convict petitioner no matter how validly his factual guilt is established without subject matter jurisdiction and the guilty plea did not bar the challenge. (Menna) 423 U.S. at 63. Rule 11 FRCP if the court that rendered the judgment lack jurisdiction there is a jurisdictional defect. A guilty plea does not bar a claim on appeal where on the face of the record the court had no power to enter the conviction or impose the sentence. A guilty plea is nothing without court having subject matter jurisdiction (In Re Alexander Dickson) 133 P. 393. A guilty plea does not waive substantive rights and can be raised in a writ of habeas corpus (Giese v. Chief of Police) 489 P.2d 1163.

1 Here, State does not challenge the charge of
2 Attempt Grand Larceny was dismissed at the
3 conclusion of Preliminary Examination on or about
4 the 14th day of June 2016 in Justice Court Dept. 3
5 by Magistrate for lack of evidence, no corpus
6 defect, slight nor marginal evidence to bound over
7 said charge to District Court. Leaving no material
8 dispute as to a mistake of fact relating to petitioner's
9 conviction by both parties.

10 Where, as here, the state did violate NRS 178.562(1)
11 by bringing another prosecution following dismissal
12 of an action to constitute "another prosecution" with-
13 out another pending vehicle for the prosecution of
14 the charge of Attempt Grand Larceny that runs afoul
15 of the provisions of NRS 178.562(1) and BARS further
16 prosecution of the petitioner on that said charge.

17 Whereas, the state's guilty plea agreement filed
18 in open court November 7, 2018 was a subsequent
19 prosecution for the same offense Attempt Grand
20 Larceny that was dismissed at the conclusion of
21 preliminary examination by magistrate without
22 another pending vehicle for prosecution nor grand
23 jury indictment, leaving the charge barred from all
24 district court proceedings against petitioner and this
25 jurisprudence set forth is perfectly clear and un-
26 ambiguous.

27 Where, as here, the state did violate NRS 174.083(1)

1 when the petitioner was once placed in jeopardy upon
2 the filed criminal complaint and proceeded to the
3 preliminary examination and at the conclusion of the
4 examination the charge of Attempt Grand Larceny was
5 dismissed by magistrate for lack of evidence, no corpus
6 detect, slight nor marginal evidence, that results as
7 a BAR to another indictment, information, or complaint
8 for the offense charged in the former. Thus the state
9 triggered the protections of NRS 174.055(4) to bar
10 the subsequent prosecution of the charge of Attempt
11 Grand Larceny against the petitioner in all district
12 court proceedings when the dismissal occurred before
13 the subsequent form of prosecution was obtained and
14 no good cause shown to the court or court order.

15 WHEREAS, here there is no material dispute of fact
16 that the charge of Attempt Grand Larceny was dismissed
17 against petitioner at the conclusion of the preliminary
18 examination and said charge barred from any sub-
19 sequent proceedings leaving the District Court with
20 no subject matter jurisdiction against petitioner for
21 the charge of Attempt Grand Larceny.

22 Where, as here, when the charge of Attempt Grand
23 Larceny was dismissed that the state predicted its
24 intent on for the charge of Burglary in the filed
25 criminal complaint in Justice Court, then the Burglary
26 charge was fatal and it to must have been dismissed
27 leaving no charge(s) and no jurisdiction for the District
28 court to proceed at all.

1 WHEREAS, Justice requires that when a court errs
2 in its adjudication of a petitioner it must be vacated,
3 if the guilty plea is the product of ignorance as it is
4 violative of constitutional safeguards. WHERE, AS HERE, this
5 is a proper case for correction of the error in the judg-
6 ment, because petitioner stands convicted of a crime he
7 did not commit. It's worthwhile to note that Rule 32(d)
8 of the FRCP expressly incorporates this concept to set
9 aside the judgment of conviction after sentence in order
10 "to correct manifest injustice". WHERE, AS HERE, the error
11 complained of has resulted in a miscarriage of justice
12 and has prejudiced the petitioner in respect to a
13 substantial right.

14 WHEREAS, the underlying purpose in this ~~motion~~ ^{motion} is
15 to redress an injury done to a petitioner who pleaded
16 guilty to a crime he did not commit through clear
17 and convincing evidence.

18 WHERE, AS HERE there is no colorable argument that
19 the state can make to overcome the fact that the
20 district court did not have subject matter jurisdiction
21 and that jeopardy attach to the charge of Attempt Grand
22 Larceny and any other argument would be belied and
23 repelled by the record and the law.

24 WHEREAS, the state knowingly, voluntarily, and
25 intelligently filed in open court a fraudulent, un-
26 constitutional guilty plea agreement and amended
27 information to deprive and mislead petitioner to his
28 prejudice that was malicious, unprofessional, and

grossly unethical. As to deprive the petitioner of the protections that the constitution afforded him and was designed to protect him of and deny petitioner due process of law.

Whereas, had counsel provided petitioner adequate and zealous representation he would have made aware to petitioner the law and the facts that would have led to a more favorable decision by informing petitioner of the court's lack of jurisdiction and that the charge of attempt grand larceny was barred from district court against petitioner.

Whereas the negotiations contained in the guilty plea agreement was not knowingly and voluntarily nor intelligently agreed to by the petitioner as the guilty plea agreement was not sufficiently clear and unambiguous making plea involuntary and unknowingly.

II. By entering a guilty plea agreement, petitioner did not waive any prior constitutional defects.

In this case, petitioner entered a Alford plea. By doing this to a charge of Attempt Grand Larceny that this District Court had no subject matter jurisdiction for ^{that} operated to deprive me of due process of law and judged on its face the charge is one which the state may not constitutionally prosecute petitioner.

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 29
day of March, 2020, I mailed a true and correct copy of the foregoing, "Rule 12b Motion
to Relief from the March 18, 2020 Order which denied Mr. Hayes Motion"
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 District Courts
OFFICE OF THE CLERK
201 LAKE AVE. 3RD Floor
LAS VEGAS, NV
89155-1160

Clerk County District Attorney
201 LAKE AVE
LAS VEGAS, NEVADA
89155-2212

Nevada Atty General
100 N. Carson Street
Carson City, NV
89401

CC:FILE

DATED: this 29 day of March, 2020.

James H. Hayes
#1175672
/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 Rule 60b

Motion
(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.

