

IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown  
Clerk of Supreme Court

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**Rickie Slaughter,**

Petitioner-Appellant,

**v.**

**Charles Daniels, et al.,**

Respondents-Appellees.

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On Appeal from the Order Denying Petition  
For Writ of Habeas Corpus (Post-Conviction)  
Eighth Judicial District, Clark County  
(A-20-812949-W | 04C204957)  
Honorable Tierra Jones, District Court Judge

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**Petitioner-Appellant's Appendix to the Opening Brief  
Volume II of XXII**

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Dated July 21, 2021.

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

/s/ *Jeremy C. Baron*  
Jeremy C. Baron  
Assistant Federal Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2021, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include: Alexander Chen.

I further certify that some of the participants in the case are not registered appellate electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

Rickie Slaughter NDOC #85902 High Desert State Prison P.O. Box 650 Indian Springs, NV 89070	Erica Berrett Deputy Attorney General Office of the Attorney General 555 E. Washington Ave. Suite 3900 Las Vegas, NV 89101
---	--

/s/ Richard D. Chavez

An Employee of the  
Federal Public Defender

FILED

AUG 7 12 54 PM '06

*Shirley C. Pangione*  
CLERK

Rickie Lamont Slaughter Jr. #85902  
Petitioner/In Propria Personam  
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Indian Springs, Nevada 89018

DISTRICT COURT  
CLARK COUNTY, NEVADA

Rickie Lamont Slaughter Jr.

Petitioner,

vs.

Warden, D.W. Neven,  
The State of Nevada  
et. al.

Respondent(s).

Case No. C204957

Dept. No. 3

Docket \_\_\_\_\_

**PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

INSTRUCTIONS:

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

RECEIVED

AUG - 7 2006

COUNTY CLERK

1 Failure to raise all grounds I this petition may preclude you from filing future petitions challenging  
2 your conviction and sentence.

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

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one  
9 copy must be filed with the clerk of the district court for the county in which the conviction occurred.  
10 Petitions raising any other claim must be filed with the clerk of the district court for the county in  
11 which you are incarcerated. One copy must be mailed to the respondent, one copy to the attorney  
12 general's office, and one copy to the district attorney of the county in which you were convicted or to  
13 the original prosecutor if you are challenging your original conviction or sentence. Copies must  
14 conform in all particulars to the original submitted for filing.

### 10 PETITION

11 1. Name of institution and county in which you are presently imprisoned or where and who you  
12 are presently restrained of your liberty: High Desert State Prison

13 2. Name the location of court which entered the judgment of conviction under attack: The  
14 Eighth Judicial District Court Department 3

15 3. Date of judgment of conviction: August 8, 2005

16 4. Case number: C204957

17 5. (a) Length of sentence: 15-Life, (see Attachment "A")

18 (b) If sentence is death, state any date upon which execution is scheduled: N/A

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

21 Yes ☒ No ☐ If "Yes", list crime, case number and sentence being served at this time:

22 Attempt possession of controlled substance, C196399, 12-32 months

23 7. Nature of offense involved in conviction being challenged: First Degree Kidnap,

24 Attempt murder w/deadly weapon, Robbery w/deadly

25 weapon, First Degree Kidnap w/weapon

1 8. What was your plea? (Check one)

2 (a) Not guilty \_\_\_\_

3 (b) Guilty ☒

4 (c) Nolo contendere \_\_\_\_

5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea  
6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: \_\_\_\_

7 stipulation that concurrent time will run between  
8 the counts

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

10 (a) Jury \_\_\_\_

11 (b) Judge without a jury \_\_\_\_

12 11. Did you testify at trial? Yes \_\_\_\_ No \_\_\_\_

13 12. Did you appeal from the judgment of conviction?

14 Yes \_\_\_\_ No \_\_\_\_

15 13. If you did appeal, answer the following:

16 (a) Name of court:

17 (b) Case number or citation:

18 (c) Result:

19 (d) Date of appeal:

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

21 14.) If you did not appeal, explain briefly why you did not: \_\_\_\_

22 \_\_\_\_

23 \_\_\_\_

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

27

28

1 16. If your answer to No 15 was "Yes", give the following information:  
2 (a) (1) Name of court: \_\_\_\_\_  
3 (2) Nature of proceedings: \_\_\_\_\_  
4 \_\_\_\_\_  
5 (3) Grounds raised : \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 (4) Did you receive an evidentiary hearing on your petition, application or motion?  
9 Yes \_\_\_\_ No \_\_\_\_  
10 (5) Result: \_\_\_\_\_  
11 (6) Date of result: \_\_\_\_\_  
12 (7) If known, citations of any written opinion or date of orders entered pursuant to each  
13 result: \_\_\_\_\_  
14 (b) As to any second petition, application or motion, give the same information:  
15 (1) Name of Court: \_\_\_\_\_  
16 (2) Nature of proceeding: \_\_\_\_\_  
17 (3) Grounds raised: \_\_\_\_\_  
18 (4) Did you receive an evidentiary hearing on your petition, application or motion?  
19 Yes \_\_\_\_ No \_\_\_\_  
20 (5) Result: \_\_\_\_\_  
21 (6) Date of result: \_\_\_\_\_  
22 (7) If known, citations or any written opinion or date of orders entered pursuant to each  
23 result: \_\_\_\_\_  
24 (c) As to any third or subsequent additional application or motions, give the same information  
25 as above, list them on a separate sheet and attach.  
26  
27  
28

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

3 (1) First petition, application or motion?

4 Yes \_\_\_\_ No \_\_\_\_

5 Citation or date of decision: \_\_\_\_\_

6 (2) Second petition, application or motion?

7 Yes \_\_\_\_ No \_\_\_\_

8 Citation or date of decision: \_\_\_\_\_

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain  
10 briefly why you did not. (You may relate specific facts in response to this question. Your response  
11 may be included on paper which is 8 ½ x 11 inches attached to the petition. Your response may not  
12 exceed five handwritten or typewritten pages in length). \_\_\_\_\_

13 \_\_\_\_\_

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

17 (a) Which of the grounds is the same: \_\_\_\_\_

18 \_\_\_\_\_

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

20 \_\_\_\_\_

21 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in  
22 response to this question. Your response may be included on paper which is 8 ½ x 11 inches attached  
23 to the petition. Your response may not exceed five handwritten or typewritten pages in length). \_\_\_\_\_

24 \_\_\_\_\_

25 \_\_\_\_\_

26 \_\_\_\_\_

27 \_\_\_\_\_

28 \_\_\_\_\_

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages  
2 you have attached, were not previously presented in any other court, state or federal, list briefly what  
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate  
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x  
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten  
6 pages in length). \_\_\_\_\_  
7

8 19. Are you filing this petition more than one (1) year following the filing of the judgment of  
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.  
10 (You must relate specific facts in response to this question. Your response may be included on paper  
11 which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or  
12 typewritten pages in length). \_\_\_\_\_  
13  
14

15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the  
16 judgment under attack?

17 Yes \_\_\_\_\_ No ☒

18 If "Yes", state what court and the case number: N/A  
19

20 21. Give the name of each attorney who represented you in the proceeding resulting in your  
21 conviction and on direct appeal: Defendant was Pro-Per with  
22 stand by counsel Paul Wommer / Counsel Paul Wommer  
23 represented defendant at sentencing hearing  
24

25 22. Do you have any future sentences to serve after you complete the sentence imposed by the  
26 judgment under attack?

27 Yes ☒ No \_\_\_\_\_ If "Yes", specify where and when it is to be served, if you know: In  
28 The Nevada Department of Corrections, not sure when to be  
served

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating  
2 additional grounds and facts supporting same.

3 23. (a) GROUND ONE: (Petitioner moves for leave to supplement  
4 this petition upon his receipt of transcripts) Prosecutors  
5 misrepresentations of law at entry of guilty plea and  
6 District courts affirmation of these misrepresentations.  
7 rendered Petitioner's Plea involuntary

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): \_\_\_\_\_

8 On April 4, 2005 the date set for Jury  
9 selection in case # C204957 The defendant  
10 Rickie L. Slaughter was offered a plea agreement  
11 that the prosecutors (Susan Krisko and Mark Digiarone)  
12 said would give the defendant "an opportunity to  
13 be released from prison in 15 years." The  
14 agreement was that the defendant would plead  
15 to 4 charges (1) Attempted Murder w/deadly weapon  
16 (2) Robbery w/lethal weapon (3) First degree Kidnapping  
17 (with substantial bodily harm); and (4) First degree  
18 Kidnapping w/deadly weapon. The state  
19 stipulated to concurrent time between the  
20 counts and retained the right to argue  
21 for 15 to Life as to count (3) while the petitioner  
22 retained the right to argue for 15 to 40 yrs.  
23 as to count (3).

24  
25 Present at these negotiations was petitioner's  
26 private investigator James B. Conklin. Petitioner  
27 rejected the States offer several times

1 stating that he did not believe this  
2 deal would be in his best interest. ~~one~~  
3 of the weapon enhancements on several counts.

4 The state told petitioner that this  
5 deal with the stacking of all sentences  
6 concurrent even with the weapon enhancements  
7 would enable him to serve in effect either  
8 one 15 to Life or one 15 to 40 yrs. sentence  
9 giving the petitioner "an opportunity to be  
10 released in 15 years".

11  
12 After prosecutors repeated efforts petitioner  
13 finally accepted the states offer. Before  
14 sentencing petitioner through research found  
15 the states apprehension of stacking several  
16 sentences concurrent and consecutive to be  
17 incorrect. Before sentencing petitioner filed  
18 a motion to withdraw his guilty plea  
19 and to Appoint counsel to assist in  
20 withdrawing his guilty plea. On August  
21 8, 2005 (petitioners sentencing date) petitioners  
22 was met before the sentencing hearing by  
23 State Prosecutor Susan Krista who repeatedly  
24 reassured petitioner that he did not need  
25 withdraw his guilty plea (present at discussion  
26 was petitioners counsel by counsel Kari Wanner)  
27 because Ms. Krista was sure that petitioners

GROUND 23(a) CONTINUED

1 sentence would be in effect either (1) one  
2 "15 to life or one 15 40" sentence and that  
3 the weapon enhancements and the other counts  
4 would not effect sentence because they were  
5 to be concurrent. After hearing Prosecution  
6 Mr. Kalk's above comments Petitioner was  
7 convinced not to pursue his motion to  
8 withdraw his guilty plea but Susan Kalk  
9 and Counsel Paul advised.

10  
11 During the hearing in the District Court  
12 appointed counsel [unclear] [unclear] [unclear] [unclear]  
13 asked if there were any local motions  
14 [unclear] [unclear] and petitioner  
15 presented his comments of "15 to life"  
16 several times but was assured that Ms. Kalk  
17 was right that [unclear] [unclear] [unclear]  
18 he [unclear] [unclear] [unclear] [unclear] [unclear]  
19 one "15 to life" in [unclear] [unclear] [unclear] [unclear]  
20 told petitioner that [unclear] [unclear] [unclear]  
21 effect the length of his sentence.  
22 Petitioner [unclear] [unclear] [unclear] [unclear]  
23 [unclear] [unclear] [unclear] [unclear] [unclear]  
24 motion. [unclear] [unclear] [unclear] [unclear] [unclear]  
25 [unclear] [unclear] will effect [unclear] [unclear] [unclear]  
26 because they will [unclear] [unclear] [unclear] [unclear]  
27 [unclear] [unclear] [unclear] (see Attachment 2)

1 23. (b) GROUND TWO: The District Court relied in significant  
2 part on information supported by impalpable or highly  
3 suspect evidence, in determining petitioners sentence. (Petitioner  
4 would move for leave to supplement his Petition upon receipt of  
5 transcription of record)

6 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): \_\_\_\_\_

7 On August 8, 2005 (petitioners sentencing hearing)  
8 before hearing commenced petitioner asked prosecutor  
9 susan krisko about statement in Presentence Investigation  
10 Report <sup>(see Attachment B)</sup> that Victim Ivan Young in case # C204957  
11 had lost his eye. State Prosecutor susan krisko stated  
12 that victim had lost his eye, and petitioner asked  
13 that she provide petitioner with documents to that effect  
14 because petitioners documents of victims medical position  
15 ~~indicated~~ <sup>(see attachment C)</sup> he had both eyes. Petitioner asserts that  
16 he has never recieved such documents after present  
17 Prosecutor Susan krisko said that she would send them  
18 to petitioner "as soon as possible".

19 During commencing of sentencing hearing District  
20 Court Judge Doug Herndon mentioned fact that victim  
21 ~~had lost his eye~~ <sup>(see attachment C)</sup> because victim had (allegedly)  
22 lost his right eye that crime was very violent and  
23 he believed that petitioner needed life time supervision  
24 petitioner believes that evidence needs to be produced  
25 that victim lost his right eye since such issue played  
26 a significant role in determining petitioners sentence.

• There a (5) attachments under attachment "C"

EXECUTED at High Desert State Prison  
on the 3rd day of August, 2006.

  
Signature of Petitioner

Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true and correct of his own personal knowledge, except as to those matters based on information and belief, and to those matters, he believes them to be true.

  
Signature of Petitioner

(Petitioner In Proper Person)  
Attorney for Petitioner

**CERTIFICATE OF SERVICE BY MAILING**

I, Rickie Lamont Slaughter Jr. hereby certify, pursuant to NRCP 5(b), that on this 3<sup>rd</sup>  
day of August, 2006, I mailed a true and correct copy of the foregoing, "Petition  
For Writ Of Habeas Corpus (Post-conviction)"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

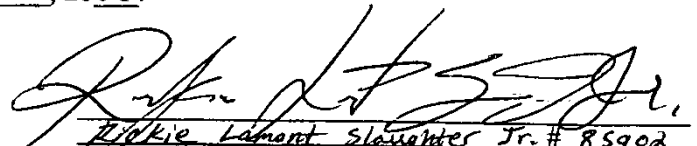
The Clark County Clerk's  
Office  
200 S. Third St  
P.O. Box 551601  
Las Vegas, Nevada 89155-1601

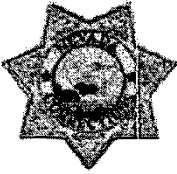
The Clark County District  
Attorneys Office  
200 S. Third St.  
Las Vegas, Nevada, 89155-2212

The Attorney General's  
Office  
555 E. Washington  
Suite 3900  
Las Vegas, NV. 89101

CC:FILE

DATED: this 3<sup>rd</sup> day of August, 2006.

  
Rickie Lamont Slaughter Jr. # 85902  
Petitioner /In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:



## Nevada Department of Corrections -- Inmate Detail Record

The information provided through this process is raw data. As the information is raw data, the department makes no warranty associated with its use. For example, the department makes no guarantee that the raw data is free of input errors. Furthermore, the department cannot provide a judgment as to the reliability or validity of this raw data when used in models, studies, or reports outside of its own control. The information on this website should not be used as an "official" record by any law enforcement agency.

### Identification and Demographics

Inmate Name:	SLAUGHTER, RICKIE L	NDOC ID:	85902
Gender:	Male	Ethnicity:	Black
DOB:	3/1984	Approximate Age:	20
Height:	5' 9"	Weight:	180 lbs
Build:	Large	Complex:	Dark
Hair Color:	Black	Eye Color:	Brown
Alias(es):	1) RICKIE LAMONT SLAUGHTER ; 2) RICKIE LAMOUNT SLAUGHTER JR. ; 3) RICK MITCHELL		

### No Photo Available

The Department of Corrections does not maintain a photo of most inmates. One such as in the event a digital photo may be available.

### Sentencing

Click on any heading below for a description and more information.

Offense	Sentence Level	Sentence Name	Min Sentence	Max Sentence	Parole Eligibility	Mandatory Review
KIDNAPPING I	1A	ACTIVE	15.00	999	08-04-2020	CS SENT <i>Life</i>
KIDNAPPING I, UDW	1B	CCNC	5.00	999	CC SENT	CC SENT <i>Life</i>
ATT MURDER, UDW	1C	CCNC	7.5	20	CC SENT	CC SENT <i>10-16-17</i>
ROBBERY, UDW	1D	CCNC	6.00	15	CC SENT	CC SENT <i>10-2-14</i>
ATT POSS CON SUB; SCH 1-4; 1ST OFF	1E	CCNC	1.00	2.67	CC SENT	CC SENT <i>4-4-07</i>
BURGLARY	1F	CCNC	1.00	2.50	CC SENT	CC SENT <i>11-11-05</i>
USE OF DEADLY WEAPON ENHANCEMENT	2A	PENDING	5.00	999	PENDING	PENDING
USE OF DEADLY WEAPON ENHANCEMENT	2B	PENDING	7.5	20	PENDING	PENDING
USE OF DEADLY WEAPON ENHANCEMENT	2C	PENDING	6.00	15	PENDING	PENDING

### Custody

County of Commitment:	Clark	Commitment Code:	Probation Violator - No New Felony
Offense Group:	Violence	On Parole Agenda?	NOT ON PAROLE AGENDA
Current Institution:	High Desert State Prison	Custody Level:	Medium Custody

[Click here for visiting information.](#)

Attachment "A"



Care How Much We Know.  
Know How Much We Care.

☐ UMC / Emergency Department  
1800 W. Charleston Blvd.  
Las Vegas, NV 89102  
383-2000

☐ Pediatric Emergency Department  
1800 W. Charleston Blvd.  
Las Vegas, NV 89102  
383-2000

#### CLINICS

☐ Total Life Care  
2231 W. Charleston Blvd. 1<sup>st</sup> floor  
Las Vegas, NV 89102  
383-2691

☐ S. Rancho, Suite 205  
Las Vegas, NV 89102  
383-2691

☐ Ernst F. Lied Ambulatory Center  
1524 Pinto Lane  
Las Vegas, NV 89106  
Internal Medicine  
383-2831  
Pediatric Outpatient Services  
383-3642

☐ University Women's Center  
2231 W. Charleston Blvd. 2<sup>nd</sup> floor  
Las Vegas, NV 89102  
383-2403

#### QUICK CARES / CLINICS

☐ Boulder Quick Care  
5412 Boulder Highway  
Las Vegas, NV 89121  
383-2300

☐ Enterprise Quick Care  
1700 Enterprise Peak Street  
Las Vegas, NV 89105

#### QUICK CARES / CLINICS

☐ UMC Quick Care  
2231 W. Charleston Blvd. 1<sup>st</sup> floor  
Las Vegas, NV 89102  
383-2074

☐ Peccole Quick Care  
9320 W. Sahara  
Las Vegas, NV 89117  
O.C. 383-3850 Clinic 383-3633

☐ Nellis Quick Care / Primary Care  
61 North Nellis Boulevard  
Las Vegas, NV 89110  
Q.C. 644-8701 Clinic 383-6250

☐ Rancho Quick Care / Primary Care  
4331 N. Rancho Drive  
Las Vegas, NV 89130  
Q.C. 383-3600 Clinic 383-3630

☐ McCarran Quick Care / Primary Care  
1769 E. Russell Road  
Las Vegas, NV 89119  
Q.C. 383-3600 Clinic 383-3660

☐ Summerlin Quick Care / Primary Care  
2031 N. Boffalo  
Las Vegas, NV 89128  
Q.C. 383-3750 Clinic 383-2050

☐ Sunset Quick Care / Primary Care  
525 Marks Street  
Henderson, NV 89014  
Q.C. 383-6210 Clinic 383-6230

☐ Craig Quick Care / Primary Care  
2202 W. Craig Road  
N. Las Vegas, NV 89132  
O.C. 383-6270 Clinic 383-6280

☐ Spring Valley Quick Care / Primary Care  
4180 S. Rainbow Blvd. Suite 810  
Las Vegas, NV 89103  
Q.C. 383-3645 Clinic 383-3626

☐ Laughlin Quick Care / Primary Care  
150 E. Edison Way  
Laughlin, NV 89029  
(702) 329-3364

DATE: 7/3/07				
PATIENT NAME: Ivan Young				
ADDRESS:				
CITY:	STATE: ZIP:			
DATE OF BIRTH:	SOCIAL SECURITY NUMBER:	PATIENT PHONE:	ALLERGIES:	
MEDICAL HISTORY:		DIAGNOSIS:	LOCATION (ER, 4N) RX WRITTEN:	DATE / TIME OF DISCHARGE:

29422607 5/21/1973  
YOUNG, IVAN L  
DR KUHLS, DEBORAH A  
000-663-635 REG 06272004 M

#### DISCHARGES TO BE WRITTEN 24 HOURS IN ADVANCE

HEIGHT \_\_\_\_\_ WEIGHT \_\_\_\_\_

DRUG AND DOSE	QUANTITY	DIRECTIONS	REF
Augmentin Suspension 500mg		500mg p.o. T.I.D.	
Bacitracin ointment	1 tube	Apply to wound BID	
Artificial Tears	30ml	1-2 drops to both eyes QID and PRN	

Attachment "C-1"

PHYSICIAN'S SIGNATURE: [Signature]	PHYSICIAN'S PHONE/BEEPER NUMBER:	DEA #:	ORAS0253219-1.D.# 8956
OTHER INSTRUCTIONS:			
FOR PHARMACY USE <input type="checkbox"/> DISP. ONLY AS WRITTEN			
SIGNATURE OF PHARMACIST CHECKING MEDICATION AND COUNSELING PATIENT:	SIGNATURE OF PERSON RECEIVING MEDICATION AND COUNSELING:	SIGNATURE OF PATIENT REQUESTING NON-CHILD PROOF CONTAINER:	



Care How Much We Know.  
Know How Much We Care.

☐ UMC / Emergency Department  
1800 W. Charleston Blvd.  
Las Vegas, NV 89102  
383-2000

☐ Pediatric Emergency Department  
1800 W. Charleston Blvd.  
Las Vegas, NV 89102  
383-2000

#### CLINICS

☐ Total Life Care  
2231 W. Charleston Blvd. 1<sup>st</sup> floor  
Las Vegas, NV 89102  
383-2000

☐ Internal Care  
40 S. Rancho, Suite 205  
Las Vegas, NV 89102  
383-2691

☐ Ernst F. Lied Ambulatory Center  
1524 Pinta Lane  
Las Vegas, NV 89108  
Internal Medicine  
383-2631  
Pediatric Outpatient Services  
383-3642

☐ University Women's Center  
2231 W. Charleston Blvd. 2<sup>nd</sup> floor  
Las Vegas, NV 89102  
383-2403

#### QUICK CARES / CLINICS

☐ Boulder Quick Care  
5412 Boulder Highway  
Las Vegas, NV 89121  
383-2300

☐ Enterprise Quick Care  
1700 S. Boulder Peak Street  
Las Vegas, NV 89106

#### QUICK CARES / CLINICS

☐ UMC Quick Care  
2231 W. Charleston Blvd. 1st floor  
Las Vegas, NV 89102  
383-2074

☐ Peccole Quick Care  
9320 W. Sahara  
Las Vegas, NV 89117  
Q.C. 383-3850 Clinic 383-3833

☐ Nellie Quick Care / Primary Care  
81 North Nellie Boulevard  
Las Vegas, NV 89110  
Q.C. 644-8701 Clinic 383-6250

☐ Rancho Quick Care / Primary Care  
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Las Vegas, NV 89130  
Q.C. 383-3800 Clinic 383-3630

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Las Vegas, NV 89103  
Q.C. 383-3645 Clinic 383-3626

☐ Laughlin Quick Care / Primary Care  
150 E. Edison Way  
Laughlin, NV 89029  
(702) 329-3364

DATE:

PATIENT NAME

ADDRESS

CITY

STATE

ZIP

DATE OF BIRTH

SOCIAL SECURITY NUMBER

PATIENT PHONE

ALLERGIES

MEDICAL HISTORY

DIAGNOSIS

LOCATION (ER, 4N) RX WRITTEN

DATE / TIME OF DISCHARGE

#### DISCHARGES TO BE WRITTEN 24 HOURS IN ADVANCE

HEIGHT \_\_\_\_\_ WEIGHT \_\_\_\_\_

DRUG AND DOSE	QUANTITY	DIRECTIONS	REF
Prescription 1/4 eye drops	#1	1 drop R eye every 2 hrs	
Atropine 1%	#1	1 drop R eye 3x daily	
Tobradex to be many Dexamethasone 10 drops	#1	1 drop R eye qhs	

Attachment "C-2"

PHYSICIAN'S SIGNATURE

PHYSICIAN'S PHONE/BEEPER NUMBER

DEA #

ORAS0253219-

OTHER INSTRUCTIONS

#### FOR PHARMACY USE

☐ DISP. ONLY AS WRITTEN

SIGNATURE OF PHARMACIST CHECKING MEDICATION  
AND COUNSELING PATIENT


SIGNATURE OF PERSON RECEIVING MEDICATION AND  
COUNSELING

SIGNATURE OF PATIENT REQUESTING  
NON-CHILD PROOF CONTAINER

2922607

5/21/1973

5/21/1973

Name of Drug 	Reason/Dose/Time of Day	Handout M-Micromedex (Includes pertinent drug/drug and food/drug interactions)	D/c Rx to be filled at UMC	
			Yes	No
Augmentin 500mg	500mg BY MOUTH THREE TIMES A DAY		✓	
Bacitracin ointment	APPLY TO FACE TWICE A DAY		✓	
Roxicet 5-10 cc	BY MOUTH EVERY 4 HOURS AS NEEDED FOR PAIN		✓	
Artificial tears	1-2 DROPS TO BOTH EYES EVERY 4 HOURS AS NEEDED		✓	
Cipro 3%	1 DROP TO RIGHT EYE 4 X A DAY		✓	
Atropine 1%	1 DROP TO RIGHT EYE THREE TIMES A DAY		✓	
Artificial tears	1-2 DROPS TO BOTH EYES EVERY 4 HOURS		✓	
Predforte 1%	1 DROP TO RIGHT EYE EVERY 2 HOURS		✓	

DO NOT TAKE OVER THE COUNTER DRUGS, VITAMINS, SUPPLEMENTS OR HERBAL REMEDIES WITHOUT PERMISSION FROM YOUR PHYSICIAN

DIET: AS TOLERATED

ACTIVITY: AS TOLERATED, NO HEAVY LIFTING

Equipment needed: NONE

HYGIENE/INCISIONAL CARE: KEEP CLEAN

Equipment/Supplies needed: NONE

NOTIFY YOUR FAMILY DOCTOR FOR: FEVER, NAUSEA & VOMITING, SWELLING, ITCHINESS ON FACE

NOTIFY YOUR SURGEON FOR: SAME AS ABOVE ↑

WEIGHT MONITORING: Y      N ✓ CALL/RETURN TO ED OR YOUR DOCTOR FOR: SAME AS ABOVE

### FOLLOW -UP ON IDENTIFIED HEALTH MAINTENANCE ISSUES:

- ☐ Advised to see MD regarding      ☐ PAP   ☐ Mammogram   ☐ Proctoscopy  
☐ Provided information on self examination of      ☐ Breast   ☐ Testicles   ☐ Quit Smoking: \_\_\_\_\_  
☐ Provided information on community services for substance abuse      ☐ MicroMedex stop smoking instruction  
☐ Advised to contact Nevada Tobacco Users Help line      Phone: 877-0684

Immunization (check as applicable)	Influenza	Pneumovax	Diphtheria/Tetanus	Tetanus	Hepatitis
Received in hospital					
Advised to receive					

The above information has been explained to me and all my questions have been answered.

Patient Signature (or family member if patient unable): [Signature] Current Phone #: 454-345

Discharging Nurse's Signature: [Signature] Date: 7-3-2004

Attachment "C-3"

**PRESENTENCE REPORT**  
**RICKIE LAMONT SLAUGHTER**  
**CC#: C204957**

**PAGE 9**

### IX. VICTIM INFORMATION

Jennifer Dennis, (VC2148321) was contacted and stated that her and her son, Aaron Dennis, (VC2148322) other than the scare, suffered no physical damages. She stated that her husband, Ivan Young, was shot and consequently lost his right eye. The defendant also caused major damage to their residence in the amount of \$5,500. The medical services were covered by Victims of Crime (VC2146820) with a total claim of \$35,000.

Ryan John (VC2148318), Jose Posado (VC2148315) and Jermaun Means (VC2148316) were also contacted and stated that other than the fear and emotional distress associated with this crime, they suffered no financial losses. The Division is requesting restitution in the total amount of \$45,500 to cover the victim's losses.

### X. CONCLUSION

The defendant has a lengthy criminal history as a juvenile and subsequently as series of theft and drug related offenses as an adult, culminating in the instant crime, an offense of extreme violence. The defendant's action caused several human beings to fear for their lives and one in particular, Mr. Ivan Young, to lose his right eye. Therefore, the Division believes the defendant to be a threat to society, with one long prison sentence as the appropriate punishment.

