

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

NOASC
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Attorneys for Respondents

DISTRICT COURT
CLARK COUNTY, NEVADA

BRECK SMITH,

Petitioner,

vs.

STATE OF NEVADA,

Respondents.

Case No. C-19-337302-1

Dept. No. XXV

NOTICE OF APPEAL

Notice is hereby given that the State of Nevada, Respondents above named, hereby appeal to the Supreme Court of Nevada from the order granting Petitioner Breck Smith's post-conviction petition for a writ of habeas corpus, entered in this action on February 17, 2021.

RESPECTFULLY SUBMITTED this 26th day of March 2021.

AARON D. FORD
Attorney General

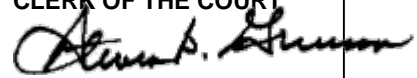
By: /s/ Katrina A. Samuels
Katrina A. Samuels
Deputy Attorney General

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The following participants in this case are registered electronic filing system users and will be served electronically:

McAvoy Amaya & Revero Attorneys
Michael J. McAvoy
400 S. 4th St., Ste. 500
Las Vegas, NV 89101
Mike@mrlawlv.com

/s/ M. Landreth
An employee of the Office of the Attorney General



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KSamuels@ag.nv.gov
Attorneys for Respondents

DISTRICT COURT
CLARK COUNTY, NEVADA

BRECK SMITH,

Petitioner,

vs.

STATE OF NEVADA,

Respondents.

Case No. C-19-337302-1

Dept. No. XXV

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

State of Nevada

2. Identify the judge issuing the decision, judgment, or order appealed from:

Kathleen E. Delaney

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant State of Nevada

Katrina A. Samuels
Deputy Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101-1068
(702) 486-3770

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of the respondent's trial counsel):

1 The respondent is Breck Smith (NDOC #77141). He was represented in the district court
2 by:

3 **McAvoy Amaya & Revero Attorneys**
4 **Michael J. McAvoy**
400 S. 4th St., Ste. 500
Las Vegas, NV 89101

- 5 5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to
6 practice law in Nevada and, if so, whether the district court granted that attorney permission to
appear under SCR 42 (attach a copy of any district court order granting such permission):

7 **Both attorneys named above are licensed to practice law in Nevada.**

- 8 6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

9 **Appellant was represented by the Nevada Attorney General.**

- 10 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

11 **Appellant is represented by the Nevada Attorney General.**

- 12 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry
13 of the district court order granting such leave:

14 **Appellant was not granted leave to proceed in forma pauperis in the district court.**

- 15 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
16 indictment, information, or petition was filed):

17 **The proceedings commenced in the district court on January 12, 2021, when respondent
filed his petition for a writ of habeas corpus.**

- 18 10. Provide a brief description of the nature of the action and result in the district court, including the
19 type of judgment or order being appealed and the relief granted by the district court:

20 **This action is a time-credits habeas action challenging the district court's statutory**
21 **interpretation of NRS 213.1517(4) and how it applies to the calculation of respondent's**
22 **parole violation hearing date and the calculation of his parole eligibility date based on the**
23 **adjudication of his new criminal charge arising from his parole violation. The district court**
24 **granted the habeas petition and ordered NDOC to recalculate respondent's sentence in**
25 **order that respondent would start receiving credit on the new charge from the time he was**
26 **returned to NDOC's custody for his parole violation instead of after the adjudication of his**
27 **new charge.**

- 28 11. Indicate whether the case has previously been the subject of an appeal to or original writ
proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the
prior proceeding:

This case has not previously been the subject of an appeal or an original writ petition.

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

1 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

2 **This is not a civil case.**

3 RESPECTFULLY SUBMITTED this 26th day of March 2021.

4 AARON D. FORD
5 Attorney General

6 By: /s/ Katrina A. Samuels
7 Katrina A. Samuels (Bar No. 13394)
8 Deputy Attorney General
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing Notice of Appeal with the Clerk
3 of the Court by using the electronic filing system on the 26th day of March.

4 The following participants in this case are registered electronic filing system users and will be
5 served electronically:

6 McAvoy Amaya & Revero Attorneys
7 Michael J. McAvoy
8 400 S. 4th St., Ste. 500
Las Vegas, NV 89101
Mike@mrlawlv.com

9
10 /s/ M. Landreth
11 An employee of the Office of the Attorney General
12
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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. C-19-337302-1**

State of Nevada
vs
Breck Smith

§
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§

Location: **Department 25**
 Judicial Officer: **Delaney, Kathleen E.**
 Filed on: **01/10/2019**
 Cross-Reference Case Number: **C337302**
 Defendant's Scope ID #: **806628**
 ITAG Booking Number: **1800015071**
 ITAG Case ID: **1968986**
 Lower Court Case # Root: **18F05188**
 Lower Court Case Number: **18F05188X**
 Metro Event Number: **1803222077**

CASE INFORMATION

| Offense | Statute | Deg | Date | Case Type: | Felony/Gross Misdemeanor |
|--|-----------|-----|------------|--------------|--------------------------|
| Jurisdiction: District Court | | | | | |
| 1. ATTEMPT BURGLARY | 205.060.2 | F | 03/22/2018 | Case Status: | 08/21/2019 Closed |
| PCN: 0025742615 ACN: 1803222077 | | | | | |
| Filed As: ATTEMPT INVASION OF THE HOME | F | | 1/11/2019 | | |
| Arrest: 03/22/2018 | | | | | |
| | | | | | MET - Metro |

Statistical Closures

08/21/2019 Guilty Plea with Sentence (before trial) (CR)