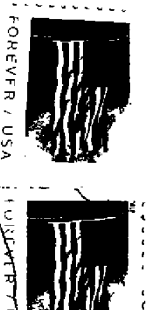
James H. Hayes
Signature

3-29-20
Date

JAMES H. HAYES
Print Name

pro per
Title

4444, James # 1175072
JBC
P.O. Box 208
Tahoe Springs, NV 89070



Clerk County District Courts
"Office of the clerk"

RECEIVED

APR - 2 2020

CLERK OF THE COURT

200 Lewis Ave, 3rd floor
Las Vegas, Nevada

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Las Vegas P&DC 89199
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Southern Desert
Correctional Center
MAR 30 2020
Outgoing Mail

Google:

UCANTCME LLC



1 **ORDR**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **PARKER BROOKS**
6 **Deputy District Attorney**
7 **Nevada Bar #11927**
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, aka,**
14 **James Howard Hayes, Jr., #2796708**
15 **Defendant.**

CASE NO: C-16-315718-1

DEPT NO: XIX

16 **ORDER DENYING DEFENDANT'S PRO PER MOTION TO CORRECT AN**
17 **ILLEGAL SENTENCE**

18 **DATE OF HEARING: March 18, 2020**
19 **TIME OF HEARING: 8:30 A.M.**

20 **THIS MATTER** having come on for hearing before the above entitled Court on the
21 18th day of March, 2020, the Defendant not being present, represented in PROPER PERSON,
22 the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through
23 PARKER BROOKS, Deputy District Attorney, and the Court having heard without argument,
24 based on the pleadings and good cause appearing therefor,

25 ///

26 ///

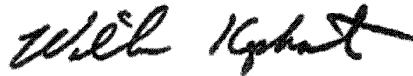
27 ///

28 ///

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1 Court FINDS, Defendant's claims are similar to those filed in the appeal; however,
2 Defendant fails to provide any statutory basis and/or authority to support the motion;
3 Defendant's additional claims are substantive and should have been raised on appeal;
4 therefore, IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Correct an
5 Illegal Sentence, shall be, and it is DENIED in its totality.

6 DATED this 12th day of May, 2020.



7
8 DISTRICT JUDGE

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

11
12 BY 

PARKER BROOKS
13 Deputy District Attorney
14 Nevada Bar #11927

15
16
17 CERTIFICATE OF SERVICE

18 I certify that on the 13th day of May, 2020, I mailed a copy of the foregoing Order to:

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

22
23 BY 

Secretary for the District Attorney's Office

24
25
26
27
28 jm/L2

DA
PP

A

FILED

JUN 01 2020

Alma L. Williams
CLERK OF COURT

HALES, James H. ID NO. 1175072

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89010

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

State of Nevada
(Plaintiff)

v.

JAMES H. HALES
(Defendant)

"HEARING REQUESTED"

CASE NO.: C-16-315718-1

DEPT. NO.: 19

DOCKET:

Hearing: 6/22/2020
Time: 10:15 AM

"MOTION TO VACATE SENTENCE" (CONVICTIONS INVALID)

COMES NOW, defendant James H. Hales, herein above respectfully
moves this Honorable Court for an granting of this Motion to Vacate
sentence and redress this fundamental miscarriage
of Justice.

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

DATED: this 30th day of April, 2020

BY: James H. Hales
JAMES H. HALES # 1175072
Defendant In Proper Personam

RECEIVED

-MAY 05 2020

CLERK OF THE COURT

Points and Authorities

Statement of the Case

On or about July 23, 2013, James H. Hayes was charged by way of Criminal Complaint with one count of Burglary (Category B Felony - NRS 205.010) and one count of Attempt Grand Larceny (Category D Felony/Gross Misdemeanor - NRS 205.220, 205.222.2, 193.330). Following a preliminary hearing in Justice Court, Las Vegas Township on June 14, 2016, the charge of Burglary was bound over to district court, and the charge of Attempt Grand Larceny was dismissed.

On November 7, 2018, pursuant to a Guilty Plea Agreement, defendant entered a plea of Guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970) to one count of Attempt Grand Larceny.

~~***~~ This court must excuse any procedural bars or waivers as failure to consider this "Motion to Vacate" would result in a fundamental miscarriage of justice as Mr. Hayes is actually innocent not mere legal insufficiency but factual innocence no more evident than Justice Court Magistrate dismissing the charge of attempt grand larceny at conclusion of preliminary examination for lack of admissible evidence, no corpus delicti, and no slight nor marginal evidence. Moreover, none of the three female occupants of said room in night of question testified or gave written statements that any of their property was taken or misplaced or that Mr. Hayes did not have permission to be in said room.

Argument

1. State violated the Equal Protection Clause of the United States Constitution Fourteenth Amendment and the Nevada Constitution Article 4 § 1.

Whereas a state may not prescribe different penalties for the same offense without violating the Equal Protection Clause of the Fourteenth Amendment, likewise, where a statute prescribes different punishments or different degrees of punishment for the same acts committed under the same circumstances by persons in like situations, the Equal Protection Clause is violated.

In the instant case, Mr. Hayes was charged with violating NRS 205.220.1, 205.222.2, 193.330 Attempt Grand Larceny, a Category D felony. Under the statutory scheme, however, Mr. Hayes could also have been charged with a gross-misdemeanor that requires proof of essentially the same elements.

Mr. Hayes contends the aforementioned statutes require essentially the same elements of proof, thereby giving the court and the district attorney unbridled discretion to prosecute the crime as a gross-misdemeanor or felony. Here, the statutes in question mandate different punishments for what appear to be the same act. The penalty contained in felony treatment imposes a prison term of one to four years with the possibility of a fine not to exceed \$5,000.00 and gross-misdemeanor treatment imposes up to 30 day in County Jail and a fine not to exceed \$2,000.00. Here, Mr. Hayes agreed to probation

1 with one condition of probation being 30 days in the Clark
2 County Jail with 30 days time served credit. Nonetheless,
3 Mr. Hayes was charged under the felony treatment of the
4 statute rather than the misdemeanor treatment. When the
5 elements contained in the statute(s) does not establish
6 an intelligent standard for distinguishing the conduct
7 proscribed by the statute(s).

8 WHEREAS, therefore that insofar as the statute(s) in
9 questions permitted defendant to be incarcerated for either
10 a gross-misdemeanor or for a felony, in the discretion of
11 the Judge or prosecutor, it violates the Equal protection
12 clause of the fourth Amendment, so the statute and
13 conviction must be vacated. so as to give the Judge or
14 District attorney discretion whether to prosecute under the
15 statute as a felony or a gross-misdemeanor for the same act.
16 Such a provision in law has been held unconstitutional.
17 This statute is constitutionally infirm as it allows arbitrary
18 law enforcement which cannot be controverted.

19 HERE, Mr. Hayes prays, this court will not be persuaded
20 by this grossly incorrect applications of law or facts to law,
21 as it is the prosecutor's duty to refrain from improper methods
22 calculated to produce a wrongful conviction. When the
23 prosecutor's interest in a criminal prosecution is not that
24 it shall win a case, but that justice shall be done. (Nevada
25 Rules of Professional Responsibility 3.3)

26 II. Mr. Hayes had his 6th Amendment right of the United
27 States constitution violated "Right to effective assistance of
28 counsel" 2 federal and state constitutional rights

1 whereas counsel failed to provide zealous and quality
2 representation what he advised and coaxed Mr. Hayes
3 to plead guilty to a charge that he did not commit. As
4 counsel was fully aware that the instant charge
5 attempt grand larceny was dismissed by Justice
6 court magistrate at the conclusion of preliminary
7 hearing for lack of admissible evidence, no corpus
8 delicti and no slight nor marginal evidence. Here,
9 counsel acted unreasonably, thereby inducing Mr. Hayes
10 to plead to crime not committed predicated on the
11 promise of a time ~~credit~~ credit served sentence for
12 a gross-misdemeanor and no period of imprisonment
13 to be served. thereby, releasing Mr. Hayes from being
14 subjected to embarrassment, expense and ordeal and
15 compelling him to live in a continuing state of anxiety
16 and insecurity as well as enhancing the possibility that
17 even though innocent he may be found guilty. Furthermore,
18 counsel failed to advise Mr. Hayes of the consequences
19 of accepting plea offer by not straightforwardly advising
20 Mr. Hayes that the state trial court could unilaterally
21 impose a habitual criminal sentence upon him when
22 his past criminal conduct, though reprehensible, simply
23 does not warrant the harsh sanctions when Mr. Hayes
24 only had one prior felony (non-violent) conviction and
25 never been to prison when the alleged instant offense
26 occurred.