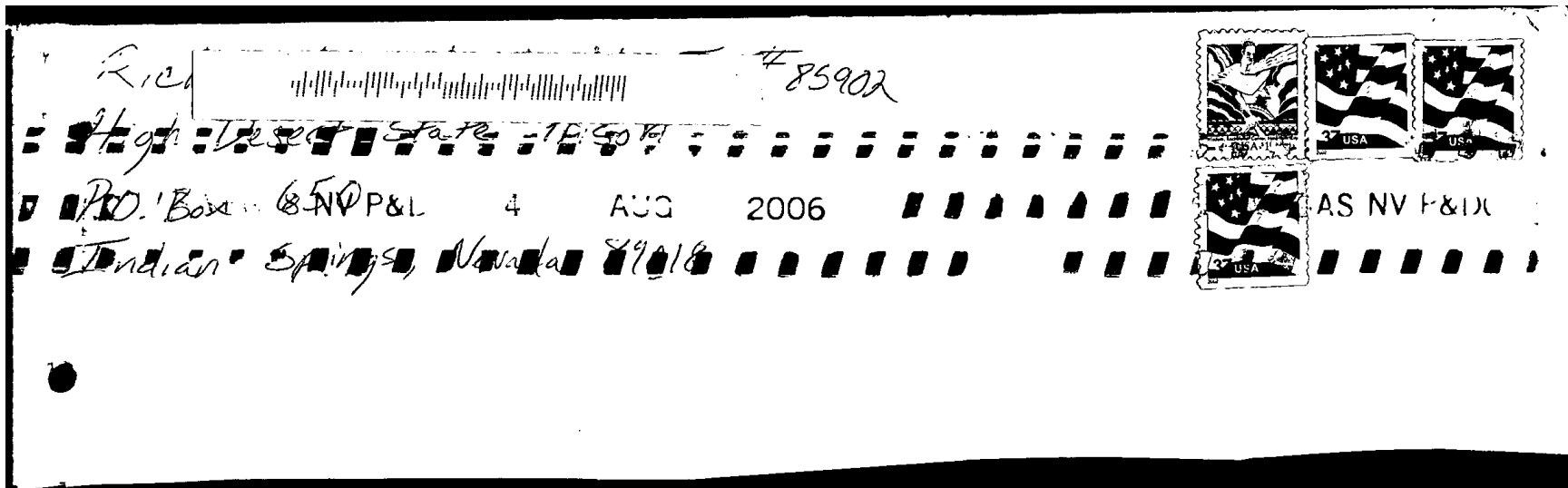
### XI. CUSTODY STATUS/CREDIT FOR TIME SERVED

**Custody Status:** In custody Clark County Detention Center

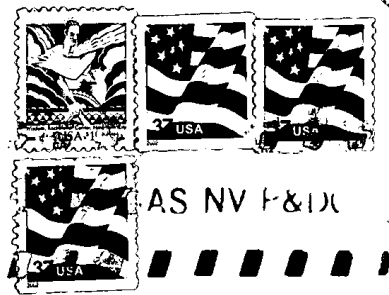
**CTS:** 0 Days: 06-29-2004 to 09-21-2004 (NLVDC) 84 Days  
**RMD:** 09-21-2004 to 05-04-2005 (CCDC) 204 Days  
**RMD:** 05-04-2005 to 06-06-2005 (NSP) 33 Days  
**RMD:** 06-06-2005 to 08-08-2005 (NSP) 64 Days

Nevada probationer/prisoner credited to C190662

*Attachment "B"*



Rich [redacted] #85902  
High Desert State - 1st 50¢  
PO Box 850 P&L 4 AUG 2006  
Indian Springs, Nevada 89018



AS NV F&IX

  
CLERK

1 **OPPS**  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 GIANCARLO PESCI  
6 Deputy District Attorney  
7 Nevada Bar #007135  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2212  
10 (702) 455-4711  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICKIE LAMONT SLAUGHTER,  
#1896569

Defendant.

CASE NO: C204957

DEPT NO: III

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR LEAVE TO SUPPLEMENT  
PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION); APPOINTMENT  
OF COUNSEL AND MOTION FOR COURT MINUTES AND TRANSCRIPTS AT STATE  
EXPENSE

DATE OF HEARING: September 13, 2006  
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
GIANCARLO PESCI, Deputy District Attorney, and hereby submits the attached Points and  
Authorities in Opposition to Defendant's Motion for Leave to Supplement Petition;  
Appointment of Counsel and for Court Minutes and Transcripts at State Expense.

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

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 Defendant was charged by way of Information with the following crimes: one count  
4 of CONSPIRACY TO COMMIT KIDNAPPING (Felony – NRS 199.480, 200.030); one  
5 count of CONSPIRACY TO COMMIT ROBBERY (Felony – NRS 199.480); one count of  
6 CONSPIRACY TO COMMIT MURDER (Felony – 199.480); two (2) counts of ATTEMPT  
7 MURDER WITH USE OF A DEADLY WEAPON (Felony – NRS 200.010, 200.030,  
8 193.330,193.165); one count of BATTERY WITH USE OF A DEADLY WEAPON (Felony  
9 – NRS 200.481; one count of ATTEMPT ROBBERY WITH USE OF A DEADLY  
10 WEAPON (Felony – NRS 200.380, 193.330, 193.165); one count of ROBBERY WITH  
11 USE OF A DEADLY WEAPON (Felony – NRS 200.380, 193.165); one count of  
12 BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony – NRS 205.060);  
13 BURGLARY (Felony – NRS 205.060); six (6) counts of FIRST DEGREE KIDNAPPING  
14 WITH USE OF A DEADLY WEAPON (Felony – NRS 200.310,200.320,193.165) and one  
15 count of MAYHEM (Felony – NRS 200.280). Pursuant to plea negotiations, the State filed a  
16 fourth Amended Information dismissing thirteen out of the seventeen counts for which  
17 Defendant was initially charged.

18 On April 4, 2005, proceeding pro se, Defendant pled guilty to: COUNT 1 -  
19 ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010,  
20 200.030, 193.330, 193.165); COUNT 2 - ROBBERY WITH USE OF A DEADLY  
21 WEAPON (Felony - NRS 200.380, 193.165); COUNT 3 - FIRST DEGREE KIDNAPPING  
22 (Felony - NRS 200.310, 200.320); and COUNT 4 - FIRST DEGREE KIDNAPPING WITH  
23 USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165).

24 On August 08, 2005, Defendant was sentenced as follows: as to COUNT 1, a  
25 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a MINIMUM of NINETY  
26 (90) MONTHS in the Nevada Department of Corrections (NDC), plus an equal and  
27 CONSECUTIVE MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a  
28 MINIMUM of NINETY (90) MONTHS for Use of a Deadly Weapon; on COUNT 2, a

1 MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and a MINIMUM of  
2 SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC), plus and  
3 equal and CONSECUTIVE MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS  
4 and a MINIMUM of SEVENTY-TWO (72) MONTHS for Use of a Deadly Weapon,  
5 CONCURRENT with Count 1; on COUNT 3, a MAXIMUM of LIFE in the Nevada  
6 Department of Corrections (NDC), with a MINIMUM of 15 YEARS before Parole  
7 Eligibility, CONCURRENT with Counts 1 and 2; on COUNT 4, LIFE in the Nevada  
8 Department of Corrections (NDC), with a MINIMUM of 5 YEARS before Parole Eligibility,  
9 plus and equal and CONSECUTIVE LIFE in the Nevada Department of Prisons, with a  
10 MINIMUM of 5 YEARS before Parole Eligibility for Use of a Deadly Weapon,  
11 CONCURRENT with Counts 1, 2, and 3, with NO Credit for Time Served. Judgment of  
12 Conviction was filed on August 31, 2005. On August, 7, 2006, Defendant filed a Petition for  
13 Writ of Habeas Corpus (Post-Conviction). The matter is set for hearing on November 20,  
14 2006. Defendant now files the instant motions and the State responds as follows.

## 15 ARGUMENT

### 16 I 17 THE ONE YEAR TIME BAR IS STRICTLY CONSTRUED

18 NRS 34.726 provides for one year in which to file a post-conviction petition:

19 (1) Unless there is good cause shown for delay, a petition that challenges the  
20 validity of a judgment or sentence must be filed within 1 year of the entry  
21 of the judgment of conviction or, if an appeal has been taken from the  
22 judgment, within 1 year after the Supreme Court issues its remittitur. For  
the purposes of this subsection, good cause for delay exists if the  
petitioner demonstrates to the satisfaction of the court:

23 (a) That the delay is not the fault of the petitioner; and

24 (b) That dismissal of the petition as untimely will unduly prejudice the  
petitioner.

25 In Gonzales v. State, 118 Nev. 590, 53 P.3d 901, 902 (2002), the Nevada Supreme  
26 Court rejected a habeas petition, pursuant to the mandatory provisions of NRS 34.726(1),  
27 that was filed a mere two days late. *Gonzales* reiterated the importance of filing the petition  
28 within the mandatory deadline, absent a showing of “good cause” for the delay in filing.

1 Gonzales, 53 P.3d at 902. Defendant's Judgment of Conviction was filed on August 31,  
2 2005. Defendant filed the instant Motion for Extended Time to Supplement his Petition for  
3 Writ of Habeas Corpus - Post- Conviction (and his bare petition) on August 7, 2006,  
4 purportedly to extend or toll the one year time bar. Therefore, it appears Defendant's motion  
5 is attempting to preemptively demonstrate legally relevant "good cause" for the extension  
6 and establish undue prejudice to his case if the extension is not granted. *See* NRS 34.726.

7 The Court has said that to establish good cause, a defendant must demonstrate that  
8 some impediment external to the defense prevented compliance with the mandated statutory  
9 time limits. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); *see also*  
10 Hathaway v. State, 119 Nev. 30, 71 P.3d 503, 506 (2003), *citing* Pellegrini v. State, 117 Nev.  
11 860, 886-87, 34 P.3d 519, 537 (2001); Passanisi v. Director 105 Nev. 63, 769 P.2d 72  
12 (1989); Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v. Director,  
13 104 Nev. 656, 764 P.2d 1303 (1988). The Court has also ruled that once the State raises  
14 procedural grounds for dismissal, the burden then falls on the defendant "to show that good  
15 cause exists for his failure to raise any grounds in an earlier petition and that he will suffer  
16 actual prejudice if the grounds are not considered." Phelps v. Director of Prisons, 104 Nev.  
17 656, 659, 764 P.2d 1305 (1988). To find good cause there must be a "substantial reason; one  
18 that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 71 P.3d at 506 (2003),  
19 *quoting* Colley v. State, 105 Nev. 235, 236, 773 p.2d 1229, 1230 (1989), *quoting* State v.  
20 Estencion, 625 P.2d 1040, 1042 (Haw. 1981). The Court explained that in order to establish  
21 prejudice, the defendant must show "not merely that the errors of [the proceedings] created  
22 possibility of prejudice, but that they worked to his actual and substantial disadvantage, in  
23 affecting the state proceedings with error of constitutional dimensions." Hogan v. Warden,  
24 109 Nev. 952, 960, 860 P.2d 710, 716 (1993).

25 The Court has indicated that valid impediments external to the defense giving rise to  
26 "good cause" could be "that the factual or legal basis for a claim was not reasonably  
27 available to counsel, or that 'some interference by officials' made compliance  
28 impracticable." Hathaway, 71 P.3d at 506, *quoting* Murray v. Carrier, 477 U.S. 478, 488,

1 106 S.Ct. 2639, 2645 (1986); *see also* Gonzalez, 53 P.3d at 904, *citing* Harris v. Warden,  
2 114 Nev. 956, 959-60 n. 4, (64 P.2d 785 n. 4 (1998)). Clearly, the delay in filing the petition  
3 must not be the fault of the petitioner. NRS 34.726(1)(a).

4 Defendant has offered no good cause for granting an extension of the statutory time  
5 limitation. Bare legalisms not explaining specifically valid reasons for delay or extension of  
6 time are not sufficient to justify evasion of the one year time bar. *See* Hargrove v. State, 100  
7 Nev. 498, 686 P.2d 222 (1984)(holding naked allegations insufficient to afford relief).  
8 Conspicuously absent from Defendant's motion is some personalized explanation and that  
9 absence makes clear that delay at the eleventh hour is attributable directly and inexcusably to  
10 the fault of petitioner. NRS 34.726(1)(a). Because Defendant has failed to demonstrate good  
11 cause, this court should have no hesitation in summarily denying the motion.

## 12 13 **II DEFENDANT IS NOT ENTITLED TO APPOINTED COUNSEL**

14 In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court  
15 ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings.  
16 In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court  
17 similarly observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in  
18 post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel  
19 provision as being coextensive with the Sixth Amendment to the United States  
20 Constitution."

21 McKague specifically held that with the exception of NRS 34.820(1)(a) [entitling  
22 appointed counsel when petition is under a sentence of death], one does not have "[a]ny  
23 constitutional or statutory right to counsel at all" in post-conviction proceedings. *Id.* at 164.  
24 The Nevada Supreme Court has observed that a Defendant "must show that the requested  
25 review is not frivolous before he may have an attorney appointed." Peterson v. Warden,  
26 Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971)(citing former statute NRS  
27 177.345(2)). Defendant has not shown that his contentions have merit from which he would  
28 benefit by having the assistance of an attorney. The presence of an attorney will not advance

1 Defendant's frivolous attempt towards the relief he seeks. Therefore, Defendant is not  
2 entitled to appointment of an attorney on this case.

3 **III**  
4 **PETITIONER HAS NO RIGHT TO FREE TRANSCRIPTS**

5 The State is not required to furnish transcripts at its expense upon the unsupported  
6 request of a petitioner claiming inability to pay for them. Petitioner must satisfy the court  
7 that the points raised have merit, which will tend to be supported by a review of the record  
8 before he may have trial records supplied at state expense. Peterson v. Warden, 87 Nev.  
134, 135-36, 483 P.2d 204, 205 (1971).

9 An indigent appellant's right to have access to needed transcripts was established in  
10 Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956). The protection of  
11 indigents from preclusive monetary requirements has been extended to other post-conviction  
12 proceedings. See Smith v. Bennett, 365 U.S. 708, 81 S.Ct. 895, 6 L.Ed.2d 39 (1961);  
13 Douglas v. Green, 363 U.S. 192, 80 S.Ct. 1048, 4 L.Ed.2d 1142 (1960) (docket fees in  
14 habeas corpus proceedings). However, the United States Supreme Court reiterated in  
15 Eskridge v. Washington State Board of Prison Terms and Paroles, 357 U.S. 214, 216, 78  
16 S.Ct. 1061, 1062, 2 L.Ed.2d 1269 (1958), what it had said in Griffin: "We do not hold that a  
17 State must furnish a transcript in every case involving an indigent defendant."

18 Here, Petitioner has failed to make the necessary threshold showing of need for state-  
19 supplied transcripts because Defendant has already filed a Petition for Writ of Habeas  
20 Corpus (Post-Conviction) raising claims without the use of State supplied transcripts. The  
21 Defendant asked for all court minutes regarding his case and any transcripts of proceedings  
22 involving him. He has not demonstrated that any irregularity occurred at those proceedings  
23 to justify a requirement that the State provide records and transcripts at its expense.

24 For the foregoing reasons, the Defendant is not entitled to transcripts at State expense,  
25 and has not been deprived of his right of redress or access to the courts. The Defendant has  
26 failed to show that there is any merit to his claims for which the transcripts he requests are  
27 necessary. See Peterson, *supra*.

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**CONCLUSION**

For all the foregoing reasons, Defendant's Motion for Appointment of Counsel/Free Transcripts should be DENIED.

DATED this 11<sup>th</sup> day of September, 2006.

Respectfully submitted,

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781

BY /s/GIANCARLO PESCI  
Deputy Name  
Chief Deputy District Attorney  
Nevada Bar #00Deputy Bar

**CERTIFICATE OF MAILING**

I hereby certify that service of the above and foregoing, was made this 11<sup>th</sup> of September, 2006, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RICKIE SLAUGHTER, BAC #85902  
HDSP/PO BOX 650  
INDIAN SPRINGS, NV 89018

/s/L. GUDEMAN  
Secretary for the District Attorney's  
Office

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*Shirley E. Rungius*  
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Rickie Lamont Slaughter, Jr. #85902  
High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89018

PETITIONER - IN PROPER PERSON

DISTRICT COURT

CLARK COUNTY, NEVADA

Rickie Lamont Slaughter, Jr.,	)	Case No.:	C204957
	)		
Petitioner,	)	Dept No.:	III
	)		
-vs-	)		
	)		
Warden, D.W. Neven, and The	)	Hearing Date:	
State Of Nevada,	)	Hearing Time:	
	)		
Respondents.	)		

PETITIONER'S RESPONSE TO THE STATE'S OPPOSITION  
TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS  
/ REQUEST FOR EVIDENTIARY HEARING / EXHIBITS

Comes Now, Petitioner, Rickie Lamont Slaughter Jr., in proper person pursuant to the dictates of Hains v. Kerner, 92 S.Ct. 594, at 596 wherein (Pro se pleadings are to be held to a less stringent standard than those pleadings drafted by attorneys) and respectfully submits the above entitled response.

The foregoing motion is made and based upon all papers, pleadings, documents, exhibits, and the Points and Authorities attached hereto, and on file, and any oral argument this Court deems necessary.

Petitioner prays this Honorable Court grant relief in his favor to ensure his right to a fair and meaningful hearing under the 14th amendment.

.....  
.....


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1  
2 TO: Warden, D.W. Neven, The State of Nevada; and

3 TO: The Clark County District Attorney's Office

4 You will please take Notice, that the undersigned will bring the foregoing  
5 Response on for hearing on the \_\_\_\_ day of \_\_\_\_\_ 2006, in Department  
6 3 at 9:00 a.m. or as soon as counsel may be heard in this matter.

7 Dated this \_\_\_\_ day of December 2006.

8   
9 RICKIE LAMONT SLAUGHTER JR. #85902  
(Petitioner in Proper Person)

10 Points and Authorities

11  
12 Statement of the case - By way of information Defendant (from herein  
13 "Mr. Slaughter") was charged with 17 Felony Counts. Pursuant to plea negotia-  
14 tions on April 4, 2005 proceeding pro. se with Appointed Standby Counsel Mr.  
15 Slaughter pled guilty to 4 Felony Counts.

16 On August 8, 2005, Mr. Slaughter was sentenced by the District Court. On  
17 August 7, 2006, Mr. Slaughter filed a Petition for Writ of Habeas Corpus (Post-  
18 conviction). On August 10, 2006, the District Court issued an Order, ordering  
19 the State to file a response or answer to Mr. Slaughter's Petition for Writ of  
20 Habeas Corpus within 45 days of the entry of it's Order. On November \_\_\_\_  
21 2006, the State filed an opposition to Mr. slaughter's Petition. On November  
22 28, 2006. The District Court Ordered Mr. Slaughter to file a Response and all  
23 Supplemental Pleadings by December 13, 2006. Mr. Slaughter now submits the in-  
24 stant response to the States Opposition to his Petition for Writ of Habeas  
25 Corpus (Post-conviction).  
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1 available. The State will not oppose <sup>1</sup> concurrent time between the counts.  
2 The defendant has agreed to retain the right to argue for fifteen (15) to forty  
3 (40) at sentencing as to COUNT III. (See Petitioner's Exhibit # 1 Petitioner's  
4 copy of plea agreement)

5 Mr. Slaughter refused the agreement several times on the basis that he  
6 believed that the weapon enhancements on Counts I, II, and IV would affect his  
7 sentence in length. Ms. Krisko and Mr. Digiacamo assured Mr. Slaughter that  
8 because concurrent time would run between the Counts, and the fact that Count  
9 III the "controlling sentence" had no weapon enhancement he would be serving in  
10 effect "one 15 to life or one 15 to 40 year sentence" in the Judges discretion,  
11 by pleading guilty to the plea agreement because the weapon enhancements on  
12 Counts I, II, and IV would run while he was serving Count III, giving Mr.  
13 Slaughter "an opportunity to be released in 15 years."

14 Upon these repeated assurances from Ms. Krisko and Mr. Digiacamo, Mr.  
15 Slaughter accepted the plea agreement. The Court then asked Mr. Digiacamo (the  
16 prosecutor) to explain the negotiations:

17 THE COURT: "Why don't you go ahead and tell me, if would please, Mr.  
18 Digiacamo, what the negotiations are."

19 MR. DIGIACAMO: "Yes, Judge."  
20 The defendant will enter a plea to -- let's make sure I read these all off.  
21 Count I, attempt murder with use of a deadly weapon; Count II, robbery with the  
22 use of a deadly weapon; Count III, first degree kidnapping; and Count IV, first  
23 degree kidnapping with use of a deadly weapon.

24 The State agrees to retain the right to argue for 15 years to life at

25 1. This was a mistatement in the language of the plea agreement inwhich  
26 the prosecutor amended at sentencing. (See RT of Sentencing at pp.  
4-5; Ins: 18-25; and 1-3)

27

28

1 sentencing as to Count III, but stipulates that life without the possibility of  
2 parole is not an available sentence for the Court.

3 The State will not oppose concurrent time between the Counts, and the def-  
4 endant has agreed to retain the right to argue for 15 to 40 years as to sentenc-  
5 ing on Count III.

6 Essentially, Judge, the negotiation is either a 15 to life or a 15 to 40,  
7 depending on the Court's decision at sentencing, and the sentencing is to be  
8 before this Court is my understanding, Judge." (RT of Guilty Plea pp. 24-25;  
9 lines; 13-25; and 1-7)

10 THE COURT: "Do you agree with the negotiations as Mr. Digiacamo stated  
11 them?"

12 THE DEFENDANT: "Yeah, that the decisions between 15 to 40 , and 15 to  
13 life?"

14 THE COURT: "Right. Okay . . . " (RT of Guilty Plea pp. 25; lines: 17-21)

15 The Court then canvassed Mr. Slaughter. During the canvass Mr. Slaughter  
16 remembers having an off - the - record discussion with his stand by counsel and  
17 the prosecutor Mr. Digiacamo concerning the effects of the agreement on the sen-  
18 tence length, and was given the same assurances as before:

19 THE COURT: "And those were just the potential ranges of punishment you  
20 could recieve. Do you understand all that?"

21 THE DEFENDANT: "Yeah. Can I have a moment for a second?"

22 THE COURT: "Yes!"

23 (Whereupon, the defendant had an off - the - record discussion with his  
24 Attorney.)(RT of Guilty Plea pp. 30-31; lines; 23-25; and 1-5)

25 The Court then finished the canvass and ultimately accepted Mr. Slaugh-  
26 ter's guilty pleas, and a sentencing date was set.

27 Before the date set for sentencing Mr. Slaughter came to believe that Ms.  
28 Krisko and Mr. Digiacamo had misapprehend the effects of stacking several

1 sentences concurrent and consecutive, and consequently misrepresented the bene-  
2 fits and effects of the plea agreement out of proportion to him at the negotia-  
3 tions.

4 Accordingly, Mr. Slaughter sought to file a Motion to Withdraw his guilty  
5 pleas.<sup>2</sup> (See Petitioner's Exhibit # 2 Motion to Withdraw Guilty Plea)

6 On August 8, 2005, before the sentencing proceedings Mr. slaughter was met  
7 by Ms. Krisko in the hallway outside of the Courtroom, when he informed her of  
8 his decision to withdraw his guilty pleas due to the misrepresentations of the  
9 benefits, and effects of the plea agreement the she, and Mr. Digiacamo had given  
10 him at the negotiations. Ms. Krisko then told Mr. Slaughter that he did not  
11 need to withdraw his guilty pleas, because she was sure that Mr. Slaughter's  
12 sentences would run as she had previously stated to Mr. Slaughter at the initial  
13 negotiations. That the sentence would in effect be "one 15 to life or one 15 to  
14 40 year sentence" and that the weapon enhancements on Counts I, II, and IV would  
15 not affect sentence length because they were to be ran concurrent. Mr. Slaugh-  
16 ter was then persuaded by Ms. Krisko and his stand by counsel Paul Wommer not  
17 to pursue his Motion to Withdraw his Guilty Pleas.

18 During the sentencing proceedings the essence of Ms. Krisko and Mr. Digia-  
19 camo's misrepresentations surfaced in Ms. Krisko's statement to the Court:

20 MS. KRISKO: " . . . It is our understanding you have every intention of  
21 allowing the nigotiations to stand and to follow those negotiations so the he's  
22 not looking at doing more than the 15 to either 40, if he gets that, or life if  
23 we get what we want . . . " (RT of Sentencing pp.5; lines 10-14)

24 2. This Motion was filed after sentencing, though it was recieved by the Court  
25 Clerk 4 days before sentencing, Mr. Slaughter believes that it was subse-  
26 quently deemed moot and was not present at the proceedings of the hearing  
27 held August 23, 2005.  
28

1 Mr. Slaughter also expressed his concerns of stacking several sentences  
2 concurrent and consecutive at the proceedings:

3 THE DEFENDANT: "I had a question also, if the Counts run concurrent I  
4 really didn't understand how that would run, how -- with the other consecutive  
5 weapons enhancements." (RT of Sentencing pp. 6; ln: 5-8)

6 The Court then explained to Mr. Slaughter that the weapon enhancements  
7 would not run consecutive to the 15 to life or 15 to 40 years:

8 THE DEFENDANT: "But they don't run consecutive to the 15 to 40 or the 15  
9 to life if the Counts run concurrent?"

10 THE COURT: "Well, if I choose to run them all concurrent then you're cor-  
11 rect. They will not run consecutive to the 15 to life." (RT of Sentencing pp.  
12 6-7; lns; 21-25; and 1)

13 After hearing these assurances from the Judge himself, Mr. Slaughter seen  
14 no reason to pursue his Motion to Withdraw his Guilty Pleas.

15 Accordingly, the Court then sentenced Mr. Slaughter and told Mr. Slaughter  
16 that he was effectively serving a 15 to life:

17 THE COURT: "Effectively, Mr. Slaughter, you have a life sentence with a  
18 minimum of 15 years, which is what I believe you bargained for, and what the  
19 State has stipulated they were going to request of the Court today and I have  
20 agreed to follow that . . . " (RT of Sentencing pp. 15-16; lns; 24-25; and 1-3)

21 While in Prison, Mr. Slaughter has discovered that the weapon enhancements  
22 will affect his sentence length, because they will only be able to be served  
23 consecutive to his 15 to life. (See Petitioner's Exhibit # 4 a print out of  
24 his sentencing structure form the NDOC)

25 Argument

26 Dismissal of the Petitioner's Petition Is Improper as Petitioner has Ass-  
27 erted Claims Supported by Specific Factual Allegations that if True, Would Enti-  
28 tle Him To Relief, And Petitioner's Allegations Are Not Belied by the Record

1 thus, Entitling Him To An Evidentiary Hearing As A Matter Of Law

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2  
3 The Nevada Supreme Court has consistently held that a Habeas Corpus Pe-  
4 titioner "is entitled to an evidentiary hearing only if he supports his claims  
5 with specific factual allegations, that if true would entitle him to relief."  
6 however a "Petitioner is not entitled to an evidentiary hearing if the factual  
7 allegations are belied or repelled by the record." Hodges v. State, 119 Nev.  
8 479, Id. at 482, 78 p.3d 67, at 68 (Nev. 2003); see also Hargrove v. State,  
9 100 Nev. 498, 686 P.2d 222, at 225 (Nev. 1984).

10 For purposes of determining if a claim is belied or repelled by the record  
11 the Court held that "[A] claim is belied when it is contradicted or proven to  
12 be false by the record as it existed at the time the claim was made." Mann v.  
13 State, 118 Nev. 351 46 P.3d 1228, Id. at 1230 (Nev. 2002).

14 Essentially this principle of law identifies the components that must be  
15 satisfied to entitle Mr. Slaughter to an Evidentiary Hearing, and avoid summary  
16 dismissal:

17 (1) Petitioner must assert claims supported by specific factual allega-  
18 tions; 2) that if true would entitle him to relief; and 3) these factual alle-  
19 gations cannot be belied or repelled by the record.

20 As is evident from the facts set forth in Mr. Slaughter's Petition for  
21 post-conviction habeas relief, Mr. Slaughter has asserted claims of misrepre-  
22 sentation by Ms. Krisko and Mr. Digiacamo inwhich he supports with specific  
23 factual allegations. Specifically Mr. Slaughter claims that he was told by Ms.  
24 Krisko and Mr. Digiacamo that the plea agreement in question would give him  
25 "an opportunity to be released from prison in 15 years." And that with the  
26 stacking of several sentences concurrent and consecutive the plea agreement  
27 would enable him to serve in "effect one 15 to life or one 15 to 40 year sen-  
28 tence."

1        These allegations remain uncontroverted in the State's opposition and find  
2 some support in the contrast of Mr. Slaughter's actual sentence structure (see  
3 Petitioner's Exhibit # 4) and Ms. KrisKo's own statement to the Court at  
4 sentencing:

5        MS. KRISKO: ". . . It is our understanding you have every intention of  
6 allowing the negotiations to stand and to follow those negotiations so that he's  
7 (Mr. Slaughter) not looking at doing more [time] then the 15 to either 40, if he  
8 gets that, or life if we get what we want . . ." (RT of Sentencing August 8,  
9 2005 pp.5; ln: 10-14). (Emphasis added)

10       This statement clearly shows the truth of Mr. Slaughter's assertion concern-  
11 ing the intent of the negotiations. Further in support of this allegation is  
12 Mr. Slaughter's private Investigators (Mr. Conklin) recollection and his notes  
13 of the negotiations. (See Petitioner's Exhibit# 3)

14       There is also some indication as to what was represented to Mr. Slaughter  
15 at the negotiations in Mr. Digiacamo's statement to the Court:

16       MR. DIGIACAMO: ". . . Essentially, Judge, the negotiation is either a 15  
17 to life or a 15 to 40, depending on the Court's decision at sentencing . . ."  
18 (RT of Sentencing plea pp.25; ln. 4-7)(Emphasis added)

19       Thus, Mr. Slaughter's asserted claim of misrepresentation is supported by  
20 specific factual allegations that not only are not belied by the record, but  
21 actually find some support in the record.