DATE**CASE ASSIGNMENT****Current Case Assignment**

| | |
|------------------|----------------------|
| Case Number | C-19-337302-1 |
| Court | Department 25 |
| Date Assigned | 01/10/2019 |
| Judicial Officer | Delaney, Kathleen E. |

PARTY INFORMATION

| | | |
|------------------|----------------------------|---|
| Defendant | Smith, Breck Warden | <i>Lead Attorneys</i> Mcavoyamaya, Michael J. <i>Retained</i> 702-299-5083(W) |
| Plaintiff | State of Nevada | Wolfson, Steven B 702-671-2700(W) |

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

| | |
|------------|--|
| 01/10/2019 |  Criminal Bindover Packet Justice Court |
| 01/10/2019 |  Criminal Bindover - Confidential |
| 01/11/2019 |  Information Party: Plaintiff State of Nevada <i>Information</i> |
| 02/01/2019 |  Reporters Transcript REPORTER'S TRANSCRIPT OF PROCEEDINGS WAIVER |

CASE SUMMARY
CASE NO. C-19-337302-1

| | |
|------------|--|
| 06/24/2019 |  Guilty Plea Agreement <i>Guilty Plea Agreement Pursuant to Alford</i> |
| 06/24/2019 |  Amended Information <i>Amended Information</i> |
| 07/26/2019 |  PSI |
| 07/26/2019 |  PSI - Victim Impact Statements |
| 08/21/2019 |  Judgment of Conviction <i>Judgment of Conviction (Plea of Guilty-Alford)</i> |
| 01/12/2021 |  Petition for Writ of Habeas Corpus Filed by: Defendant Smith, Breck Warden <i>Emergency Petition for Writ of Habeas Corpus, Mandamus, and/or Prohibition to Correct Illegal Sentence Imposed by the Nevada Board of Parole Commissioners</i> |
| 01/14/2021 |  Clerk's Notice of Hearing <i>Clerk's Notice of Hearing</i> |
| 01/25/2021 |  Response Filed by: Plaintiff State of Nevada <i>Response to Petition for Writ of Habeas Corpus</i> |
| 01/25/2021 |  Exhibits Filed By: Plaintiff State of Nevada <i>Index of Exhibits and Exhibits in Support of Response to Petition for Writ of Habeas Corpus</i> |
| 01/25/2021 |  Reply in Support Filed By: Defendant Smith, Breck Warden <i>Traverse In Support of Petition for Habeas Corpus</i> |
| 01/26/2021 |  Certificate of Service Filed by: Plaintiff State of Nevada <i>Certificate of Service</i> |
| 02/17/2021 |  Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact and Conclusions of Law and Order</i> |
| 02/24/2021 |  Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i> |
| 03/26/2021 |  Notice of Appeal (criminal) Party: Plaintiff State of Nevada <i>Notice of Appeal</i> |
| 03/26/2021 |  Case Appeal Statement Filed By: Plaintiff State of Nevada <i>Case Appeal Statement</i> |

DISPOSITIONS

CASE SUMMARY**CASE NO. C-19-337302-1**06/24/2019 **Plea** (Judicial Officer: Delaney, Kathleen E.)

1. ATTEMPT BURGLARY

Guilty

PCN: 0025742615 Sequence:

08/12/2019 **Disposition** (Judicial Officer: Delaney, Kathleen E.)

1. ATTEMPT BURGLARY

Guilty

PCN: 0025742615 Sequence:

08/12/2019 **Adult Adjudication** (Judicial Officer: Delaney, Kathleen E.)

1. ATTEMPT BURGLARY

03/22/2018 (F) 205.060.2 (DC50442)

PCN: 0025742615 Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:24 Months, Maximum:60 Months

Consecutive: Case Number C232319, C232113, C23109, C24508

Credit for Time Served: 0 Day

Fee Totals:

Administrative

Assessment Fee

25.00

\$25

Fee Totals \$

25.00

\$150 DNA & \$3 DNA Collection fees previously imposed

08/12/2019 **Amended Adult Adjudication** (Judicial Officer: Delaney, Kathleen E.) Reason: Amended

1. ATTEMPT BURGLARY

03/22/2018 (F) 205.060.2 (DC50442)

PCN: 0025742615 Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:24 Months, Maximum:60 Months

Consecutive: Case Number C232319, C232113, C23109, C240508

Credit for Time Served: 0 Day

Fee Totals:

Administrative

Assessment Fee


25.00

\$25

Fee Totals \$


25.00

\$150 DNA & \$3 DNA Collection fees previously imposed

HEARINGS01/14/2019  **Initial Arraignment** (10:00 AM) (Judicial Officer: Wittenberger, Shannon)

Matter Continued;

Journal Entry Details:

*Deputized Law Clerk, Quanisha Holloway appearing for the State. Mr. Ericsson requested matter be CONTINUED, COURT SO ORDERED. CUSTODY 2/04/19 10:00 AM ARRAIGNMENT CONTINUED (LLA);*02/04/2019  **Arraignment Continued** (10:00 AM) (Judicial Officer: Delaney, Kathleen E.)