27 III. Incorrect application of law or facts to law

1 that was so fundamental as to make the entire
2 proceeding invalid.

3 Whereas the state violated state law NRS 178.562(1)
4 by bringing the instant offense following dismissal of the
5 offense at the conclusion of preliminary examination
6 to constitute "another prosecution" without another
7 pending vehicle for the prosecution of the instant
8 offense attempt grand larceny that runs afoul of the
9 provisions of NRS 178.562(1) and BARS further prosecution
10 of Mr. Hayes on the charge of attempt grand larceny.

11 Whereas, state violated NRS 174.085(3) when Mr.
12 Hayes was placed in jeopardy upon the criminal
13 complaint and at conclusion of preliminary examination
14 the charge of attempt grand larceny was dismissed
15 by magistrate that is a BAR to another indictment,
16 information or complaint for the charge in the former
17 attempt grand larceny. Thus the state triggered the
18 protections of NRS 174.085(3) to bar the subsequent
19 prosecution of the instant offense attempt grand larceny
20 against Mr. Hayes in all district court proceedings.
21 Here this court must reject the federal standard and
22 articulate the state standard under which jeopardy
23 attached and redress this fundamental miscarriage
24 of justice, as this conviction and sentence is
25 invalid.

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hines, hereby certify, pursuant to NRCP 5(b), that on this 30th
day of April, 2020 I mailed a true and correct copy of the foregoing, "Motion
to vacate sentence (conviction invalid)"
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. Court
Office of the Clerk
205 LEWIS AVE. 3rd FLOOR
LAS VEGAS, NV
89135-1160

Clark County Dist. Attorney
205 LEWIS AVE
LAS VEGAS, NV
89135-2212

CC:FILE

DATED: this 30th day of April, 2020.

James H. Hines
1195072
/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 to

VACATE SENTENCE (CONVICTION INVALID)
(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

4-30-20
Date

JAMES H. HAYES
Print Name

PRO PER
Title

-9-

PA
PD

1 Hayes, James H # 1175029
2 / In Propria Personam
3 Post Office Box 208 S.D.C.C.
4 Indian Springs, Nevada 89018

FILED
JUN 01 2020
Alfred J. Williams
CLERK OF COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8
9 State of Nevada
10 v. (Plaintiff)
11 James H. Hayes
12 (Defendant)

Case No. C-16-315918-1
Dept No. 19
Docket

Hearing: 6/22/2020
Time: 10:15 AM

13
14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that

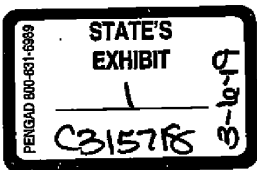
16
17 will come on for hearing before the above-entitled Court on the ____ day of _____, 20____,
18 at the hour of ____ o'clock ____ M. In Department ____, of said Court.

19
20 CC:FILE

21
22 DATED: this 30th day of April, 2020.

23
24 BY: *James H. Hayes*
25 James H. Hayes #1175029
26 /In Propria Personam

DOCUMENTARY EXHIBITS





CASE No. 1083786
INCIDENT NO./TRN: 903747201X-A002

THE STATE OF TEXAS

V.

JAMES HAYES

STATE ID No.:TX04418157

§
§
§
§
§
§
§

IN THE 185TH DISTRICT

COURT

HARRIS COUNTY, TEXAS

p2

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. SUSAN BROWN	Date Judgment Entered:	3/2/2007
Attorney for State:	K. TAYLOR	Attorney for Defendant:	A. LANNIE
<u>Offense for which Defendant Convicted:</u>			
FRAUDULENT USE/POSSESSION OF IDENTIFYING INFORMATION			
<u>Charging Instrument:</u>		<u>Statute for Offense:</u>	
INDICTMENT		N/A	
<u>Date of Offense:</u>			
9/7/2006			
<u>Degree of Offense:</u>		<u>Plea to Offense:</u>	
STATE JAIL FELONY		NOT GUILTY	
<u>Verdict of Jury:</u>		<u>Findings on Deadly Weapon:</u>	
GUILTY		N/A	
Plea to 1 st Enhancement Paragraph:	N/A	Plea to 2 nd Enhancement/Habitual Paragraph:	N/A
Findings on 1 st Enhancement Paragraph:	N/A	Findings on 2 nd Enhancement/Habitual Paragraph:	N/A
<u>Punished Assessed by:</u>	<u>Date Sentence Imposed:</u>	<u>Date Sentence to Commence:</u>	
JURY	3/2/2007	3/2/2007	
<u>Punishment and Place of Confinement:</u>	2 YEARS STATE JAIL DIVISION, TDCJ		

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

Fine: \$ 10,000.00 Court Costs: \$ 271.20 Restitution: \$ N/A Restitution Payable to: ☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From 9/8/2006 to 9/9/2006 From 2/14/2007 to 3/2/2007 From to

From to From to From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Harris County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

Hayes
1083786

Punishment Assessed by Jury / Court / No election (select one)

- ☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.
- ☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.
- ☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

- ☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, State Jail Division, TDCJ. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the Harris County District Clerk's office. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of Harris County, Texas on the date the sentence is to commence. Defendant shall be confined in the Harris County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the Harris County District Clerk's office. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the Office of the Harris County . Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

- ☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.
- ☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Signed and entered on March 2, 2007

X S. Brown
HON. SUSAN BROWN
JUDGE PRESIDING

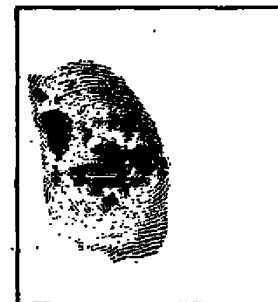
Ntc Appeal Filed: MAR 02 2007 Mandate Rec'd: _____

After Mandate Received, Sentence to Begin Date is: _____

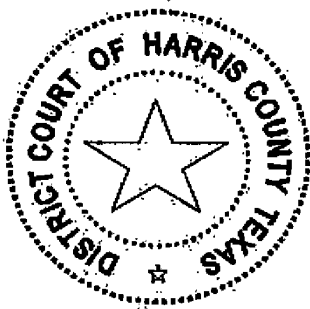
Def. Received on 03/02/07 at 1155 AM PM

By: G. Blahut #1638 Deputy Sheriff of Harris County

Clerk: chaves
1/4/09
LCBT=CM SW



Right Thumbprint



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this February 22, 2019

Certified Document Number: 27034063 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com