22       In considering if Mr. Slaughter's claim would entitle him to relief if true,  
23 the Court must identify, and apply the dictates of the relevant case law.

24       To promote clarity, Mr. Slaughter claims he was induced to plead guilty,  
25 based upon the prosecutor's misrepresentations given to Mr. Slaughter at the  
26 plea negotiations. Therefore, despite the State's mischaracterization the  
27 alleged defect lies in the States misrepresentations and not an adivsement,  
28 "colloquy", or canvass between Mr. Slaughter and the Court.

1        Thus, contrary to the State's misapprehension to the relevant legal pre-  
2        cept we must turn to a long established legal principle that governs such an  
3        issue.

4        IN qualifying it's decision the United States Supreme Court stated the  
5        applicable standard for testing the voluntariness of guilty pleas:

6        "[A] plea of guilty entered by one fully aware of the direct consequences,  
7        including the actual value of any commitments made to him by the court, prosecu-  
8        tor, or his own counsel, must stand unless induced by threats (or promises to  
9        discontinue improper harassment), misrepresentation (including unfulfilled or  
10       unfulfillable promises), or perhaps by promises that are by their nature as hav-  
11       ing no proper relationship to the prosecutors business (e.g. bribes)" Brady v.  
12       United States, 397 U.S. 742, Id. at 755, 90 S.Ct. 1463, at 1472 (1970); see also  
13       Mabry v. Johnson, 467 U.S. 504, at 509, 104 S.Ct. 2543, at 2547 (1984) (holding  
14       this a "the applicable standard") (Emphasis added)

15       Further, our Ninth Circuit Court of Appeals has held "that a promise that  
16       in any degree induces a plea must be fulfilled." Gunn v. Ignacio, 263 F.3d 965,  
17       969 (9th Cir. 2001) (Internal quotations omitted); see also Stubbs v. State, 972  
18       P.2d 843, at 845 (Nev. 1998) (holding that "when a plea rest in any significant  
19       degree on a promise or agreement of the prosecutor so that it can be said to be  
20       part of the inducement or consideration such promise must be fulfilled." citing  
21       Santobello v. New York, Infra Id. at 499).

22       Mr. Slaughter asserts that the prosecutors misrepresentations, and mislead-  
23       ing assurances in the instant case are tantamount to promises and were very much  
24       a "part of the inducement or consideration," Santobello v. New York, 404 U.S.  
25       257, at 262, 92 S.Ct. 495, at 499 (1971), in his decision to plead guilty to the  
26       plea agreement.

27       In Santobello v. New York, Supra, in an opinion concurring with the Major-  
28       ity of the United States Supreme Court, Mr. Justice Douglas opined that:

1        "Walker v. Johnston, 312 U.S. 275, 61 S.Ct. 574, 85 L.Ed. 830, Clearly  
2 held that . . . if he had been tricked by the prosecutor through misrepresen-  
3 tation into pleading guilty then his due process rights were offended."  
4 Santobello, supra, Id. at 265, and 500; see also Walker v. Johnston, 312 U.S.  
5 275, at 61 S.Ct. 574, at (1948) (holding that if defendant was "deceived"  
6 into pleading guilty his rights are offended).

7        Further, and analogous to Mr. Slaughter's claims is the principle estab-  
8 lished in Rouse v. State, infra, holding "that mere subjective belief of a def-  
9 endant as to potential sentence, or hope of leniency, unsupported by any pro-  
10 mise from the State or indication by the Court, is insufficient to invalidate a  
11 guilty plea as involuntary or unknowing." Rouse v. State, 91 Nev. 677, 541 P.2d  
12 643, at 644 (Nev. 1975).

13        This case specifically dealt with advise from defendants counsel, and  
14 its principle should also apply to a case of the instant nature, where Mr.  
15 Slaughter's belief of the negotiations was spawned and certainly supported by  
16 promises from the prosecution.

17        Thus, after a review of the relevant law it becomes apparent that if Mr.  
18 Slaughter's claim of misrepresentations by the prosecutor's were true they  
19 "would entitle him to relief," Hodges v. State, supra Id. at, 68, because his  
20 due process rights would be offended and the plea would be involuntary, because  
21 of such misrepresentations.

22        Finally, Mr. Slaughter has asserted claims with factual allegations outside  
23 of the record (e.g. off - the - record discussions or negotiations). Thus,  
24 "[W]hen a defendant's allegations . . . are based on facts outside of the record,  
25 an evidentiary hearing is required." Frazer v. U.S., 18 F.3d 778, at 781 (9th  
26 Cir. 1994); See also Earp v. Stokes, 423 F.3d 1024 at, 1035 (9th Cir. 2005).  
27 In light of the analysis of the facts of this case and the relevant case law,  
28 this Court is urged to grant an Evidentiary Hearing and deny the States request

1 to dismiss the Petition, as Mr. Slaughter has clearly asserted claims supported  
2 by factual allegations that if true, would entitle him to relief, and these  
3 claims find support in the record.

4 Mr. Slaughter also wishes to present testimony by the following witnesses  
5 in support of his claims.

6 1) James B. Conklin - Mr. Slaughter's private investigator who was pres-  
7 ent at the negotiations, see Petitioner's Exhibit # 3 a copy of Mr. Conklin's  
8 notes of the negotiations and letter written by Mr. Conklin describing his  
9 recollection of the negotiations.

10 2) Rickie L. Slaughter Sr. - Mr. Slaughter's father whom Mr. Slaughter  
11 explained his understanding of the plea agreement shortly after the negotiations  
12 (See Petitioner's Exhibit # 5).

13 3) Tiffany R. Johnson - Mr. Slaughter's close friend whom Mr. Slaughter  
14 explained his understanding of the agreement shortly after the negotiations  
15 (See Petitioner's Exhibit # 6).

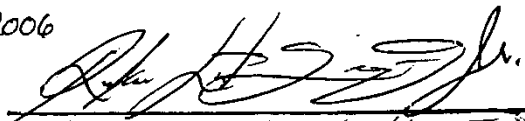
16 Mr. Slaughter also wishes to present his own testimony in support of claims  
17 for relief.

18 Conclusion

19 Clearly, Mr. Slaughter has satisfied the standards of the governing case  
20 Law and this case falls squarely into the caveats of the relevant legal princi-  
21 ples entitling him to an evidentiary hearing as A Matter of Law.

22 *Respectfully submitted*

23 *Dated this 7<sup>th</sup> day of December 2006*

24   
25 *Rickie Lamont Slaughter Jr.*

**CERTIFICATE OF SERVICE BY MAILING**

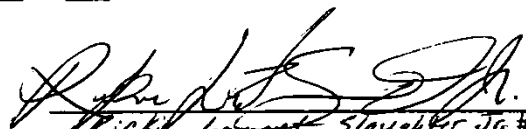
I, Rickie L. Slaughter Jr. #85902, hereby certify, pursuant to NRCP 5(b), that on this \_\_\_ day of December, 20 06, I mailed a true and correct copy of the foregoing, "Response To State's Opposition To Petition/Request For Evidentiary hearing/exhibits" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

The Clark County Clerks  
Office  
200 Lewis Ave. P.O. Box 552212  
Las Vegas, Nevada 89155-2212

The Clark County District  
Attorney's Office  
200 Lewis Ave. P.O. Box 552212  
Las Vegas, Nevada 89155-2212

CC:FILE

DATED: this \_\_\_ day of December, 20 06.

  
Rickie L. Slaughter Jr. #85902  
Petitioner In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

1 **GMEM**

2 **DAVID ROGER**

3 **DISTRICT ATTORNEY**

4 Nevada Bar #002781

5 **SUSAN R. KRISKO**

6 Deputy District Attorney

7 Nevada Bar #006024

8 200 South Third Street

9 Las Vegas, NV 89155-2212

10 (702) 455-4711

11 Attorney for Plaintiff

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**

15 Plaintiff,

CASE NO:

C204957

DEPT NO:

XVI

16 -vs-

17 **RICKIE LAMONT SLAUGHTER,**  
18 #1896569

19 Defendant.

20 **GUILTY PLEA AGREEMENT**

21 I hereby agree to plead guilty to: **COUNT 1 - ATTEMPT MURDER WITH USE**  
22 **OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.330, 193.165); COUNT**  
23 **2 - ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380,**  
24 **193.165); COUNT 3 - FIRST DEGREE KIDNAPPING (Felony - NRS 200.310,**  
25 **200.320); and COUNT 4 - FIRST DEGREE KIDNAPPING WITH USE OF A**  
26 **DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165), as more fully alleged in**  
27 **the charging document attached hereto as Exhibit "1".**

28 My decision to plead guilty is based upon the plea agreement in this case which is as follows:

The State has agreed to retain the right to argue for fifteen (15) to life at sentencing as to Count 3, but stipulates that life without parole is not available. The State will not oppose concurrent time between the counts. The defendant has agreed to retain the right to argue for fifteen (15) to forty (40) at sentencing as to Count 3.

*Shirley*  
**Exhibit 1**

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1 CONSEQUENCES OF THE PLEA

2 I understand that by pleading guilty I admit the facts which support all the elements of  
3 the offense(s) to which I now plead as set forth in Exhibit "1".

4 I understand that as a consequence of my plea of guilty the Court must sentence me to  
5 imprisonment in the Nevada Department of Corrections as follows:

6 COUNT 1 (Attempt Murder With Use of a Deadly Weapon) - for a minimum term of not  
7 less than TWENTY-FOUR (24) months and a maximum term of not more than TWO  
8 HUNDRED FORTY (240) months plus an equal and consecutive minimum term of not less  
9 than TWENTY-FOUR (24) months and a maximum term of not more than TWO  
10 HUNDRED FORTY (240) months. The minimum term of imprisonment may not exceed  
11 forty percent (40%) of the maximum term of imprisonment.

12 COUNT 2 (Robbery With Use of a Deadly Weapon) - for a minimum term of not less than  
13 TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED  
14 EIGHTY (180) months plus an equal and consecutive minimum term of not less than  
15 TWENTY-FOUR (24) months and a maximum term of not more than ONE HUNDRED  
16 EIGHTY (180) months. The minimum term of imprisonment may not exceed forty percent  
17 (40%) of the maximum term of imprisonment.

18 COUNT 3 (First Degree Kidnapping) - the Court must sentence me to imprisonment in the  
19 Nevada State Prison for ~~Life without the possibility of parole~~ OR life with the possibility of  
20 parole with parole eligibility beginning at 15 years (180 months) OR definite term of 40  
21 years (480 months) with parole eligibility beginning at 15 years (180 months);

22 COUNT 4 (First Degree Kidnapping With Use of a Deadly Weapon) - the Court must  
23 sentence me to imprisonment in the Nevada State Prison for life with the possibility of  
24 parole with parole eligibility beginning at 5 years (60 months) OR definite term of 15 years  
25 (180 months) with parole eligibility beginning at 5 years (60 months) plus an equal and  
26 consecutive life with the possibility of parole with parole eligibility beginning at 5 years (60  
27 months) OR definite term of 15 years (180 months) with parole eligibility beginning at 5  
28 years (60 months).

1 I understand that the law requires me to pay an Administrative Assessment Fee.

2 I understand that, if appropriate, I will be ordered to make restitution to the victim of  
3 the offense(s) to which I am pleading guilty and to the victim of any related offense which is  
4 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to  
5 reimburse the State of Nevada for any expenses related to my extradition, if any.

6 I understand that I am not eligible for probation for the offense to which I am  
7 pleading guilty.

8 I understand that if more than one sentence of imprisonment is imposed and I am  
9 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order  
10 the sentences served concurrently or consecutively.

11 I also understand that information regarding charges not filed, dismissed charges, or  
12 charges to be dismissed pursuant to this agreement may be considered by the judge at  
13 sentencing.

14 I have not been promised or guaranteed any particular sentence by anyone. I know  
15 that my sentence is to be determined by the Court within the limits prescribed by statute.

16 I understand that if my attorney or the State of Nevada or both recommend any  
17 specific punishment to the Court, the Court is not obligated to accept the recommendation.

18 I understand that if the State of Nevada has agreed to recommend or stipulate a  
19 particular sentence or has agreed not to present argument regarding the sentence, or agreed  
20 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor  
21 when the offense could have been treated as a felony, such agreement is contingent upon my  
22 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing  
23 is continued). I understand that if I fail to appear for the scheduled sentencing date or I  
24 commit a new criminal offense prior to sentencing the State of Nevada would regain the full  
25 right to argue for any lawful sentence.

26 I understand if the offense(s) to which I am pleading guilty to was committed while I  
27 was incarcerated on another charge or while I was on probation or parole that I am not  
28 eligible for credit for time served toward the instant offense(s).

1 I understand that as a consequence of my plea of guilty, if I am not a citizen of the  
2 United States, I may, in addition to other consequences provided for by federal law, be  
3 removed, deported, excluded from entry into the United States or denied naturalization.

4 I understand that the Division of Parole and Probation will prepare a report for the  
5 sentencing judge prior to sentencing. This report will include matters relevant to the issue of  
6 sentencing, including my criminal history. This report may contain hearsay information  
7 regarding my background and criminal history. My attorney and I will each have the  
8 opportunity to comment on the information contained in the report at the time of sentencing.  
9 Unless the District Attorney has specifically agreed otherwise, then the District Attorney  
10 may also comment on this report.

11 WAIVER OF RIGHTS

12 By entering my plea of guilty, I understand that I am waiving and forever giving up  
13 the following rights and privileges:

14 1. The constitutional privilege against self-incrimination, including the right to refuse  
15 to testify at trial, in which event the prosecution would not be allowed to comment to the  
16 jury about my refusal to testify.

17 2. The constitutional right to a speedy and public trial by an impartial jury, free of  
18 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the  
19 assistance of an attorney, either appointed or retained. At trial the State would bear the  
20 burden of proving beyond a reasonable doubt each element of the offense charged.

21 3. The constitutional right to confront and cross-examine any witnesses who would  
22 testify against me.

23 4. The constitutional right to subpoena witnesses to testify on my behalf.

24 5. The constitutional right to testify in my own defense.

25 6. The right to appeal the conviction, with the assistance of an attorney, either  
26 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional  
27 or other grounds that challenge the legality of the proceedings and except as otherwise  
28 provided in subsection 3 of NRS 174.035.

1 VOLUNTARINESS OF PLEA

2 I have discussed the elements of all of the original charge(s) against me with my  
3 attorney and I understand the nature of the charge(s) against me.

4 I understand that the State would have to prove each element of the charge(s) against  
5 me at trial.

6 I have discussed with my attorney any possible defenses, defense strategies and  
7 circumstances which might be in my favor.

8 All of the foregoing elements, consequences, rights, and waiver of rights have been  
9 thoroughly explained to me by my attorney.

10 I believe that pleading guilty and accepting this plea bargain is in my best interest,  
11 and that a trial would be contrary to my best interest.

12 I am signing this agreement voluntarily, after consultation with my attorney, and I am  
13 not acting under duress or coercion or by virtue of any promises of leniency, except for those  
14 set forth in this agreement.

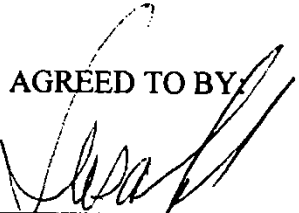
15 I am not now under the influence of any intoxicating liquor, a controlled substance or  
16 other drug which would in any manner impair my ability to comprehend or understand this  
17 agreement or the proceedings surrounding my entry of this plea.

18 My attorney has answered all my questions regarding this guilty plea agreement and  
19 its consequences to my satisfaction and I am satisfied with the services provided by my  
20 attorney.

21 DATED this \_\_\_\_ day of April, 2005.

22  
23 RICKIE LAMONT SLAUGHTER  
24 Defendant

25 AGREED TO BY:

26   
27 SUSAN R. KRISKO  
28 Deputy District Attorney  
Nevada Bar #006024

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of  
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)  
to which guilty pleas are being entered.

5 2. I have advised the Defendant of the penalties for each charge and the restitution  
6 that the Defendant may be ordered to pay.

7 3. All pleas of guilty offered by the Defendant pursuant to this agreement are  
consistent with the facts known to me and are made with my advice to the Defendant.

8 4. To the best of my knowledge and belief, the Defendant:

9 a. Is competent and understands the charges and the consequences of pleading  
10 guilty as provided in this agreement.

11 b. Executed this agreement and will enter all guilty pleas pursuant hereto  
voluntarily.

12 c. Was not under the influence of intoxicating liquor, a controlled substance or  
13 other drug at the time I consulted with the defendant as certified in paragraphs  
1 and 2 above.

14 Dated: This \_\_\_\_ day of April, 2005.

15 \_\_\_\_\_  
16 ATTORNEY FOR DEFENDANT  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

kjk

1 AINFO  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 SUSAN R. KRISKO  
6 Deputy District Attorney  
7 Nevada Bar #006024  
8 200 South Third Street  
9 Las Vegas, Nevada 89155-2212  
10 (702) 455-4711  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA, )

10 Plaintiff, )

11 -vs- )

12 RICKIE LAMONT SLAUGHTER,  
13 #1896569 )

14 Defendant. )

Case No: C204957  
Dept No: XVI

FOURTH AMENDED  
INFORMATION

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

18 DAVID ROGER, District Attorney within and for the County of Clark, State of  
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That RICKIE LAMONT SLAUGHTER, the Defendant(s) above named, having  
21 committed the crimes of **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON**  
22 **(Felony - NRS 200.010, 200.030, 193.330, 193.165); ROBBERY WITH USE OF A**  
23 **DEADLY WEAPON (Felony - NRS 200.380, 193.165); FIRST DEGREE**  
24 **KIDNAPPING (Felony - NRS 200.310, 200.320); and FIRST DEGREE KIDNAPPING**  
25 **WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165), on or**  
26 **about the 26th day of June, 2004, within the County of Clark, State of Nevada, contrary to**  
27 **the form, force and effect of statutes in such cases made and provided, and against the peace**  
28 **and dignity of the State of Nevada,**

EXHIBIT " 1 "

PAWPDOCS\INF\OUTLYING\4N04N098005.DOC

1 COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

2 RICKIE SLAUGHTER and/or an unknown co-conspirator did then and there, without  
3 authority of law, and malice aforethought, willfully and feloniously attempt to kill IVAN  
4 YOUNG, a human being, by shooting at and into the body and/or causing a bullet to strike  
5 the face of the said IVAN YOUNG, with a deadly weapon, to-wit: a firearm.

6 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

7 RICKIE SLAUGHTER and/or an unknown co-conspirator did then and there  
8 wilfully, unlawfully and feloniously take person property, to-wit: an ATM card, from the  
9 person of RYAN JOHN, or in his presence by means of force or violence, or fear of injury  
10 to, and without the consent and against the will of the said RYAN JOHN, by pointing a  
11 firearm at the said RYAN JOHN and demanding said money, Defendants using a deadly  
12 weapon, to-wit: a firearm, during the commission of said crime, the Defendants being  
13 responsible under one or more of the following principles of criminal liability, to-wit: (1) by  
14 the Defendant and an unknown co-conspirator conspiring with each other to commit the  
15 offense of larceny and/or robbery and/or kidnapping whereby all Defendants are vicariously  
16 liable for the foreseeable acts of the other conspirators when the acts were in furtherance of  
17 the conspiracy; and/or (2) RICKIE SLAUGHTER directly committing the acts constituting  
18 said offense and/or 3) RICKIE SLAUGHTER and/or the unknown co-conspirator aiding or  
19 abetting in the commission of said crime, to-wit: by securing and/or detaining and/or robbing  
20 the said RYAN JOHN, with the use of a deadly weapon, the Defendants acting in concert  
21 throughout; the Defendants counseling and encouraging each other throughout.

22 COUNT 3 - FIRST DEGREE KIDNAPPING

23 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,  
24 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away IVAN YOUNG, a human  
25 being, with the intent to hold or detain the said IVAN YOUNG against his will, and without  
26 his consent, for the purpose of committing robbery and/or to inflict substantial bodily harm  
27 and/or to kill, said kidnapping resulting in substantial bodily harm to the said IVAN  
28 YOUNG.

1 COUNT 4 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

2 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,  
3 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away RYAN JOHN, and/or JOSE  
4 POSADA, and/or AARON DENNIS, and/or JERMAUN MEANS, and/or JENNIFER  
5 DENNIS, a human being, with the intent to hold or detain the said RYAN JOHN, and/or  
6 JOSE POSADA, and/or AARON DENNIS, and/or JERMAUN MEANS, and/or JENNIFER  
7 DENNIS against their will, and without their consent, for the purpose of committing robbery  
8 and/or to inflict substantial bodily harm and/or to kill, said Defendant using a deadly  
9 weapon, to-wit: a firearm, during the commission of said crime, the Defendants being  
10 responsible under one or more of the following principles of criminal liability, to-wit: (1) by  
11 the Defendant and an unknown co-conspirator conspiring with each other to commit the  
12 offense of larceny and/or robbery and/or kidnapping and/or to inflict substantial bodily harm  
13 and/or kill whereby all Defendants are vicariously liable for the foreseeable acts of the other  
14 conspirators when the acts were in furtherance of the conspiracy; and/or (2) RICKIE  
15 SLAUGHTER directly committing the acts constituting said offense and/or 3) RICKIE  
16 SLAUGHTER and/or the unknown co-conspirator aiding or abetting in the commission of  
17 said crime, to-wit: by securing and/or detaining and/or robbing RYAN JOHN, and/or JOSE  
18 POSADA, and/or AARON DENNIS, and/or JERMAUN MEANS, and/or JENNIFER  
19 DENNIS, the Defendants acting in concert throughout; the Defendants counseling and  
20 encouraging each other throughout.

21 DAVID ROGER  
22 DISTRICT ATTORNEY  
23 Nevada Bar #002781

24 BY

25 SUSAN R. KRISKO  
26 Deputy District Attorney  
27 Nevada Bar #006024

28 DA#04FN0980X/kjk  
NLVPD EV#0415160  
ATT MURDER W/WPN;  
RWDW; 1° KIDNAP;  
1° KIDNAP WDW - F

**PROPER PERSON SETTINGS**

**CASE #:** C204957

**DEPARTMENT:** 3

**DEFENDANT:** RICKIE LAMONT SLAUGHTER JR

**DATE FILED:** 8/8/05

**MATTERS TO BE HEARD:** DEFENDANTS MOTION TO WITHDRAW A GUILTY PLEA

**HEARING DATE:** 08/23/05

**COPIES GIVEN TO:**

- ☒ **DISTRICT ATTORNEY**
- ☐ **PUBLIC DEFENDER**
- ☒ **PROPER PERSON**
- ☐ **ATTORNEY GENERAL**
- ☒ **ATTORNEY OF RECORD**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT** <sup>\*</sup>2

1 Rickie Lamont Slaughter Jr. #85902  
2 NDOC - High Desert State Prison  
3 P.O. Box 650  
4 Indian Springs, NV. 89018  
5  
6  
7  
8

FILED

AUG 8 2 38 PM '05

*Shirley S. Haggins*  
CLERK

District Court  
Clark County, Nevada

9 The State of Nevada  
10 Plaintiff,

Case No C204957

Dept No 3

11 vs.

Hearing Date: 8-23-05

12 Rickie Lamont Slaughter Jr.  
13 Defendant.

Hearing Time:

14 Defendant's Motion To withdraw A Guilty  
15 Plea

16  
17 Now Comes, Rickie Lamont Slaughter Jr., in  
18 the above entitled motion with Points And Authorities  
19 in support and base the above entitled motion and relief  
20 upon all Papers and Pleadings on file. Defendant prays  
21 this Honorable Court grant relief in Defendants favor  
22 to prevent manifest injustice.

23 Dated this 2nd day of August 2005

24

25

*Rickie Lamont Slaughter Jr.*  
Rickie Lamont Slaughter Jr. #85

26

27

28

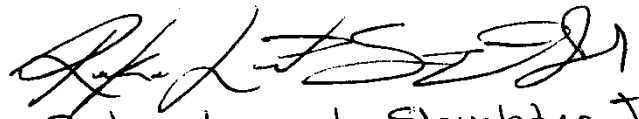
EXHIBIT #2

# NOTICE OF MOTION

To: The State Of Nevada

To: The Clark County District Attorney's Office

you will please take Notice that the undersigned will bring the following motion on for hearing on the \_\_\_\_ day of \_\_\_\_ 2005 in Department 3 at 9:30 am or as soon as counsel may be heard thereafter.

  
Rickie Lamont Slaughter Jr.

## Points And Authorities

Pursuant to NRS 176.165 a defendant may move to withdraw his plea of guilty before sentence is imposed.

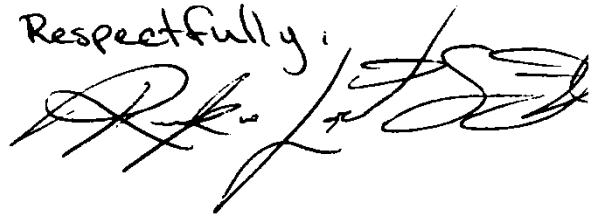
NRS 176.165 states in pertinent part that "a motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended"

In the instant case the defendant wishes to withdraw his plea due to misrepresentations made by the D.A. (Ms. Susan Krisiko) and (Marc Digiacamo) and the defendant's stand by counsel (Paul Wommer), that effected the voluntariness of the plea.

EXHIBIT #2

1 Because of the numerous misconceptions,  
2 of "Direct consequences", of the plea the defendant  
3 respectfully request that this Honorable Court  
4 grant the defendant the assistance of counsel,  
5 to review the record for all improprieties.

6  
7 Respectfully,

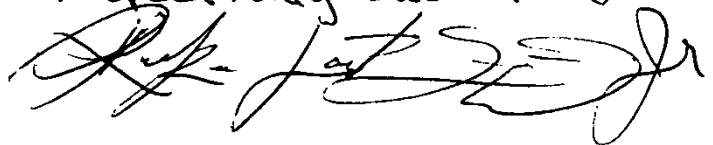
8   
9

10 Closing And Relief Sought  
11

12  
13 The defendant respectfully request that  
14 this Honorable Court grant the defendant  
15 the assistance of Counsel, to assist the  
16 defendant in withdrawing his guilty plea.

17 The defendant prays this Honorable understand  
18 the magnitude of the defendant's position current  
19 situation, and grant the relief requested, to  
20 prevent "manifest injustice".

21 Respectfully submitted

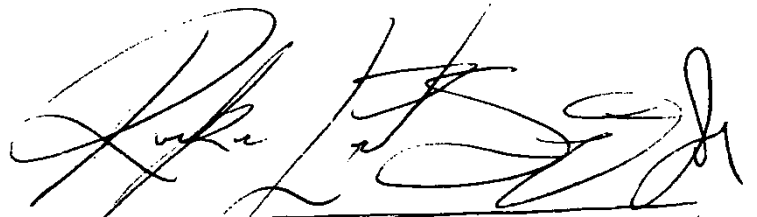
22   
23

24  
25 EXHIBIT #2  
26

# Certificate of mailing

I hereby certify that ~~the~~ a copy of the foregoing motion was mailed on the 2nd day of August 2005 by deposited a copy of the same in the U.S. mail box pre paid postage to the following address

David J. Rogers  
The Clark County District Attorney's office  
200 S. Third St.  
P.O. Box 552212  
Las Vegas, NV. 89155-2212

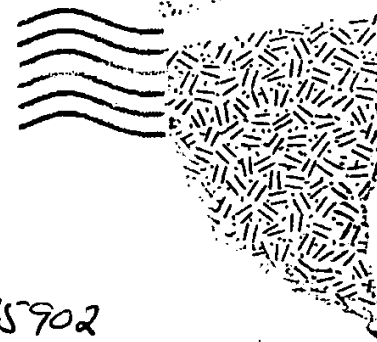


Rickie Lamont Slaughter #8590  
HDSP. P.O. Box 650  
Indian Springs, NV.  
89018

EXHIBIT #2

EXFED INVESTIGATIONS  
2251 N. RAMPART BLVD. #267  
LAS VEGAS, NV 89128

LAS VEGAS NV 890  
09 DEC 2005 PM 2 T



45-42

Mr Rickie LARANT STAGHER # 85902  
High Desert State Prison  
PO Box 650  
INDIAN SPRINGS, NV 89018



EX

EXHIBIT #3

12/8/05

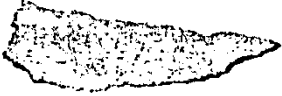
MR Richie Slaughter

IT WAS NICE TO HEAR FROM YOU. -

PLEASE FIND ENCLOSED A COPY OF MY NOTES  
TAKEN FOR THE HEARING ON 4/4/2000. -

AS YOU CAN SEE THEY ARE SHORT. I RECALL

<sup>KRISKO</sup>  
PROSECUTOR OFFERING 15 TO LIFE, BUT YOU WERE  
TO BE GIVEN THE OPPORTUNITY TO ARGUE FOR  
15-40 YEARS, AT THE SENTENCING.