02/04/2019, 02/26/2019, 03/19/2019, 04/09/2019, 04/16/2019, 05/06/2019, 05/20/2019, 06/03/2019, 06/17/2019, 06/24/2019

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

CASE SUMMARY

CASE NO. C-19-337302-1

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Amended Information FILED IN OPEN COURT. Colloquy regarding the need for a Pre-Sentence Investigation Report to be prepared. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. SMITH ARRAIGNED AND PLED GUILTY pursuant to the ALFORD DECISION TO ATTEMPT INVASION OF THE HOME (F). State gave an offer of proof. Court ACCEPTED plea and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. CUSTODY (COC-NDC) 08/12/19 9:00 A.M. SENTENCING;

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Mr. Ericsson stated the matter is taking longer than it should; he tried reaching out to Deputy District Attorney William Merback, Esq. to finalize the plea agreement. He was not available. Ms. Wong noted Mr. Merback has been absent this week. COURT ORDERED, matter CONTINUED. CUSTODY CONTINUED TO: 06/24/19 9:00 A.M.;

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

COURT NOTED there was an indication there may be global negotiations. CONFERENCE AT BENCH. COURT ORDERED, matter CONTINUED to allow negotiations to occur and the paperwork to be prepared. CUSTODY CONTINUED TO: 06/17/19 9:00 A.M.;

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Upon Court's inquiry as to the status of the case, Mr. Ericsson stated the parties are making progress; he met with Deputy District Attorney James Sweetin. Mr. Ericsson requested a two week continuance, he believes he will have the paperwork by that time. COURT ORDERED, matter CONTINUED. CUSTODY CONTINUED TO: 06/03/19 9:00 A.M.;

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

CASE SUMMARY

CASE NO. C-19-337302-1

Mr. Ericsson indicated the matter may resolve through global negotiations and requested a CONTINUANCE. COURT SO ORDERED. CUSTODY CONTINUED TO: 05/20/19 9:00 A.M.;

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Deputy Law Clerk Austin Beaumont present on behalf of the State. CONFERENCE AT BENCH. COURT ORDERED, matter CONTINUED to Department XXV at counsel's request. CUSTODY 5/6/19 9:00 AM ARRAIGNMENT CONTINUED (DEPT 25) ;

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Deputy Law Clerk Andrea Orwoll present on behalf of the State. Mr. Ericsson requested a continuance as they need additional time to work out a collateral matter. COURT ORDERED, matter CONTINUED. CUSTODY 4/16/19 10:00 AM ARRAIGNMENT CONTINUED (LLA) ;

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Deputy Law Clerk Joshua Prince present on behalf of the State. Ms. Stewart requested a continuance. COURT ORDERED, matter CONTINUED. CUSTODY 4/9/19 10:00 AM ARRAIGNMENT CONTINUED (LLA) ;

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Deputized Law Clerk, Joshua Prince appearing for the State. At the request of Ms. Ericsson, COURT ORDERED, matter CONTINUED. CUSTODY 3/19/19 10:00 AM ARRAIGNMENT COURT (LLA);

Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

Matter Continued;

CASE SUMMARY
CASE NO. C-19-337302-1

Matter Continued;

Matter Continued;

Plea Entered;

Journal Entry Details:

Deputized Law Clerk, Quanisha Holloway, present on behalf of the State. Mr. Ericsson requested the matter be CONTINUED, as there was another case involved; COURT SO ORDERED. CUSTODY 02/26/19 10:00 AM ARRAIGNMENT CONTINUED (LLA);

08/12/2019



Sentencing (9:00 AM) (Judicial Officer: Delaney, Kathleen E.)

MINUTES

Plea (Judicial Officer: Delaney, Kathleen E.)

1. ATTEMPT BURGLARY

Guilty

PCN: 0025742615 Sequence:

Disposition (Judicial Officer: Delaney, Kathleen E.)

1. ATTEMPT BURGLARY

Guilty

PCN: 0025742615 Sequence:

Adult Adjudication (Judicial Officer: Delaney, Kathleen E.)

1. ATTEMPT BURGLARY

03/22/2018 (F) 205.060.2 (DC50442)

PCN: 0025742615 Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:24 Months, Maximum:60 Months

Consecutive: Case Number C232319, C232113, C23109, C24508

Credit for Time Served: 0 Day

Fee Totals:

Administrative

Assessment Fee

25.00

\$25

Fee Totals \$

25.00

\$150 DNA & \$3 DNA Collection fees previously imposed

Amended Adult Adjudication (Judicial Officer: Delaney, Kathleen E.) Reason: Amended

1. ATTEMPT BURGLARY

03/22/2018 (F) 205.060.2 (DC50442)

PCN: 0025742615 Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:24 Months, Maximum:60 Months

Consecutive: Case Number C232319, C232113, C23109, C240508

Credit for Time Served: 0 Day

Fee Totals:

Administrative

Assessment Fee

25.00

\$25

Fee Totals \$

25.00

\$150 DNA & \$3 DNA Collection fees previously imposed

Defendant Sentenced;

Journal Entry Details:

Upon Court's inquiry, Ms. Rose stood by the negotiations. Argument by Mr. Ericsson; statement by Deft. DEFT SMITH ADJUDGED GUILTY of ATTEMPT BURGLARY (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, Deft. SENTENCED to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE TO C232319, C232113, C232109 and

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-19-337302-1

C240508, with ZERO (0) DAYS credit for time served. COURT FURTHER ORDERED, the \$150.00 DNA Analysis fee including testing to determine genetic markers and \$3.00 DNA Collection Fee, WAIVED, as previously collected. BOND, if any, EXONERATED. NDC (COC-NDC);

01/27/2021



Petition for Writ of Habeas Corpus (3:00 PM) (Judicial Officer: Delaney, Kathleen E.)