778

ORIGINAL

FILED

FEB 16 2012

John J. Blum
CLERK OF COURT

1 AJOC
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 JAMES HOWARD HAYES, JR.,
12 #2796708

13 Defendant.

Case No: C270308-1

Dept No: XX

C-11-270308-1
AJOC
Amended Judgment of Conviction
1772473



14 AMENDED JUDGMENT OF CONVICTION
15 (PLEA OF GUILTY)

16 The Defendant previously appeared before the Court with counsel and entered a plea
17 of guilty to the crime(s) of ATTEMPT POSSESSION OF CREDIT OR DEBIT CARD
18 WITHOUT CARDHOLDER'S CONSENT (Category E Felony/Gross Misdemeanor), in
19 violation of NRS 193.330, 205.690; thereafter, on the 23rd day of August, 2011, the
20 Defendant was present in court for sentencing with his counsel, DIANE DICKSON, Deputy
21 Public Defender, and good cause appearing,

22 THE DEFENDANT IS HEREBY ADJUDGED guilty of said Felony offense(s) and,
23 in addition to the \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis fee
24 including submission to testing to determine genetic markers, the Defendant is sentenced as
25 follows: to a MINIMUM of NINETEEN (19) MONTHS and a MAXIMUM of FORTY-
26 EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC); SUSPENDED;

27 ///

RECEIVED

FEB 07 2012

CLERK OF THE COURT

RECEIVED

FEB 13 2012

DEPT. 20

PAWPDOCSJUDG02302392302.doc

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1 placed on PROBATION for an indeterminate period not to exceed FIVE (5) YEARS.

2 CONDITIONS:

- 3 1. Abide by any curfew imposed by probation officer.
- 4 2. No contact whatsoever with the named victim in this case.
- 5 3. Enter and complete any evaluations and/or counseling deemed necessary.
- 6 4. Search: person, residence, vehicle, and/or any area in his possession, custody, and/or
- 7 control for any controlled substances, contraband, and/or financial information specifically
- 8 credit cards and/or property belonging to other people.
- 9 5. Complete 16 hours of community service work each month during the term of probation,
- 10 unless employed full time.

11 THEREAFTER, on the 19th day of January, 2012, the Defendant being present in

12 court with his counsel, DIANNE DICKSON, Deputy Public Defender, and pursuant to

13 request, COURT ORDERED, PROBATION REINSTATED with the ADDED

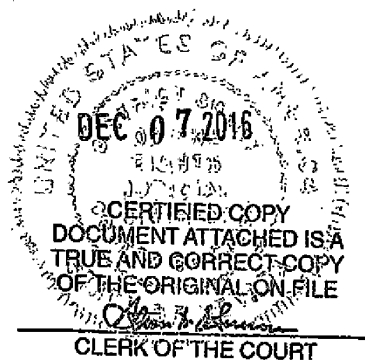
14 CONDITION of THIRTY (30) DAYS FLAT TIME from TUESDAY January 17, 2012, in

15 the Clark County Detention Center (CCDC). FURTHER, upon release, Defendant shall

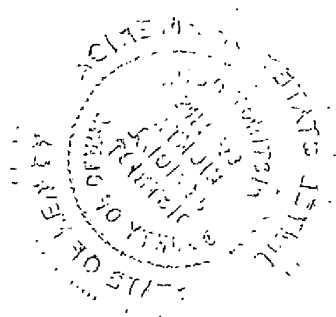
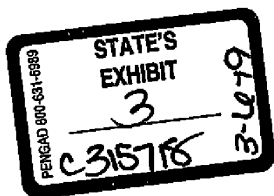
16 receive a DISHONORABLE DISCHARGE.

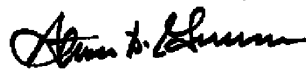
17 DATED this 14th day of February, 2012.

18 
19 DISTRICT JUDGE



10F23923X: ckb





CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, JR.
#2796708

Defendant.

CASE NO. C315125-1

DEPT. NO. XX

JUDGMENT OF CONVICTION
(JURY TRIAL)


The Defendant previously entered a plea of not guilty to the crime of BURGLARY (Category B Felony) in violation of NRS 205.060; and the matter having been tried before a jury and the Defendant having been found guilty of the crime of BURGLARY (Category B Felony) in violation of NRS 205.060; thereafter, on the 23rd day of February, 2017, the Defendant was present in court for sentencing with counsel TYLER GASTON, Deputy Public Defender, and good cause appearing,

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
2 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee plus
3 \$3.00 DNA Collection Fee, the Defendant is SENTENCED as follows: a MAXIMUM of
4 SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of TWENTY-ONE (21)
5 MONTHS in the Nevada Department of Corrections (NDC), with FIFTY-FIVE (55) DAYS
6 credit for time served. As the \$150.00 DNA Analysis Fee and Genetic Testing have
7 been previously imposed, the Fee and Testing in the current case are WAIVED.
8

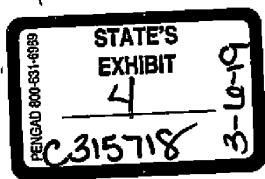
9 DATED this 6th day of March, 2017
10
11

12 
13 _____
14 ERIC JOHNSON
15 DISTRICT COURT JUDGE
16
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(M)

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

CLERK OF THE COURT

MAR 06 2019





CASE No. 1083785
INCIDENT NO./TRN: 903747201X-A001

THE STATE OF TEXAS

V.

JAMES HAYES

STATE ID No.:TX04418157

§ IN THE 185TH DISTRICT
§ COURT
§ HARRIS COUNTY, TEXAS
§
§
§

42

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. SUSAN BROWN	Date Judgment Entered:	3/2/2007
Attorney for State:	K. TAYLOR	Attorney for Defendant:	A. LANNIE
Offense for which Defendant Convicted: CREDIT/DEBIT CARD ABUSE			
Charging Instrument: INDICTMENT		Statute for Offense: N/A	
Date of Offense: 9/7/2006			
Degree of Offense: STATE JAIL FELONY		Plea to Offense: NOT GUILTY	
Verdict of Jury: GUILTY		Findings on Deadly Weapon: N/A	
Plea to 1 st Enhancement Paragraph:	N/A	Plea to 2 nd Enhancement/Habitual Paragraph:	N/A
Findings on 1 st Enhancement Paragraph:	N/A	Findings on 2 nd Enhancement/Habitual Paragraph:	N/A
Punished Assessed by:	JURY	Date Sentence Imposed:	3/2/2007
		Date Sentence to Commence:	3/2/2007
Punishment and Place of Confinement:	2 YEARS STATE JAIL DIVISION, TDCJ		
THIS SENTENCE SHALL RUN CONCURRENTLY.			
<input type="checkbox"/> SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .			
Fine:	Court Costs:	Restitution:	Restitution Payable to:
\$ 10,000.00	\$ 271.00	\$ N/A	<input type="checkbox"/> VICTIM (see below) <input type="checkbox"/> AGENCY/AGENT (see below)
Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.			
The age of the victim at the time of the offense was N/A .			