GOOD LUCK. I HOPE YOU ARE ABLE TO MAKE  
THE MOST OF YOUR TIME AND WILL BE OUT IN THE  
MINIMUM - 

CONTACT ME IF I CAN PROVIDE ANYTHING  
FURTHER. -

TIM CONKLIN  
EXFPO INVESTIGATIONS,  
TEL. 204-76514

EXHIBIT #3

& all 109 from reg he JR

1100 lines -

137 - ?

---

4/4/01

Plead guilty

max 15 - Life

argue for 15 - 40

Sentencing 6/6/01 -

EXHIBIT #3



## Nevada Department of Corrections -- Inmate Detail Record

The information provided through this process is raw data. As the information is raw data, the department makes no warranty associated with its use. For example, the department makes no guarantee that the raw data is free of input errors. Furthermore, the department cannot provide a judgment as to the reliability or validity of this raw data when used in models, studies, or research outside of its own control. The information on this website should not be used as an "official" record by any law enforcement agency.

### Identification and Demographics

Inmate Name:	SLAUGHTER, RICKIE L	NDOC ID:	85902	<b>No Photo Av</b> The Department of does not maintain d of most inmates. O such as in the event a digital photo may br
Gender:	Male	Ethnicity:	Black	
DOB:	11/18/1984	Approximate Age:	20	
Height:	5' 9"	Weight:	180 lbs	
Build:	Large	Complex:	Dark	
Hair Color:	Black	Eye Color:	Brown	
Alias(es):	1) RICKIE LAMONT SLAUGHTER ; 2) RICKIE LAMOUNT SLUAUGHTER JR. ; 3) RICK MITCHE			

### Sentencing

Click on any heading below for a description and more information.

Offense	Sentence Level	Sentence Name	Min Sentence	Max Sentence	Parole Eligibility	Mandatory Review	
KIDNAPPING I	1A	ACTIVE	15.00	999	08-04-2020	CS SENT	LIFE
KIDNAPPING I, UDW	1B	CCNC	5.00	999	CC SENT	CC SENT	LIFE
ATT MURDER, UDW	1C	CCNC	7.5	20	CC SENT	CC SENT	10-10
ROBBERY, UDW	1D	CCNC	6.00	15	CC SENT	CC SENT	10-20
ATT POSS CON SUB; SCH 1-4; 1ST OFF	1E	CCNC	1.00	2.67	CC SENT	CC SENT	4-4
BURGLARY	1F	CCNC	1.00	2.50	CC SENT	CC SENT	11-11
USE OF DEADLY WEAPON ENHANCEMENT	2A	PENDING	5.00	999	PENDING	PENDING	-
USE OF DEADLY WEAPON ENHANCEMENT	2B	PENDING	7.5	20	PENDING	PENDING	-
USE OF DEADLY WEAPON ENHANCEMENT	2C	PENDING	6.00	15	PENDING	PENDING	-

### Custody

County of Commitment:	Clark	Commitment Code:	Probation Violator - No New Felony
Offense Group:	Violence	On Parole Agenda?	NOT ON PAROLE AGENDA
Current Institution:	High Desert State Prison	Custody Level:	Medium Custody

Click here for visiting information.

Exhibit #11



Mr. Rickie L. Slaughter  
4810 S. Labrea St. Apt. 105  
Los Angeles, CA 90008



Rickie L. Slaughter Jr.

#1896569CCDC

5P23L  
454

330 S. CASINO CENTER

LAS VEGAS, NV. 89101

89101+8102

EXHIBIT #5

April 5, 2005

Hi Son,

I just got a call from Tiffany and she said that you took a deal 15 to life. I don't know what that means. What is the parole on that? I really don't know what to say, but I want you to continue to have courage, the ability to conquer fear or despair. There is always hope, promise for the future. Having faith, complete trust in your higher power. He gives us the perseverance, to persist in spite of difficulties. Just reading your letters that you wrote to me and Francis tells me about your spirituality, understanding that the life we now live is not ours but the one who gives all life.

Count your blessings instead of your crosses; count your health instead of your wealth; count on God instead of yourself. I have grown to love you and I'm still carrying guilt and shame. I am powerless about the past but I care a great deal of what happens to you.

I have questions to ask you. How long will you be there? Will I be able to come and see you? Where will they send you to? Max (Ely) or Carson City?

I heard about unconditional love, and accepted people as they are, life was more enjoyable, and my burden was lighter by far. I can see good in everyone, and love is all about. I have discovered the God within, that I tried to teach others to see, I cherish the change that I have seen, for all that's changed is me.

Your father,  
Rickie L. Slaughter Sr.



EXHIBIT

# 5

daughter.



2B24

Mr. Rickie L. Slaughter, Jr.  
# 85902 Unit 3A Rm 28  
NDOC / High Desert State Prison,  
Indian Springs, NV. 89070

89070-0000



EXHIBIT # 6

8. 8. 2005

Hello Baby.

Well today we have been through a lot. And I want you to know that I am here for you. Baby I do not know what I am going to do. I need you, and all the things that I could do is feel hurt inside. These next years are going to be hard me but I know they will be hard for you. Not being able to be here with me and the baby. I just hope that these next 15 years go by fast so you can come home. And all you need to do is stay focused, and do all the things you can do so that time goes by.

I want you to know that I am very proud of you Mr. Slaughter. You have grown so much, and my heart is full of joy. Baby I love you so much, and that will never change.

Time we have spent together was wonderful, and the time we will spend together will be even better. You are the love of my life, and I am happy to be Mrs. Rickie Slaughter Jr. Going through all of this has made everything show me. Together we are strong, and I

EXHIBIT #6

want you to know that I am sorry  
for anything that I have done, and will  
do all that I have to do to support  
you, and all in return I want is your  
love, and support through everything.

Like I had told you I plan to  
move in december or the beginning  
of January, I hope that everything  
goes as I hope. I want you to  
know that when I saw your face  
I felt so good, = see you are  
growing side burnz. (Sevey) just like  
you. Baby you look good. my man  
is fine as hell. (Smile)

Well baby is good. just getting big. he  
loves you, and always know that  
he asks for his chickly. He says chickly  
gone buy buy, I tell him yes, but  
you will be back, and I let him  
know that no matter where chickly is  
that you love him, No matter what.

I want you to a part of putting  
his Birthday party together.  
Do you think I should just do  
something for the family or party  
I was thinking maybe a I would  
have a c.c. & and invite, some of  
the kids from the church, and make  
like, Ice cream and maybe a bounce.

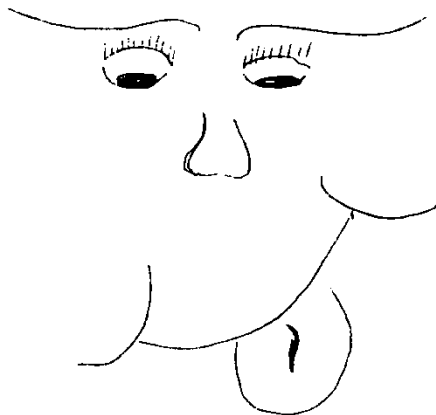
exhibit 8

What do you think. give me some  
ideas, and we will put this all  
together.

After the 16th of this month. my  
new off days will be Sat & Sun.  
So I will be able to go to church,  
I am happy about that.

I love you Mr. Skaghter, and I  
am always going to be here to  
support the love of my life. We  
are one, and we are going to grow  
and learn, and become strong.  
I love you so much.

I love,  
Cynthia Skaghter



I want you to know that  
they denied me until I  
sent them some paper  
work so I hope that  
as soon as they get  
it I will be there



↓ DON'T WORRY (Smile) NEVER WORRY

TO the love of my life.

No matter where we are.

Baby I love you. always

am for ever. All things are

possible through Christ that strengthen

me, (us). focus on our goal.

and you will be home A.S.A.P.

The Slaughter  
family

Mr. Rickie Lamont Slaughter Jr.

Mrs. Tiffany J. Slaughter

Mr. Rickie Lamont Slaughter (Jr.)  
Mrs. ~~\_\_\_\_\_~~ Slaughter

THIS will never change unless one  
is added to the family.

EXHIBIT #6

TRAN  
CASE NO. C-204957  
DEPT. NO.3

**FILED**

APR 16 10 17 AM '07

**ORIGINAL**

*CRAY*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RICKIE SLAUGHTER, )  
 )  
Defendant. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT  
OF  
WRIT OF HABEAS CORPUS

BEFORE THE HONORABLE DOUGLAS HERNDON  
DISTRICT COURT JUDGE

DATED: MONDAY, DECEMBER 18, 2006

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

**RECEIVED**

APR 16 2007

CLERK OF THE COURT

1 APPEARANCES:

2 For the State: MARC DEIGIACOMO, ESQ.

3

4 For the Defendant: PRO PER

5

6

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11 \* \* \* \* \*

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25

1 LAS VEGAS, NEVADA; MONDAY, DECEMBER 18, 2006

2 P R O C E E D I N G S

3 \* \* \* \* \*

4  
5 THE COURT: Page 1, of our criminal  
6 calendar, C-204957, State of Nevada versus Rickie  
7 Slaughter.

8 The record will reflect the presence of  
9 Mr. DiGiacomo on behalf of the State. Mr. Slaughter is  
10 present, in custody, representing himself.

11 All right. Mr. Slaughter.

12 THE DEFENDANT: At the last hearing on  
13 November 27th, you told me to file my reply to the State's  
14 opposition on supplemental pleading. I did put those in.  
15 I don't know if the court had an opportunity to look at  
16 them?

17 THE COURT: I did.

18 THE DEFENDANT: Or if Mr. DiGiacomo didn't  
19 have any opposition to -- I put in the motion to  
20 supplement and amend my petition, which I pretty much did  
21 drop ground two, due to the fact I just got the transcript  
22 in court on the 27th, and actually revised and amended the  
23 misleading statements of fact, things like that.

24 There were a few exhibits I attached to it  
25 that weren't available to me at the time when I filed the

1 first petition, due to the jail's limitation on personal  
2 property, which I had to send things on that I sent back  
3 that didn't get back to me until after that.

4 THE COURT: What part of your petition are  
5 you still pursuing?

6 THE DEFENDANT: Ground one.

7 THE COURT: Which is that your plea was  
8 not knowing and voluntary?

9 THE DEFENDANT: That it was not voluntary,  
10 that I was induced by misrepresentations.

11 THE COURT: Is that still based upon your  
12 belief that somehow you got a sentence that I told you  
13 that you didn't get.

14 THE DEFENDANT: Well, it's based upon that  
15 I was told at the plea negotiations that I -- the deal I  
16 was taking would give me an opportunity to be released  
17 from prison in 15 years. But actually that's not  
18 possible, as shown by my Exhibit No. 4, which is my  
19 sentence structure, which actually has another sentence  
20 coming after that 15.

21 So that's what it was pretty much based on  
22 by misrepresentation that was given to me at the plea  
23 negotiation by the prosecutors.

24 THE COURT: All right. Mr. DiGiacomo,  
25 anything.

1 THE DEFENDANT: Have we started arguing on  
2 this?

3 THE COURT: Yes.

4 THE DEFENDANT: Well, yeah, pretty much  
5 the position I was taking in my reply was that I believed  
6 an evidentiary hearing was required in order to fully  
7 develop the factual circumstances surrounding the issues  
8 before you make a ruling.

9 In Hargrove (ph) vs. State, which is  
10 discussed at page 8 in my reply, the Nevada Supreme Court  
11 identified the requirements that entitle a petitioner to  
12 an evidentiary hearing, which are that he must assert a  
13 claim supported by specific factual allegations. These  
14 factual allegations cannot be belied or repelled by the  
15 record. And, if true, they would be entitled to relief.

16 The claims asserted in the petition that I  
17 was induced to plead guilty through a misrepresentation by  
18 the prosecutors at the negotiations, specifically, that  
19 when they offered the agreement, as I said, it would --  
20 they said it would give me an opportunity to be released  
21 from prison in 15 years. And that the agreement would  
22 enable me to serve, in effect, 15 to life, or 15 to 40  
23 year sentence.

24 I would point out to the Court, that these  
25 allegations haven't been converted by the State in their

1 opposition.

2 I would direct the Court's attention to  
3 Exhibit No. 2, which is a motion to withdraw the guilty  
4 plea submitted to the court four days before sentencing,  
5 but didn't get brought to the court's attention at  
6 sentencing because of a conversation that was held outside  
7 between me and prosecutor, Ms. Krisko.

8 At that conversation I expressed my  
9 intention to withdraw my guilty plea because I believed  
10 that it misapprehended the effects of the agreement. And  
11 Ms. Krisko proceeded to tell me the agreement would give  
12 me an opportunity to be released in 15 years, and  
13 effectively persuaded me not to pursue the motion.

14 But the substance of, pretty much, the  
15 representations that are alleged in my petition, kind of  
16 surfaced in the record at the sentencing transcript. And  
17 I'll direct the court's attention to page 5 of sentencing  
18 transcript, lines 10 through 14, where Ms. Krisko states  
19 to the court, "it is our understanding you have every  
20 intention of allowing the negotiations, to stand and  
21 follow those negotiations, so he's not looking at doing  
22 more than the 15 to either 40, if he gets that, or the 15  
23 to life, if we get what we want."

24 I think this indicates the intention of  
25 the negotiations and supports my allegations, that I was

1 told that the deal would give me an opportunity to be  
2 released in 15 years.

3 THE COURT: I absolutely agree with you.  
4 But there is no dispute as to that.

5 THE DEFENDANT: Right.

6 Well, further on that, was this petition  
7 as Exhibit No. 3, which was the letter from my private  
8 investigator, who was present at the negotiations,  
9 involved, and actually took notes. And he came out with  
10 the same understanding.

11 THE COURT: And you understood that it was  
12 an opportunity that you could be paroled at 15 years, and  
13 you weren't going to have any other sentences start.

14 THE DEFENDANT: Right.

15 THE COURT: And the opportunity to get out  
16 on parole after 15 years on all your sentences.

17 THE DEFENDANT: That by taking that deal I  
18 would be given an opportunity.

19 THE COURT: All right.

20 THE DEFENDANT: As to the third prong, if  
21 the allegations are true, would they entitle me to relief.

22 Well, for the sake of clarity, because I  
23 know the State spoke extensively in opposition about the  
24 plea canvass and acceptance of the plea. I reiterate to  
25 the court that the claims I was given of misrepresentation

1 by the prosecutors at the negotiations, therefore, the  
2 allegation defects lies in their misrepresentation at the  
3 negotiations and not in an advisement from the court on  
4 the canvass between me and the court.

5 With that being said, the appropriate  
6 authority is found in Brady vs. United States, which is  
7 at -- discussed at page 9, in my response, where the court  
8 established a standard for testing the voluntariness of  
9 the guilty plea. And they actually held in there that a  
10 plea of guilty, if I wasn't fully aware of the direct  
11 consequences, including the actual value and commitments  
12 made to them by the court, prosecutor, and his own  
13 counsel, must stand unless induced by threats or  
14 misrepresentations, including fulfilling all fulfillable  
15 promises.

16 Also in Santabella (ph) vs. United States  
17 Supreme Court, stated that if a prisoner was tricked  
18 through misrepresentations by prosecutors into pleading  
19 guilty, his due process rights are offended.

20 This -- later this standard was upheld in  
21 Maybel vs. Johnson 15 years late, so it's still the  
22 applicable standard and hasn't been turned over.

23 THE COURT: I'm familiar with all the  
24 standards and all the cases, so don't worry about that.

25 THE DEFENDANT: So it becomes evident that

1 if my claims of misrepresentation are true, then it would  
2 entitle me to relief, because they would be involuntary.

3 So I believe all of the requirements set  
4 forth by the Nevada Supreme Court, we have claims  
5 supported by specific allegations, not belied by the  
6 record, but actually support by the record, and, if true,  
7 would entitle me to relief.

8 So the requirement that entitle me to an  
9 evidentiary hearing as a matter of law have been  
10 satisfied.

11 But I would also like to note to the court  
12 that the Ninth Circuit has also held that when a  
13 petitioner's factual allegations are based outside the  
14 record an evidentiary hearing is required. And the  
15 purpose of this being is to develop the full factual  
16 nature of the facts outside the record, like those hallway  
17 discussions or negotiations, or whatever that is, and to  
18 bring those to the court's attention so the court can make  
19 a full and accurate factual determination.

20 And that authority is found in Fragil (ph)  
21 vs. United State, in the Ninth Circuit, and Herbs vs.  
22 Stokes, which is decided in 2005 in the Ninth Circuit,  
23 which is cited and discussed at page 10 of my response.

24 I'd also have the court aware that in the  
25 event an evidentiary hearing is conducted, I do wish to

1 present testimony by my private investigator, by myself,  
2 and also by other members of my family who I expressed my  
3 understanding of my agreement to shortly after the  
4 negotiation.

5 With that being said, I would urge the  
6 court to deny the State's request to summarily deny my  
7 petition, and to grant my request to conduct an  
8 evidentiary hearing so we can fully develop the facts and  
9 things of that nature. I believe requirements set forth  
10 by the Nevada Supreme Court have been satisfied.

11 THE COURT: All right. Mr. DiGiacomo, do  
12 you stand on the pleadings?

13 MR. DIGIACOMO: Yes, Judge.

14 THE COURT: Here's the thing,  
15 Mr. Slaughter. I remember doing your plea. We went  
16 through this plea meticulously. You were representing  
17 yourself.

18 I am satisfied, from my memory of that, as  
19 well as, reviewing the plea transcripts, and the plea  
20 memorandum that was filed in this case, that it was  
21 absolutely knowingly and voluntarily entered. That the  
22 plea agreement was understood by yourself. It was  
23 knowingly and voluntarily entered, and you understood all  
24 the ramifications of your plea.

25 Your whole argument here today and in your

1       pleadings is premised on your belief that there is a  
2       sentence that is going to start running after your 15 to  
3       life, and that is just not the fact.

4               And you seem -- it seems to me that you  
5       are basing that on the Nevada prison record that shows  
6       you've got a deadly weapon enhancement sentences that are,  
7       quote, unquote, pending.

8               THE DEFENDANT: Right.

9               THE COURT: What you have to understand,  
10       and we went through this at the time of your plea, those  
11       deadly weapon enhancements are pending on sentences that  
12       have less than 15 years on them.

13               You do 5 years. You're eligible for  
14       parole, then you would start another 5 to 15, or 5 to life  
15       sentence.

16               THE DEFENDANT: Right.

17               THE COURT: Every sentence you received,  
18       every sentence on every count is concurrent, okay. So  
19       what the prosecutors told you, and what we went through at  
20       the plea agreement is absolutely what happened. You  
21       received a life minimum 15 sentence for kidnapping with  
22       substantial bodily harm.

23               You received a 7-and-a-half year to 20  
24       sentence, plus, 7-and-a-half year to 20, which is 15 to  
25       40, for attempt murder with use of a deadly weapon. That

1 runs concurrent to your 15 to life, okay.

2 So you can do no more than 15 years on  
3 that sentence before you're eligible for parole, just  
4 like on your kidnapping with substantial bodily harm.

5 On the robbery with a deadly weapon, you  
6 received a 6 to 15, plus, a consecutive 6 to 15 for the  
7 weapon, which is 12 to 30 years. That is concurrent. So  
8 you can do no more than 12 years on the bottom end of that  
9 sentence before you could be released on parole. And that  
10 runs the same time as your 15 to life.

11 And on your kidnapping with a deadly  
12 weapon sentence, you received a 5 to life, plus, a  
13 consecutive 5 to life, which is, theoretically, 10 to  
14 life. So you can do no more than 10 on the low end,  
15 before you're eligible for parole on that sentence. And  
16 that runs concurrent to the 15 to life.

17 So you got exactly what you bargained for  
18 at the time. And there is nothing in the record to  
19 suggest to me that your plea was not freely and  
20 voluntarily entered, and an evidentiary hearing isn't  
21 going to change any of that. Because whatever the prison  
22 may have told you about the sentence, I know what the  
23 sentence is. The judgment of conviction is what the  
24 sentence was. That's what they have to follow.

25 There is no sentence that you have on any

1 of those counts that was different than what you bargained  
2 for and received at sentencing from this court.

3 THE DEFENDANT: Your Honor, may I.

4 THE COURT: Yes.

5 THE DEFENDANT: Let me clarify for a  
6 second.

7 Actually, what happens with the sentence  
8 is the first line of sentences become one sentence to the  
9 longest sentence, which is the 15 to life. Under Nevada  
10 statute that becomes the eligibility parole for the 15  
11 years, so actually those weapons enhancements become a  
12 second sentence where I was sentenced to 5 to life, that  
13 doesn't become until after the 15 to life, and that's how  
14 they run.

15 THE COURT: When you receive a sentence of  
16 a minimum of 5 years to life --

17 THE WITNESS: You don't go to parole  
18 because the sentence is -- you ran the sentence all  
19 concurrent on the counts. Actually it turns the weapons  
20 enhancement into a second sentence that can't be served  
21 until after --

22 THE COURT: If the prison chooses not to  
23 parole you after 5 years, that's their decision, that's  
24 the Parole Board's decision.

25 THE DEFENDANT: Right.

1 I'm saying you can't go to parole on it.  
2 The parole turns into the 15 to life, the longest  
3 sentence, that requires you to go to parole.

4 THE COURT: Mr. DiGiacomo do you have  
5 anything you want to add?

6 MR. DIGIACOMO: Well, I called the  
7 timekeeper, and I haven't been able to talk to her.  
8 Because if what Mr. Slaughter is saying -- I don't agree  
9 with Mr. Slaughter -- he got 15 to life.

10 Mr. Slaughter is saying, it's true if they  
11 don't give him a parole hearing in 5 years, then I think  
12 that needs to be something brought before the court so  
13 that you can order them to give him a parole hearing after  
14 5 years. Not that he gets to withdraw from his plea  
15 agreement.

16 The Board is going to giving him a hearing  
17 after 5 years, but if they choose to deny it because he  
18 serving a higher sentence, that's the Parole Board's  
19 choice. There's nothing we can do about it.

20 THE DEFENDANT: No, it's not the Parole  
21 Board's choice.

22 THE COURT: It is the Parole Board's  
23 choice.

24 You're asking me prospectively to say that  
25 the prison isn't going to give you a parole hearing, and

1       therefore, your plea wasn't valid.

2               THE DEFENDANT: The parole will come after  
3       15 years.

4               THE COURT: If after 5 years, they don't  
5       give you a parole hearing, like they're required to under  
6       this sentence under the law, that's when you can move the  
7       court for some relief somehow. That's when you can come  
8       back and say the Parole Board is violating my rights,  
9       they're not giving me a parole hearing.

10              This sentence is a minimum of 5 years  
11       before parole eligibility. Nobody guaranteed you were  
12       going to get paroled.

13              THE DEFENDANT: No, but they guaranteed  
14       I'd have the opportunity to get out in 5.

15              THE COURT: In 5 years if they're not  
16       going to give you a parole hearing, then that's the time  
17       when this becomes a germane issue. It doesn't change the  
18       bargain or what was understood when this bargain was  
19       entered, okay.

20              THE DEFENDANT: Well, the Nevada Supreme  
21       Court ruled on that in Kingsly vs. Department of Prisons,  
22       where they had misapprehend the effect of the stack of  
23       sentences, similar to this. And they ruled that the court  
24       is out of jurisdiction when the modification is based on  
25       something other than something that was materially untrue

1       about the record and things of that nature.

2                   THE COURT: I agree that it's a separate  
3       issue. It's a separate action that you filed with the  
4       parole board not giving you the parole hearing you believe  
5       you are entitled to.

6                   Here's the thing, Mr. Slaughter. We can  
7       go back and forth all day, and I don't have time to debate  
8       it. I have a jury trial that needs to get back started.

9                   I have considered this. This has been on  
10      calendar five times, and I've considered all of these  
11      issues each time that you've filed anything in regards to  
12      it.

13                   I'm going to deny the petition for writ of  
14      habeas corpus. I don't think there are sufficient grounds  
15      to grant it.

16                   I think that this is an issue where you're  
17      worried that the prison isn't going to do something in the  
18      furture, and you want to go back and vacate your plea.  
19      That's not a basis for vacating the plea.

20                   The sentence is just as you bargained for.  
21      There's nothing in the record that suggests you didn't  
22      understand, or intelligently waive rights when you entered  
23      that plea. I have evaluated the plea transcript. I have  
24      evaluated the plea memorandum. I've evaluated all of your  
25      arguments, but I don't find them to have merit. And I

1       don't think an evidentiary hearing is going to change what  
2       the argument is here today. So I don't think an  
3       evidentiary hearing is necessary.

4               So the petition is denied. Mr. DiGiacomo,  
5       if you'll prepare an order and submit it, please, to  
6       Mr. Slaughter, as well.

7               THE DEFENDANT: Can I ask the court, was  
8       my leave to file a supplement and amended petition  
9       granted -- so that's the petition considered for the  
10      record.

11              THE COURT: I considered everything that  
12      you filed, so, yes, the supplement was granted.

13              MR. DIGIACOMO: Thank you.

14

15

16                   \* \* \* \* \*

17

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25

CERTIFICATE  
OF  
CERTIFIED COURT REPORTER

\* \* \* \* \*

I, the undersigned certified court reporter in and for the  
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the  
time and place therein set forth; that the testimony and  
all objections made at the time of the proceedings were  
recorded stenographically by me and were thereafter  
transcribed under my direction; that the foregoing is a  
true record of the testimony and of all objections made at  
the time of the proceedings.

  
Sharon Howard  
C.C.R. #745

## AFFIRMATION

PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the  
proceeding

State vs. Slaughter,  
filed in District Court Case No. C-204957,

☒

Does not contain the social security number of any  
person.

☐

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

(A) NAC 656.350

-or-

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

Sharon Howard

Sharon Howard, CCR #745

4/16/07

Date

FILED

JAN 11 2 44 PM '07

Rickie Lamont Slaughter Jr.  
NDOC No. #85902  
P.O. Box 650, HDSP  
Indian Springs, Nevada 89018

PETITIONER/APPELLANT - IN PROPRIA PERSONA

*Shirley B. Ranzina*  
CLERK

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

--oo0oo--

Rickie Lamont Slaughter, Jr., )  
Petitioner/Appellant, )  
vs. )  
Warden Of High Desert State Prison )  
D.W. Neven, The State Of Nevada )  
Respondent(s). )

Case No. C204957  
Dept No. III  
Docket \_\_\_\_\_

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the Petitioner/Appellant,  
Rickie L. Slaughter Jr., in and through his proper person, hereby  
appeals to the Supreme Court of Nevada from the ORDER denying and/or  
dismissing the Petition For Writ Of Habeas Corpus (Post-Conviction)  
ruled on the 18<sup>th</sup> day of December, 2006.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Respectfully Submitted By:

*Rickie Lamont Slaughter Jr.*  
PETITIONER/APPELLANT - IN PRO PER

///  
//  
/

RECEIVED

JAN 11 2007

COUNTY CLERK

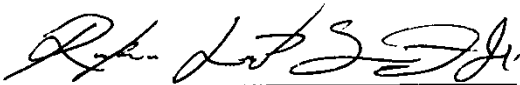
Certificate of Mailing

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 200  
I mailed a true and correct copy of the forgoing "Notice Of  
Appeal", "Designation Of Record On Appeal", and "Case Appeal  
Statement", to the following addresses:

David J. Roger  
District Attorney's Office  
200 Lewis Ave. P.O. Box 552212  
Las Vegas, Nevada 89155-2212

Shirley B. Parraguirre  
Clark County Clerks Office  
200 Lewis Ave. P.O. Box 551601  
Las Vegas, Nevada 89155-1601

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 200

  
Rickie Lamont Slaughter Jr. #85802  
High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89018  
(In Proper Person)

112  
**ORIGINAL**

1 **NOED**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

JAN 30 9 33 AM '07

*Charles J. Short*  
CLERK OF THE COURT

4  
5 **RICKIE SLAUGHTER,**

6 Petitioner,

7 vs.

8 **THE STATE OF NEVADA,**

9 Respondent,

Case No: C204957  
Dept No: III

**NOTICE OF ENTRY OF  
DECISION AND ORDER**

10  
11 **PLEASE TAKE NOTICE** that on January 29, 2007, the court entered a decision or order in this matter, a  
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on January 30, 2007.