Emergency Petition for Writ of Habeas Corpus, Mandamus and/or Prohibition to Correct Illegal Sentence Imposed by the Nevada Board of Parole Commissioners

Granted; Emergency Petition for Writ of Habeas Corpus, Mandamus and/or Prohibition to Correct Illegal Sentence Imposed by the Nevada Board of Parole Commissioners

Journal Entry Details:

Following arguments by counsel and colloquy, Court FINDS plain language of the statute shows that it was not complied with, that the Nevada Department of Corrections did exceed its authority by taking custody of Deft. prior to final adjudication of the new criminal charge but deferring the ruling on revoking parole for more than 60 days after taking custody. Therefore, COURT ORDERED, petition GRANTED IN PART with regards to Nevada Department of Corrections exceeding its authority and DENIED IN PART as to due process rights. FURTHER ORDERED, the parole board to recalculate time 60 days when Deft. actually returned to custody with Nevada Department of Corrections and that date is June 12, 2018. Deft's counsel to prepare findings of facts and conclusions of law to include State's arguments. Attorney General to review and order to be submitted to the Court within 14 days. NDC;

DATE

FINANCIAL INFORMATION

Defendant Smith, Breck Warden

Total Charges

25.00

Total Payments and Credits

0.00

Balance Due as of 3/29/2021

25.00

FCL
McAVOY AMAYA & REVERO ATTORNEYS
MICHAEL J. MCAVOYAMAYA, ESQ. (14082)
TIMOTHY E. REVERO (14603)
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Las Vegas, NV 89101
Telephone: 702.685.0879
Facsimile: 702.995.7137
Mike@mrlawlv.com
Tim@mrlawlv.com
Attorneys for Petitioner

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY OF NEVADA

* * * *

In the Matter of the Application of,

BRECK SMITH, #
For a Writ of Habeas Corpus.

CASE NO.: C-19-337302-1

Dept. XXV

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
ORDER

DATE OF HEARING: JANUARY 27, 2021
TIME OF HEARING: 3:00 PM

THIS CAUSE having come up for hearing before the Honorable KATHLEEN DELANEY, District Judge, on the 27th day of January, 2021, the Petitioner being represented by MICHAEL J. MCAVOYAMAYA, ESQ, of MCAVOY AMAYA & REVERO ATTORNEYS, the Respondent being represented by KATRINA A. SAMUELS, of the Office of the Nevada Attorney General, and the Court having considered the matter, including the briefs, 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. Petitioner was arrested, convicted, and sentenced under the habitual offender statute in 2008.
2. Petitioner was granted parole for the 2008 convictions on March 7, 2017.
3. On March 22, 2018, Petitioner was arrested on new charges of attempted burglary, possession of burglary tools, and parole violation.

1 15. When “a determination has been made that probable cause exists for the continued
2 detention of a paroled prisoner, the Board shall consider the prisoner's case within 60 days after
3 his return to the custody of the Department of Corrections or his or her placement in residential
4 confinement pursuant to subsection 1.” *See Nev. Rev. Stat. § 213.1517(3).*

5 16. The sixty (60) day parole revocation hearing requirement is intended to ensure that
6 a parolee believed to have violated the terms of his parole is not deprived of his constitutionally
7 protected liberty interests without due process.

8 17. There is an exception to NRS § 213.1517(3) when “probable cause for continued
9 detention of a paroled prisoner is based on conduct which is the subject of a new criminal charge,”
10 which permits the Parole Board to either “consider the prisoner's case under the provisions of
11 subsection 3 or defer consideration until not more than 60 days after his or her return to the custody
12 of the Department of Corrections following the final adjudication of the new criminal charge.” *See*
13 *Nev. Rev. Stat. § 213.1517(4).*

14 18. Petitioner argued in his briefs and at the hearing that the plain language of both the
15 sixty (60) day parole revocation hearing requirement in NRS § 213.1517 Subsection 3, and its
16 exception in Subsection 4, impose a duty on the Parole Board to hold the parole revocation hearing
17 within sixty (60) days of the parolee’s return to NDOC custody.

18 19. The State argued in its response brief and the hearing that the exception in NRS §
19 213.1517 Subsection 4 permits the Parole Board to defer the parole revocation hearing until sixty
20 (60) days after the adjudication of the parolee’s new charges.

21 20. The Court finds, based on the plain language of NRS § 213.1517, that Petitioner’s
22 interpretation of the statute is correct. NRS § 213.1517(4) does not grant the Parole Board the
23 authority to impose indefinite terms of imprisonment in the custody of NDOC by taking custody
24 of a parolee, and then deferring the parole revocation hearing until after the parolee is convicted
25 on the new charges.

26 21. The Court holds that the plain language of NRS §§ 213.1517 Subsections 3 and 4
27 impose a duty on the Parole Board to hold the parole revocation hearing within sixty (60) days of
28 a parolee’s return to the custody of NDOC upon a finding a probable cause that the terms of parole
have been violated, regardless of whether there are new charges pending. The Parole Board may
only defer the parole revocation hearing if the parolee remains in the custody of the jurisdiction
where the new charges have been committed until final adjudication of the new charges. *See Nev.*

1 Rev. Stat. § 213.1517(4). Upon conviction on the new charges, the Parole Board must then hold
2 the parole revocation hearing within sixty (60) days of the parolee's return to NDOC custody. *Id.*

3 22. The Court acknowledges and understands the State's argument and requested
4 interpretation of the statute that the sixty (60) day time period to hold the parole revocation hearing
5 run from the date of conviction, but finds that the only way that the State's interpretation
6 withstands scrutiny is by ignoring the plain language in NRS § 213.1517 subsection 3 and 4 stating
7 that the sixty (60) day period to hold the parole revocation hearing begins to run upon the parolee's
8 return to NDOC custody, or imposition of residential confinement.