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From	9/8/2006	to	9/9/2006	From	2/14/2007	to	3/2/2007
------	----------	----	----------	------	-----------	----	----------

Time Credited: From to From to From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Harris County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

- ☒ Defendant appeared in person with Counsel.
- ☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.
- It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.
- The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.
- The Court received the verdict and ORDERED it entered upon the minutes of the Court.

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of Imaging

1083785

Punishment Assessed by Jury / No election (select one)

- ☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.
- ☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.
- ☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

- ☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, State Jail Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the **Sheriff of Harris County, Texas** on the date the sentence is to commence. Defendant shall be confined in the **Harris County Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

- ☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.
- ☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Signed and entered on March 2, 2007

X *[Signature]*
HON. SUSAN BROWN
JUDGE PRESIDING

Ntc Appeal Filed: MAR 02 2007 Mandate Rec'd: 4/29/08 Affirmance

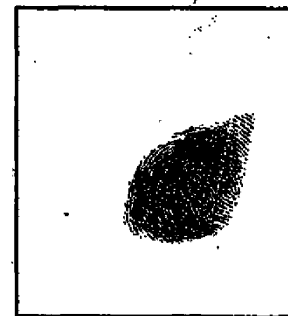
After Mandate Received, Sentence to Begin Date is: 3/2/2007

Def. Received on 03/02/07 at 1155 (AM) PM

By: J. Blalock #1630, Deputy Sheriff of Harris County

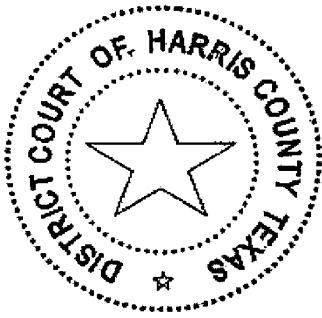
Clerk: chaves / 4/PPA SW
LCPT = CA

Jail Credit Remains the Same.



Right Thumbprint





I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this February 22, 2019

Certified Document Number: 40486771 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 23, 2016

C-16-315718-1 State of Nevada
 vs
 James Hayes

June 23, 2016 10:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Kristen Brown

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Devaney, Kelli M. Attorney
 HAYES, JAMES HOWARD Defendant
 Public Defender Attorney

JOURNAL ENTRIES

- Deputized Law Clerk, Kelsey Einhorn appearing for the State.

DEFT. HAYES ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, Deft's Request for Discovery is GRANTED pursuant to NRS 174.235 and Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

BOND

12/27/16 8:30 AM CALENDAR CALL (DEPT. 12)

1/03/16 1:30 PM JURY TRIAL (DEPT. 12)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 06, 2016

C-16-315718-1 State of Nevada
 vs
 James Hayes

December 06, 2016 8:30 AM Motion for Discovery

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	Holiday, Kristy	Attorney
	Mendoza, Erika	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present. Ms. Holiday requested Deft's presence be waived, further noting he resides in California and has had excellent communication with Ms. Sauter. Additionally, Ms. Sauter is on vacation, and defense will request a continuance for Ms. Sauter to appear and handle proceedings. COURT ORDERED, matter CONTINUED. Court noted for the record State had filed their written opposition yesterday. Ms. Holiday noted this in her file.

BOND

12/08/16 8:30 A.M. DEFT'S MOTION FOR DISCOVERY

12/20/16 8:30 A.M. CALENDAR CALL

1/03/17 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 08, 2016

C-16-315718-1 State of Nevada
 vs
 James Hayes

December 08, 2016 8:30 AM Motion for Discovery

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	DeVaney-Sauter, Kelli M.	Attorney
	Public Defender	Attorney
	Rogan, Jeffrey	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present; PRESENCE WAIVED.

COURT ORDERED, as follows:

1. Court noted this request is overly broad, however, it will GRANT it to extent it is required by NRS 174.235.
2. State to comply with NRS 174.234.
3. State to comply with NRS 174.235.
4. State to comply with NRS 174.235.
5. State to comply with NRS 174.235.
6. State to provide anything other than statutory witness fee.
7. State to comply with Brady obligations.
8. State is to disclose prior felony information or crimes involving moral turpitude.
9. MOTION DENIED.
10. If there are any informants, the State is to disclose this information to Court, for determination as

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to whether the information needs to be turned over.

11. MOTION GRANTED; State to provide defense with all chain of custody regarding evidence.

Ms. Sauter to prepare the order.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 20, 2016

C-16-315718-1 State of Nevada
 vs
 James Hayes

December 20, 2016 8:30 AM Calendar Call

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	DeVaney-Sauter, Kelli M.	Attorney
	HAYES, JAMES HOWARD	Defendant
	Public Defender	Attorney
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Devaney-Sauter informed Court there is a pending motion to consolidate this case and another criminal case before Judge Eric Johnson on December 22, 2016. Additionally, defense has to do further investigation, and will not be ready for trial. At request of counsel, COURT ORDERED, trial date VACATED; matter SET for status check.

BOND

1/26/17 8:30 A.M. STATUS CHECK: FURTHER PROCEEDINGS / RESET TRIAL DATE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 22, 2016

C-16-315718-1 State of Nevada
 vs
 James Hayes

December 22, 2016 8:30 AM Motion to Admit Evidence

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	DeVaney-Sauter, Kelli M.	Attorney
	Dickerson, Michael	Attorney
	Gaston, Tyler	Attorney
	Public Defender	Attorney
	Rowles, William C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present. Mr. Gaston informed Court Deft. was told he did not have to be here. COURT ORDERED, Deft's presence WAIVED. Mr. Dickerson provided details surrounding the allegations; and argued in support of admission of Deft's other burglary acts from three years prior, and further argued as to State's theory of Deft's probable defense, State needing to prove intent. Court stated it was not provided Deft's Opposition to State's Motion. Ms. Sauter apologized; and provided a copy of the Opposition to Court for consideration. COURT ORDERED, matter CONTINUED for Court to review this Opposition, prior to further arguments. Upon Court's inquiry, Mr. Dickerson clarified the request to consolidate this case and C315125 from Department 20 was denied by Judge Eric Johnson, and Judge Johnson had said he would entertain another bad acts motion by State. Discussions as to trial date of January 3, 2017 already having been vacated by this Court.