16 **CHARLES J. SHORT, CLERK OF THE COURT**

17 By: *Brandi J. Wendel*

18 Brandi J. Wendel, Deputy Clerk

19 **CERTIFICATE OF MAILING**

20 I hereby certify that on this 30 day of January 2007, I placed a copy of this Notice of Entry of Decision and  
21 Order in:

22 The bin(s) located in the Office of the County Clerk of:  
23 Clark County District Attorney's Office  
Attorney General's Office - Appellate Division

- 24 ☒ The United States mail addressed as follows:  
25 Rickie Slaughter # 85902  
26 P.O. Box 650  
Indian Springs, NV 89018

27 *Brandi J. Wendel*  
28 Brandi J. Wendel, Deputy Clerk

S14

1 **ORDR**

2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 MARC DiGIACOMO  
6 Chief Deputy District Attorney  
7 Nevada Bar #006955  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

JAN 29 4 45 PM '07

*Cliff D. [Signature]*  
CLERK OF THE COURT

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,  
15 Plaintiff,

16 -vs-

17 RICKIE SLAUGHTER,  
18 #1896569

19 Defendant.

CASE NO: C204957

DEPT NO: III

20 FINDINGS OF FACT, CONCLUSIONS OF  
21 LAW AND ORDER

22 DATE OF HEARING: 12/18/06  
23 TIME OF HEARING: 9:00 a.m.

24 THIS CAUSE having come on for hearing before the Honorable Douglas Herndon,  
25 District Judge, on the 18<sup>th</sup> day of December, 2006, the Petitioner being present, proceeding  
26 In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney,  
27 by and through MARC DIGIACOMO, Deputy District Attorney, and the Court having  
28 considered the matter, including briefs, transcripts, arguments of counsel, and documents on  
file herein, now therefore, the Court makes the following findings of fact and conclusions of  
law:

FINDINGS OF FACT

- 1) Defendant was charged by way of Information with the following crimes: one count  
of CONSPIRACY TO COMMIT KIDNAPPING (Felony – NRS 199.480, 200.030);  
one count of CONSPIRACY TO COMMIT ROBBERY (Felony – NRS 199.480);

1 one count of CONSPIRACY TO COMMIT MURDER (Felony – 199.480); two (2)  
2 counts of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony –  
3 NRS 200.010, 200.030, 193.330,193.165); one count of BATTERY WITH USE OF  
4 A DEADLY WEAPON (Felony – NRS 200.481; one count of ATTEMPT  
5 ROBBERY WITH USE OF A DEADLY WEAPON (Felony – NRS 200.380,  
6 193.330, 193.165); one count of ROBBERY WITH USE OF A DEADLY WEAPON  
7 (Felony – NRS 200.380, 193.165); one count of BURGLARY WHILE IN  
8 POSSESSION OF A FIREARM (Felony – NRS 205.060); BURGLARY (Felony –  
9 NRS 205.060); six (6) counts of FIRST DEGREE KIDNAPPING WITH USE OF A  
10 DEADLY WEAPON (Felony – NRS 200.310,200.320,193.165) and one count of  
11 MAYHEM (Felony – NRS 200.280). Pursuant to plea negotiations, the State filed a  
12 fourth Amended Information dismissing thirteen out of the seventeen counts for  
13 which Defendant was initially charged.

14 2) On April 4, 2005, proceeding pro se with appointed stand-by counsel, Defendant pled  
15 guilty to: COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY  
16 WEAPON (Felony - NRS 200.010, 200.030, 193.330, 193.165); COUNT 2 -  
17 ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380,  
18 193.165); COUNT 3 - FIRST DEGREE KIDNAPPING (Felony - NRS 200.310,  
19 200.320); and COUNT 4 - FIRST DEGREE KIDNAPPING WITH USE OF A  
20 DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165).

21 3) On August 08, 2005, Defendant was granted appointment of his stand-by counsel for  
22 representation at sentencing. The court, having heard argument from the State,  
23 Defendant and Defendant's counsel sentenced Defendant as follows: as to COUNT 1,  
24 a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a MINIMUM of  
25 NINETY (90) MONTHS in the Nevada Department of Corrections (NDC), plus an  
26 equal and CONSECUTIVE MAXIMUM of TWO HUNDRED FORTY (240)  
27 MONTHS and a MINIMUM of NINETY (90) MONTHS for Use of a Deadly  
28 Weapon; on COUNT 2, a MAXIMUM of ONE HUNDRED EIGHTY (180)

1 MONTHS and a MINIMUM of SEVENTY-TWO (72) MONTHS in the Nevada  
2 Department of Corrections (NDC), plus an equal and CONSECUTIVE MAXIMUM  
3 of ONE HUNDRED EIGHTY (180) MONTHS and a MINIMUM of SEVENTY-  
4 TWO (72) MONTHS for Use of a Deadly Weapon, CONCURRENT with Count 1;  
5 on COUNT 3, a MAXIMUM of LIFE in the Nevada Department of Corrections  
6 (NDC), with a MINIMUM of 15 YEARS before Parole Eligibility, CONCURRENT  
7 with Counts 1 and 2; on COUNT 4, LIFE in the Nevada Department of Corrections  
8 (NDC), with a MINIMUM of 5 YEARS before Parole Eligibility, plus an equal and  
9 CONSECUTIVE LIFE in the Nevada Department of Prisons, with a MINIMUM of 5  
10 YEARS before Parole Eligibility for Use of a Deadly Weapon, CONCURRENT with  
11 Counts 1, 2, and 3, with NO Credit for Time Served. Judgment of Conviction was  
12 filed on August 31, 2005.

- 13 4) On August, 7, 2006, Defendant filed the instant Petition for Writ of Habeas Corpus  
14 (Post-Conviction).
- 15 5) The district court properly canvassed Defendant and properly accepted the guilty plea  
16 which was made knowingly, intelligently, voluntarily, and it suffers from no  
17 constitutional defects.
- 18 6) Defendant's claim that he was induced into pleading guilty by the prosecutor's  
19 misrepresentations of law upon entry of his plea is completely belied by the record.
- 20 7) The trial court took sufficient steps to ensure that Defendant's guilty plea was made in  
21 a knowing, intelligent, and voluntary manner.
- 22 8) Defendant signed a guilty plea agreement with the guidance and advice of stand-by  
23 counsel on April 4, 2005. The agreement states the range of punishment in explicit  
24 detail for the relevant charges. The agreement also contains an explicit "WAIVER  
25 OF RIGHTS" section which details all the meaningful constitutional trial rights  
26 Defendant is giving up by pleading guilty including the right to testify, the right to  
27 confront and cross-examine witnesses, the right to subpoena witnesses, and that each  
28 element of the charges must be proved by the State beyond a reasonable doubt.

1 Defendant's signature is affixed to the end of this document. There is also a separate  
2 "certificate of counsel" signed by Defendant's attorney that avers as an officer of the  
3 court that thorough discussions occurred with Defendant about all matters pertinent to  
4 the case.

- 5 9) There is absolutely no indication from the record that the Court based its sentencing  
6 decision on impalpable or highly suspect evidence.

7 CONCLUSIONS OF LAW

- 8 1) The law in Nevada directs that "[t]he trial court should view the guilty plea as  
9 presumptively valid and the burden should be on the defendant to establish that the  
10 plea was not entered knowingly and intelligently." Bryant v. State, 102 Nev. 268,  
11 272, 721 P.2d 364, 368 (1986). Further, a guilty plea should not be invalidated "as  
12 long as the totality of the circumstances, as shown by the record, demonstrates that  
13 the plea was knowingly and voluntarily made and that the defendant understood the  
14 nature of the offense and the consequences of the plea." State v. Freese, 116 Nev.  
15 1097, 1105, 13 P.3d 442, 448 (2000).

- 16 2) "To properly accept a guilty plea, a court must sufficiently canvass a defendant to  
17 determine if the defendant knowingly and intelligently entered into the plea."  
18 Williams v. State, 103 Nev. 227, 230, 737 P.2d 508, 510 (1987).

- 19 3) In Hanley v. State, the Court stated:

20 [I]n cases where a guilty plea is accepted, the record should affirmatively  
21 show that certain minimal requirements are met. These are generally:

- 22 1. an understanding waiver of constitutional rights and  
23 privileges;  
24 2. absence of coercion by threat or promise of leniency;  
25 3. understanding of the consequences of the plea, the range of  
punishments; and  
26 4. an understanding of the charge, the elements of the offense.

27 97 Nev. 130, 133, 624 P.2d 1387, 1389 (1981)(internal citations  
28 omitted).

- 4) There is no requirement in Nevada that a "ritualistic oral canvass of a defendant"

1 takes place prior to accepting a guilty plea, and the failure to conduct one does not  
2 invalidate a plea. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The  
3 Supreme Court of Nevada "will not invalidate a plea as long as the totality of the  
4 circumstances, as shown by the record, demonstrates that the plea" was entered in a  
5 knowing and voluntary manner and defendant understood nature and consequences of  
6 the offense(s) and plea. Id. A court may not rely simply on a written plea agreement  
7 without some verbal interaction with a defendant. Id. Thus, a "colloquy" is  
8 constitutionally mandated, and a "colloquy" is but a conversation in a formal setting,  
9 such as that occurring between an official sitting in judgment of an accused at plea.  
10 See id.

- 11 5) The totality of the "record" to be evaluated for plea validity contains all of the  
12 following: (1) all interaction between the court and Defendant up to the moment of  
13 the plea; (2) an extensive and express written plea agreement signed by Defendant;  
14 and (3) a certification from Defendant's attorney that full discussions about the case  
15 and all relevant matters occurred with Defendant and that Defendant was sufficiently  
16 advised and prepared to enter the plea with no cause for legal concern; and (4) a plea  
17 "canvass" to verify that Defendant appreciated the consequences of the moment, and  
18 to give him one last chance to question any matter relevant to the proceedings. See  
19 State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).
- 20 6) In Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), the Court held  
21 that claims asserted in a petition for post-conviction relief must be supported with  
22 specific factual allegations, which if true, would entitle the petitioner to relief.
- 23 7) A defendant cannot repudiate any of the statements he makes on the record. Lundy v.  
24 Warden, 89 Nev. 419, 514 P.2d 212 (1973).

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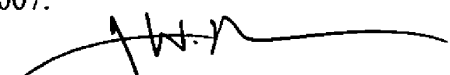

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and it is, hereby denied.

DATED this 25<sup>th</sup> day of January, 2007.

  
\_\_\_\_\_  
DISTRICT JUDGE  


DAVID ROGER  
DISTRICT ATTORNEY  
Nevada Bar #002781

BY   
\_\_\_\_\_  
MARC DiGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006955

04FN0980X/GCU:lg

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKIE LAMONT SLAUGHTER, JR.  
A/K/A RICKIE SLAUGHTER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48742

**FILED**

JUL 24 2007

ANGIE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER AFFIRMING IN PART.  
VACATING IN PART AND REMANDING

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On August 31, 2005, the district court convicted appellant, pursuant to a guilty plea, of attempted murder with the use of a deadly weapon (Count 1), robbery with the use of a deadly weapon (Count 2), first degree kidnapping with substantial bodily harm (Count 3), and first degree kidnapping with the use of a deadly weapon (Count 4). The district court sentenced appellant to serve in the Nevada State Prison two equal and consecutive terms of 90 to 240 months for Count 1; two equal and consecutive terms of 72 to 180 months for Count 2, to run concurrent with Count 1; life with the possibility of parole after 15 years for Count 3, to run concurrent with the sentences for Counts 1 and 2; and two equal and consecutive terms of life with the possibility of parole after 5 years for

07-16181

Count 4, to run concurrent with the terms for Counts 1, 2, and 3. Appellant did not file a direct appeal.

On August 7, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 29, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that the district court relied on suspect evidence to determine his sentence. Specifically, appellant claimed that there was not sufficient proof that a victim of his crime lost an eye as a result of his crime and the district court nevertheless relied on this evidence in determining his sentence. As appellant's claim did not address the voluntariness of his plea or whether his plea was entered without the effective assistance of counsel, appellant's claim fell outside the scope of claims permissible in a habeas corpus petition challenging a judgment of conviction based upon a guilty plea.<sup>1</sup> Thus, the district court did not err in denying this claim, and we affirm this portion of the district court's order.

Appellant also challenged the voluntariness of his plea. A guilty plea is presumptively valid, and a petitioner carries the burden of

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<sup>1</sup>NRS 34.810(1)(a).

establishing that the plea was not entered knowingly and intelligently.<sup>2</sup> Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>3</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>4</sup> In addition, a petitioner's subjective belief "as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing."<sup>5</sup>

Appellant claimed that his plea was involuntary based on promises that his resulting sentence would permit his release in 15 years. The record on appeal reveals that appellant was informed of the potential sentences he faced in the plea agreement and plea canvass, and that appellant acknowledged the district court was not bound by the plea negotiations. However, it appeared that appellant pleaded guilty based on an understanding that offered him the opportunity to be released after 15 years. Standby counsel for appellant and counsel for the State indicated that they both understood that the minimum sentence appellant could serve would be 15 years. Further, the district court stated at sentencing

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<sup>2</sup>Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

<sup>3</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

<sup>4</sup>State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

<sup>5</sup>Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

that appellant was receiving the benefit of the bargain and purportedly sentenced appellant to terms of imprisonment that would permit his release in 15 years. Therefore, it is unclear if appellant was informed by the State or district court that he would only serve a sentence of 15 years before he was eligible for release or if he was actually informed he could receive a greater sentence.

Whether appellant was informed by the State or district court that under his plea agreement, he would be eligible for parole after having served 15 years is of crucial importance given the mechanics of appellant's sentence structure. It appears, for example, that it may have been legally impossible to structure appellant's sentences in a manner that would permit appellant's release after only 15 years. Notably, the Nevada Department of Corrections ("NDOC") has considered appellant's 15-to-life sentence for Count 3 the controlling sentence for purposes of parole eligibility pursuant to NRS 213.1213.<sup>6</sup> Although the NDOC lists appellant's sentences for the primary offenses of Counts 1, 2, and 4 as

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<sup>6</sup>NRS 213.1213 provides:

If a prisoner is sentenced pursuant to NRS 176.035 to serve two or more concurrent sentences, whether or not the sentences are identical in length or other characteristics, eligibility for parole from any of the concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole.

running concurrent with the controlling sentence,<sup>7</sup> appellant cannot begin serving the equal and consecutive deadly weapon enhancement sentences for those counts until he completes the underlying, primary offense sentences. It appears that appellant will not complete those underlying sentences, at least regarding Count 4, until he is paroled on the controlling sentence.<sup>8</sup> Thus, the sentences for the deadly weapon enhancements on those counts would not begin to run until appellant was paroled on the controlling count, which did not contain a deadly weapon enhancement. While the district court expressed its desire to accommodate the sentence that appellant apparently bargained for, and thus sentenced appellant to a sentence it believed permitted his release in 15 years, it appears the NDOC has structured appellant's sentence in a manner that will not permit appellant to be eligible for release until he has served more than 15 years. The effect of this is that the NDOC has apparently structured appellant's sentences to require the deadly weapon

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<sup>7</sup>The sentences for appellant's primary offenses include: the 90 to 240 month sentence for attempted murder with the use of a deadly weapon (Count 1); the 72 to 180 month sentence for robbery with the use of a deadly weapon (Count 2); and the 5-to-life sentence for first-degree kidnapping with the use of a deadly weapon (Count 4). The deadly weapon enhancements sentences are the equal and consecutive terms imposed on Counts 1, 2, and 4.

<sup>8</sup>It appears that under NRS 213.1213, appellant may not be eligible for parole on the sentences for the primary offenses until he is paroled on the controlling sentence. It further appears, however, that appellant may be discharged from a fixed term sentence while serving time on the controlling sentence – Count 3.

enhancement for Count 4 to run consecutively to Count 3, contrary to the sentence structure set forth in the judgment of conviction.

It is unclear, however, whether NRS 213.1213 requires the sentence structure as calculated by NDOC. There does not appear to be any language in NRS 213.1213 precluding the NDOC from treating the sentences for the primary offenses and deadly weapon enhancements for each count as a “block” and paroling appellant on the sentences for the primary offenses and the deadly weapon enhancements for Counts 1 and 4 when appellant is paroled from the controlling sentence set forth in Count 3. Given the district court’s intention, as expressed at sentencing and in the judgment of conviction, that appellant be required to serve a minimum term of 15 years before parole eligibility and the fact that the district court ordered the sentences for Counts 1 and 4 to run concurrently with Count 3, it appears that appellant could be paroled for both the primary offense and the deadly weapon enhancement as a “block.”<sup>9</sup>

Accordingly, we remand this claim for an evidentiary hearing to determine whether appellant's plea was voluntary in light of the alleged mistake concerning the minimum sentence upon which appellant, his counsel, counsel for the State, and the district court apparently relied in

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<sup>9</sup>But see NRS 213.120(2) (providing that a prisoner may be paroled when he has served the minimum term of imprisonment imposed by the court); Nevada Dep’t of Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987) (holding that NRS 193.165 clearly shows legislative intent to impose a separate and distinct penalty for the use of a deadly weapon that must be treated as a separate sentence for all purposes).

the proceedings. In particular, the district court should determine whether appellant was informed, and by whom, that he would or could receive a total minimum sentence of only 15 years. Moreover, the district court should determine whether it was legally possible to achieve a total minimum sentence of 15 years under NRS 213.1213.<sup>10</sup> Lastly, the district court should determine whether NRS 213.1213 precludes the NDOC from paroling appellant on the sentences for the primary offenses with the deadly weapon enhancements, when it paroles appellant on the controlling sentence.<sup>11</sup> The district court should elicit a response from the Attorney General as the NDOC's structuring of appellant's sentences would appear to fall within the Attorney General's provenance. Further, given the complexities, the district court may wish to appoint counsel to assist appellant in this matter.

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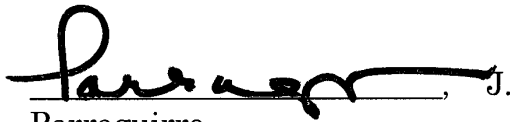
<sup>10</sup>If the district court had imposed sentences with maximum terms of 90 months or less for Counts 1 and 2, and a sentence of 5 to 15 years instead of 5 years to life on Count 4, then it may have been theoretically possible to achieve a total minimum sentence of 15 years imprisonment before parole eligibility under the NDOC's interpretation of NRS 213.1213.

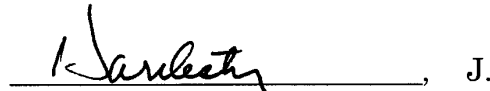
<sup>11</sup>In referring to the sentence as a block, this court refers to the cumulative sentence for each count. Expressed visually, the sentence structure appears as:


15-life  
concurrent with  
[(90-240 + 90-240) concurrent with (72-180 + 72-180) concurrent with (5 –  
life + 5 – life)]

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and further briefing are unwarranted in this matter.<sup>12</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>13</sup>

 J.  
Parraguirre

 J.  
Hardesty

 J.  
Saitta

cc: Hon. Douglas W. Herndon, District Judge  
Rickie Lamont Slaughter Jr.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>12</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>13</sup>We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. In addition, this order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKIE LAMONT SLAUGHTER, JR. A/K/A RICKIE  
SLAUGHTER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 48742

District Court Case No. C204957

**FILED**

AUG 28 2007

**REMITTITUR**

TO: Charles J. Short, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY W. Carado  
DEPUTY CLERK

DATE: August 21, 2007

Janette M. Bloom, Clerk of Court

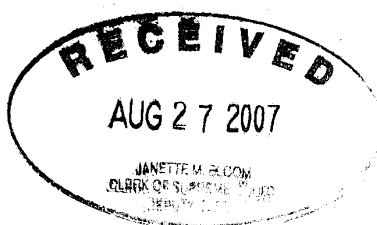
By: J. Yung  
Chief Deputy Clerk

cc: Hon. Douglas W. Herndon, District Judge  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Rickie Lamont Slaughter Jr.

**RECEIPT FOR REMITTITUR**

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on August 23, 2007.



Deputy Robert J. Mills  
District Court Clerk

**RECEIVED**  
AUG 23 2007  
CLERK OF THE COURT

07-16525

**App. 0336**

ORIGINAL

RSPN

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By: DENNIS C. WILSON  
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Facsimile: 702-486-2377  
Attorneys for Respondents

FILED

Nov 9 4 38 PM '07

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

RICKIE LAMONT SLAUGHTER, JR., aka  
RICKIE SLAUGHTER,

Petitioner,

v.

THE STATE OF NEVADA,

Respondent.

Case No.: C204957  
Dept. No.: III

ATTORNEY GENERAL'S RESPONSE TO  
NEVADA SUPREME COURT'S JULY 24,  
2007, ORDER

The State, through legal counsel CATHERINE CORTEZ MASTO, Attorney General, by DENNIS C. WILSON, Deputy Attorney General, hereby responds to the Nevada Supreme Court's July 27, 2007, Order herein regarding the structuring of Defendant's sentence herein. This Response is made and based upon the pleadings and papers on file herein and the following Points and Authorities.

DATED this 5 day of November, 2007.

CATHERINE CORTEZ MASTO  
Attorney General

By: Dennis C. Wilson  
DENNIS C. WILSON  
Deputy Attorney General

Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

RECEIVED

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CLERK OF THE COURT

I.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**POINT 1      GIVEN INMATE SLAUGHTER'S EXISTING SENTENCES, IT IS NOT LEGALLY POSSIBLE TO ACHIEVE A TOTAL MINIMUM SENTENCE OF FIFTEEN YEARS UNDER NRS 213.1213. SLAUGHTER MUST SERVE 22½ YEARS BEFORE HE IS ELIGIBLE FOR PAROLE TO THE COMMUNITY.**

The district court sentenced Slaughter on four counts; Count 2 was concurrent to Count 1, Count 3 to 1 and 2, and Count 4 to 1, 2 and 3:

Count 1—attempted murder with use of a deadly weapon;      (7½-20 + 7½-20)

Count 2—robbery with use of a deadly weapon;      (6-15 + 6-15)

Count 3---1st degree kidnapping with subst. bodily harm;      (15-life)

Count 4—1st degree kidnapping with use of a deadly weapon. (5-life + 5-life)

NRS 213.1213 is titled "**Eligibility for parole of prisoner sentenced to serve two or more concurrent sentences is based on sentence with longest period.**" and provides as follows:

If a prisoner is sentenced pursuant to NRS 176.035 to serve two or more **concurrent** sentences, whether or not the sentences are identical in length or other characteristics, **eligibility for parole** from any of the **concurrent** sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole. (Emphasis added).

The Nevada Supreme Court has remanded this matter to the court in part to elicit a response from the Attorney General's Office regarding the way NDOC has structured the Defendant's sentence. The district court is to determine 1) "whether it was legally possible to achieve a total minimum sentence of 15 years under NRS 213.1213," and 2) "whether NRS 213.1213 precludes the NDOC from paroling appellant on the sentences for the primary offenses with the deadly weapon enhancements, when it paroles appellant on the controlling sentence."

To answer the first question, given Slaughter's existing sentences, and applying NRS 213.1213 the way NDOC interprets it, it is NDOC's position that it is not legally possible to achieve a total minimum sentence of 15 years. Slaughter must serve 22 ½ years under his

...

1 existing sentences before he is eligible to be paroled to the community, as explained in the  
2 following.

3 In structuring Slaughter's sentence, NDOC relied on Nevada Dep't Prisons v. Bowen,  
4 103 Nev. 477, 481, 745 P.2d 697, 699-700 (1987). Bowen overturned Biffath I and Biffath II.  
5 Biffath 1 (95 Nev. 260, 593 P.2d 51 (1979)) held that the primary sentence and an  
6 enhancement sentence must be treated as a single sentence for purposes of awarding good-  
7 time credits. Biffath II (97 Nev. 18, 621 P.2d 1113 (1981)) held that a primary sentence and  
8 an enhancement sentence must be treated as one sentence for purposes of computing  
9 eligibility for parole. See Stevens v. Warden, 114 Nev. 1217, 969 P.2d 945 (1998) and  
10 Niergarth v. State, 105 Nev. 26, 768 P.2d 882 (1989). Bowen expressly overruled Biffath I  
11 and Biffath II and held that primary and enhancement sentences must be treated as **separate**  
12 sentences for **all purposes**. Applying Bowen to Slaughter's sentences, NDOC separated the  
13 primary sentences of Counts 1, 2, 3 and 4 from the consecutive sentences of Counts 1, 2 and  
14 4. NDOC then applied NRS 213.1213 to the primary concurrent sentences of Counts 1, 2, 3  
15 and 4 and determined that Slaughter is not eligible for parole on said four counts until he  
16 becomes eligible for parole on the primary sentence which has the furthest away parole  
17 eligibility date, that is, the 15-life sentence (Count 3). (Slaughter is eligible for parole when he  
18 completes the minimum sentence on each count, that is, 7½ years on Count 1, 6 years on  
19 Count 2, 15 years on Count 3 and 5 years on Count 4; Count 3, therefore, requires the  
20 longest period (15 years) before Slaughter is eligible to be paroled to his consecutive  
21 sentences.) Thus, under NRS 213.1213, Slaughter cannot be paroled on any of the four  
22 primary sentences until he serves fifteen years. After he serves fifteen years, and if he is  
23 paroled the first time he goes before the parole board, Slaughter can then begin to serve the  
24 three consecutive deadly weapon sentences. These three deadly weapon sentences run  
25 concurrently to each other and are, therefore, also governed by NRS 213.1213. Because, as  
26 explained above, NRS 213.1213 determines eligibility for parole by the concurrent sentence  
27 which requires the longest period before the prisoner is eligible for parole, Slaughter would  
28 not be eligible for parole on any of the three deadly weapon sentences until he had served

1 the 7½ year minimum of the Count 1 deadly weapon sentence. (Count 1 requires the longest  
2 period (7½ years) before Slaughter is eligible for parole; Count 2 requires 6 years and Count  
3 4 requires 5 years; so he is not eligible for parole on any of the three deadly weapon  
4 sentences until he serves 7½ years). Based on the foregoing, the earliest Slaughter could be  
5 eligible for parole to the community is after he has served a minimum of 22 ½ years (15 on  
6 the primary sentences + 7½ years on the deadly weapon sentences.)

7 If the court on Count 3 had sentenced Slaughter to 7½-life or 5-life instead of 15-life,  
8 Slaughter could have been eligible for parole in 15 years. For example, if Slaughter on Count  
9 3 had pled to another First Degree Kidnapping with Use of a Deadly Weapon instead of the  
10 First Degree Kidnapping with SBH, he would have been sentenced to a 5-life. Under this  
11 scenario, the primary 7½ year minimum sentence of Count 1 would have the longest or  
12 furthest-out parole eligibility date. After he had served said 7 ½ years, Slaughter could then  
13 be eligible for parole to the deadly weapon sentences. After serving another 7½ years on the  
14 deadly weapon sentence of Count 1, he could then become eligible for parole to the  
15 community. Thus, he would be eligible for parole to the community after serving fifteen years.

16  
17 **POINT 2 NRS 213.1213 AND BOWEN PRECLUDE NDOC FROM**  
18 **TREATING SLAUGHTER'S PRIMARY SENTENCES AND**  
19 **DEADLY WEAPON SENTENCES AS 'BLOCKS", AND**  
20 **PRECLUDE HIM FROM BECOMING PAROLE ELIGIBLE**  
**ON THE DEADLY WEAPON SENTENCES AT THE SAME**  
**TIME HE BECOMES PAROLE ELIGIBLE ON THE**  
**CONTROLLING PRIMARY SENTENCE.**

21 In its second question, the Nevada Supreme Court has directed the district court to  
22 determine "whether NRS 213.1213 precludes NDOC from paroling inmate Slaughter on the  
23 sentences for the primary offenses with the deadly weapon enhancements, when it paroles  
24 Slaughter on the controlling sentence." (It appears the Court has misspoken in that NDOC  
25 does not parole inmates, it only determines their eligibility for parole; the Parole Board  
26 determines whether an inmate should be paroled.) The Court further states that:

27 ...

28 ...

1 There does not appear to be any language in NRS 213.1213 precluding  
2 the NDOC from treating the sentences for the primary offenses and  
3 deadly weapon enhancements for each count as a 'block' and paroling  
4 appellant on the sentences for the primary offenses and the deadly  
5 weapon enhancements for Counts 1 and 4 when appellant is paroled from  
6 the controlling sentence set forth in Count 3. Given the district court's  
7 intention, as expressed at sentencing and in the judgment of conviction,  
8 that appellant be required to serve a minimum term of 15 years before  
9 parole eligibility and the fact that the district court ordered the sentences  
10 for Counts 1 and 4 to run concurrently with Count 3, it appears that  
11 appellant could be paroled for both the primary offense and the deadly  
12 weapon enhancement as a "block." [fn.9 But see NRS 213.120(2)  
13 (providing that a prisoner may be paroled when he has served the  
14 minimum term of imprisonment imposed by the court); Nevada Dep't of  
15 Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987) (holding that NRS  
16 193.165 clearly shows legislative intent to impose a separate and distinct  
17 penalty for the use of a deadly weapon that must be treated as a separate  
18 sentence for all purposes).]

19 Looking at footnote 11 of the Nevada Supreme Court's July 24, 2007 Order, the Court  
20 describes a "block" as referring to the **cumulative** sentence for each count. It appears that  
21 the Court is contemplating that Slaughter's sentence may be able to be structured by  
22 **combining** *ab initio* the 90-240 primary sentence with the 90-240 consecutive sentence  
23 which would create a sentence of 180-480 months for Count 1. Combining the other primary  
24 and deadly weapon sentences in the same way, Count 2 would have a sentence of 144-360,  
25 and Count 4 a 120-life. Count 3 would remain at 180-life because it has no enhancement  
26 sentence. Slaughter's furthest-out parole eligibility date would then be controlled by the 180  
27 months of Counts 1 and 3, resulting in Slaughter being eligible for parole on all four counts in  
28 180 months or 15 years. The Supreme Court inquires whether NDOC is precluded from  
structuring his sentences this way, as "blocks." It is NDOC's position that NRS 213.1213 and  
Bowen preclude treating Slaughter's primary sentences and deadly weapon sentences as  
"blocks" and thereby preclude Slaughter from becoming parole eligible on the separate deadly  
weapon sentences at the same time he becomes parole eligible on the controlling primary  
sentence and the three other primary sentences.

Structuring a sentence in this "block" fashion runs afoul of NRS 213.1213, Bowen and  
Stevens, *supra*, and Kimsey, *infra*, which prohibit treating each count's primary and  
consecutive sentences as a single sentence for purposes of computing parole eligibility. In

1 State v. Kimsey, 109 Nev. 519, 853 P.2d 109 (1993), the district court sentenced Kimsey to  
2 nine consecutive terms of two years each to be served concurrently with six consecutive  
3 terms of three years each. The sentences were to be served concurrently with two concurrent  
4 prison terms of four years, one prison term of five years, and one term of six months in the  
5 county jail. Subsequently, the district court entered two amended judgments of conviction,  
6 each of which included a statement by the district court that it was its intention to sentence  
7 Kimsey to a single eighteen-year term in the aggregate for the purpose of parole eligibility.  
8 The Department of Prisons refused to treat Kimsey's sentences as a single eighteen-year  
9 term for purposes of parole eligibility. On appeal, the Court held:

10           The sentencing structure, as set forth in the Nevada Revised  
11 Statutes, does not contemplate "aggregate sentences for the purpose of  
12 parole eligibility." **There is no authority for the proposition that the**  
13 **district court may sentence a defendant convicted of multiple**  
14 **offenses to an aggregate sentence for the purpose of parole**  
15 **eligibility.** Thus, the state correctly contends that the district court  
exceeded its jurisdiction in commanding the Nevada Department of  
Prisons to treat the criminal judgments against Kimsey as a single  
eighteen-year term in the aggregate for the purposes of parole eligibility.  
(Emphasis added.)

16 Aggregating sentences is the same as combining them, treating them cumulatively or treating  
17 them as a block. It is NDOC's position that Nevada Supreme Court precedent precludes it  
18 from treating Slaughter's sentences as "blocks" for purposes of determining parole eligibility  
19 or for any other purpose.

20           NRS 213.1213 also precludes NDOC from declaring Slaughter parole eligible on the  
21 deadly weapon enhancements at the same time it declares him parole eligible on the  
22 controlling sentence. NRS 213.1213 governs **concurrent** sentences only and requires that  
23 the parole eligibility date of all of the concurrent sentences be set by determining which  
24 concurrent sentence has the furthest-out parole eligibility date. When the primary sentence  
25 and the separate consecutive deadly weapon sentence are combined as a "block", you no  
26 longer have a purely concurrent sentence. You create a hybrid sentence which is half  
27 concurrent and half consecutive. By combining the primary and separate consecutive  
28 sentence in a "block", you are in effect applying NRS 213.1213 to a consecutive deadly

1 weapon sentence. Combining Slaughter's primary sentences with his consecutive sentences  
2 **before** applying NRS 213.1213, improperly manipulates the sentences in an attempt to  
3 remove the partly-consecutive nature of the sentences and improperly applies NRS 213.1213  
4 to consecutive sentences. NDOC, without manipulating the sentences, looks at each  
5 sentence, determines what the primary concurrent sentences are, applies NRS 213.1213,  
6 and sets the parole eligibility date. After the inmate is paroled on these primary sentences,  
7 NDOC then addresses the consecutive sentences in the same manner. Treating the  
8 sentences as blocks, that is **combining** the primary sentence with the consecutive deadly  
9 weapon sentence, applies NRS 213.1213 to a consecutive sentence and runs afoul of Bowen  
10 and NRS 193.165 which require the imposition of a **separate** term of imprisonment "equal to  
11 and in addition to" the term of imprisonment imposed for the primary offense. Based on the  
12 foregoing, NRS 213.1213 and Nevada Supreme Court precedent preclude NDOC from  
13 declaring Slaughter parole eligible on the deadly weapon enhancements at the same time it  
14 declares him parole eligible on the controlling sentence.

15           **POINT 3     IF BY THE TERM "BLOCK" THE NEVADA SUPREME**  
16           **COURT MEANS THAT, NOTWITHSTANDING A**  
17           **CONTROLLING PRIMARY SENTENCE, AN INMATE**  
18           **WOULD BE ELIGIBLE TO BE PAROLED TO A**  
19           **CONSECUTIVE ENHANCEMENT AS SOON AS HE**  
20           **EXPIRED THE RELATED PRIMARY SENTENCE, THEN**  
              **TREATING SLAUGHTER'S SENTENCES AS BLOCKS**  
              **WILL BE MORE DETRIMENTAL TO HIM THAN TREATING**  
              **THEM AS GROUPS.**

21 Out of an abundance of caution regarding the meaning of "block", NDOC assumes *arguendo*,  
22 for purposes of **POINT 3** only, that treating a sentence as a "block" means that an inmate  
23 could be paroled to his consecutive deadly-weapon sentence immediately after he expired his  
24 underlying primary sentence without first waiting for the expiration of a controlling primary  
25 sentence. The following will show that it is detrimental to Slaughter to serve a consecutive  
26 deadly-weapon sentence immediately after he expires that sentence's primary sentence. The  
27 following scenario provides an example:

28 ...

Ct 1	Robbery	5 – 15
Ct 1	UDW (to Robbery)	5 – 15 consecutive to Ct 1, Robbery
Ct 2	Burglary with Weapon	3 – 9, concurrent to Ct 1 Robbery
Ct 2	UDW (to Burglary)	3 – 9, consecutive to Ct 2, Burglary

In the above example, treating the Burglary and its consecutive deadly weapon enhancement as a "block" separately from the Robbery and its consecutive deadly weapon enhancement, is more detrimental to an inmate than treating these sentences as a group. (The term "group" means that NDOC would group the concurrent primary offenses (Robbery and Burglary) and separately group the consecutive deadly weapon enhancements.) Let us assume that the inmate was sentenced on January 1, 2007, that the inmate earned all the credits he could and that he was paroled the first time every time he went before the Board. Treating the above sentences as a **group** (which is the way NDOC currently structures sentences) in this example, the inmate, under NRS 213.1213, would have to serve five years (the furthest-out parole eligibility date of the Burglary and the Robbery) before he was eligible for parole to the consecutive sentences. Because of sentence credits, the inmate would expire the primary 3-9 year Burglary sentence in 4½ years (earning 2 for 1 credits). If he was paroled on the primary 5-15 sentence at 5 years, he would then begin to serve the deadly weapon sentences. Again, because of sentence credits, the inmate would then expire the deadly-weapon 3-9 sentence in 4½ years, and become eligible for parole on the deadly-weapon 5-15 in 5 years. So, treating the sentences as a group governed by NRS 213.1213, the inmate in the above example would be eligible for parole to the community 10 years after he began his sentence, that is January 1, 2017.

Treating the 3-9 year primary sentence and the 3-9 year consecutive deadly weapon sentence in the above example as a **block** instead of a group, the inmate would be eligible for parole on the primary 3-9 year sentence in five years, that is January 1, 2012. (Under NRS 213.1213, between the concurrent 3-9 primary sentence and the concurrent 5-15 primary sentence, the primary 5-15 minimum sentence has the longest or furthest-out parole eligibility date, so the inmate would not be eligible for parole on the 3-9 concurrent primary sentence until he served five years, not three years.) Because of sentence credits, the

1 inmate would expire the primary 3-9 year Burglary sentence in 4½ years, six months before  
2 he reached the five-year parole eligibility date. Treating the two 3-9 year sentences as a  
3 block, the deadly weapon 3-9 sentence would then begin to run 4½ years into the sentences,  
4 that is July 1, 2011. This deadly weapon sentence would then be running concurrently with  
5 the 5-15 year primary sentence. Since these sentences are now concurrent, NRS 213.1213  
6 would then require NDOC to set the inmate's parole eligibility date to the furthest-out parole  
7 eligibility date between the 3-9 deadly weapon sentence and the 5-15 primary sentence.  
8 Since the parole eligibility date on the 3-9 deadly weapon sentence would be three years out  
9 on July 2, 2014 and the parole eligibility date on the primary 5-15 sentence would be six  
10 months out on January 1, 2012, the 3-9 deadly weapon sentence has the furthest-out parole  
11 eligibility date. NRS 213.1213 would require NDOC to set a parole eligibility date for July 2,  
12 2014 on both the deadly weapon 3-9 and the primary 5-15. In effect, because the sentences  
13 were treated as a block, the inmate would have to serve 7½ years (from January 1, 2007 until  
14 July 2, 2014) before he was eligible to be paroled from the primary 5-15 to the consecutive  
15 deadly weapon 5-15. If he was paroled at that July 2, 2014 hearing, he would have to wait  
16 five more years to be eligible for parole on the deadly weapon 5-15 sentence. So, if his  
17 sentences are treated as blocks, the earliest he could be paroled to the community would be  
18 July 2, 2019, whereas if his sentences were treated as groups, he would be eligible for parole  
19 to the community on January 2, 2017. The problem with treating the sentences as blocks, is  
20 that every time a primary sentence expires it results in a consecutive sentence becoming a  
21 concurrent sentence which in turn generally moves back the parole eligibility date of all the  
22 other concurrent sentences. So in the example above, even though the inmate was 6 months  
23 away from being eligible for parole on the primary 5-15, the consecutive 3-9 becoming a  
24 concurrent 3-9 moved his parole eligibility date back 2½years, which in turn affected his  
25 parole eligibility on his consecutive 5-15.

26 The above example shows that treating Slaughter's sentences as a block is more  
27 detrimental to him than treating them as a group. If Slaughter's sentences are treated as a  
28 **group** under NRS 213.1213, Slaughter, who was convicted on August 31, 2005, would be

1 eligible for parole on the four primary sentences on August 7, 2020. (While he waited for the  
2 August 7, 2020 parole expiration date, he would expire the primary Robbery 6-15 sentence  
3 (Count 2) on January 12, 2014 and the primary Attempt Murder 7½-20 year sentence (Count  
4 1) on July 18, 2016.) With two of the primary sentences expired, and having been paroled on  
5 the two other primary sentences (the 5-life and the 15-life), his parole eligibility date on the  
6 three remaining deadly weapon sentences would be 7½ years later on January 7, 2028. (7½  
7 years is the furthest-out parole eligibility date of the three deadly weapon sentences). Thus, if  
8 the sentences were treated as a group, he would be eligible for parole to the community on  
9 January 7, 2028.

10 However, if Slaughter's sentences were treated as a block (as defined *arguendo*  
11 above) the earliest he could be paroled to the community would be January 20, 2029,  
12 whereas if his sentences were treated as groups, he would be eligible to be paroled to the  
13 community on January 7, 2028. Treating his sentences as a block, with regard to the four  
14 primary sentences, Slaughter's parole eligibility date will be August 7, 2020 because the  
15 Count 3 15-life sentence has the furthest-out parole eligibility date. While he waits for the  
16 August 7, 2020 date, Slaughter will expire the Count 2 primary Robbery 6-15 sentence on  
17 January 12, 2014. He would then be paroled to the Count 2 deadly weapon sentence on  
18 January 13, 2014. That Count 2 deadly weapon sentence would then begin to run  
19 concurrently with the other three primary sentences, which would bring NRS 213.1213 into  
20 play. NRS 213.1213 will require the parole eligibility dates of the three other concurrent  
21 sentences to move back to the furthest-out parole eligibility date of the four concurrent  
22 sentences. However, since the parole eligibility date of the Count 2 deadly weapon sentence  
23 is January 13, 2020, and the parole eligibility date of the Count 3 15-life sentence is August 7,  
24 2020, the Count 3 15-life sentence will still determine the controlling parole eligibility date.

25 Slaughter, however, will expire the Count 1 primary Attempt Murder sentence on July  
26 18, 2016. If his sentences are treated as blocks, he will start to serve the Count 1 deadly  
27 weapon 7½ year sentence on July 19, 2016. That sentence will be a concurrent sentence  
28 which will again bring NRS 213.1213 into play. At this point, Slaughter will be serving the

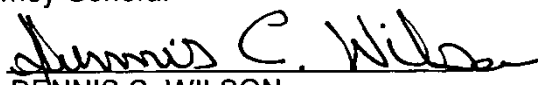
Count 1 deadly weapon sentence, the Count 2 deadly weapon sentence, the primary 15-life and the primary 5-life, all concurrently. NRS 213.1213 will require NDOC to set a parole eligibility date based on the furthest-out parole eligibility date of these four sentences which are now running concurrently. The 7½ year deadly-weapon sentence, which will have a January 20, 2024 parole eligibility date, is furthest out and will "trump" the 15-life August 7, 2020 parole eligibility date and become the furthest parole eligibility date. So, if his sentences are treated as blocks, Slaughter will not be eligible for parole on the Count 1 deadly weapon sentence, the Count 2 deadly weapon sentence, the primary 15-life and the primary 5-life until January 20, 2004. After he is paroled on these sentences on January 20, 2004, he will still have to serve the remaining deadly weapon 5-life, and he will not be eligible for parole to the community until January 20, 2029. Thus, if his sentences are treated as a group he is eligible to be paroled to the community on January 7, 2028. If his sentences are treated as blocks, he will not be eligible for parole to the community until January 20, 2029.

#### CONCLUSION

Slaughter's sentences require him to do 22½ years before he is eligible for parole to the community. Bowen requires NDOC to treat the primary and deadly-weapon sentences separately for all purposes. NRS 213.1213 requires the parole eligibility dates of concurrent sentences to be determined by the concurrent sentence which has the furthest-out parole eligibility date. NRS 213.1213 and Bowen preclude NDOC from treating Slaughter's primary sentences and separate deadly weapon sentences as "blocks" and thereby preclude Slaughter from becoming parole eligible on the separate deadly weapon sentences at the same time he becomes parole eligible on the controlling primary sentence and the three other primary sentences.

DATED this 5 day of November, 2007.

CATHERINE CORTEZ MASTO  
Attorney General

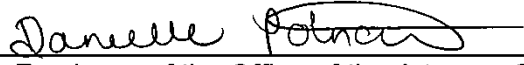
By:   
DENNIS C. WILSON  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I do hereby certify that I am an employee of the Office of the Attorney General and that on the 9<sup>th</sup> day of November, 2007, I served a true and accurate copy of the foregoing **Attorney General's Response To Nevada Supreme Court's July 24, 2007, Order** by mailing via United States mail, first class, postage prepaid, to:

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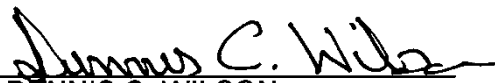
**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding *Attorney General's Response* To Nevada Supreme Court's July 24, 2007, Order filed in 8<sup>th</sup> Judicial District Court Case Number C204957 does not contain the social security number of any person.

Dated this 5 day of November, 2007

CATHERINE CORTEZ MASTO  
Attorney General

By:   
DENNIS C. WILSON  
Deputy Attorney General

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District Court  
Clark County, Nevada

FILED

MAR 28 02 09 PM '08

Rickie Lamont Slaughter, Jr.,  
Petitioner,

CLERK OF THE COURT C204957  
Dept. No: III

v.  
The State Of Nevada,  
Respondents.

Hearing Date:  
Hearing Time:

Petitioner's Opening Brief In  
Support Of His Request To Withdraw  
His Guilty Plea As Appropriate  
Habeas Relief

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## Statement Of Issues And Points

This court ordered the parties in this case to submit briefing on the following:

Whether the appropriate relief for a defendant who has pled guilty based upon a prosecutors misrepresentation regarding parole eligibility, is to modify the defendant's sentence, to meet the Parole eligibility expectations, or to allow him to withdraw his guilty pleas?

### Petitioner's Answer:

The defendant must be permitted to withdraw his plea, as Nevada Supreme Court precedent precludes a district court from modifying a defendant's sentence to meet a parole eligibility misapprehension.

The petitioner (herein "Mr. Slaughter") advances the following points in support:

**Point I** - Because The State's Misrepresentation Concerned The Parole Eligibility Consequences Of The Plea, Modifying The Sentence To Meet The Parole Eligibility Expectations Would Violate The Separation Of Powers Doctrine (Discussed at pg. 7)

**Point II** - Because Mr. Slaughter's Initial Attempt To Withdraw His Plea Before Sentencing On The Same Basis That He Has Now Prevailed Was Prevented By The State's Interference, He Should Now Be Permitted To Withdraw From The Agreement (Discussed at pg. 12)

**Point III** - Because The State Did Not "Breach The Plea Agreement", But In Fact, Gave Mr. Slaughter A "Misrepresentation" Of Law, That Mis-led Him Into Pleading Guilty, "Specific Performance" Is Not An Applicable Remedy (Discussed at pg. 15)

**Point IV** - The Doctrine Which Permits Sentence Modification Does Not Extend To Cases In Which There Has Been A Misapprehension About The Legal Consequences Of A Plea, That Do Not Concern The Maximum Possible Sentence, That A Defendant Can Receive For The Plea (at pg. 18)

## Statement Of The Case

On August 31, 2005, Judgment of Conviction was filed convicting Petitioner ("Mr. Slaughter") pursuant to a guilty plea of attempted murder w/ use of a deadly weapon (Count 1), robbery w/ use of a deadly weapon (Count 2), first degree kidnapping w/ substantial bodily harm (Count 3), first degree kidnapping w/ use of a deadly weapon (Count 4). Mr. Slaughter was sentenced to serve two equal and consecutive terms of 90 to 240 months for Count 1; two equal and consecutive terms of 72 to 180 months for Count 2; to run concurrent w/ count 1; Life with the possibility of parole after 15 yrs. for Count 3, to run concurrent with counts 1 and 2; and two equal and consecutive terms of Life w/ the possibility of parole after 5 yrs. for Count 4, to run concurrent with Counts 1, 2, 3.

On August 7, 2006, Mr. Slaughter filed the instant (Post-Conviction) petition for a Writ of Habeas Corpus.

On January 29, 2007, this Court filed an Order Dismissing Mr. Slaughter's petition. Mr. Slaughter took appeal and on July 24, 2007, The Nevada Supreme Court vacated this Courts order and remanding this case with instructions to conduct an evidentiary hearing. Remittitur issued on August 21, 2007. On February 14, 2008, this court ordered a briefing schedule for the parties to submit briefs on the appropriate relief to be given to Mr. Slaughter.

1 Mr. Slaughter now submits the instant "Openi-  
2 ng Brief" in support of his request to withdraw his.  
3 guilty pleas.

## 4 Statement Of The Facts

5  
6  
7 On April 4, 2005, the date set for jury  
8 selection in this case, the state offered Mr. Slaug-  
9 hter a plea agreement in which the state said  
10 would allow Mr. Slaughter an opportunity to be releas-  
11 ed in a minimum term of 15 yrs.

12 The proffered plea agreement provides in pertin-  
13 ent part :

14 "  
15 . . . plead guilty to: Count 1 - Attempted  
16 murder with use of a deadly weapon; Count  
17 2 - Robbery with use of a deadly weapon; Count  
18 3 - First Degree kidnapping; and Count 4 -  
19 First Degree kidnapping with use of a de-  
20 adly weapon. . . . My decision to plead  
21 guilty is based upon the plea agreement in  
22 this case which is as follows:

23 The state has agreed to retain the right to  
24 argue for fifteen (15) to Life at sentencing as  
25 to Count 3, but stipulates that Life without  
26 parole is not available. The state will stipu-  
27 late concurrent time between the counts.

28 The defendant has agreed to retain the  
right to argue for fifteen (15) to forty (40) at  
sentencing as to Count 3. "

see (Petitioner's Appendix "PA"-A; Guilty Plea  
agreement) (Statutory citations omitted) Id. at pg. 1

Mr. Slaughter initially rejected the states offer on

1 the basis that he felt that the weapon enhancements  
2 on Counts 1, 2, and 4, could make a minimum term  
3 release of 15 yrs. impossible. After, the court heard  
4 arguments on Mr. Slaughter's pre-trial issues, the State  
5 initiated another attempt at negotiations, in which, the  
6 State again offered Mr. Slaughter the plea agreement, this  
7 time telling Mr. Slaughter that it was sure that the stack-  
8 ing of the sentences could permit release in 15 yrs.

9 Mr. Slaughter accepted the agreement based on the Stat-  
10 es representations

11 Mr. Slaughter's sentencing date was set for August  
12 8, 2005. On August 4, 2005 - 4 days before Mr. Slaug-  
13 hters sentencing date - the district court clerk received  
14 a "...motion To Withdraw A Guilty Plea" from Mr. Sl-  
15 aughter, in which his request was based on his belief  
16 that he may have been given a "misrepresentation" by  
17 the state at the plea negotiations. (See PA-B; Defen-  
18 dant's Motion To Withdraw A Guilty Plea; stamped "Received  
19 " August 4, 2005; file stamped August 8, 2005).

20 On August 8, 2005, before the commencement  
21 of the hearing, a discussion took place between  
22 Mr. Slaughter and the state (Mr. Krisko). (Note:  
23 The following facts have been consistently set forth by  
24 Mr. Slaughter, throughout the entire instant habeas  
25 proceedings and remains entirely undisputed by the  
26 State).

27 At this pre-hearing discussion, among other issues,  
28 the state and Mr. Slaughter discussed his intention to

1 withdraw his guilty pleas , based on Mr. Slaughter's  
2 belief that a minimum term of 15 yrs. may not have  
3 been possible under the agreement that he pled to,  
4 thus, the state had misrepresented the law to  
5 him at the negotiations. Mr. Slaughter was then  
6 told by both the state and his stand-by counsel  
7 (Paul Wommer) that the law had not been misr-  
8 epresented to him , because a minimum term  
9 of 15 yrs. before release was permissible under the  
10 agreement. Mr. Slaughter , was told not to pursue  
11 his motion to withdraw his plea, because his claim  
12 was not viable.

13 Mr. Slaughter did not pursue his motion  
14 during the hearing because of his discussion with the  
15 State and his stand-by counsel. However, Mr. Sl-  
16 aughter did present his concerns regarding the weap-  
17 on enhancements to the court. Ultimately , this  
18 court sentenced Mr. Slaughter to a term it belie-  
19 ved would provide a minimum term of 15 yrs.,  
20 based upon it's misapprehension of the effect.  
21 of stacking several sentences concurrent and consecu-  
22 tive.

23 On August , 7 , 2006 , Mr. Slaughter sought  
24 habeas relief on the basis that the state had mis-led  
25 him into pleading guilty , because Nevada's parole sta-  
26 tues do not permit his release in a minimum of 15 yrs.  
27 under his sentence structure. Initially , this court dismissed  
28 Mr. Slaughter's petition. On appeal , The Nevada Supreme Court

1 entered an Order vacating the district court judgment  
2 and remanding Mr. Slaughter's claim of misrepresentat-  
3 ion, for an evidentiary hearing " . . . to determine  
4 whether [Mr. Slaughter's] plea was voluntary in light  
5 of the alleged mistake concerning the minimum sentence  
6 . . . " (see Slaughter v. State, Docket No: 48742; at  
7 pg. 6; July 24, 2007).

8 The Nevada Supreme Court also ordered the district  
9 court to elicit a response from the Attorney General,  
10 regarding the application of Nevada parole statute NRS  
11 213.1213 to Mr. Slaughter's sentence structure. Slaugh-  
12 ter v. State, *supra*, Id. at 7.

13 Since this has been remanded, this Court has elicited  
14 a response from the Attorney General, in which, the  
15 Attorney General has determined that it "is not legally  
16 possible" for Mr. Slaughter to be eligible for release in  
17 15 years under Nevada parole statute NRS. 213.1213.

18 This Court further determined that Mr. Slaughter  
19 was, in fact, given a misrepresentation by the State  
20 at the plea negotiations. Thus, Mr. Slaughter's guilty  
21 pleas were involuntary. This Court's final task, is  
22 to now determine the appropriate relief to be afforded  
23 to Mr. Slaughter. As such, Mr. Slaughter once again  
24 request that he be permitted to withdraw his guilty  
25 pleas.  
26

### 27 Argument

28

## Point 1.

Because The State's Misrepresentation  
Concerned The Parole Eligibility Consequences of  
The Plea, Modifying The Sentence To Meet The  
Parole Eligibility Expectations Would Violate  
The Separation Of Powers Doctrine

The Nevada Constitution requires that there be a separation of powers between the departmental functions of the legislative, the Executive and the Judicial branches. Specifically commanding that "no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others" NRS Const. Art. 3 § 1(1). The power to determine a state prisoner's eligibility for parole is "exclusively" an executive function. See NRS 213.130 (providing that NDOC "shall determine when prisoner . . . is eligible to be considered for parole"); also Creps v. State, 581 P.2d 842, 847 (Nev. 1978) ("once person is incarcerated in state prison . . . power to alleviate the sentence rest entirely with the executive branch").

In State v. Kimsey, 853 P.2d 109 (Nev. 1993), the district court sentenced a defendant to multiple sentences both concurrent and consecutive, with the intent that they result in an 18 yr. term for the purpose of computing parole eligibility. After refusal by the Prison to compute the sentences as such, the district court attempted to modify the Judgment of Convictions to meet the parole eligibility expectations. On Appeal, the Nevada Supreme Court reversed, holding that the district court

1 it had no authority to dictate the terms of a  
2 defendants parole eligibility, by modifying a  
3 sentence to meet a misapprehension concerning  
4 parole eligibility, because "the granting of  
5 relief from incarceration is authorized by  
6 the legislature and performed by the state  
7 board as an executive function." Id. at,  
8 111-12; see also Creps v. State, 581 P.2d 842  
9 Id. at, 847 (Nev. 1978) (Emphasis added).

10 In the instant case, the legislative and  
11 Executive functions are clearly implicated by  
12 the mandatory applications of Nevada parole  
13 statute NRS 213.1213 and weapon enhance-  
14 ment statute NRS. 193.165, to Mr. Slaughte-  
15 r's existing sentence structure. Mr. Slaug-  
16 hter pled guilty to a stack of multiple sen-  
17 tences, based on the state's representati-  
18 ons that the result could provide parole elig-  
19 ibility in a minimum of 15 years. As a res-  
20 ult Mr. Slaughter was sentenced as follows:  
21 for, Count 1 Attempt murder with a deadly weapon  
22 two equal and consecutive terms of 90 to 240 mo-  
23 nths; Count 2 Robbery with a deadly weapon two  
24 o equal and consecutive terms of 72 to 180 months  
25 ; Count 3 Kidnapping in the first degree with sub-  
26 stantial bodily, a term of Life with a possibility  
27 of parole after 15 yrs.; and Count 4 first degr-  
28 ee kidnapping with a deadly weapon, to, two equal

1 and consecutive terms of Life with the possib-  
2 ility of parole after 5 yrs.; With all counts to r-  
3 un concurrent to each other.

4 It has since been determined by the Att-  
5 orney General that a minimum term of 15 yrs.  
6 before parole eligibility was "not legally pos-  
7 sible" for Mr. Slaughter, as Nevada Revised  
8 Statues required him to serve a minimum of  
9 22 1/2 yrs. before parole eligibility. See (Attorney  
10 General's Response; Dated November 5, 2007).

11 Specifically, the following statutes command  
12 such a result: NRS. 193.165, which provides for  
13 a consecutive penalty for use of a deadly weapon. See  
14 also Nevada Dep't of Prisons v. Bowen, 745 P.2d 697 (Nev.  
15 1987) (holding that legislatures intent to impose separate  
16 and distinct penalty, is clear from statute); and NRS  
17 213.1213, a parole statute, which provides:

18 " If a prisoner is sentenced pursuant to  
19 NRS 176.035 to serve two or more concurrent  
20 sentences, whether or not the sentences ar-  
21 e identical in length or other characteris-  
22 tics, eligibility for parole from any of the  
sentences must be based on the sentence  
which requires the longest period before  
the prisoner is eligible for parole. "

23 Obviously, these statutes clearly show the form a-  
24 nd manner in which the legislature intended that  
25 a sentence structure such as, Mr. Slaughter's  
26 , is required to be carried out. Thus, the structure  
27 is statutorily mandated and to modify it, would  
28 "violate[]" the intent and purpose of parole

1 statutes and constitutes an invasion of the  
2 legislative and executive functions" State  
3 v. Clark, 520 P.2d 1361, at 1363 (Nev. 1974) (Em-  
4 phasis added); see also State v. District Court,  
5 457 P.2d 217 (Nev. 1969).

6 In Clark, supra, the district court modifi-  
7 ed a defendant's sentence, based upon a mis-  
8 understanding of the defendant's parole eligi-  
9 bility. The Nevada Supreme Court reversed,  
10 stating that a district court "cannot do ind-  
11 irectly what we stated. . . cannot be done  
12 directly." Id. same (internal citations omitted)  
13 (Emphasis added)

14 Further, in recognizing this "invasion" of "fu-  
15 nctions" in a case of similar substance as Mr. S-  
16 laughter's, our Supreme Court distinguished the  
17 appropriate relief to be accorded to defendants wh-  
18 o's guilty pleas were involuntary, because they we-  
19 re given a misrepresentation regarding the statuto-  
20 ry mandated "minimum" sentence they could receive, fr-  
21 om those misinformed concerning the "maximum" possi-  
22 ble sentence, by holding that:

23 " . . . in situations in which a defendant'  
24 has been misinformed of the maximum possible  
25 sentence he might receive for a guilty plea,  
26 this court will simply modify the defendant's  
27 actual sentence to comport with his understand-  
28 ing of the maximum possible sentence . . .  
When, as here, a defendant is told  
that the mandatory statutory minimu-  
m is less than what the statute

1 actually provides , however , a sentence  
2 modification . . . would be inappropriate;  
3 such a modification . . . might result in  
4 the imposition of a lighter sentence than  
5 that contemplated by the legislature, and  
6 would thereby result in a usurpation of the  
7 legislature's function. "

8 Sierra v. State, 691 P.2d 431 , at 433 fn.1 (Nev.  
9 1984) (internal citations omitted).

10 Accordingly , the Nevada Supreme Court vacated  
11 the judgment of convictions and guilty pleas in their  
12 entirety. The situation presented in Sierra, supra,  
13 is clearly sufficiently analogous to Mr. Slaughters,  
14 when a modification of Mr. Slaughter's sentence  
15 would result in both a lighter sentence and earlier  
16 parole eligibility than that "contemplated" by the  
17 legislatures parole statue NRS. 213.1213. Thus,  
18 the principle established in Sierra, supra, should apply  
19 to the instant case.

20 Therefore , because the misrepresentation that  
21 the state gave Mr. Slaughter at the plea negoti-  
22 ations concerned the minimum term that he could  
23 serve before parole eligibility , coupled with the  
24 facts, that Mr. Slaughter's present sentence str-  
25 ucture is both legally proper and statutorily man-  
26 dated by parole statue NRS 213.1213 , the only  
27 permissible avenue of relief available to this  
28 court , is to allow Mr. Slaughter to Withdraw  
his guilty pleas, as a sentence modification is  
prohibited by the separation of powers doctrine.

## Point II.

Because Mr. Slaughter's Initial Attempt To Withdraw His Guilty Pleas Before Sentencing, On The Same Basis That He Has Now Prevailed Was Prevented by State Interference, He Should Now Be Permitted To Withdraw From The Plea Agreement

In Tezierski v. State, *infra*, the Nevada Supreme Court held that because the defendant in that case had pled guilty to a bargain under a misconception and moved to withdraw his plea before sentencing after learning of such, he should have been allowed to withdraw from the agreement because "[n]o public policy supports binding a defendant to his plea where the plea was made under misconception, and where the State has not yet been prejudiced." Tezierski v. State, 812 P.2d 355, at 356 (Nev. 1991); (emphasis added); see also Mitchell v. State, 848 P.2d 1060 (Nev. 1993).

In the instant case, Mr. Slaughter's plea of guilty was made under a misconception concerning a parole eligibility consequence of the plea. Prior to Mr. Slaughter's sentencing hearing, Mr. Slaughter submitted a motion to withdraw his plea, on the basis that the state had given him a "misrepresentation" that spawned this misconception. see (PA-B; Defendants Motion To Withdraw His Guilty Plea; Stamped "Received" August 4, 2005. by court clerk).

1 On August 8, 2005, the date set for Mr.  
2 Slaughters sentencing, a discussion between Mr.  
3 Slaughter and the State took place before comm-  
4 encement of the proceedings. (See Reporter's Transcr-  
5 ipt of Sentencing "RT. of Sentencing" pg. 4-5; August 8,  
6 2005).

7 During this pre-hearing discussion Mr. Slaughter and  
8 Ms. Krisko ("the state"), discussed among other things,  
9 Mr. Slaughters intention to move to withdraw his  
10 guilty pleas that day on the basis that, Mr. Slaug-  
11 hter believed that Ms. Krisko may have misre-  
12 presented the law to him and consequently mis-led  
13 him into pleading guilty. Mr. Slaughter was  
14 then told by both Ms. Krisko and his stand-by cou-  
15 nel that the law had not been misrepresented  
16 to him at the plea negotiations, because a minim-  
17 um term of 15 years before parole eligibility relea-  
18 ve was permissible under the plea agreement if  
19 all counts were ran concurrent.

20 Ultimately, Mr. Slaughter was also told by Mr.  
21 Krisko that he couldn't pursue his misrepresent-  
22 ation claim because it was not viable. Based  
23 on the above mentioned discussion Mr. Slaughter  
24 did not present his claim at the sentencing heari-  
25 ng.

26 Through the instant habeas proceedings, Mr.  
27 Slaughter's claim of misrepresentation by the  
28 State has been determined to be sufficient

1 grounds to invalidate his guilty pleas as  
2 involuntary.

3 Thus, Mr. Slaughter asserts that if not  
4 for the state's interference with his initial at-  
5 ttempt to withdraw from the plea agreement  
6 before sentencing, on the same basis that  
7 he has now prevailed, this court would  
8 have been obligated to allow Mr. Slaughter  
9 to withdraw his pleas. See Housewright  
10 v. Powell, 710 P.2d 73, at 75 (Nev. 1985)

11 (stating that "if Powell had filed a motion  
12 to withdraw his guilty plea when he first lea-  
13 rned of the existence of this statute, we  
14 believe the district court would probably ha-  
15 ve been obligated to grant the motion").

16 As such, Mr. Slaughter should not  
17 be penalized now, for the state's interfer-  
18 ence with his initial attempt to withdr-  
19 aw his pleas. It was the state's acti-  
20 ons which prevented Mr. Slaughter from pr-  
21 esenting this meritorious issue before the r-  
22 endition of sentencing.

23 Therefore, because it is now clear that  
24 Mr. Slaughter would have been entitled to  
25 withdraw from the agreement before sentenc-  
26 ing, contrary, to what he was told by the  
27 state at the pre-sentencing conversation, He  
28 should be given the chance to withdraw his pleas.

### Point III .

Because The State Did Not "Breach The Plea Agreement", But In Fact, Gave Mr. Slaughter A "Misrepresentation" Of Law, that Mis-led Him Into Pleading Guilty, "Specific Performance" Is Not An Applicable Remedy In The Instant Case

Mr. Slaughter anticipates that the State will argue that "specific performance" is the proper remedy for a prosecutorial "breach of plea agreement" when it "will implement the parties' reasonable expectations" Stubbs v. State, 972 P.2d 843 (Nev.1998). Thus, Mr. Slaughter points out, that his issue of "misrepresentation" is distinguished from a claim of "breach of plea agreement".

To start, in cases in which the State has breached a plea agreement, the prosecution has failed to execute some specified provision of the agreement that it has agreed to perform. Such as, the promise to make a specific sentencing recommendation, see Stubbs v. State, *supra*, *Id.* same; or to stand silent at sentencing, see Santobello v. New York, 92 S.Ct. 495 (1971); or to not oppose a particular sentence, see Gunn v. Ignacio, 263 F.3d 965 (9TH Cir. 2001).

Further, breach of plea agreement cases take on an entirely different legal analysis than "misrepresentation" cases. See Buckley v. Terhune, 441 F.3d 688, 695 (9TH Cir. 2006) (holding that in cases

1 of breached plea agreement, the agreement should  
2 be construed pursuant to state contract law).

3 In the instant case, the state did not  
4 fail to perform any specified provision of the  
5 plea agreement or any of the agreements conditioned  
6 obligations. To the contrary, the state  
7 gave Mr. Slaughter a representation of law  
8 at the plea negotiations concerning a parole  
9 consequence of stacking sentences that was  
10 not legally accurate under Nevada's parole  
11 and sentencing statutes. See State v. Kimsey  
12 853 P.2d 109, at 111 (Nev. 1993) (holding that "Nev-  
13 ada Revised Statutes, does not contemplate aggregate  
14 sentences for the purpose of parole eligibility."  
15 )

16 It was this misrepresentation of law which  
17 misled Mr. Slaughter into pleading guilty to  
18 the agreement. Thus, Mr. Slaughter's case falls  
19 squarely into the line of cases regarding "misrep-  
20 resentations". See United States v. Cortez,  
21 973 F.2d 764, 769 (9th Cir. 1992) (holding that  
22 because defendant "pled guilty while under the  
23 mistaken belief, fostered by the misrepresenta-  
24 tions of his counsel, the district court  
25 , and [the prosecutor]" defendant's pleas were  
26 vacated); See also, Chizen v. Hunter, 809  
27 F.2d 560, at 563 (9th Cir. 1986) (defendant was  
28 given a "misrepresentation", thus, pleas were invalid).

1 As such, due process requires that Mr. Sla-  
2 ughter's guilty pleas be vacated given this circum-  
3 stance. See Brady v. United States, 90 S.Ct.  
4 1463, at 1472 (1970) (stating that a guilty plea  
5 cannot stand if "induced by . . . misrepresentati-  
6 on");

7 Thus, clearly, because the prosecution in  
8 this case performed all of its provisional  
9 stipulations as provided for in the plea agree-  
10 ment, "specific performance" is not an  
11 applicable remedy in this case.

12 It was the prosecutors misrepresentatio-  
13 ns of legal consequences at the plea negoti-  
14 ations that violated Mr. Slaughter's constit-  
15 utional right to due process. If not for  
16 the misleading actions by the state, Mr. Sla-  
17 ughter would have proceeded to trial.

18 Accordingly, such a constitutional err-  
19 or renders the integrity of the judicial proce-  
20 edings in which Mr. Slaughter's plea was  
21 accepted void, and nullifies the ensuing adj-  
22 udication of guilt. In light of these facts,  
23 Mr. Slaughter should be permitted to withdraw  
24 from the agreement, so that he and the  
25 state can be placed back to the original po-  
26 sitions, that they were in right before the  
27 constitutional violation of Mr. Slaughter's  
28 fundamental rights occurred.

## Point IV.

The Doctrine Which Permits Sentence Modification Does Not Extend To Cases, In Which, There Has Been A Misapprehension About The Legal Consequences Of A Plea, That Does Not Concern The Maximum Possible Sentence, That A Defendant Can Receive For The Plea

The Nevada Supreme Court has consistently held that when a defendant's sentence is statutorily proper, "[g]enerally a district court lacks jurisdiction to suspend or modify a sentence after the defendant has begun to serve it" Pascanisi v. State, 831 P.2d 1371, at 1373 (Nev. 1992); See also, Campbell v. State, 957 P.2d 1141, at 1142 (Nev. 1998), (Emphasis added).

However, this rule is not absolute. A thorough study of case law reveals two exceptions:

- 1) When a defendant has been misinformed regarding the "maximum" possible sentence he can receive for a guilty plea. See, Taylor v. Warden, 607 P.2d 587 (Nev. 1980); also, Douglas v. State, 656 P.2d 853, 855 (Nev. 1983) (holding that when defendant is misinformed regarding maximum possible sentence "appropriate relief . . . was reduction of the . . . maximum");

- 2) When a court relies on "materially untrue assumptions about a defendant's record" that work to the defendant's extreme detriment. State v. District Court, 677 P.2d 1044, 1048-49 (Nev. 1984).

1 In the instant case, the Nevada Supreme  
2 Court remanded Mr. Slaughter's claim "to de-  
3 termine whether [his] plea was voluntary  
4 in light of the alleged mistake concerning  
5 the minimum sentence " Slaughter v. State  
6 supra, at 6.

7 At the plea negotiations the state misrepres-  
8 ented the "minimum" Mr. Slaughter could serve befo-  
9 re parole eligibility under the plea. Thus, Mr. S-  
10 laughter's situation is clearly distinguished from  
11 the one presented in Taylor, supra, as this case  
12 does not concern the maximum possible sentence. Se-  
13 e, Sierra v. State, 691 P.2d 431, 433 fn. 1 (Nev. 1984)  
14 (holding that a "modification" would "be inappropriate" when  
15 defendant is given misrepresentation about "statutory minimum  
16 m"). Further, the court in State v. Kimsey, supra  
17 , specifically held, in part, that the doctrine which  
18 permits a court to modify a sentence does not  
19 apply when there has been a "misapprehension  
20 of the parole consequences of stacking several  
21 sentences " Id., at 111

22 As to the second exception: this court did  
23 not rely on any materially false assumptions  
24 regarding Mr. Slaughter's past record when imp-  
25 osing sentence upon him. Campbell v. State, supra.

26 As such, case law is clear, that a court will  
27 have jurisdiction to modify a proper sentence only when  
28 there were mistakes about the maximum sentence or a defendant

ant's record; these "considerations represent an appropriate jurisdictional limit to the correction or modification of a defective sentence by a district court." Passanisi v. State, supra, at 1373-74 (internal quotations omitted); State v. District Court, 677 P.2d 1044, at 1048-49 (Nev. 1984).

Thus, in sum, neither of the exceptions to a district court's general lack of jurisdiction to modify a statutorily proper sentence after a defendant has begun to serve it, apply to this case. Therefore, because Nevada Supreme Court precedent does not permit modification of Mr. Slaughter's sentence, permitting him to withdraw his guilty pleas is the only legally valid form of relief.

## Conclusion

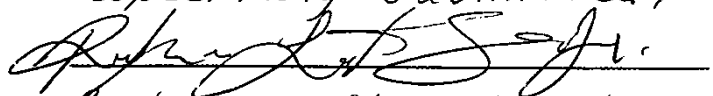
The state did not "breach" any of its provisional obligations to the plea agreement, But the state did mislead Mr. Slaughter into pleading guilty by misrepresenting the parole eligibility consequences of his plea. Furthermore, Mr. Slaughter's initial attempt to withdraw his pleas before sentencing on this basis was <sup>pre-</sup>pre- by state interference. The precedential Authorities are clear, that a district court cannot

1 modify a defendant's sentence to meet a  
2 parole eligibility misunderstanding, as such  
3 a modification would violate the purpose  
4 and intent of parole statutes and also exceed  
5 a court's limited jurisdiction to modify a  
6 statutorily proper sentence.

7 Thus, the facts of this case and the  
8 relevant principles of law, constrain this  
9 court to the only available and just avenue  
10 of relief, which is to allow Mr. Slaughter  
11 to withdraw the pleas that he was  
12 mis-led into making.

13 This 24<sup>th</sup> day of March 2008,

14 Respectfully Submitted,

15 

16 Rickie L. Slaughter #85902

17 High Desert State Prison

18 P.O. Box 650

19 Indian Springs, NV. 89018

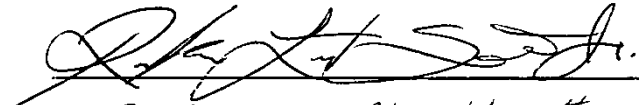
20  
21 Certificate Of Mailing

22 I hereby certify that the foregoing "... Brief In  
23 Support ... To Withdraw ... Guilty Pleas ..." and true  
24 and correct copies were deposited by I Rickie L. Slaughter  
25 #85902 in the High Desert State Prison mail box postage  
26 pre-paid to the following addresses this 24<sup>th</sup>  
27 day of March 2008, :

1 The Clark County District Attorney's office  
2 200 Lewis Avenue, P.O. Box 552212  
3 Las Vegas, Nevada 89155-2212

4 The Clark County Clerks Office  
5 200 Lewis Avenue, P.O. Box 551601  
6 Las Vegas, Nevada 89155-1601  
7

8  
9 Dated this 24<sup>th</sup> day of March 2008

10  
11   
12 Rickie L. Slaughter #85402  
13 High Desert State Prison  
14 P.O. Box 650  
15 Indian Springs, NV. 89018  
16 (Petitioner In Proper Person)  
17  
18  
19  
20  
21  
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CLERK OF THE COURT

**OPPS**  
**DAVID ROGER**  
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Nevada Bar #002781  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

RICKIE LAMONT SLAUGHTER, Jr., )  
#85902, )  
Plaintiff, )  
-vs- )  
THE STATE OF NEVADA )  
Respondent. )

CASE NO: C204957  
DEPT NO: III

OPPOSITION TO PETITIONER'S MOTION FOR WITHDRAWAL OF GUILTY PLEA

DATE OF HEARING: June 3, 2008  
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through  
SUSAN R. KRISKO, Chief Deputy District Attorney, and hereby submits the attached  
Points and Authorities in opposition to plaintiff's motion.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENTS OF FACTS**

3 On June 26, 2004, the defendant along with another man went to 2612 Glory View in  
4 North Las Vegas. Victim Ivan Young was outside when the defendant and his accomplice  
5 came up and forced the victim into his home at gun point. At one point during this strong  
6 arm robbery, Ryan John was walking by and the defendants called out to him on the pretext  
7 of wanting to talk to him. When he approached, they forced him into the residence also.

8 Inside this residence, Ivan Young's wife, young son and nephew were also taken  
9 hostage by these defendants. Ivan Young, his wife, the two young boys and Ryan John were  
10 all tied up with cord and Ryan Young was stomped in the head while lying helpless on the  
11 floor. Rickie Slaughter took the opportunity to terrorize this family even more by going to  
12 Ivan Young who was tied up helpless on the floor and shooting into the ground next to his  
13 face. A fragment then entered Ivan Young's face, causing him to lose his eye. While this  
14 robbery was taking place, Jermaun Means came to the door to check on his car, a car that  
15 Ivan Young was painting. He was also pulled into the house and tied up and robbed at gun  
16 point. The defendants stole Ryan John's ATM card and used it just a little while later to get  
17 \$200.00.

18 This case was set for trial numerous times and on the day of trial in front of District  
19 Court 1, the defendant went pro per and was able to delay the trial. Then on April 4, 2005,  
20 the next trial setting the defendant decided to take a plea negotiation, again on the day of  
21 trial. He was and remains his own counsel. The plea negotiation contemplated his being  
22 eligible for parole after 15 years. While the State's position is to remedy the sentence; it is  
23 important to note that the defendant was never promised he would in fact be released at that  
24 time. He would only be eligible for parole.

25 **ARGUMENT**

26 The defendant makes an unsubstantiated statement in his brief concerning a certain  
27 finding. No where has this Court determined that "Mr. Slaughter was, in fact, given a  
28 misrepresentation by the State at the plea negotiations". Defendant makes this statement and

1 then uses it to bolster the idea that the only remedy due him is to withdraw his plea. That is  
2 absurd. It is also prejudicial to the State.

3 **NO MISREPRESENTATION OCCURRED**

4 The Supreme Court asked for an advisory opinion from the Attorney General to  
5 explain the position of the prison as to **NRS 213.1213**. The State does not agree with the  
6 interpretation and conclusion the Attorney General came to however that is irrelevant. The  
7 fact that **NRS 213.1213** was open to different interpretations shows that it was reasonable for  
8 the State and the defendant to have made the negotiation that we did. Further, this very court  
9 on December 18, 2006, at the writ of Habeas Corpus argument fully believed that the  
10 sentence was appropriate and that the prison would follow the plain reading of the statute to  
11 make him eligible for parole at 15 years. No bad faith existed. The State was ready to go to  
12 trial on the day of negotiations. The State would gain no benefit from these alleged  
13 misrepresentations.

14 To begin, the defendant chose to represent himself. He is not entitled to any special  
15 consideration due to this fact. **SCR 253** Guidelines and procedures in criminal proceedings  
16 in the district court where the defendant elects self representation.

17 1. Where a defendant appearing in district court chooses self  
18 representation, the court should make a specific, penetrating and  
19 comprehensive inquiry of the defendant to determine whether the  
20 defendant understands the consequences of his or her decision to  
21 proceed without counsel. The district court's observation of the  
22 defendant should reveal that the defendant appears to understand  
23 the nature of the proceedings, and is voluntarily exercising his or  
24 her informed free will. The district court's inquiry should reveal  
25 whether the defendant should consult with appointed counsel to  
26 discuss the consequences of self representation before deciding  
27 to proceed in proper person.

28 2. The court should inform the defendant of some of the dangers,  
disadvantages and consequences of self representation:

(a) Self representation is often unwise and a defendant may  
conduct a defense to his or her own detriment;

(b) A proper person defendant is responsible for knowing and  
complying with the same procedural rules as lawyers, and cannot  
expect help from the judge in complying with these procedural  
rules;

(c) A defendant proceeding in proper person will not be allowed  
to complain on appeal about the competency or effectiveness of  
his or her representation;

1 (d) The state will be represented by experienced professional  
2 counsel who will have the advantage of skill, training and ability;  
3 (e) The proper person defendant is not entitled to special library  
4 privileges;  
5 (f) A defendant unfamiliar with legal procedures may allow the  
6 prosecutor an advantage, may not make effective use of legal  
7 rights, **and may make tactical decisions that produce**  
8 **unintended consequences;** and  
9 (g) The effectiveness of the defense may well be diminished by  
10 defendant's dual role as attorney and accused.  
11 3. The court's canvass of the defendant may include questions in  
12 the following areas:  
13 (a) The defendant's age, education, literacy, background, and  
14 prior experience or familiarity with legal proceedings;  
15 (b) Defendant's health and whether the defendant is taking any  
16 medication or is under the influence of any alcohol or other  
17 drugs;  
18 (c) Defendant's mental health history;  
19 (d) Whether defendant has been threatened or coerced in any  
20 way to waive the right to an attorney;  
21 (e) Defendant's understanding of the right to representation at no  
22 cost if the defendant is unable to pay;  
23 (f) Defendant's understanding of the elements of each crime and  
24 lesser included or related offenses;  
25 (g) Defendant's understanding of the possible penalties or  
26 punishments, and the total possible sentence the defendant could  
27 receive;  
28 (h) Defendant's understanding of the pleas and defenses which  
may be available;  
(i) Defendant's understanding that the court may appoint standby  
counsel who, in the event that the court terminates the  
defendant's self representation, would become appointed counsel  
and represent the defendant in the remaining proceedings;  
(j) **Defendant's understanding that if standby counsel is**  
**appointed, standby counsel is not required to advise or**  
**provide a proper person defendant with legal advice;** and  
(k) Defendant's understanding that he or she has 30 days within  
which to file an appeal from the entry of a judgment of  
conviction.  
4. The court shall make findings on the record concerning  
whether:  
(a) The defendant is competent to waive his or her constitutional  
right to be represented by an attorney; and  
(b) The defendant is waiving the right to counsel freely,  
voluntarily and knowingly, and has a full appreciation and  
understanding of the waiver and its consequences.  
5. If the district court appoints counsel to represent a defendant  
who insists on exercising his or her right to self representation,  
then the district court should state the basis for denying  
defendant's request for self representation.

27 The defendant's claims of misrepresentation are frivolous. While he is correct that  
28 the State's interpretation of the applicable statute was contrary to what the Attorney General

1 has now opined, the defendant made the choice to enter the guilty plea. Further, his  
2 sentencing plea shows that the defendant was advised numerous times the Court did not even  
3 have to follow the State's recommendation, stipulation or wish. Transcript of Sentencing,  
4 August 8, 2005, page 5. His knowledge of the same statutes was presumed given his waiver  
5 of council. Further, while the State still maintains a remedy is required, in choosing to  
6 represent himself, he put himself in the position that he may make tactical decisions that  
7 produce unintended consequences.

8 Further his claim that he was precluded from filing his motion to withdraw guilty plea  
9 by the State is disingenuous. The defendant seems to be the only person that thought that his  
10 parole eligibility may be at issue, if you are to believe that what his August 8, 2005 motion  
11 was about. It seems that the defendant felt misrepresentations had occurred to get him to  
12 plea and therefore he should have gone forward with his motion. Those misrepresentations  
13 aren't disclosed but he now claims it was due to his reading of **NRS 213.1213**. That alone  
14 invalidates all of his arguments. If he believed his parole eligibility was in question, as his  
15 own counsel, he had the duty to pursue the claim. The State strongly disagrees that any  
16 "interference" happened. The defendant has run his defense as he wanted from the very  
17 beginning. The State's memory of that discussion is contrary to the defendant's; no one told  
18 him he could not pursue his claim. See Reporters transcript of sentencing, August 8, 2005,  
19 page 7-8. The defendant's concern was the wording in the guilty plea agreement and that is  
20 discussed in the transcript. His concerns were addressed on the record. The State in no way  
21 interfered with his issue being heard. It was however, discussed that the State believed the  
22 sentence was appropriate and would allow for his parole *eligibility* at 15 years; not his  
23 release. The defendant wanted the benefit of representing himself and now cries foul that he  
24 was stopped from effectively representing himself. That is simply untrue.

25 **DEFENDANT SHOULD NOT BE ENTITLED TO WITHDRAW HIS GUILTY PLEA.**

26 The defendant represented himself throughout the proceedings, and was adequately  
27 informed as to the consequences of his guilty plea. Any claim that he was misinformed as to  
28 his eligibility for parole is without merit and negated by the fact that his eligibility for parole

1 is not a consequence of the guilty plea agreement. As such, the court was not under a duty to  
2 advise defendant of the circumstances as they relate to parole eligibility.

3 **THERE WAS NO DUTY TO ADVISE DEFENDANT OF HIS ELIGIBILITY FOR PAROLE**

4 In *Stocks v. Warden, Nevada State Prison*, 86 Nev. 758, 762, 476 P.2d 469, 472  
5 (1970), the Court held the statute governing acceptance of guilty pleas requires “that the  
6 accused understand the nature of the charge against him and the consequences of his plea  
7 thereto, that is, the sentence authorized for that crime.” In *Stocks*, the Court refused to allow  
8 the defendant to withdraw his guilty plea, and also held the court was not required to advise  
9 petitioner that parole was not available, since parole eligibility is only a “collateral  
10 consequence.” *Id.*, citing *Anushevitz v. Warden*, 86 Nev. 191, 467 P.2d 115 (1970) (There is  
11 “no duty upon the court to advise a defendant regarding the prospects for parole, the granting  
12 of which is wholly beyond the jurisdiction of the district judge); *Mathis v. Warden, Nevada*  
13 *State Penitentiary*, 86 Nev. 439, 471 P.2d 233 (1970) (the court did not allow defendant to  
14 withdraw his guilty plea, despite allegation that “he misunderstood the trial court concerning  
15 his right to probation or parole ...”). The holdings in *Mathis*, *Anushevitz*, and *Stocks* have  
16 expressly been upheld in *Sali v. Warden, Nevada State Prison*, 87 Nev. 41, 482 P.2d 287  
17 (1971), and have long remained the holding that a defendant’s ineligibility for parole is not a  
18 “consequence of a guilty plea,” and the court will not permit a defendant to withdraw his  
19 guilty plea on claim of failure to advise. See also *Little v. Warden, Nevada State Prison*, 117  
20 Nev. 845, 34 P.3d 540 (2001) (Ineligibility for parole is a “collateral consequence” and the  
21 Court will not allow withdrawal from an otherwise valid guilty plea based on totality of  
22 circumstances if defendant was aware he was ineligible for probation.).

23 Here, the defendant was well-informed of the sentence he was facing, which was  
24 presented in length in the guilty plea agreement. The sentence was facially valid, he was  
25 properly canvassed at the sentencing, and he made several acknowledgements concerning his  
26 rights in pleading guilty and the ramifications that flow there from. This fact has been  
27 established in a prior hearing on the voluntariness of the plea. See Finding of Fact,  
28 Conclusions of Law and Order, State’s Exhibit #1

1                    **THE ATTORNEY GENERAL OPINION SHOULD HAVE NO CONSEQUENCE**

2            The Court in *Mathis* further presents eerily similar facts as defendant's case, and the  
3 Court denied defendant the habeas relief he was seeking in that case. The Court supported  
4 the holding that the trial court is not required to advise the defendant of his eligibility for  
5 parole and also renounced defendant's that his plea was not voluntarily given. *Mathis*, 86  
6 Nev. at 440, 471 P.2d at 234. In fact, the defendant claimed he misunderstood because  
7 "after [he] began to serve his sentence he was informed through an opinion of the attorney  
8 general (No. 489, February 18, 1968) construing NRS 213.110, that he was ineligible for  
9 parole." *Id.* at 441 (emphasis added). "A belief or hope alone that probation or parole would  
10 be granted is insufficient to compel the withdrawal of a guilty plea. *Id.* at 443, citing *Bates*  
11 *v. State*, 84 Nev. 43, 436 P.2d 27 (1968).

12            The defendant should not be entitled to withdraw his guilty plea, despite the attorney  
13 general's opinion which determined he must serve 22 ½ years (as opposed to 15) before he is  
14 eligible for his earliest release. The defendant must serve 15 years for the largest of the  
15 primary offenses he committed before he is, in fact, eligible for parole. Once paroled for the  
16 primary offense, he may then begin serving the sentence for the weapon enhancements, and  
17 he can then be paroled to the community as early as 7 ½ years later in accord with the  
18 Attorney General's opinion on the interpretation of **NRS 213.1213** and the holding  
19 recognized in *Nevada, Department of Prisons v. Bowen*, 103 Nev. 477, 745 P.2d 697 (1987).

20                    **DEFENDANT'S GUILTY PLEA WAS GIVEN KNOWING AND VOLUNTARILY.**

21            The Court need look no further than the long-announced rule in *Lundy v. Warden*,  
22 *Nevada State Prison*, 89 Nev. 419, 514 P.2d 212 (1973), for denying a defendant's post-  
23 conviction relief when claiming his guilty plea is not entered voluntarily. Similar to *Lundy*,  
24 the defendant in this case is not setting forth any substantive evidence to warrant a finding  
25 that the plea should be invalid. The court further elaborated:

26            "An allegation that a guilty plea is entered because of the expectation of a lesser  
27 penalty is, of itself, insufficient to invalidate the plea. When an accused expressly represents  
28 in open court that his plea is voluntary, he may not ordinarily repudiate his statements to the

1 sentencing judge. In the case before us, nothing in the record impeaches (Lundy's) plea or  
2 suggests that his admissions in open court were anything but the truth."  
3 *Id.* at 422, citing *Brady v. United States*, 397 U.S. 742, 758, 90 S.Ct. 1463, 1474 (1970). The  
4 trial court admonished the defendant to which he made express announcements, which serve  
5 to negate any claims that his plea was involuntary.

6 In another case in which the defendant wished to withdraw his guilty plea, the court  
7 determined yet again that defendant "was not misled as to when he would be eligible for  
8 parole." *Greene v. State*, 110 Nev. 1336, 1338, 885 P.2d 609, 610 (1994). The court  
9 rejected the defendant's contention without an evidentiary hearing, because the statutory  
10 authority was not misleading in its application to defendant's sentence. Here, the attorney  
11 general's office provided its interpretation of the minimum sentence under **NRS 213.1213**,  
12 and the defendant should not be able to seek relief for any alleged misunderstanding when  
13 the sentence is facially valid.

#### 14 **THE STATE WOULD SUFFER PREJUDICE**

15 In *Hart v. State*, 116 Nev. 558, 1 P.3d 969 (2000), the court used **NRS 176.165** to  
16 reject defendant's motion to withdraw guilty plea and provided a descriptive enumeration of  
17 the factors to resolve this issue:

18 "Our decision that some limitation should be placed on the motion to withdraw a plea  
19 is also grounded in the language of **NRS 176.165**. As previously discussed, the statute  
20 provides the district court may permit a defendant to withdraw a plea, after sentencing, only  
21 to 'correct manifest injustice.' Whether an 'injustice' is 'manifest' will depend on a variety  
22 of factors, including whether the State would suffer prejudice if the defendant is permitted to  
23 withdraw his or her plea. Accordingly, we hold that consideration of the equitable doctrine  
24 of laches has shown 'manifest injustice' that would permit withdrawal of a plea after  
25 sentencing.

26 Application of the doctrine of an individual case may require consideration of several  
27 factors, including: (1) whether there was an inexcusable delay in seeking relief; (2) whether  
28 an implied waiver has arisen from the defendant's knowing acquiescence in existing

1 conditions; and (3) whether circumstances exist that prejudice the State. See *Buckholt v.*  
2 *District Court*, 94 Nev. 631, 633, 584 P.2d 672, 673-74 (1978).” *Id.* at 563 (emphasis  
3 added). The State would undoubtedly suffer prejudice by permitting Defendant to withdraw  
4 his guilty plea. The defendant was sentenced August 8, 2005, and he has not provided any  
5 worthy basis to support his notion. The State would be required to obtain further evidence  
6 which may no longer exist and secure witnesses whose once vivid memory is now faded.  
7 This is the exact “manifest injustice” the holding in *Hart* seeks to prevent, and defendant  
8 should not be permitted to withdraw his guilty plea.

9 **COMPETING ARGUMENTS**

10 The State is aware of the competing arguments advanced in this reply. While the  
11 State is adamant that the defendant should not be able to withdraw his plea, and that any  
12 consequences to that plea were at his risk, the State maintains that the spirit of the  
13 negotiations should be fulfilled. The defendant’s sentence was to be that he would be  
14 eligible for release *if* he was granted parole, at 15 years. To that end, the State would ask to  
15 withdraw the deadly weapon enhancements and file an amended judgment of conviction.  
16 That should be the appropriate remedy in this case wherein the defendant’s whole argument  
17 has been that he should have been eligible for release at 15 years. To do so would  
18 accomplish all the goals of both parties.

19 DATED this 18th day of April, 2008.

20 Respectfully submitted,

21 DAVID ROGER  
22 Clark County District Attorney  
23 Nevada Bar #002781

24  
25 BY

26 SUSAN R. KRISKO  
27 Chief Deputy District Attorney  
28 Nevada Bar #006024

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**CERTIFICATE OF MAILING**

I hereby certify that service of the above and foregoing was made this 18<sup>th</sup> day of April, 2008, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

RICKIE SLAUGHTER #85902  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89018

BY /s/ J. Robertson  
Secretary for the District Attorney's Office

SRK/jr

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*Cheryl R. Smith*  
CLERK OF THE COURT

**ORDR**

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
MARC DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006955  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RICKIE SLAUGHTER,  
#1896569

Defendant.

CASE NO: C204957

DEPT NO: III

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER

DATE OF HEARING: 12/18/06  
TIME OF HEARING: 9:00 a.m.

THIS CAUSE having come on for hearing before the Honorable Douglas Herndon, District Judge, on the 18<sup>th</sup> day of December, 2006, the Petitioner being present, proceeding In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through MARC DIGIACOMO, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

- 1) Defendant was charged by way of Information with the following crimes: one count of CONSPIRACY TO COMMIT KIDNAPPING (Felony - NRS 199.480, 200.030); one count of CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 199.480);

EXHIBIT "1" PAWPDOCS\FOF\outlying\4n0\4N098001.doc

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1 one count of CONSPIRACY TO COMMIT MURDER (Felony – 199.480); two (2)  
2 counts of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony –  
3 NRS 200.010, 200.030, 193.330, 193.165); one count of BATTERY WITH USE OF  
4 A DEADLY WEAPON (Felony – NRS 200.481; one count of ATTEMPT  
5 ROBBERY WITH USE OF A DEADLY WEAPON (Felony – NRS 200.380,  
6 193.330, 193.165); one count of ROBBERY WITH USE OF A DEADLY WEAPON  
7 (Felony – NRS 200.380, 193.165); one count of BURGLARY WHILE IN  
8 POSSESSION OF A FIREARM (Felony – NRS 205.060); BURGLARY (Felony –  
9 NRS 205.060); six (6) counts of FIRST DEGREE KIDNAPPING WITH USE OF A  
10 DEADLY WEAPON (Felony – NRS 200.310, 200.320, 193.165) and one count of  
11 MAYHEM (Felony – NRS 200.280). Pursuant to plea negotiations, the State filed a  
12 fourth Amended Information dismissing thirteen out of the seventeen counts for  
13 which Defendant was initially charged.

14 2) On April 4, 2005, proceeding pro se with appointed stand-by counsel, Defendant pled  
15 guilty to: COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY  
16 WEAPON (Felony - NRS 200.010, 200.030, 193.330, 193.165); COUNT 2 -  
17 ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380,  
18 193.165); COUNT 3 - FIRST DEGREE KIDNAPPING (Felony - NRS 200.310,  
19 200.320); and COUNT 4 - FIRST DEGREE KIDNAPPING WITH USE OF A  
20 DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165).

21 3) On August 08, 2005, Defendant was granted appointment of his stand-by counsel for  
22 representation at sentencing. The court, having heard argument from the State,  
23 Defendant and Defendant's counsel sentenced Defendant as follows: as to COUNT 1,  
24 a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a MINIMUM of  
25 NINETY (90) MONTHS in the Nevada Department of Corrections (NDC), plus an  
26 equal and CONSECUTIVE MAXIMUM of TWO HUNDRED FORTY (240)  
27 MONTHS and a MINIMUM of NINETY (90) MONTHS for Use of a Deadly  
28 Weapon; on COUNT 2, a MAXIMUM of ONE HUNDRED EIGHTY (180)

1 MONTHS and a MINIMUM of SEVENTY-TWO (72) MONTHS in the Nevada  
2 Department of Corrections (NDC), plus an equal and CONSECUTIVE MAXIMUM  
3 of ONE HUNDRED EIGHTY (180) MONTHS and a MINIMUM of SEVENTY-  
4 TWO (72) MONTHS for Use of a Deadly Weapon, CONCURRENT with Count 1;  
5 on COUNT 3, a MAXIMUM of LIFE in the Nevada Department of Corrections  
6 (NDC), with a MINIMUM of 15 YEARS before Parole Eligibility, CONCURRENT  
7 with Counts 1 and 2; on COUNT 4, LIFE in the Nevada Department of Corrections  
8 (NDC), with a MINIMUM of 5 YEARS before Parole Eligibility, plus an equal and  
9 CONSECUTIVE LIFE in the Nevada Department of Prisons, with a MINIMUM of 5  
10 YEARS before Parole Eligibility for Use of a Deadly Weapon, CONCURRENT with  
11 Counts 1, 2, and 3, with NO Credit for Time Served. Judgment of Conviction was  
12 filed on August 31, 2005.

- 13 4) On August, 7, 2006, Defendant filed the instant Petition for Writ of Habeas Corpus  
14 (Post-Conviction).
- 15 5) The district court properly canvassed Defendant and properly accepted the guilty plea  
16 which was made knowingly, intelligently, voluntarily, and it suffers from no  
17 constitutional defects.
- 18 6) Defendant's claim that he was induced into pleading guilty by the prosecutor's  
19 misrepresentations of law upon entry of his plea is completely belied by the record.
- 20 7) The trial court took sufficient steps to ensure that Defendant's guilty plea was made in  
21 a knowing, intelligent, and voluntary manner.
- 22 8) Defendant signed a guilty plea agreement with the guidance and advice of stand-by  
23 counsel on April 4, 2005. The agreement states the range of punishment in explicit  
24 detail for the relevant charges. The agreement also contains an explicit "WAIVER  
25 OF RIGHTS" section which details all the meaningful constitutional trial rights  
26 Defendant is giving up by pleading guilty including the right to testify, the right to  
27 confront and cross-examine witnesses, the right to subpoena witnesses, and that each  
28 element of the charges must be proved by the State beyond a reasonable doubt.

1 Defendant's signature is affixed to the end of this document. There is also a separate  
2 "certificate of counsel" signed by Defendant's attorney that avers as an officer of the  
3 court that thorough discussions occurred with Defendant about all matters pertinent to  
4 the case.

- 5 9) There is absolutely no indication from the record that the Court based its sentencing  
6 decision on impalpable or highly suspect evidence.

7 CONCLUSIONS OF LAW

- 8 1) The law in Nevada directs that "[t]he trial court should view the guilty plea as  
9 presumptively valid and the burden should be on the defendant to establish that the  
10 plea was not entered knowingly and intelligently." Bryant v. State, 102 Nev. 268,  
11 272, 721 P.2d 364, 368 (1986). Further, a guilty plea should not be invalidated "as  
12 long as the totality of the circumstances, as shown by the record, demonstrates that  
13 the plea was knowingly and voluntarily made and that the defendant understood the  
14 nature of the offense and the consequences of the plea." State v. Freese, 116 Nev.  
15 1097, 1105, 13 P.3d 442, 448 (2000).

- 16 2) "To properly accept a guilty plea, a court must sufficiently canvass a defendant to  
17 determine if the defendant knowingly and intelligently entered into the plea."  
18 Williams v. State, 103 Nev. 227, 230, 737 P.2d 508, 510 (1987).

- 19 3) In Hanley v. State, the Court stated:

20 [I]n cases where a guilty plea is accepted, the record should affirmatively  
21 show that certain minimal requirements are met. These are generally:

- 22 1. an understanding waiver of constitutional rights and  
23 privileges;  
24 2. absence of coercion by threat or promise of leniency;  
25 3. understanding of the consequences of the plea, the range of  
26 punishments; and  
27 4. an understanding of the charge, the elements of the offense.

28 97 Nev. 130, 133, 624 P.2d 1387, 1389 (1981)(internal citations  
omitted).

- 4) There is no requirement in Nevada that a "ritualistic oral canvass of a defendant"

1 takes place prior to accepting a guilty plea, and the failure to conduct one does not  
2 invalidate a plea. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The  
3 Supreme Court of Nevada "will not invalidate a plea as long as the totality of the  
4 circumstances, as shown by the record, demonstrates that the plea" was entered in a  
5 knowing and voluntary manner and defendant understood nature and consequences of  
6 the offense(s) and plea. Id. A court may not rely simply on a written plea agreement  
7 without some verbal interaction with a defendant. Id. Thus, a "colloquy" is  
8 constitutionally mandated, and a "colloquy" is but a conversation in a formal setting,  
9 such as that occurring between an official sitting in judgment of an accused at plea.  
10 See id.

- 11 5) The totality of the "record" to be evaluated for plea validity contains all of the  
12 following: (1) all interaction between the court and Defendant up to the moment of  
13 the plea; (2) an extensive and express written plea agreement signed by Defendant;  
14 and (3) a certification from Defendant's attorney that full discussions about the case  
15 and all relevant matters occurred with Defendant and that Defendant was sufficiently  
16 advised and prepared to enter the plea with no cause for legal concern; and (4) a plea  
17 "canvass" to verify that Defendant appreciated the consequences of the moment, and  
18 to give him one last chance to question any matter relevant to the proceedings. See  
19 State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).
- 20 6) In Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), the Court held  
21 that claims asserted in a petition for post-conviction relief must be supported with  
22 specific factual allegations, which if true, would entitle the petitioner to relief.
- 23 7) A defendant cannot repudiate any of the statements he makes on the record. Lundy v.  
24 Warden, 89 Nev. 419, 514 P.2d 212 (1973).

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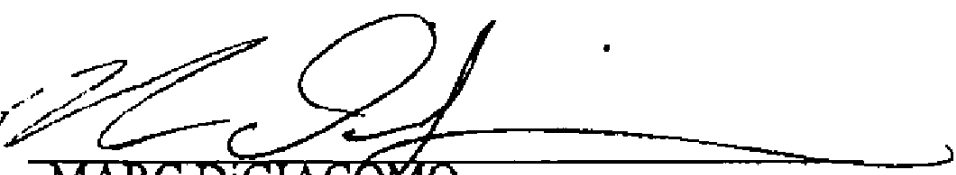
ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and it is, hereby denied.

DATED this 25<sup>th</sup> day of January, 2007.

  
DISTRICT JUDGE

DAVID ROGER  
DISTRICT ATTORNEY  
Nevada Bar #002781

BY   
MARC DIGIACOMO  
Chief Deputy District Attorney  
Nevada Bar #006955

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*Reply*

Rickie L. Slaughter, Jr. #85902  
High Desert State Prison, P.O. Box 650  
Indian Springs, Nevada 89018  
Petitioner In Proper Person

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CR. [Signature]  
CLERK OF THE COURT

District Court  
Clark County, Nevada

Rickie Lamont Slaughter, Jr.  
Petitioner,

Case No: C204957

Dept. No: 111

v  
The State Of Nevada,  
Respondent.

Hearing Date: June 3, 2008

Hearing Time: 9:00 am

Petitioner's Reply To The State's Opposition  
To Withdrawal Of Guilty Plea  
As Appropriate Relief

Comes Now, Rickie Lamont Slaughter, Jr., in the above  
entitled Reply and hereby submits the attached Points  
And Authorities in reply to respondent's opposition.

This reply is made and based upon all papers and  
pleadings on file herein, the attached points and authori-  
ties in support hereof, and any oral argument at  
the time of hearing this cause.

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### Points And Authorities

*Point I - The State's Opposition Relies On Cases Concerning A District Courts "Duty To Advise", Thus, Those Authorities Are Inapplicable To The Determination Of This Case, As The Issue Of This Case Concerns The State's Erroneous Representations Made During The Plea Negotiations And Not The Court's "Duty To Advise"*

1

*Point II - The State fails To address The Governing Nevada Supreme Court Precedents, Raised In Mr. Slaughter's Brief, Which Prohibit A District Court From Modifying A Defendant's Sentence, To Meet The Parole Eligibility Intentions*

3

*Point III - The Nevada Supreme Court has held That The "Equitable Laches Doctrine" Of Hart v. State, Is Inapplicable To Petitions Brought Under NRS Chapter 34, And Alternatively, The Relevant Factors Weigh In Favor Of Overcoming The Doctrine*

4

*Point IV - In light Of The States Sudden Factual Dispute With Material Off-The Record Discussions At Issue, An Evidentiary Hearing Should be Conducted*

8

*Point V - The State Fails To Cite To Any Authority Or Caselaw To Support its Position That Modifying Mr. Slaughter's Sentence Is An Appropriate Remedy*

11

*Certificate Of Mailing*

11

## Points And Authorities

### Point 1.

The State's Opposition Relies on Cases Concerning A District Court's "Duty To Advise", Thus, Those Authorities Are Inapplicable To The Determination Of This Case, As The Issue Of This Case Concerns The State's Erroneous Representations Made During The Plea Negotiations And Not The Court's "Duty To Advise"

As the Nevada Supreme Court declared in it's order remanding this case "[w]hether [Mr. Slaughter] was informed by the State . . . that under his plea agreement, he would be eligible for parole after having served 15 years is of crucial importance" Slaughter v. State, Docket No: 48742, pg. 4; (filed July 24, 2007) (emphasis added)

Thus, the High Court announced the relevant issue for consideration. Through the instant habeas proceedings, it has been established by the evidence, including the state's own concessions that "the plea negotiation contemplated [Mr. Slaughter's] being eligible for parole after 15 years." (State's Opposition; filed April 18, 2008; pg. 2). It has further been determined that it was and "is not legally possible to achieve a total minimum of 15 years" under the state's proffered plea agreement (Attorney General's Response, pg. 2-11; November 5 2007)

As such, the state's conceded representation to Mr. Slaughter that the agreement would allow him to be "eligible for parole after 15 years" can only logically be deemed a mis-representation. This is so if "the prosecution, gave [the defendant], however honestly, clearly erroneous legal advice" Von Moltke v Gillies

68 S.Ct. 316, at 325, 332 U.S. 708 (1948).

The plea of guilty cannot be deemed voluntary if Mr. Slaughter "pled guilty while under the mistaken belief fostered by the misrepresentations" United States v. Cortez, 973 F.2d 764, at 769 (9th Cir. 1992)

As such, the states reliance upon, Stocks v. Warden, 476 P.2d 469 (Nev. 1970) and it's progeny to support the proposition that Mr. Slaughter's plea was valid is extremely misplaced. See also, Anushevitze v. Warden, 467 P.2d 115 (Nev. 1970); Mathis v. Warden, 471 P.2d 233 (1970); and U'ali v. Warden, 482 P.2d 287 (1971).

This line of cases relied on by state raise an issue not present in the instant case, and the state neglects to inform this court of the limited holdings and limitations of legal issues that these authorities apply to.

The Stocks, supra / Anushevitze, supra, progeny hold and stand only for the proposition that there is "no duty upon the court to advise a defendant" regarding parole. Stocks, supra Id at 472

This is true, however, the relevant issue in this case is not this court's "duty . . . to advise", but, whether Mr. Slaughter "pleaded guilty in reliance on the palpably erroneous advice of . . . the prosecution" Von Moltke v. Gillies, supra, at 326

Accordingly, consideration of the state's argument can only serve to mislead this court and obfuscate the actual issues of this case.

## Point 11.

*The State fails to address the Governing Nevada Supreme Court Precedents, Raised in Mr. Slaughter's Brief, Which Prohibit A District Court From Modifying A Defendant's Sentence To Meet The Parole Eligibility Intentions*

The State completely fails to address (2) points of crucial importance to this case that Mr. Slaughter raises in his opening brief: 1) That because Mr. Slaughter is statutorily precluded by parole statute NRS 213.1213 from being parole eligible after 15 years, the precedential authorities of the Nevada Supreme Court expressly forbid a district court from modifying his judgment of conviction, to meet the parole eligibility expectations, as such a modification would violate the intent and purpose of the parole statute. See State v. Clark, 520 P.2d 1361, at 1363 (Nev. 1974) (holding that the district courts modification of defendant's sentence to meet the parole eligibility misunderstanding "violates the intent and purpose of parole statutes and constitutes an invasion of the legislative and executive functions"); See also, State v. Kimsey, 853 P.2d 109, at 110 (Nev. 1993) (holding, in part, that "the doctrine of separation of powers prohibits the judicial branch from interfering with the executive function of determining eligibility for parole") (emphasis added).

And 2) the point concerning the line of authorities by the Nevada Supreme Court that specifically

preclude a district court from applying the doctrine which permits sentence modification to a facially valid sentence, except in extremely narrow and specified circumstances. See Passanisi v. State, 831 P.2d 1371, at 1374 (Nev. 1992) (holding that misunderstanding regarding appellant's availability to be eligible for honor camp was not mistake "with respect to the appellant's record, nor was appellant's sentence illegal. Thus, the district court had no authority . . . to modify appellant's sentence"); See also, Edwards v. State, 918 P.2d 321 (Nev. 1996) (holding that if a motion to modify sentence is based on issues outside narrow scope recognized by Nevada Supreme Court, the motion should be denied).

Clearly, the state's lack to address these relevant points, is an indication of the state's inability to overcome the prohibitions of the governing laws, which are contrary to the state's position.

### Point III.

The Nevada Supreme Court has held that the "Equitable Laches Doctrine" of Hart v. State, is inapplicable to petitions brought under NRS. Chapter 34, and alternatively, the relevant factors weigh in favor of overcoming the doctrine.

In the instant case, Mr. Slaughter brought his claim through a timely post-conviction petition for Writ of Habeas Corpus pursuant to the provisions of NRS. Chapter 34. The state, 2 years

after Mr. Slaughter filed his petition, attempts for the first time, to raise the equitable laches doctrine in its most recent opposition.

In Hart v. State, 1 P.3d 969 (Nev. 2000), 6 years after his conviction, the defendant in that case filed a motion to withdraw guilty plea presumably under NRS 176.165. Because NRS 176.165 has no statutory time limits, in which, a petitioner must file within, the Nevada Supreme Court adopted the equitable laches doctrine to provide some restraint and limitation to the statutes unlimiting nature. The court also noted that "the motion to withdraw a plea exists independently from provisions governing post-conviction relief" Id. at 971.

In Clem v. State, 81 P.3d 521 (Nev. 2003), the state attempted to raise the equitable laches doctrine to a defendant's petition for habeas relief, but the Nevada Supreme Court held that the "equitable-laches doctrine recognized in Hart applies to motions to withdraw a guilty plea and is inapplicable to petitions brought under NRS Chapter 34" Id. at 525, footnote 22

Thus, because Mr. Slaughter's claim was brought via a timely habeas petition under NRS chapter 34, the consideration of the equitable laches doctrine is not legally permissible and the state erroneously attempts to raise this issue. Further, because NRS chapter 34 has procedural time limits in place, in which

, a petitioner must file within, to apply such a doctrine to petitions brought within its time requirements, would both nullify the purpose of Nevada's habeas provisions and unreasonably the right of petitioners attacking their guilty pleas to obtain habeas relief. See, Little v. Warden, 34 P.3d 540, 544 (Nev. 2001) (defendant may challenge validity of guilt plea "either by bringing a post-conviction motion to withdraw the guilty plea or by initiating a post-conviction habeas proceeding")

Alternatively, if this court, despite the Nevada Supreme Court's ruling in Clem, supra, decides to invite the consideration of the equitable laches doctrine Mr. Slaughter asserts that this issue should be deemed:

- 1) Moot - as the equitable laches doctrine is designed to "preclude consideration of the motion on the merits" Little, supra, Id at 545; Thus, given the state's failure to raise this issue until nearly 2 years after Mr. Slaughter filed his petition, this court as well as the Nevada Supreme Ct. have already considered Mr. Slaughter's petition "on the merits". Id.

And 2) as weighing in favor of considering Mr. Slaughter's request for relief, given consideration of the factors enumerated in Hart, supra. The Nevada Supreme court enumerated (3) question-like factors that may be relevant in considering such an issue: Whether there was an inexcusable delay in seeking relief; Whether an implied waiver has arisen from the defendant's knowing acquiescence

in existing conditions; and whether circumstances exist that prejudice the state Id., at 972

The answers to these questions weigh in Mr. O'laughter's favor of overcoming the equitable laches doctrine. First, the timing in Mr. Slaughter's decision to seek relief must be considered reasonable, given, the promises that he was given by the state regarding the parole eligibility consequences of the plea at both the plea negotiations as well as at the pre-sentencing hearing discussion. Further, when Mr. Slaughter presented his concerns about the weapon enhancements effect on the parole eligibility to this court at sentencing he was given essentially the same representations that he had earlier received from the state. See (Reporter's Transcript of Sentencing, at pg. 6-7; August 8, 2005). Mr. Slaughter sought immediate relief after discovering while serving his sentence that the above mentioned representations were in error.

Second, an "implied waiver" cannot be found, in light of the circumstances described above.

lastly, by the states own concession "The state was ready to go to trial on the day of negotiations" (see State's Opposition, pg. 3; lines 11-12; April 18, 2008). Thus, no circumstances can exist that prejudice the state, as all of the evidence that was in the state's possession at the time of the negotiation is still retained by the state,

and the state's witness testimony is preserved in the preliminary hearing transcript. The state has not alleged that any evidence or witnesses have been destroyed or lost and consequently has not shown any tangible form of prejudice.

#### Point IV.

*In light of the States sudden  
Factual Dispute With Material  
Off-The-Record Discussions At Issue  
An Evidentiary Hearing Should Be  
Conducted*

Initially, it should be noted that the Nevada Supreme Court vacated this court's prior judgment and issued instructions for this court to conduct an evidentiary hearing. See Slaughter v. State, supra, at 6; July 24, 2007. This court dispensed with the need to conduct an evidentiary on February 14, 2008, based on the understanding that the material facts were not in dispute, between Mr. Slaughter and the state. The state now, for the first time attempts to controvert material assertions of fact, that Mr. Slaughter has consistently set forth throughout the entire instant habeas proceedings.

The facts are material in that they concern Mr. Slaughter's assertion that during an off-the-record conversation between him and the state prior to the commencement of his sentencing

proceedings, Mr. Slaughter informed the state of his intention to move to withdraw his plea based on his concerns that the agreement would not permit his release after 15 years because of the weapon enhancements. Mr. Slaughter's concerns were based on information and conversations that he had with inmates at the prison, at which he was being held. Mr. Slaughter also asserts that at this conversation that he was told that his claim was not a basis to withdraw his plea, by both the state and his stand-by counsel. Based on this discussion and the answer he received from the court when he presented his concerns about the weapon enhancements, Mr. Slaughter asserts that he did not pursue his motion to withdraw as he reasonably believed that He had no basis too.

Mr. Slaughter, advanced in his 'opening brief', as one of the basis for his position on the appropriate relief, that if not for this "interference" a proper consideration of his claim at that time, would have required that he be permitted to withdraw ~~from~~ the agreement and thus, he should be permitted to do so now.

The state disputes part of the contents of it's off-the-record discussion with Mr. Slaughter and insinuates that Mr. Slaughter's only concern was with the wording of the agreement.

However, the transcript of the sentencing

hearing provides support to Mr. Slaughter's contention that there were more concerns expressed by Mr. Slaughter at this off-record discussion than the state is willing to admit, specifically, the following excerpt supports Mr. Slaughter's position on the facts:

THE COURT: " . . . I did receive a proper request for amended plea agreement. Did counsel get that?

MS. KRISHO: I did. And what actually happened is -- just to maybe forstall some of the other arguments that Mr. Slaughter had out in the hallway. We made an agreement that we would argue for 15 to life.

I did not tell him that I would agree to have my secretary go through the pain of writing up a new guilty plea agreement, but we will stipulate, we will agree, will not oppose, whatever words he wants, that's fine.

In addition, I think his concern is that this court is somehow going to fashion something that goes beyond the contemplated negotiation. "

Reporter's Transcript Of Sentencing, pg. 4-5  
August 8, 2005 (Emphasis added)

As such, an evidentiary hearing is required to adequately resolve this factual dispute between the state and Mr. Slaughter as these facts are material to one of the basis upon which Mr. Slaughter relies to support his position that he should be permitted to withdraw from the agreement. See Mann v. State, 46 P.3d 1228, 1231 (Nev. 2002) (holding that the court "has consistently recognized a habeas petitioner's statutory right

to have factual disputes resolved by way of an evidentiary hearing").

Thus, in sum, Mr. Slaughter request that the evidentiary hearing pursuant to the supreme courts remand order be conducted so that he may present evidence to establish his version of the facts.

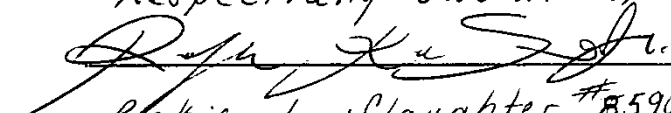
### Point V.

The State fails To Cite To Any Authority Or Case law To Support It's Position That Modifying Mr. Slaughter's Sentence Is An Appropriate Remedy

The state's complete failure to cite to any form of authority to support it's request to modify Mr. Slaughter's sentence, is indeed telling of how truly contrary to Nevada law, that the states request is. To be sure, the governing precedents render the state's request legally impermissible.

Dated this 6<sup>th</sup> day of May 2008

Respectfully submitted,

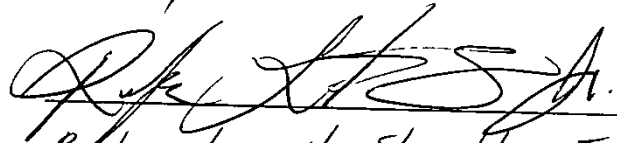
  
Rickie L. Slaughter, #85902

### Certificate Of Mailing

I hereby certify that the attached "Reply To The State's Opposition . . ." and true correct copies were placed in the High Desert State Prison Mail box prepaid postage to:

The Clark County District Attorneys office  
200 Lewis Ave, P.O. Box 552212  
Las Vegas, Nevada 89155-2212

Dated this 7<sup>th</sup> day of May 2007.

  
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