9 23. This Court is not permitted to "ignore as meaningless" words and clauses in a
10 statute or law. *State ex rel. Thatcher v. Reno Brewing Co.*, 42 Nev. 397, 405, 178 P. 902, 903
11 (1919). There is a presumption that the framers of our laws intended "to give force and effect, not
12 only to the main legislative intent of the act but also to its several parts, words, clauses, and
13 sentences, and chose appropriate language to express their intention." *Id.* That "presumption is
14 removed only when it appears, from a construction of a statute as a whole, effect cannot be given
15 to the paramount purpose unless particular words or clauses are rejected, or without limiting or
16 expanding their literal import." *Id.*

17 24. The State has failed to overcome the presumption that the plain language in NRS §
18 213.1517 Subsections 3 and 4 means that the Parole Board must hold the parole revocation hearing
19 ~~be held~~ within sixty (60) days of the parolee's return to NDOC custody. *Id.*

20 25. For these reasons, this Court holds that the Parole Board exceeded its authority
21 pursuant to NRS § 213.1517, deferring the parole revocation well beyond sixty (60) days after
22 Petitioner's return to NDOC custody.

23 26. Petitioner also raised the issue of the Parole Board's procedure of taking custody
24 of Petitioner and deferring the parole revocation also resulted in a violation of Petitioner's
25 constitutional right to bail on the new charges. The State opposed, arguing that NRS § 178.484(2)
26 prevents a parolee from receiving bail unless ordered by the court, the Parole Board, or the Division
27 of Parole and Probation, and that no such order was issued.

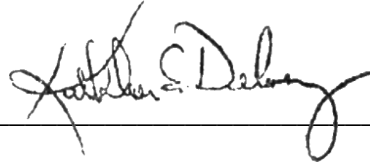
28 27. The Court does not believe Petitioner's constitutional right to bail was violated by
the Parole Board, but because the Court finds the Parole Board exceeded its authority under NRS
§ 213.1517, the Court will not decide on the merits of that issue at this time.

28. THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby GRANTED. The Court orders that based on its findings and conclusions the Petitioner is entitled to recalculation of his time served for the parole violation and sentence entered in this case as follows:

- [illegible]

1 d. NDOC shall also ensure that in Case No. 19C337302, Petitioner has been awarded flat
2 time and statutory credit from June 24, 2019, the date he entered his plea, to the present
3 date.

4 Dated this 17th day of February, 2021

5 
6

7 OBB 329 BD7D 12F3
8 Kathleen E. Delaney
9 District Court Judge

10 **MCAVOY AMAYA & REVERO ATTORNEYS**
11 **MICHAEL J. MCAVOY-AMAYA, ESQ.**
12 Nevada Bar No. 14082

13 BY: /s/ Michael J. McAvoy-Amaya
14 **MICHAEL J. MCAVOYAMAYA, ESQ.**
15 Nevada Bar No.: 14082
16 *Attorney for Petitioner*

17 Katrina A. Samuels
18 Deputy Attorney General
19 State of Nevada
20 Nevada Bar No. 13394

21 BY: /s/ Katrina A. Samuels
22 **KATRINA A. SAMUELS, ESQ**
23 Nevada Bar No.: 13394
24 *Attorney for Respondent*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada

CASE NO: C-19-337302-1

7 vs

DEPT. NO. Department 25

8 Breck Smith
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 2/17/2021

15 Marsha Landreth

mlandreth@ag.nv.gov

16 Rikki Garate

rgarate@ag.nv.gov

17 Katrina Samuels

KSamuels@ag.nv.gov

18 Cheryl Martinez

cjmartinez@ag.nv.gov

19 Lucas Combs

ljcombs@ag.nv.gov

20 Michael Mcavoyamaya

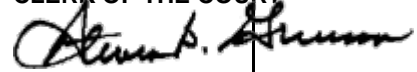
mike@mrlawlv.com

21 Timothy Revero

tim@mrlawlv.com

22 Steve Wolfson

23 motions@clarkcountyda.com
24
25
26
27
28



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BRECK SMITH,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-19-337302-1

Dept No: XXV

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

PLEASE TAKE NOTICE that on February 17, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on February 24, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 24 day of February 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Breck Smith # 77141
3955 W. Russell Rd.
Las Vegas, NV 89118

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

FCL
McAVOY AMAYA & REVERO ATTORNEYS
MICHAEL J. MCAVOYAMAYA, ESQ. (14082)
TIMOTHY E. REVERO (14603)
400 S. 4th Street, Suite 500
Las Vegas, NV 89101
Telephone: 702.685.0879
Facsimile: 702.995.7137
Mike@mrlawlv.com
Tim@mrlawlv.com
Attorneys for Petitioner

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY OF NEVADA

* * * *

In the Matter of the Application of,

BRECK SMITH, #
For a Writ of Habeas Corpus.

CASE NO.: C-19-337302-1

Dept. XXV

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND
ORDER

DATE OF HEARING: JANUARY 27, 2021
TIME OF HEARING: 3:00 PM

THIS CAUSE having come up for hearing before the Honorable KATHLEEN DELANEY, District Judge, on the 27th day of January, 2021, the Petitioner being represented by MICHAEL J. MCAVOYAMAYA, ESQ, of MCAVOY AMAYA & REVERO ATTORNEYS, the Respondent being represented by KATRINA A. SAMUELS, of the Office of the Nevada Attorney General, and the Court having considered the matter, including the briefs, 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. Petitioner was arrested, convicted, and sentenced under the habitual offender statute in 2008.
2. Petitioner was granted parole for the 2008 convictions on March 7, 2017.
3. On March 22, 2018, Petitioner was arrested on new charges of attempted burglary, possession of burglary tools, and parole violation.