BOND

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1/12/17 8:30 A.M. STATE'S MOTION TO ADMIT EVIDENCE OF OTHER ACTS

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 22, 2016

C-16-315718-1 State of Nevada
 vs
 James Hayes

December 22, 2016 9:00 AM

Motion to Consolidate

HEARD BY: Johnson, Eric

COURTROOM: RJC Courtroom 10D

COURT CLERK: Tia Everett
 Natalie Ortega

RECORDER: Angie Calvillo

REPORTER:

PARTIES

PRESENT:	DeVaney-Sauter, Kelli M.	Attorney
	Dickerson, Michael	Attorney
	Gaston, Tyler	Attorney
	Rowles, William C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Rowles and Ms. Devaney-Sauter argued their respective positions. COURT ORDERED, Motion DENIED.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 12, 2017**

C-16-315718-1 State of Nevada
 vs
 James Hayes

January 12, 2017 8:30 AM Motion to Admit Evidence

HEARD BY: Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Susan Botzenhart**RECORDER:** Kristine Santi**REPORTER:****PARTIES**

PRESENT:	DeVaney-Sauter, Kelli M.	Attorney
	Dickerson, Michael	Attorney
	HAYES, JAMES HOWARD	Defendant
	Public Defender	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Dickerson informed Court Deft. was convicted of burglary in his jury trial. Thereafter, Mr. Dickerson argued in support of the burglary matter to be admitted, and there having been no lawful intent on Deft's acts. Ms. Sauter opposed; and argued as to NRS 48.045, and State having given an overbroad reading of intent. Further arguments as to case law cited by State in the pleadings, State having failed to establish the relief being sought on using any intent evidence, common schemer plan exception, Newman vs. State case law, and prejudice outweighing probative value for Deft. if the act comes in for trial. Ms. Sauter added the State cannot establish introduction of this evidence, and based on a prior, the jury in this case may convict him just on this, and not on any evidence. Further arguments as to Nevada Supreme Court decision. Ms. Sauter requested Court to consider setting an evidentiary hearing on the issue, if Court is inclined to grant State's Motion. Mr. Dickerson stated he will submit a trial transcript from the other case to this Court. Further arguments as to case law being clear. COURT ORDERED, Motion DENIED. Ms. Sauter to prepare the order.

☐ BOND

BOND

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1/26/17 8:30 A.M. STATUS CHECK: FURTHER PROCEEDINGS / RESET TRIAL DATE

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 26, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

**January 26, 2017 8:30 AM Status Check: Reset Trial
Date**

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:	Brouwers, Shana S.	Attorney
	HAYES, JAMES HOWARD	Defendant
	Public Defender	Attorney
	Rogan, Jeffrey	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, trial date SET.

CUSTODY

3/14/17 8:30 A.M. CALENDAR CALL

3/21/17 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 09, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

February 09, 2017 3:00 AM Minute Order

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The law firm of Colquitt & Abbatangelo, LTD., currently represents the Defendant in this matter.

Pursuant to Nevada Code of Judicial Conduct NCJC 3(E)(1)(d)(ii), and to avoid the appearance of impropriety and implied bias, the Court RECUSES itself from the above-entitled case, and ORDERS this matter to be randomly reassigned. The newly assigned Department will need to set a status check hearing to determine a date for Calendar Call and Jury Trial.

CLERK'S NOTE: A copy of the above minute order has been forwarded to Clerk's Office Master Calendar for reassignment. /// sj

CLERK'S NOTE: Law firm was notified regarding recusal. /// sj

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 06, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

March 06, 2017 8:30 AM Trial Setting

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Abbatangelo, Anthony L Attorney
 HAYES, JAMES HOWARD Defendant
 Scow, Richard H. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Mr. Abbatangelo advised he substituted in as counsel and the case was re-assigned from department 12. Further, Mr. Abbatangelo advised Defendant has invoked the 60 day rule. Mr. Scow advised the victim has scheduled military leave between 3/20/2017 - 3/31/2017. Colloquy regarding scheduling. COURT ORDERED, matter SET for trial.

BOND (COC)

3/22/2017 8:30 AM CALENDAR CALL

3/27/2017 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 22, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

March 22, 2017 8:30 AM Calendar Call

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Abbatangelo, Anthony L	Attorney
	Dickerson, Michael	Attorney
	HAYES, JAMES HOWARD	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Abbatangelo advised parties have agree to vacate the trial date and set a status check in two (2) weeks to discuss the offers which have been extended by the State. Mr. Dickerson advised this a defense request to continue, State is ready; however, State is not opposing the continuance. Further, Mr. Dickerson advised the only issue would be the availability of the victim who is in the military and the trial will need to be scheduled around victim's leave. Upon Court's inquiry, Defendant agreed to vacate trial. COURT ORDERED, trial VACATED and matter SET for Status Check.

BOND (COC)

4/03/2017 8:30 AM STATUS CHECK: NEGOTIATIONS / TRIAL SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 03, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

April 03, 2017 8:30 AM Status Check

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Patti Slattery

REPORTER:

PARTIES

PRESENT:	Abbatangelo, Anthony L	Attorney
	HAYES, JAMES HOWARD	Defendant
	Scow, Richard H.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Abbatangelo advised parties are close to a resolution and requested matter be continued thirty days. COURT SO ORDERED.

BOND (COC-NDC)

CONTINUED TO: 5/01/2017 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 01, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

May 01, 2017 8:30 AM Status Check

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Abbatangelo, Anthony L	Attorney
	HAYES, JAMES HOWARD	Defendant
	Rowles, William C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Rowles advised he believes the matter is resolved and he has the Guilty Plea Agreement. MATTER TRAILED for Mr. Abbatangelo. RECALLED. Mr. Abbatangelo requested matter be continued sixty days. Mr. Rowles advised the offer is one count of burglary stipulate to a 12 -30 concurrent with C315125 and if Defendant rejects the offer at the next date the offer will be revoked. Court stated he is inclined to set the matter for trial with a status check in thirty days for negotiations. Parties agreed. COURT ORDERED, matter SET for trial and Status Check.

BOND (COC-NDC)

5/31/2017 8:30 AM STATUS CHECK: NEGOTIATIONS

8/30/2017 8:30 AM PRE TRIAL CONFERENCE

9/27/2017 8:30 AM CALENDAR CALL

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10/02/2017 10:00 AM JURY TRIAL

PRINT DATE: 06/05/2020

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Minutes Date: June 23, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 31, 2017

C-16-315718-1 State of Nevada
vs
James Hayes

May 31, 2017 **8:30 AM** **Status Check**

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Colquitt, Ronald	Attorney
	Derjavina, Ekaterina	Attorney
	HAYES, JAMES HOWARD	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Colquitt advised the matter is not negotiated and Defendant has rejected the offer. Ms. Derjavina advised the offer has been revoked at this time. COURT ORDERED, trial date STANDS.

BOND (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 12, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

**June 12, 2017 8:30 AM Motion to Withdraw as
 Counsel**

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Abbatangelo, Anthony L Attorney
 HAYES, JAMES HOWARD Defendant
 Mendoza, Erika Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted Defendant not present. Mr. Abbatangelo advised Defendant in custody with Nevada Department of Corrections (NDC) on another case. COURT ORDERED, Motion GRANTED; Public Defender APPOINTED to determine if there will be conflict and matter SET for Status Check. FURTHER ORDERED, State to prepare an Order to Transport.

BOND (COC-NDC)

7/10/2017 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL (PD)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 10, 2017

C-16-315718-1 State of Nevada
vs
James Hayes

July 10, 2017 **8:30 AM** **Status Check**

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Beverly, Leah C	Attorney
	HAYES, JAMES HOWARD	Defendant
	Rusley, Eric W	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Rusley confirmed as counsel on behalf of Defendant. COURT ORDERED, trial date STANDS.