1 15. When “a determination has been made that probable cause exists for the continued
2 detention of a paroled prisoner, the Board shall consider the prisoner's case within 60 days after
3 his return to the custody of the Department of Corrections or his or her placement in residential
4 confinement pursuant to subsection 1.” *See Nev. Rev. Stat. § 213.1517(3).*

5 16. The sixty (60) day parole revocation hearing requirement is intended to ensure that
6 a parolee believed to have violated the terms of his parole is not deprived of his constitutionally
7 protected liberty interests without due process.

8 17. There is an exception to NRS § 213.1517(3) when “probable cause for continued
9 detention of a paroled prisoner is based on conduct which is the subject of a new criminal charge,”
10 which permits the Parole Board to either “consider the prisoner's case under the provisions of
11 subsection 3 or defer consideration until not more than 60 days after his or her return to the custody
12 of the Department of Corrections following the final adjudication of the new criminal charge.” *See*
13 *Nev. Rev. Stat. § 213.1517(4).*

14 18. Petitioner argued in his briefs and at the hearing that the plain language of both the
15 sixty (60) day parole revocation hearing requirement in NRS § 213.1517 Subsection 3, and its
16 exception in Subsection 4, impose a duty on the Parole Board to hold the parole revocation hearing
17 within sixty (60) days of the parolee’s return to NDOC custody.

18 19. The State argued in its response brief and the hearing that the exception in NRS §
19 213.1517 Subsection 4 permits the Parole Board to defer the parole revocation hearing until sixty
20 (60) days after the adjudication of the parolee’s new charges.

21 20. The Court finds, based on the plain language of NRS § 213.1517, that Petitioner’s
22 interpretation of the statute is correct. NRS § 213.1517(4) does not grant the Parole Board the
23 authority to impose indefinite terms of imprisonment in the custody of NDOC by taking custody
24 of a parolee, and then deferring the parole revocation hearing until after the parolee is convicted
25 on the new charges.

26 21. The Court holds that the plain language of NRS §§ 213.1517 Subsections 3 and 4
27 impose a duty on the Parole Board to hold the parole revocation hearing within sixty (60) days of
28 a parolee’s return to the custody of NDOC upon a finding a probable cause that the terms of parole
have been violated, regardless of whether there are new charges pending. The Parole Board may
only defer the parole revocation hearing if the parolee remains in the custody of the jurisdiction
where the new charges have been committed until final adjudication of the new charges. *See Nev.*

1 Rev. Stat. § 213.1517(4). Upon conviction on the new charges, the Parole Board must then hold
2 the parole revocation hearing within sixty (60) days of the parolee's return to NDOC custody. *Id.*

3 22. The Court acknowledges and understands the State's argument and requested
4 interpretation of the statute that the sixty (60) day time period to hold the parole revocation hearing
5 run from the date of conviction, but finds that the only way that the State's interpretation
6 withstands scrutiny is by ignoring the plain language in NRS § 213.1517 subsection 3 and 4 stating
7 that the sixty (60) day period to hold the parole revocation hearing begins to run upon the parolee's
8 return to NDOC custody, or imposition of residential confinement.

9 23. This Court is not permitted to "ignore as meaningless" words and clauses in a
10 statute or law. *State ex rel. Thatcher v. Reno Brewing Co.*, 42 Nev. 397, 405, 178 P. 902, 903
11 (1919). There is a presumption that the framers of our laws intended "to give force and effect, not
12 only to the main legislative intent of the act but also to its several parts, words, clauses, and
13 sentences, and chose appropriate language to express their intention." *Id.* That "presumption is
14 removed only when it appears, from a construction of a statute as a whole, effect cannot be given
15 to the paramount purpose unless particular words or clauses are rejected, or without limiting or
16 expanding their literal import." *Id.*

17 24. The State has failed to overcome the presumption that the plain language in NRS §
18 213.1517 Subsections 3 and 4 means that the Parole Board must hold the parole revocation hearing
19 ~~be held~~ within sixty (60) days of the parolee's return to NDOC custody. *Id.*

20 25. For these reasons, this Court holds that the Parole Board exceeded its authority
21 pursuant to NRS § 213.1517, deferring the parole revocation well beyond sixty (60) days after
22 Petitioner's return to NDOC custody.

23 26. Petitioner also raised the issue of the Parole Board's procedure of taking custody
24 of Petitioner and deferring the parole revocation also resulted in a violation of Petitioner's
25 constitutional right to bail on the new charges. The State opposed, arguing that NRS § 178.484(2)
26 prevents a parolee from receiving bail unless ordered by the court, the Parole Board, or the Division
27 of Parole and Probation, and that no such order was issued.

28 27. The Court does not believe Petitioner's constitutional right to bail was violated by
the Parole Board, but because the Court finds the Parole Board exceeded its authority under NRS
§ 213.1517, the Court will not decide on the merits of that issue at this time.

ORDER

28. THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby GRANTED. The Court orders that based on its findings and conclusions the Petitioner is entitled to recalculation of his time served for the parole violation and sentence entered in this case as follows:

- a. Petitioner's parole revocation hearing should have been held on June 12, 2018, which is 60 days from April 13, 2018, the date he returned to the custody of NDOC.
- b. The period of Petitioner's parole revocation penalty should have run from June 12, 2018, the date his parole revocation hearing should have been held, to June 17, 2019, the date his one-year penalty would have expired.
- c. NDOC shall ensure that in Case Nos. 07C232109, 07C232113, 07C232319 and 08C240508 Petitioner has been awarded flat time and statutory credit from June 12, 2018, the date his parole revocation hearing should have been held, to June 17, 2019, the date his one-year penalty would have expired.

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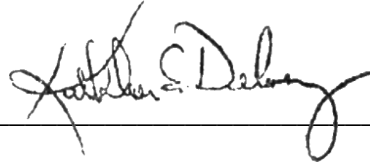
...

...

...

1 d. NDOC shall also ensure that in Case No. 19C337302, Petitioner has been awarded flat
2 time and statutory credit from June 24, 2019, the date he entered his plea, to the present
3 date.

4 Dated this 17th day of February, 2021

5 
6

7 OBB 329 BD7D 12F3
8 Kathleen E. Delaney
9 District Court Judge

10 **MCAVOY AMAYA & REVERO ATTORNEYS**
11 **MICHAEL J. MCAVOY-AMAYA, ESQ.**
12 Nevada Bar No. 14082

13 BY: /s/ Michael J. McAvoy-Amaya
14 **MICHAEL J. MCAVOYAMAYA, ESQ.**
15 Nevada Bar No.: 14082
16 *Attorney for Petitioner*

17 Katrina A. Samuels
18 Deputy Attorney General
19 State of Nevada
20 Nevada Bar No. 13394

21 BY: /s/ Katrina A. Samuels
22 **KATRINA A. SAMUELS, ESQ**
23 Nevada Bar No.: 13394
24 *Attorney for Respondent*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada

CASE NO: C-19-337302-1

7 vs

DEPT. NO. Department 25

8 Breck Smith
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 2/17/2021

15 Marsha Landreth

mlandreth@ag.nv.gov

16 Rikki Garate

rgarate@ag.nv.gov

17 Katrina Samuels

KSamuels@ag.nv.gov

18 Cheryl Martinez

cjmartinez@ag.nv.gov

19 Lucas Combs

ljcombs@ag.nv.gov

20 Michael Mcavoyamaya

mike@mrlawlv.com

21 Timothy Revero

tim@mrlawlv.com

22 Steve Wolfson

23 motions@clarkcountyda.com
24
25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 14, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

January 14, 2019 10:00 AM Initial Arraignment

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

COURT CLERK: Kristen Brown

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Smith, Breck Warden Defendant

JOURNAL ENTRIES

- Deputized Law Clerk, Quanisha Holloway appearing for the State.

Mr. Ericsson requested matter be CONTINUED, COURT SO ORDERED.

CUSTODY

2/04/19 10:00 AM ARRAIGNMENT CONTINUED (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

February 04, 2019 10:00 AM Arraignment Continued

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

COURT CLERK: Dauriana Simpson

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Smith, Breck Warden Defendant

JOURNAL ENTRIES

- Deputized Law Clerk, Quanisha Holloway, present on behalf of the State.

Mr. Ericsson requested the matter be CONTINUED, as there was another case involved; COURT SO ORDERED.

CUSTODY

02/26/19 10:00 AM ARRAIGNMENT CONTINUED (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 26, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

February 26, 2019 10:00 AM Arraignment Continued

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

COURT CLERK: Kristen Brown

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Smith, Breck Warden Defendant

JOURNAL ENTRIES

- Deputized Law Clerk, Joshua Prince appearing for the State.

At the request of Ms. Ericsson, COURT ORDERED, matter CONTINUED.

CUSTODY

3/19/19 10:00 AM ARRAIGNMENT COURT (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 19, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

March 19, 2019 10:00 AM Arraignment Continued

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

COURT CLERK:
 Rem Lord

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT: Smith, Breck Warden Defendant
 Stewart, Rachael E. Attorney

JOURNAL ENTRIES

- Deputy Law Clerk Joshua Prince present on behalf of the State.

Ms. Stewart requested a continuance. COURT ORDERED, matter CONTINUED.

CUSTODY

4/9/19 10:00 AM ARRAIGNMENT CONTINUED (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 09, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

April 09, 2019 10:00 AM Arraignment Continued

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

COURT CLERK: Rem Lord

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Smith, Breck Warden Defendant

JOURNAL ENTRIES

- Deputy Law Clerk Andrea Orwoll present on behalf of the State.

Mr. Ericsson requested a continuance as they need additional time to work out a collateral matter.
COURT ORDERED, matter CONTINUED.

CUSTODY

4/16/19 10:00 AM ARRAIGNMENT CONTINUED (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 16, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

April 16, 2019 10:00 AM Arraignment Continued

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

COURT CLERK: Rem Lord

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Smith, Breck Warden Defendant

JOURNAL ENTRIES

- Deputy Law Clerk Austin Beaumont present on behalf of the State.

CONFERENCE AT BENCH. COURT ORDERED, matter CONTINUED to Department XXV at counsel's request.

CUSTODY

5/6/19 9:00 AM ARRAIGNMENT CONTINUED (DEPT 25)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 06, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

May 06, 2019 9:00 AM Arraignment Continued

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Rose, Laura Jean Attorney
 Smith, Breck Warden Defendant
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Mr. Ericsson indicated the matter may resolve through global negotiations and requested a CONTINUANCE. COURT SO ORDERED.