BOND (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 30, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

August 30, 2017 8:30 AM Pre Trial Conference

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: April Watkins

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Dickerson, Michael Attorney
 HAYES, JAMES HOWARD Defendant
 Murphy, Jessica W. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Upon Court's inquiry, Ms. Murphy stated she believes Ms. DeVaney received most of what was needed and just received two notices from the state who will provide documents. Further, Ms. Murphy stated Deft. filed something in the Nevada Supreme Court, not sure what it is and advised it has been transferred to the Court of Appeals. Colloquy. COURT ORDERED, calendar call and trial dates STAND. Deft. advised he filed a writ of habeas corpus challenging probable cause. Statement by Mr. Dickerson.

MATTER RECALLED:

Ms. Murphy requested a status check in three weeks for possible negotiations. Colloquy. Mr. Dickerson stated Deft's counsel requested to re-open negotiations and counsel will to entertain and believes status check will facilitate negotiations. COURT ORDERED, matter SET for status check. State to prepare transport order.

BOND (COC-NDC)

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Minutes Date: June 23, 2016

C-16-315718-1

9/20/17 9:00 AM STATUS CHECK: NEGOTIATIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 27, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

September 27, 2017 9:00 AM All Pending Motions

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: HAYES, JAMES HOWARD Defendant
 Mendoza, Erika Attorney
 Murphy, Jessica W. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- CALENDAR CALL ... STATUS CHECK: NEGOTIATIONS

Ms. Murphy advised there is an offer which Defendant wants to accept; however, Defendant filed an appeal which a decision has not been reached. COURT ORDERED, trial date VACATED and matter SET for Status Check as to the Supreme Court decision.

BOND (COC-NDC)

10/25/2017 8:30 AM STATUS CHECK: SUPREME COURT DECISION ... STATUS CHECK:
NEGOTIATIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 25, 2017

C-16-315718-1 State of Nevada
 vs
 James Hayes

October 25, 2017 8:30 AM All Pending Motions

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Clowers, Shanon	Attorney
	Cottner, Kyle	Attorney
	HAYES, JAMES HOWARD	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: SUPREME COURT DECISION / TRIAL SETTING ... STATUS CHECK:
NEGOTIATIONS

Mr. Cottner advised the Court of Appeals has dismissed Defendant's pro per writ and requested a trial date be set in ordinary course. COURT ORDERED, matter SET for trial.

CUSTODY (COC-NDC)

4/11/2018 8:30 AM PRE TRIAL CONFERENCE

5/09/2018 8:30 AM CALENDAR CALL

5/14/2018 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 11, 2018

C-16-315718-1 State of Nevada
 vs
 James Hayes

April 11, 2018 8:30 AM Pre Trial Conference

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett
 Christopher Darling

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	HAYES, JAMES HOWARD	Defendant
	Mendoza, Erika	Attorney
	Murphy, Jessica W.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Murphy advised she anticipates ready for the current trial date; although she has filed a Petition which is set to be heard on 4/23/2018. COURT ORDERED, trial date STANDS. Ms. Mendoza advised Mr. Dickerson indicated that there may be something pending with the Appellant Court. Ms. Murphy advised Defendant did file a Pro Per Appeal which has since been denied and will not be an issue. Court so noted.

BOND (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 23, 2018

C-16-315718-1 State of Nevada
 vs
 James Hayes

**April 23, 2018 8:30 AM Petition for Writ of Habeas
Corpus**

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett
 Chante Williams

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: HAYES, JAMES HOWARD Defendant
 Mendoza, Erika Attorney
 Murphy, Jessica W. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted a written opposition has not been filed. Ms. Mendoza advised this is Mr. Dickerson s case who indicated the transcript in this matter was filed 7/2016 making the writ untimely and should be denied; however, if the Court would like a response he would ask for additional time. Court stated he would like a response. COURT ORDERED, State s Response shall be due on or before 4/30/2018 and matter CONTINUED. Ms. Murphy advised she provided Defendant with additional discovery this morning in Open Court as well as spoke with Defendant at length on the phone. Further, Ms. Murphy requested the State mail a copy of their opposition as soon as possible as Defendant is at High Desert. Ms. Mendoza advised Defendant is represented by counsel and counsel will be served with the Opposition.

BOND (COC-NDC)

5/9/18 8:30 AM

PRINT DATE: 06/05/2020

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Minutes Date: June 23, 2016

C-16-315718-1

PRINT DATE: 06/05/2020

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Minutes Date: June 23, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 09, 2018

C-16-315718-1 State of Nevada
 vs
 James Hayes

May 09, 2018 8:30 AM Calendar Call

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Rubina Feda

REPORTER:

PARTIES

PRESENT: Murphy, Jessica W. Attorney
 Rowles, William C. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Upon Court's inquiry, Ms. Murphy advised Defendant is in the Nevada Department of Corrections and was not transported. Court noted Defendant has an appeal pending with the Supreme Court. Colloquy regarding Defendant's pending appeal. CONFERENCE AT BENCH. COURT ORDERED, trial date VACATED and matter SET for Status Check.

BOND (COC-NDC)

6/6/18 8:30 AM STATUS CHECK: SUPREME COURT DECISION/ RESET TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 06, 2018

C-16-315718-1 State of Nevada
 vs
 James Hayes

June 06, 2018 8:30 AM Status Check

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Dickerson, Michael Attorney
 Murphy, Jessica W. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Ms. Murphy advised Defendant was not transported from the Nevada Department of Corrections. Mr. Dickerson advised the Supreme Court denied Defendant's Pro Per Petition on 5/15/2018 and requested matter be set for status check to reset the trial date. Further, Mr. Dickerson advised an offer has been extended; however, the offer has not been accepted. COURT ORDERED, matter SET for Status Check and DIRECTED State to prepare the appropriate transport order.

BOND (COC-NDC)

7/11/2018 8:30 AM STATUS CHECK: TRIAL SETTING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 11, 2018**

C-16-315718-1 State of Nevada
 vs
 James Hayes

July 11, 2018 8:30 AM Status Check: Trial Setting

HEARD BY: Kephart, William D.**COURTROOM:** RJC Courtroom 16B**COURT CLERK:** Tia Everett**RECORDER:** Christine Erickson**REPORTER:****PARTIES**

PRESENT:	HAYES, JAMES HOWARD	Defendant
	Murphy, Jessica W.	Attorney
	Rowles, William C.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Murphy advised Defendant was transported for today. Further, Ms. Murphy advised she provided Defendant with a copy of the Guilty Plea Agreement so that he would be aware of what the State was offering; however, Defendant indicated there are outstanding motions which Defendant filed on his own that he would like to heard by the Court. Additionally, Ms, Murphy advised there appears to be a break down between herself and Defendant as he has left multiple voicemails on her phone stating she is not working on his case and that she is a racist. Upon Court's inquiry, Ms. Murphy advised Defendant previously file a Pro Per Petition for Writ of Habeas Corpus. Colloquy regarding Defendant's Petition. Defendant advised he filed his motion to challenge probable cause in this case. COURT ORDERED, matter SET for Trial and Defendant's Motion SET for Hearing.

CUSTODY (COC)

8/15/2018 8:30 AM DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS

PRINT DATE: 06/05/2020

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Minutes Date: June 23, 2016

C-16-315718-1

10/10/2018 8:30 AM PRE TRIAL CONFERENCE

11/07/2018 8:30 AM CALENDAR CALL

11/13/2018 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 15, 2018

C-16-315718-1 State of Nevada
 vs
 James Hayes

August 15, 2018 8:30 AM All Pending Motions

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Dickerson, Michael Attorney
 HAYES, JAMES HOWARD Defendant
 Rusley, Eric W Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS ... DEFENDANT'S MOTION TO WITHDRAW AS COUNSEL OF RECORD

Court reviewed case history. COURT ORDERED, Motion to Withdraw as Counsel GRANTED; Michael Sanft APPOINTED and Petition CONTINUED in order for Mr. Sanft to review the case. FURTHER ORDERED, matter SET for Confirmation of Counsel.

8/29/2018 8:30 AM CONFIRMATION OF COUNSEL (SANFT) ... DEFENDANT'S PRO PETITION FOR WRIT OF HABEAS CORPUS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 29, 2018

C-16-315718-1 State of Nevada
 vs
 James Hayes

August 29, 2018 8:30 AM All Pending Motions

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: HAYES, JAMES HOWARD Defendant
 Kern, Samuel R. Attorney
 Sanft, Michael W. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- CONFIRMATION OF COUNSEL (SANFT)

Mr. Sanft confirmed as counsel and advised he has conveyed the State's offer of an alford plea to attempt grand larceny, a wobbler, State will make no recommendation at sentencing with no opposition to probation with 30 days ccdc and 30 days credit for time served. Further, Mr. Sanft advised a counter offer of a stipulation to a gross misdemeanor; however, State has indicated they are not willing to enter that stipulation and would like the Court to make that determination. Mr. Dickerson confirmed representations. COURT ORDERED, matter SET for Status Check.

DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS

COURT ORDERED, Petition DENIED as it was not filed in compliance with NRS 34.700 and the

PRINT DATE: 06/05/2020

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Minutes Date: June 23, 2016

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Court is unable to consider the Petition.

BOND (COC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 26, 2018

C-16-315718-1 State of Nevada
 vs
 James Hayes

September 26, 2018 8:30 AM Status Check

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: HAYES, JAMES HOWARD Defendant
 Holthus, Mary Kay Attorney
 Sanft, Michael W. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Mr. Sanft advised his investigator has met with Defendant and the offer extended contemplates credit for time served; although the State will retain the right to argue as to felony or gross misdemeanor treatment. Upon Court's inquiry, Mr. Sanft advised there are no outstanding discovery issues and he anticipates ready for the current trial date. COURT ORDERED, trial date STANDS.

BOND (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 07, 2018

C-16-315718-1 State of Nevada
 vs
 James Hayes

November 07, 2018 8:30 AM Calendar Call

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Dickerson, Michael	Attorney
	HAYES, JAMES HOWARD	Defendant
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Amended Information FILED IN OPEN COURT.

NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. HAYES ARRAIGNED AND PLED GUILTY PURSUANT TO ALFORD TO ATTEMPT GRAND LARCENY (F/GM). State made offer of proof. Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing; trial date VACATED.

BOND

3/06/2019 8:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 2019

C-16-315718-1 State of Nevada
 vs
 James Hayes

February 04, 2019 8:30 AM Motion

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Dickerson, Michael Attorney
 Hayes, James Howard Defendant
 Sanft, Michael W. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Mr. Dickerson advised he would submit on the motion and will answer any questions the Court may have. Mr. Sanft reviewed allegations of new charge. COURT ORDERED, Motion GRANTED; BAIL EXONERATED; Defendant REMANDED INTO CUSTODY on this cas.

CUSTODY (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 06, 2019**

C-16-315718-1 State of Nevada
 vs
 James Hayes

March 06, 2019 8:30 AM Sentencing

HEARD BY: Kephart, William D.**COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett
 Shannon Emmons

RECORDER: Christine Erickson**REPORTER:****PARTIES**

PRESENT:	Dickerson, Michael	Attorney
	Hayes, James Howard	Defendant
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. HAYES ADJUDGED GUILTY of ATTEMPT GRAND LARCENY (F). Matter argued and submitted. Exhibits presented. (see worksheets). Court FINDS State has sufficiently met the requirements of NRS 207.010. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and a \$3.00 DNA Collection fee; Deft. SENTENCED UNDER the SMALL HABITUAL STATUTE to a MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED SEVENTY-FOUR (174) MONTHS in the Nevada Department of Corrections (NDC); CONSECUTIVE to case number C315125; with TEN (10) DAYS credit for time served. FURTHER ORDERED, \$150.00 DNA Analysis fee including testing to determine genetic markers WAIVED as previously ordered.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 03, 2019

C-16-315718-1 State of Nevada
 vs
 James Hayes

June 03, 2019 8:30 AM Motion

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: LoGrippo, Frank R. Attorney
 Sanft, Michael W. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Mr. Sanft advised he does not believe the motion can be granted as he must file the appeal pursuant to a Supreme Court Order, COURT ORDERED, matter CONTINUED thirty days.

NDC

CONTINUED TO: 7/15/2019 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 15, 2019

C-16-315718-1 State of Nevada
 vs
 James Hayes

July 15, 2019 8:30 AM Motion

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: LoGrippo, Frank R. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections.
COURT ORDERED, Motion GRANTED as a Remittitur has been filed by the Supreme Court.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 07, 2019

C-16-315718-1 State of Nevada
 vs
 James Hayes

October 07, 2019 8:30 AM Motion

HEARD BY: Bonaventure, Joseph T. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Wolfson, Steven B Attorney

JOURNAL ENTRIES

- Court noted the State has indicated they were not properly served and that there is a pending appeal in this matter. COURT ORDERED, Motion DENIED as Defendant failed to properly serve the State with the motion and the Court lacks jurisdiction. . Mr. Zadrowski to prepare the Order consistent with Court s findings.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 06, 2020

C-16-315718-1 State of Nevada
 vs
 James Hayes

January 06, 2020 8:30 AM Motion to Modify Sentence

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Brooks, Parker Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections.
COURT ORDERED, matter OFF CALENDAR as Defendant has a pending appeal which divests the
Court of jurisdiction.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 18, 2020

C-16-315718-1 State of Nevada
 vs
 James Hayes

March 18, 2020 8:30 AM Motion

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Brooks, Parker Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Court reviewed the procedural history of case. Court FINDS, Defendant's claims are similar to those filed in the appeal; however, Defendant fails to provide any statutory basis and/or authority to support the motion; Defendant's additional claims are substantive and should have been raised on appeal; therefore, COURT ORDERED, Defendant's Motion to Correct an Illegal Sentence shall be DENIED in its totality.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 01, 2020

C-16-315718-1 State of Nevada
 vs
 James Hayes

June 01, 2020 10:15 AM Motion for Relief

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Waters, Steven L Attorney

JOURNAL ENTRIES

- Court noted Defendant was not transported from the Nevada Department of Corrections and ORDERED, matter CONTINUED. Court noted this matter is currently on appeal before the Supreme Court.

NDC

CONTINUED TO: 6/15/220 10:15 AM

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated May 15, 2020, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises four volumes with pages numbered 1 through 831.

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

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 5 day of June 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