CUSTODY

CONTINUED TO: 05/20/19 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 20, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

May 20, 2019 9:00 AM Arraignment Continued

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Renee Silvaggio

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Rose, Laura Jean Attorney
 Smith, Breck Warden Defendant
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Upon Court's inquiry as to the status of the case, Mr. Ericsson stated the parties are making progress; he met with Deputy District Attorney James Sweetin. Mr. Ericsson requested a two week continuance, he believes he will have the paperwork by that time. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 06/03/19 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 03, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

June 03, 2019 9:00 AM Arraignment Continued

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Merback, William J. Attorney
 Smith, Breck Warden Defendant
 State of Nevada Plaintiff

JOURNAL ENTRIES

- COURT NOTED there was an indication there may be global negotiations. CONFERENCE AT BENCH. COURT ORDERED, matter CONTINUED to allow negotiations to occur and the paperwork to be prepared.

CUSTODY

CONTINUED TO: 06/17/19 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 17, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

June 17, 2019 9:00 AM Arraignment Continued

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Sharon Howard

PARTIES

| | | |
|-----------------|---------------------|-----------|
| PRESENT: | Ericsson, Thomas A. | Attorney |
| | Smith, Breck Warden | Defendant |
| | State of Nevada | Plaintiff |
| | Wong, Hetty O. | Attorney |

JOURNAL ENTRIES

- Mr. Ericsson stated the matter is taking longer than it should; he tried reaching out to Deputy District Attorney William Merback, Esq. to finalize the plea agreement. He was not available. Ms. Wong noted Mr. Merback has been absent this week. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 06/24/19 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 24, 2019

C-19-337302-1 State of Nevada
 vs
 Breck Smith

June 24, 2019 9:00 AM Arraignment Continued

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15B

COURT CLERK: Shelley Boyle

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT: Ericsson, Thomas A. Attorney
 Lexis, Chad N. Attorney
 Smith, Breck Warden Defendant
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Amended Information FILED IN OPEN COURT.

Colloquy regarding the need for a Pre-Sentence Investigation Report to be prepared.
NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT.
SMITH ARRAIGNED AND PLED GUILTY pursuant to the ALFORD DECISION TO ATTEMPT
INVASION OF THE HOME (F). State gave an offer of proof. Court ACCEPTED plea and,
ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing.

CUSTODY (COC-NDC)

08/12/19 9:00 A.M. SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****August 12, 2019**

C-19-337302-1 State of Nevada
vs
Breck Smith

August 12, 2019 9:00 AM Sentencing

HEARD BY: Delaney, Kathleen E.**COURTROOM:** RJC Courtroom 15B**COURT CLERK:** Shelley Boyle**RECORDER:****REPORTER:** Renee Silvaggio**PARTIES**

| | | |
|-----------------|---------------------|-----------|
| PRESENT: | Ericsson, Thomas A. | Attorney |
| | Rose, Laura Jean | Attorney |
| | Smith, Breck Warden | Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Upon Court's inquiry, Ms. Rose stood by the negotiations. Argument by Mr. Ericsson; statement by Deft. DEFT SMITH ADJUDGED GUILTY of ATTEMPT BURGLARY (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, Deft. SENTENCED to a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE TO C232319, C232113, C232109 and C240508, with ZERO (0) DAYS credit for time served. COURT FURTHER ORDERED, the \$150.00 DNA Analysis fee including testing to determine genetic markers and \$3.00 DNA Collection Fee, WAIVED, as previously collected. BOND, if any, EXONERATED.

NDC (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 27, 2021**

C-19-337302-1 State of Nevada
vs
Breck Smith

| | | | |
|-------------------------|----------------|---|--|
| January 27, 2021 | 3:00 PM | Petition for Writ of Habeas Corpus | Emergency Petition for Writ of Habeas Corpus, Mandamus and/or Prohibition to Correct Illegal Sentence Imposed by the Nevada Board of Parole Commissioners |
|-------------------------|----------------|---|--|

HEARD BY: Delaney, Kathleen E.**COURTROOM:** RJC Courtroom 15B**COURT CLERK:** April Watkins**RECORDER:****REPORTER:** Dana J. Tavaglione**PARTIES**

| | | |
|-----------------|-------------------------|-----------|
| PRESENT: | Mcavoyamaya, Michael J. | Attorney |
| | Revero, Timothy E. | Attorney |
| | Samuels, Katrina A | Attorney |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Following arguments by counsel and colloquy, Court FINDS plain language of the statute shows that it was not complied with, that the Nevada Department of Corrections did exceed its authority by taking custody of Deft. prior to final adjudication of the new criminal charge but deferring the ruling on revoking parole for more than 60 days after taking custody. Therefore, COURT ORDERED, petition GRANTED IN PART with regards to Nevada Department of Corrections exceeding its authority and DENIED IN PART as to due process rights. FURTHER ORDERED, the parole board to re-calculate time 60 days when Deft. actually returned to custody with Nevada Department of

Corrections and that date is June 12, 2018. Deft's counsel to prepare findings of facts and conclusions of law to include State's arguments. Attorney General to review and order to be submitted to the Court within 14 days.

NDC

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER; NOTICE
OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT
MINUTES

STATE OF NEVADA,

Plaintiff(s),

vs.

BRECK WARDEN SMITH,

Defendant(s).

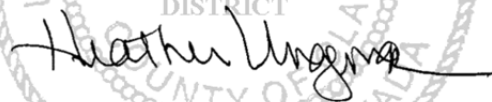
Case No: C-19-337302-1

Dept No: XXV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 29 day of March 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk