

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: APPLICATION OF BRECK
SMITH

Case No.: 82696

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Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S RESPONSE TO MOTION TO DISMISS

Appellant, by and through counsel, Aaron D. Ford, Attorney General of the State of Nevada, hereby submit this Response to Respondent's Motion to Dismiss Appeal for lack of Subject Matter Jurisdiction filed on April 27, 2021.

This Response is based upon the following points and authorities, together with all other pleadings, documents, and exhibits on file herein.

Dated this 3rd day of May 2021

Respectfully submitted,

AARON D. FORD
Attorney General

By: /s/ Katrina A. Samuels
Katrina A. Samuels
(Bar No. 13394)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3770 (phone)
(702) 486-2377 (fax)
KSamuels@ag.nv.gov
Attorney for Appellant

STATEMENT OF RELEVANT FACTS¹

On January 12, 2021, with the assistance of counsel, Breck Smith (Smith) filed a petition for writ of habeas corpus. Exhibit (Ex.) 1. In his petition, Smith challenged the timeliness of his parole revocation hearing and the calculation of his earned prison credits from the one-year penalty that was imposed upon him, because of his parole revocation. *Id.* According to Smith, his parole revocation was untimely pursuant to NRS 213.1517 (4), and as a result, the application of his earned credits from his subsequent one-year penalty were miscalculated, resulting in a delayed parole eligibility hearing date. *Id.*

The Eighth Judicial District Court agreed with Smith and entered a findings of fact and conclusion of law and order on February 17, 2021 granting Smith's request for habeas relief. Ex. 2. On February 24, 2021, the District Court filed a notice of entry of order. Ex. 3. On March 26, 2021, Appellant filed a notice of appeal, appealing the District Courts interpretation of NRS 213.1517 (4) and how it applies to the Parole Board holding a parole revocation hearing within 60 days while a petitioner has a simultaneous criminal matter that has yet to be adjudicated. Exs. 4 and 5.

///

¹ Respondent goes into a lot of facts in their Motion to Dismiss that are not relevant for this Court's determination of whether the Appellant timely filed their appeal. As a result, Appellant will not address Respondent's additional facts at this time.

On April 27, 2021, Respondent filed a Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction. Appellant's Response is set forth below.

ARGUMENT

The issue to be addressed before this Court is whether Appellant timely filed their notice of appeal in the District Court. Respondent believes that Appellant's notice of appeal is untimely pursuant to NRAP 4(a)(1), but Respondent's interpretation of the statute is incorrect. Pursuant to NRAP 4(a)(1), a notice of appeal "must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served." However, if there is an applicable statute providing a different period that a notice of appeal must be filed, "the notice of appeal required by these Rules must be filed within the time period established by the statute." *Id.* Under NRS 34.830(3), the clerk of the court must prepare a notice establishing the starting period to appeal and the notice provides that "if you wish to appeal, you must file a notice of appeal with the clerk of this court within 33 days after the date this notice is mailed to you." As NRS 34.830(3) provides a different period, Appellant must follow this statute for their notice of appeal to be timely.

In this case, the District Court entered a findings of fact and conclusion of law and order on February 17, 2021. Ex. 2. However, the District Court did not serve the written notice of entry of that judgment until February 24, 2021. Ex. 3. Here, the

notice of entry clearly states that, “you may appeal to the Supreme Court....and if you wish to appeal, you must file a notice of appeal ...within thirty-three days after the date this notice is mailed...this notice is mailed on February 24, 2021.” *Id.* Because the District Court mailed the notice to Appellant and Respondent on February 24, 2021, Appellant had 33 days or until March 29, 2021 to file their notice of appeal in the District Court. Since Appellant filed their notice of appeal on March 26, 2021, which is 30 days from the date the District Court mailed the written notice of entry of the judgment, their appeal is timely, and this Court does not lack jurisdiction.

CONCLUSION

NRS 34.830(3) is clear and unambiguous and Respondent’s claims are belied by both the law and the record. Therefore, Appellant respectfully requests this Court dismiss Respondent’s Motion.

Respectfully submitted,

AARON D. FORD
Attorney General

By: /s/ Katrina A. Samuels
Katrina A. Samuels (Bar No. 13394)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
(702) 486-3770 (phone)
KSamuels@ag.nv.gov
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on May 3, 2021.

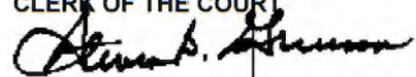
Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

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

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

Exhibit 1

Petition for Writ of
Habeas Corpus



PET
1 **MCAVOY AMAYA & REVERO ATTORNEYS**
2 MICHAEL J. MCAVOYAMAYA, ESQ. (14082)
3 TIMOTHY E. REVERO (14603)
4 400 S. 4th Street, Suite 500
5 Las Vegas, NV 89101
6 Telephone: 702.685.0879
7 Facsimile: 702.995.7137
8 Mike@mrlawlv.com
9 Tim@mrlawlv.com
10 *Attorneys for Petitioner*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY OF NEVADA**

13 * * * *

14 In the Matter of the Application of,

15 BRECK SMITH, #
16 For a Writ of Habeas Corpus.

17 CASE NO.: C-19-337302-1

18 Dept. XXV

19 **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS, MANDAMUS,**
20 **AND/OR PROHIBITION TO CORRECT ILLEGAL SENTENCE IMPOSED BY**
21 **THE NEVADA BOARD OF PAROLE COMMISSIONERS**

22 TO: The Honorable Judge of the Eighth Judicial District Court of The State of Nevada, in and
23 for the County of Clark:

24 The Petition of BRECK SMITH submitted by MICHAEL J. MCAVOYAMAYA, of the
25 McAvoy Amaya & Revero Attorneys, as attorney for the above-captioned individual, respectfully
26 affirms:

27 1. That he is a duly qualified, practicing, and licensed attorney in the City of Las
28 Vegas, County of Clark, State of Nevada.

29 2. That Petitioner makes application for a Writ of Habeas Corpus, Mandamus or
30 Prohibition; that the place where the Petitioner is imprisoned actually or constructively imprisoned
31 and restrained of his liberty is the Clark County Detention Center; that the officer by whom he is
32 imprisoned and restrained is Brian Williams (Deputy Director) and/or Tim Christianson (facility
33 manager) of the Casa Grande Transitional Housing Center.



1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 **I. FACTS PERTAINING TO DEFENDANT’S CONVICTION.**

4 Petitioner was convicted of burglary in 2008 and charged as a habitual criminal. *See* PSI
5 Report, attached as **Exhibit 1**, at 3-7. Petitioner was paroled in 2017. *Id.* at 8. Petitioner was
6 arrested on new charges of attempted burglary on March 22, 2018. *See* Criminal Bindover Packet,
7 attached as **Exhibit 2**, at 2. Petitioner was almost immediately remitted into Nevada Department
8 of Corrections (“NDOC”) custody for a suspected parole violation. *See* Parole Board Documents,
9 attached as **Exhibit 3**, at 6. After the Las Vegas Metropolitan Police Department (“LVMPD”)
10 issued an arrest report and submitted to the Nevada Department of Public Safety, Division of
11 Parole and Probation (“NDPP”), the NDPP ordered a NDPP investigation into whether or not there
12 was probable cause to believe that Petitioner had violated the terms of his parole. *Id. see also*
13 NDPP Probable Cause Violation Report, attached as **Exhibit 4**, at 1.

14 On March 28, 2018, the investigating officers of the NDPP issued their parole violation
15 report. *Id.* The report noted that “On March 22, 2018, Breck Smith was arrested by the Las Vegas
16 Metropolitan Police Department and charged with Attempt Burglary and Possession of Burglary
17 Tools in Case# 18FOS188X in addition to four counts of Violation of Parole. The subject was
18 placed in custody in the Clark County Detention Center and bail was set at \$7,000.” *Id.* The report
19 also noted that Petitioner was two months in arrears for his financial obligations to the NDPP, and
20 had not provided proof of required substance abuse evaluations. *Id.* The investigators reported that
21 the arrest was Petitioner’s first major parole violation, but that the arrest was concerning to the
22 NDPP, that Petitioner “has apparently fallen back into his old behavior,” and that the NDPP
23 investigators felt that “the subject is not an appropriate candidate for continued Community
24 supervision.” *Id.* Petitioner was in the custody of the Clark County Detention Center, and the
25 NDPP “recommended that a Retake Warrant be issued and the subject's parole be revoked.” *Id.* at
26 2.

27 In or around April 11, 2018, the Nevada Board of Parole Commissioners (the “Board”)
28 accepted the advice of the NDPP and issued the retake warrant. *See Ex. 3*, at 6. A NDPP “Notice



1 of Rights” form dated March 30, 2018, indicates that Petitioner was remanded back into the
2 custody of NDOC sometime between March 30, 2018 and April 11, 2018, when the retake warrant
3 was issued. *Id. see also* NDPP Notice of Rights, attached as **Exhibit 5**, at 1. The Notice states that
4 Petitioner’s “return to The Nevada Department of Corrections to answer charges of parole
5 violation before the Nevada Board of Parole Commissioners was determined at your Preliminary
6 Inquiry Hearing.” *See Ex. 5*, at 1. However, the form fails to indicate a date that the Preliminary
7 Inquiry Hearing to determine probable cause to detain Petitioner pending a parole violation hearing
8 was held. *Id.*

9 However, despite Petitioner being remanded into NDOC custody and being housed at the
10 High Desert State Prison, it appears that neither the NDPP nor the Board gave petitioner his
11 Preliminary Inquiry probable cause hearing, instead imprisoning Petitioner until his parole
12 revocation hearing without due process, while simultaneously denying him his right bail on new
13 offense. *Id.* at 1-13. The Board held numerous hearings on the revocation of Petitioner’s parole.
14 *See Ex. 3*, at 4-13. However, at every hearing held the Board deferred issuing a decision on whether
15 Petitioner violated his parole. *Id.*

16 Petitioner plead guilty to the new charge of attempted burglary on June 24, 2019. *Id.* at 3.
17 On June 25, 2019, the Board revoked Petitioner’s parole for one year to July 1, 2020, despite the
18 fact that Petitioner had been imprisoned in NDOC for over a year for his parole violation. *See Ex.*
19 **3**, at 4. The Board’s failure to hold the parole revocation hearing and enter a decision to revoke
20 Petitioner’s parole within 60 days of Petitioner’s remand into NDOC custody caused Petitioner to
21 incur over one year of “dead time” where Petitioner was imprisoned for a parole violation without
22 due process, and precluded Petitioner from posting bail on the new alleged offenses despite being
23 granted bail. *Id.* Petitioner alleges that the Board’s conduct violated his rights pursuant to the
24 Nevada Revised Statutes governing parole, and the Nevada and United States Constitutions.

25 ...
26 ...
27 ...
28 ...



1
2 **II. THE CORONAVIRUS PANDEMIC EMERGENCY WARRANTS EMERGENCY**
3 **TREATMENT OF THIS PETITION.**

4 The United States is currently battling the worst deadly global pandemic since the 1918
5 Spanish Flu, which killed millions of people worldwide. The everyday life of Americans has
6 changed rapidly in just the first few weeks of this pandemic, and communities are living in constant
7 fear as COVID-19 spreads rapidly to more and more victims, often with fatal results, especially
8 for those who are most vulnerable such as the elderly and immune compromised.

9 The State of Nevada has not been spared from the COVID-19 outbreak. As testing has
10 become more available, infections in the State of Nevada have risen exponentially, and threaten to
11 overburden our health care system. This pandemic is the most serious, harrowing, and desperate
12 crisis our country as has ever faced. The Center for Disease Control and Prevention (“CDC”) and
13 experts from universities around the world met in early March to project the effect this novel
14 coronavirus could have on the United States, and concluded that if drastic measures are not taken
15 to slow and stop the spread of COVID-19:

16 Between 160 million and 214 million people in the United States could be infected over
17 the course of the epidemic, according to a projection that encompasses the range of the four
18 scenarios. That could last months or even over a year, with infections concentrated in shorter
19 periods, staggered across time in different communities, experts said. As many as 200,000 to 1.7
20 million people could die.¹

21 “With great power comes great responsibility.”² In these desperate times desperate
22 measures must be taken. Governments and leaders the world over have a responsibility to do
23 everything within their power to protect the public from the deadly novel coronavirus. This threat
24 has prompted governments to issue emergency declarations and leaders to invoke emergency
25 powers of their offices to respond to this crisis to curb the spread of COVID-19 to limit the number
26 of lives ultimately lost.

27 ¹ See Worst-Case Estimates for U.S. Coronavirus Deaths, New York Times, March 13, 2020,
28 <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>

² Uncle Ben.



1 On March 12, 2020, "Steve Sisolak, Governor of the State of Nevada issued a Declaration
2 of Emergency to facilitate the State's response to the COVID-19 pandemic."³ "[O]n March 13,
3 2020, Donald J. Trump, President of the United States declared a nationwide emergency pursuant
4 to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C.
5 5121-5207 (the "Stafford Act")."⁴ "[T]he World Health Organization ["WHO"] and United States
6 Centers for Disease Control and Prevention have advised that there is a correlation between density
7 of persons gathered and the risk of transmission of COVID-19."⁵ Sisolak has declared that "close
8 proximity to other persons is currently contraindicated by public health and medical best practices
9 to combat COVID-19."⁶

10 On March 15, 2020, Sisolak "directed that '...[a]ll kindergarten through 12th grade schools
11 will close to students effective March 16, 2020 ... "and" ... may reopen no earlier than April 6,
12 2020, and only upon the approval of the Chief Medical Officer of the State of Nevada after a
13 review of the risk of transmissions within the geographic areas defined by the Chief Medical
14 Officer."⁷ On March 20, 2020, Sisolak issued a "Declaration of Emergency Directive 003
15 ordering the closure of non-essential businesses until April 16, 2020."⁸ That same day, Sisolak
16 issued another Declaration of Emergency Directive 005, which suspended the operation of several
17 Nevada statutes and regulations as they pertained to applications for distance education programs,
18 and examinations to implement the recommendations of the federal government and national and
19 international health organizations regarding social distancing.⁹

20 Since declaring a state of emergency in Nevada, Governor Sisolak has issued eight (8)
21 Declaration of Emergency Directives and two emergency regulations to in response to this health
22

23 ³ See Sisolak Emergency Directive 005,
24 http://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/Emergency_Orders/2020/2020-03-20%20-%20COVID-19%20Declaration%20of%20Emergency%20Declaration%20Directive%20005.pdf.

25 ⁴ *Id.*

26 ⁵ *Id.*

27 ⁶ *Id.*

28 ⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3-4.



1 emergency.¹⁰ Most of these emergency directives are intended to compel people to engage in two
2 of the only recognized practices that reduce the likelihood of spreading COVID-19: (1) regular
3 sanitation via thorough cleaning of hands, surfaces, and objects that may have come in contact
4 with COVID-19; and (2) social distancing, which is the practice of increasing the physical space
5 between people to reduce the likelihood of contracting the virus.

6 Governor Sisolak's directives are aimed to compel Nevadans to engage in these practices
7 and have increasingly restricted social and business interaction meant to reduce the frequency of
8 personal interaction, the proximity of people to one another and facilitate every opportunity for
9 Nevadans to engage in appropriate social distancing. These measures have included restrictions
10 on the number of people allowed to gather in public spaces; closing of public schools and colleges;
11 mandatory shut-down of restaurants, bars and other non-essential businesses; prohibiting visitation
12 in prisons, and encouraging Nevadans "Stay At Home for Nevada" except for necessary activities
13 such as buying groceries or medical care.

14 Governor Sisolak has issued emergency directives to provide nearly every Nevadan
15 meaningful opportunities to restrict exposure of COVID-19 by practicing social distancing.
16 Unfortunately, by all valid, scientific accounts, containment of this virus in the United States has
17 thus far failed and Federal, State and local governments have begun implementing increasingly
18 restrictive measures to try and limit the spread of the virus to avoid the collapse of our already
19 inadequate and overburdened healthcare system and to prevent the inevitable global economic
20 recession from becoming a depression.

21 The strategy of United States government and the government of the State of Nevada calls
22 for extreme measures to delay or prevent as many infections as possible, for as long as possible.
23 This pandemic strategy, commonly known as, "**flattening the curve**," helps healthcare systems
24 cope with the outbreak by ensuring that we don't have too many people getting sick all at once.¹¹
25 If this strategy fails, the results will be catastrophic for Nevada and the United States.

26 ¹⁰ See Governor Emergency Orders,
27 http://gov.nv.gov/News/Emergency_Orders/Emergency_Orders/

28 ¹¹ See WHAT IS FLATTENING THE CURVE? [Chart]
<https://www.nbcnews.com/science/science-news/what-flatten-curve-chart-shows-how-critical-it-everyone-fight-n1155636> (last checked March 19, 2020).



1 The risk posed by COVID-19 is extremely serious to all Nevada citizens whether it's the
2 prisoner, the prison employee, the court clerk, or the grocery store attendant. According to data
3 from the CDC and other official sources, the current global case fatality rate is 3.4% to 3.7%,
4 which is over 40 times more deadly than common influenza (the flu), which kills less than 0.1%
5 of those who contract it in the United States.¹² Further, even when people become infected by the
6 coronavirus, immunity is not guaranteed and reinfection at a later date is possible.¹³ New strains
7 of the coronavirus are mutating and spreading rapidly, and there is no guarantee that current
8 vaccines will work to protect against these new strains.¹⁴

9 Since the virus is believed to spread mainly between people who are in close proximity of
10 one another (within about 6 feet) and through the respiratory droplets produced when an infected
11 person coughs or sneezes, the most effective way to prevent the virus from spreading is to avoid
12 other people via social distancing.¹⁵ This is virtually impossible in a prison or jail setting,
13 especially given that COVID-19 can survive on surfaces like plastic and stainless steel for weeks.
14 Even worse, it now appears that COVID-19 can survive **in the air** for up to **three hours**,¹⁶ a fact
15 that has caused the CDC to recommend airborne virus protocols for healthcare facilities.¹⁷

16 ...

17 ...

18
19 ¹² See, e.g., CORONAVIRUS DEATH RATE VERSUS FLU,
20 <https://heavy.com/news/2020/02/coronavirus-death-rate-vs-flu/> (last checked, 3/19/2020);
21 ELEVEN CHARTS THAT EXPLAIN THE CORONAVIRUS PANDEMIC,
22 <https://www.vox.com/future-perfect/2020/3/12/21172040/coronavirus-covid-19-virus-charts> (last
23 checked, 3/19/2020).

24 ¹³ <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html>

25 ¹⁴ <https://www.webmd.com/lung/news/20210107/new-covid-super-strains-could-disrupt-life-again>

26 ¹⁵ See STEPS TO PREVENT ILLNESS, <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html> (last checked 3/23/2020).

27 ¹⁶ See COVID-19 CAN LAST A FEW DAYS ON SURFACES, ACCORDING TO NEW EXPERIMENT FINDINGS, <https://abcnews.go.com/Health/covid19-days-surfaces-experiment-findings/story?id=69569397> (last checked 3/23/2020).

28 ¹⁷ See INTERIM INFECTION PREVENTION AND CONTROL RECOMMENDATIONS FOR PATIENTS WITH SUSPECTED OR CONFIRMED CORONA VIRUS DISEASE 2019 (COVID-19) IN HEALTHCARE SETTINGS, <https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html> (last checked 3/23/2020).



1 **A. Nevada’s Jails And Prisons Are At High Risk Of Massive COVID-19 Outbreaks**
2 **That Pose Risks To Inmates, Employees And The Public.**

3 Jails and prisons are particularly vulnerable to the COVID-19 outbreak for a variety of
4 reasons, including inadequate medical facilities, stagnant air, inmates with compromised immune
5 systems, the rapidly aging inmate population, the constant influx of inmates, the traffic of
6 personnel coming and going, and overpopulation.¹⁸ When COVID-19 began to spread in China’s
7 prisons, there were reports of more than 500 cases spreading across five facilities in three provinces
8 in days.¹⁹ There have already been 38 confirmed cases at New York jails, with more popping up
9 in jails and prisons around the United States every day.²⁰

10 Government officials have called for a reduction in prison populations, recognizing that
11 jails are “a tinderbox for the virus, not just inside correctional facilities, but society at large.”²¹
12 Overcrowded prisons pose such a risk of spreading the virus that a bipartisan group of senators
13 wrote a letter to the Department of Justice and Bureau of Prisons pleading for Attorney General
14 William Barr, and Director Michael Carvajal to release prisoners.²²

15 We have reviewed the Federal Bureau of Prisons (BOP) COVID-19 Action Plan, which
16 covers health screening, limits on outside visits, staff travel and inmate transfers, but notably does
17 not include any measures to protect the most vulnerable staff and inmates. The Centers for Disease
18 Control and Prevention (CDC) has issued guidance indicating that adults over 60 years old and
19 individuals with chronic medical conditions, such as lung disease, heart disease, and diabetes, are

20 ¹⁸ See, e.g., ARE OUR PRISONS AND JAILS READY FOR COVID-19?,
21 <https://www.aclu.org/news/prisoners-rights/are-our-prisons-and-jails-ready-for-covid-19/> (last
22 checked 3/23/2020); THIS CHART SHOWS WHY THE PRISON POPULATION IS SO
VULNERABLE TO COVID-19, [https://www.themarshallproject.org/2020/03/19/this-chart-](https://www.themarshallproject.org/2020/03/19/this-chart-shows-why-the-prison-population-is-so-vulnerable-to-covid-19)
23 [shows-why-the-prison-population-is-so-vulnerable-to-covid-19](https://www.themarshallproject.org/2020/03/19/this-chart-shows-why-the-prison-population-is-so-vulnerable-to-covid-19) (last checked 3/23/2020).

24 ¹⁹ See THEY WERE ALREADY IN CHINA’S PRISONS. NOW THE CORONAVIRUS IS
THERE, TOO, [https://www.latimes.com/world-nation/story/2020-02-28/lawyers-activists-](https://www.latimes.com/world-nation/story/2020-02-28/lawyers-activists-pastors-uighurs-families-of-detainees-in-china-fear-coronavirus-spread-outbreak-in-camps-and-prisons)
25 [pastors-uighurs-families-of-detainees-in-china-fear-coronavirus-spread-outbreak-in-camps-and-](https://www.latimes.com/world-nation/story/2020-02-28/lawyers-activists-pastors-uighurs-families-of-detainees-in-china-fear-coronavirus-spread-outbreak-in-camps-and-prisons)
26 [prisons](https://www.latimes.com/world-nation/story/2020-02-28/lawyers-activists-pastors-uighurs-families-of-detainees-in-china-fear-coronavirus-spread-outbreak-in-camps-and-prisons) (last checked 3/13/2020).

27 ²⁰ See TEST POSITIVE FOR CORONAVIRUS AT RIKERS ISLAND, NEARBY NYC JAILS,
[https://www.washingtonpost.com/national/38-test-positive-for-coronavirus-at-rikers-island-](https://www.washingtonpost.com/national/38-test-positive-for-coronavirus-at-rikers-island-nearby-nyc-jails/2020/03/22/f3ed5fca-6b1a-11ea-abef-020f086a3fab_story.html)
28 [nearby-nyc-jails/2020/03/22/f3ed5fca-6b1a-11ea-abef-020f086a3fab_story.html](https://www.washingtonpost.com/national/38-test-positive-for-coronavirus-at-rikers-island-nearby-nyc-jails/2020/03/22/f3ed5fca-6b1a-11ea-abef-020f086a3fab_story.html) (last checked
3/23/2020).

²¹ *Id.*

²² See Appdx. at 104-105.

1 at a higher risk of contracting COVID-19 and suffering more severe illness and death. The CDC
2 has advised these individuals to avoid crowds and stay at home as much as possible. Conditions
3 of confinement do not afford individuals the opportunity to take proactive steps to protect
4 themselves, and prisons often create the ideal environment for the transmission of contagious
5 disease. For these reasons, it is important that consistent with the law and taking into account
6 public safety and health concerns, that the most vulnerable inmates are released or transferred to
7 home confinement, if possible.²³

8 The group of senators noted that “Congress has equipped BOP and the Department of
9 Justice (DOJ) with tools to use to maximize their efforts to overcome these daunting times”
10 including provision of the recently passed “First Step Act” (“FSA”), which permits the DOJ and
11 BOP to release elderly prisoners early via the “Elderly Home Detention Pilot Program” (“EHDP”).
12 “[T]he FSA reformed the compassionate release program for people facing ‘extraordinary and
13 compelling’ circumstances.”²⁴ However, since the enactment of the FSA, the BOP and DOJ had
14 refused the vast majority of applications for the EHDP, prompting these senators to urge the DOJ
15 and BOP “to immediately issue guidance requiring that ‘extraordinary and compelling’
16 circumstances be interpreted more broadly and clarify that such circumstances include
17 vulnerability to COVID-19.”

18 Finally, Section 602 of the FSA directed BOP, to the extent practicable, to transfer lower
19 risk inmates to home confinement for the maximum amount of time permitted under the law, which
20 is the shorter of 10 percent of the term of imprisonment or six months. Given the current state of
21 emergency, we urge you to consider the use of this authority to quickly transfer nonviolent
22 offenders who are at high risk for suffering complications from COVID-19 to home confinement.²⁵

23 The Nevada Department of Corrections (“NDOC”) operates nine (9) prisons and eleven
24 (11) work-release conservation camps throughout Nevada.²⁶ Many of these facilities are in rural
25

26
27 ²³ *Id.*

28 ²⁴ *Id.*

²⁵ *Id.*

²⁶ *See* Facilities, <http://doc.nv.gov/Facilities/Home/>

1 areas, geographically isolated from hospitals that may be needed to provide support in the event
2 of a COVID-19 outbreak.

3 According to a report and study conducted by the Vera Institute of Justice, Nevada's prison
4 population is approximately 13,695 people.²⁷ There are approximately 7,062 people in Nevada
5 jails.²⁸ Due to the congregate nature of prisons and other deficiencies, each of these individuals are
6 at constant risk of harm from a serious outbreak of COVID-19 while in NDOC custody. This is
7 especially true for inmates in NDOC custody who are over the age of 50 and those living with
8 certain underlying medical conditions, whose exposure to COVID-19 is highly likely to result in
9 serious illness and/or death.

10 Congregate environments like cruise ships, long-term care facilities, and prisons have
11 become the epicenters of the COVID-19 outbreak, such as the Life Care Center of Kirkland in
12 Washington State,²⁹ the Diamond Princess cruise ship which held its passengers in quarantine off
13 the coast of California,³⁰ the USS Theodore Roosevelt, which has at least 70 cases of COVID-19³¹
14 or the Cook County Jail in Chicago, which "[a]s of Monday afternoon...had 134 inmates who have
15 tested positive for COVID-19, up from just 38 on Friday...Of all the inmates tested so far only
16 nine were negative."³²

17 Because jails, prisons, and other correctional facilities are congregate environments, where
18 residents live, eat, and sleep in close contact with one another, infectious diseases spread rapidly

19 ²⁷ See Appdx. at 121.

20 ²⁸ *Id.*

21 ²⁹ See Jon Swaine and Maria Sacchetti, As Washington Nursing Home Assumed it Faced
22 Influenza Outbreak, Opportunities to Control Coronavirus Exposure Passed, Washington Post,
23 (Mar. 16, 2020) https://www.washingtonpost.com/investigations/nursing-home-with-the-biggest-cluster-of-covid-19-deaths-to-date-in-the-us-thought-it-was-facing-an-influenza-outbreak-a-spokesman-says/2020/03/16/c256b0ee-6460-11ea-845d-e35b0234b136_story.html.

24 ³⁰ See Ana Sandoiu, COVID-19 Quarantine of Cruise Ship May Have Led to More Infections,
25 Medical News Today, (Mar. 3, 2020) <https://www.medicalnewstoday.com/articles/quarantine-on-covid-19-cruise-ship-may-have-led-to-more-infections>.

26 ³¹ See Commander of aircraft carrier hit by coronavirus outbreak warns Navy 'decisive action' is
27 needed,

<https://www.cnn.com/2020/03/31/politics/aircraft-carrier-coronavirus-outbreak/index.html>.

28 ³² See One of the largest single-site jails in the US grapples with 134 coronavirus cases,
<https://abcnews.go.com/Health/largest-single-site-jails-us-grapples-134-coronavirus/story?id=69871778>.

1 and uncontrollably.³³ This is particularly true for airborne diseases, such as COVID-19, which
2 makes this virus particularly dangerous in a correctional facility that has hundreds and thousands
3 of people, many coming and going throughout the day.³⁴

4 The public health risks inside prisons are far greater than in other congregate environments.
5 The World Health Organization (“WHO”) states that people who are incarcerated and otherwise
6 deprived of their liberty are generally more vulnerable to disease and illness.³⁵ “The very fact of
7 being deprived of liberty generally implies that people in prisons and other places of detention live
8 in close proximity with one another, which is likely to result in a heightened risk of person-to-
9 person and droplet transmission of pathogens like COVID-19.”³⁶

10 The WHO, like the CDC, warn of two primary ways COVID-19 is transmitted: (1) person-
11 to-person transmission by breathing in droplets coughed out or exhaled by a person with the virus;
12 and (2) by touching contaminated surfaces or objects and then touching their eyes, nose, or
13 mouth.³⁷ Both methods of transmission make people in jails and prisons especially susceptible to
14 this contagion. Overcrowding, inadequate medical care, and the number of vulnerable people in
15 custody make the risk of uncontrolled spread of COVID-19 in prisons even greater. This is because
16 it is virtually impossible to achieve social distancing in the prison or jail setting. Inmates share
17 toilets, sinks, showers, eat in cafeterias and often have limited access to soap, hot water, and other
18 necessary hygiene items. Prisons are remarkably unsanitary. Prison staff also enter and exit prisons
19 daily to go home to their communities. Prison staff are essential employees, and with inadequate
20 infection screening procedures, the spread of COVID-19 within Nevada’s prison system is
21 inevitable.

22
23 ³³ See Anne C. Spaulding, Coronavirus and the Correctional Facility, Emory Center for the
24 Health of Incarcerated Persons, 17 (Mar. 9, 2020),
25 https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.

26 ³⁴ *Id.*

27 ³⁵ See Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of
28 Detention: Interim Guidance, World Health Organization: Regional Office for Europe, (Mar. 15,
2020), [http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-
and-control-of-COVID-19-in-prisons.pdf?ua=](http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=).

³⁶ *Id.*

³⁷ *Id.*

1 Prisons and jails serve as “epidemiological pumps,” amplifying conditions for the spread
2 of disease.³⁸ The lack of adequate medical infrastructure not only impacts the ability of prisons to
3 screen for infectious diseases, such as COVID-19, but also prisons’ ability to provide the intensive
4 medical treatment necessary for those who develop severe, life-threatening symptoms. Given the
5 history of epidemiologic outbreaks in correctional facilities, such as Tuberculosis, H1N1 and
6 MRSA, it is reasonable to expect COVID-19 will also readily spread in prisons, especially when
7 people cannot engage in proper hygiene and adequately distance themselves from infected
8 residents or staff.³⁹ Without the ability to care for vulnerable individuals who are most at-risk of
9 serious illness from a COVID-19 infection, many of those individuals will likely die from exposure
10 to this virus. This can and must be prevented.

11 **B. COVID-19 Poses A Grave Risk of Serious Illness or Death to Individuals Over 50**
12 **and to Those with Underlying Medical Conditions.**

13 There are several factors that increase the risk of death or serious complications (like
14 permanent loss of lung function) from COVID-19. The most serious appears to be **age**. People
15 between age **50 and 59**, for example, are **three times** more likely to die than those aged **40-49**,
16 and over **seven times** more likely to die than those aged **30-39**.⁴⁰ The risk increases exponentially
17 for adults over the age of **60**. So far, **80%** of COVID-19 deaths have been adults aged **65 and**
18 **over**, and the older you are, the greater your risk of serious complications, hospitalization and
19 death.⁴¹

20
21 ³⁸ John Jacobi, Prison Health Public Health: Obligations and Opportunities, 31 Am. J. L. and
22 Med. 447 (2005).

23 ³⁹ *See generally*, Claire Fortin, A Breeding Ground for Communicable Disease: What to do
24 About Public Health Hazards in New York Prisons, 29 Buff. Pub. Interest L. J. 153 (2011);
25 Malles v. Lehigh County, 639 F.Supp.2d 566 (2009).

26 ⁴⁰ *See, e.g.*, CORONAVIRUS DEATH RATE VERSUS FLU,
27 <https://heavy.com/news/2020/02/coronavirus-death-rate-vs-flu/> (last checked, 3/19/2020);
28 ELEVEN CHARTS THAT EXPLAIN THE CORONAVIRUS PANDEMIC,
<https://www.vox.com/future-perfect/2020/3/12/21172040/coronavirus-covid-19-virus-charts> (last
checked, 3/19/2020) Chart 5: **OLDER PEOPLE IN CHINA HAVE BEEN AT THE GREATEST
RISK OF DYING FROM COVID-19.**

⁴¹ *See* CENTERS FOR DISEASE CONTROL AND PREVENTION, COVID-19 OLDER
ADULTS, [https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-
complications/older-adults.html](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications/older-adults.html) (last checked 3/23/2020).

1 Overall health also plays a large role in determining who survives COVID-19, and who
2 does not. People with medical conditions like **heart disease, lung disease, diabetes, auto-**
3 **immune diseases, and hypertension** are at a higher risk for serious illness and death. For example,
4 out of the first 170 patients to die in Wuhan, nearly **half had high blood pressure.**⁴²

5 While many people who become infected will recover with minimal medical intervention,
6 people over the age of fifty and those with certain medical conditions face greater chances of
7 serious illness or death from COVID-19.⁴³ The CDC, WHO, and other public health organizations
8 have determined that underlying medical conditions, including lung disease, heart disease, chronic
9 liver or kidney disease, diabetes, epilepsy, hypertension, compromised immune systems (e.g.,
10 cancer, HIV, autoimmune disease, etc.), and/or pregnancy, place individuals of any age at an
11 exponentially higher risk of serious illness or death from the COVID-19 virus.⁴⁴

12 For these vulnerable populations, the symptoms of COVID-19, particularly shortness of
13 breath, can be severe, and complications can manifest at an alarming pace. Individuals who have
14 contracted the virus may first display symptoms in as little as two days after exposure, and their
15 condition can rapidly deteriorate. Indeed, even the Government of Nevada has recognized the
16 serious risk COVID-19 poses to the elderly, issuing information, guidance and recommendations
17 for Nevada residents including that Nevadans:

- 18 • Avoid all non-essential travel and social interactions.
- 19 • Work from home, when possible, and do not gather in groups.
- 20 • Stay at least 6 feet apart from others.
- 21 • **Persons 50+ years old and those who have chronic lung disease, heart disease,**
22 **diabetes, cancer or a weakened immune system are most at risk.**⁴⁵

23
24 ⁴² See TOP CORONAVIRUS DOCTOR: PATIENTS WITH HIGH BLOOD PRESSURE AT
25 GREATER RISK OF DYING, <https://fortune.com/2020/03/09/coronavirus-death-high-blood-pressure-hypertension-patients-wuhan-china-doctor-covid-19/> (last checked, 3/19/2020).

26 ⁴³ See Coronavirus Disease 2019 (COVID-19): If You Are at Higher Risk, Centers for Disease
27 Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>.

28 ⁴⁴ Q&A on Coronaviruses (COVID-19), WHO, *supra*.

⁴⁵ See Stay Home for Nevada: What Nevadans Need to Know and Do,

1 Even the United States Congress recognizes that “[c]onditions of confinement do not afford
2 individuals the opportunity to take proactive steps to protect themselves, and prisons often create
3 the ideal environment for the transmission of contagious disease,” and the elderly and immune
4 compromised are at extreme risk. “For these reasons, it is important that consistent with the law
5 and taking into account public safety and health concerns, that the most vulnerable inmates are
6 released or transferred to home confinement, if possible.”⁴⁶

7 **C. Breck Smith Has Extremely High Risk Of Death From COVID-19.**

8 The US Center for Disease Control (“CDC”) instructs that persons over 50-64 years of age
9 are 4 times more likely to be hospitalized from COVID-19, and 30 times more likely to die from
10 COVID-19 than individuals who are ages 18-29.⁴⁷ Further, adults of any age with the following
11 conditions are at increased risk of severe illness from the virus that causes COVID-19:

- 12 • Cancer
- 13 • Chronic kidney disease
- 14 • COPD (chronic obstructive pulmonary disease)
- 15 • Heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
- 16 • Immunocompromised state (weakened immune system) from solid organ transplant
- 17 • Obesity (body mass index [BMI] of 30 kg/m² or higher but < 40 kg/m²)
- 18 • Severe Obesity (BMI ≥ 40 kg/m²)
- 19 • Pregnancy
- 20 • Sickle cell disease
- 21 • Smoking
- 22 • Type 2 diabetes mellitus

23 Based on what we know at this time, adults of any age with the following conditions might
24 be at an increased risk for severe illness from the virus that causes COVID-19:

- 25 • Asthma (moderate-to-severe)

26
27 http://dhhs.nv.gov/Reports/Press_Releases/2020/Stay_Home_for_Nevada__What_Nevadans_Need_to_Know_and_Do/

28 ⁴⁶ See Appdx. at 104-105.

⁴⁷ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

- 1 • Cerebrovascular disease (affects blood vessels and blood supply to the brain)
- 2 • Cystic fibrosis
- 3 • Hypertension or high blood pressure
- 4 • Immunocompromised state (weakened immune system) from blood or bone marrow
- 5 transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune
- 6 weakening medicines
- 7 • Neurologic conditions, such as dementia
- 8 • Liver disease
- 9 • Overweight (BMI > 25 kg/m², but < 30 kg/m²)
- 10 • Pulmonary fibrosis (having damaged or scarred lung tissues)
- 11 • Thalassemia (a type of blood disorder)
- 12 • Type 1 diabetes mellitus⁴⁸

13 Breck is 56 years old, and thus 4 times more likely to be hospitalized, and 30 times more
14 likely to die from COVID-19 than persons 18-29. Breck also suffers from high blood pressure. *See*
15 *Medical Records*, attached as **Exhibit 6**, at 3. Breck also suffers from chronic viral hepatitis C,
16 which is a disease that affects the liver. *Id.* These combined conditions make Breck an extremely
17 high-risk individual.

18 **D. The NDOC Has Lost Control Over the Coronavirus Pandemic in Its Facilities.**

19 Presently, there are thousands of COVID-19 positive staff and inmates in NDOC facilities,
20 and ten (39) deaths (36 inmates, 3 staff), and many others are hospitalized at this time.⁴⁹⁵⁰ The
21 NDOC has lost control over the COVID-19 pandemic in its facilities and there is a drastic need to
22 depopulate. In the Casa Grande Transitional Housing facility where Petitioner is housed, there are
23
24

25 ⁴⁸ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

26 ⁴⁹ <https://www.8newsnow.com/news/local-news/covid-19-cases-explode-at-nevada-prisons-including-8-inmate-deaths/>

27 ⁵⁰ <https://app.powerbigov.us/view?r=eyJrljoiNDMwMDI0YmQtNmUyYS00ZmFjLWI0MGItZDM0OTY1Y2Y0YzNhliwidCI6ImU0YTM0MGU2LWI4OWUtNGU2OC04ZWZhLTE1NDRkMjcwMzk4MCI9>

1 at least sixty-one (61) inmates have tested positive, twenty-three (23) staff, and one staff death.⁵¹
2 For the foregoing reasons, this petition should be heard on an emergency basis.

3 III. ARGUMENT

4 A. Standard of Review

5 “Any person convicted of a crime and under sentence of death or imprisonment who claims
6 that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution
7 of the United States or the Constitution or laws of this State, or who, after exhausting all available
8 administrative remedies, claims that the time the person has served pursuant to the judgment of
9 conviction has been improperly computed, may, without paying a filing fee, file a postconviction
10 petition for a writ of habeas corpus to obtain relief from the conviction or sentence or to challenge
11 the computation of time that the person has served.” Nev. Rev. Stat. § 34.724. “Every person
12 unlawfully committed, detained, confined or restrained of his or her liberty, under any pretense
13 whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment
14 or restraint.” Nev. Rev. Stat. § 34.360.

15 A Writ of Mandamus “may be issued by the Supreme Court, the Court of Appeals, a district
16 court or a judge of the district court, to compel the performance of an act which the law especially
17 enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to
18 the use and enjoyment of a right or office to which the party is entitled and from which the party
19 is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a
20 district court or a judge of the district court it shall be made returnable before the district court.”
21 Nev. Rev. Stat. § 34.160. The Writ of Mandamus “shall be issued in all cases where there is not a
22 plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit,
23 on the application of the party beneficially interested.” Nev. Rev. Stat. § 34.170.

24 “The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings
25 of any tribunal, corporation, board or person exercising judicial functions, when such proceedings
26 are without or in excess of the jurisdiction of such tribunal, corporation, board or person.” Nev.
27 Rev. Stat. Ann. § 34.320. “The writ may be issued only by the Supreme Court, the Court of Appeals

28 ⁵¹ *Id.*



1 or a district court to an inferior tribunal, or to a corporation, board or person, in all cases where
2 there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon
3 affidavit, on the application of the person beneficially interested.” Nev. Rev. Stat. § 34.330.

4 The Nevada Supreme Court has held that challenges to decisions by the BOARD are
5 appropriate matters for bringing a Writ of Mandamus or Prohibition. *Butterfield v. State*, 131 Nev.
6 1259 (2015). This is because such challenges are not properly brought as Petitions for Habeas
7 Corpus, or motions to correct an illegal sentence. *Parish v. State*, No. 56814, 2011 Nev. Unpub.
8 LEXIS 88, at *1-2 (Mar. 17, 2011) (“the district court did not err in denying Parish's motion
9 because his claims fell outside the narrow scope of claims that are permitted in a motion to correct
10 an illegal sentence.”)

11 A motion to correct an illegal sentence may only challenge the facial legality of the
12 sentence, alleging that either the district court was without jurisdiction to impose a sentence or the
13 sentence imposed was in excess of the statutory minimum. *See Edwards v. State*, 112 Nev. 704,
14 708-09, 918 P.2d 321, 324-25 & n.2 (1996). Further, “no statute or court rule authorizes an appeal
15 from...an order [of the BOARD]” meaning there is no plain, speedy, adequate remedy at law to
16 address the matters raised in this petition. *See Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133,
17 1135 (1990). As such, writs of mandamus and prohibition are the appropriate procedure for
18 challenging actions of the BOARD. *Raggio v. Campbell*, 80 Nev. 418, 426, 395 P.2d 625, 629
19 (1964).

20
21 **B. The Board and NDOC Exceeded Its Authority Under Nevada Law Unconstitutionally**
22 **Imprisoned Petitioner When It Took Custody Of Petitioner But Deferred Ruling On**
23 **Revoking His Parole Until Petitioner Plead Guilty To The Subsequent Offense Of**
24 **Attempted Burglary**

25 “The State Board of Parole Commissioners may direct that any prisoner confined in the
26 state prison, or confined in another jurisdiction as provided in NRS 176.045, shall be released on
27 parole as provided in chapter 213 of NRS, if eligible for parole under the provisions of such
28 chapter.” Nev. Rev. Stat. § 176.095. “If the parolee violates a condition of parole, he may be
imprisoned on the unexpired sentence.” *Coleman v. State*, 130 Nev. 190, 194, 321 P.3d 863, 866



1 (2014). A parolee is granted numerous rights under chapter 213 of the NRS, even when arrested
2 for a new offense. Petitioner's statutory and constitutional rights were violated by the Board in
3 Petitioner's case. *Id.*

4
5 ***1. The Board And NDPP Violated Petitioner's Pre-NDOC Custody Statutory Due
Process Rights.***

6 A condition of all probation in the State of Nevada requires parolees to refrain from
7 violating state or federal laws other than minor traffic violations. *See Nev. Rev. Stat. § 213.1511.*
8 When a parolee is arrested for a new offense or a parole violation while on parole, the arresting
9 officer must:

- 10 (a) Present to the detaining authorities, if any, a statement of the charges against the
11 parolee; and
12 (b) Notify the Board of the arrest and detention or residential confinement of the
13 parolee and submit a written report showing in what manner the parolee violated a
condition of his or her parole.

14 Nev. Rev. Stat. § 213.151.

15 ***“Before a parolee who has been arrested and is in custody for a violation of his or her
16 parole may be returned to the custody of the Department of Corrections for that violation, an
17 inquiry must be conducted to determine whether there is probable cause to believe that the parolee
18 has committed acts that would constitute such a violation.” See Nev. Rev. Stat. § 213.1511. The
19 probable cause inquiry must be conducted by an officer who:***

- 20 (a) Is not directly involved in the case;
21 (b) Has not made the report of the violation; and
22 (c) Has not recommended revocation of the parole, but the inquiring officer need
not be a judicial officer.

23 *Id.*

24 The inquiring officer shall allow the parolee to:

- 25 (a) Appear and speak on his or her own behalf.
26 (b) Obtain counsel.
27 (c) Present any relevant letters or other documents and any person who can give
28 relevant information.



1 (d) Confront and question any person who appears against the parolee unless, in the
2 opinion of the inquiring officer, the informant would be subjected to a risk of harm
3 by the disclosure of his or her identity.

3 *Id.*

4 A conviction “for violating a federal or state law or a local ordinance, except a minor traffic
5 offense, which is committed while the prisoner is on parole constitutes probable cause for the
6 purposes of subsection 1 and the inquiry required therein need not be held.” *Id.* After the Board
7 has held the probable cause inquiry hearing, the Board Chief, after consideration of the case, may:

- 8 (a) Release the arrested parolee again upon parole;
9 (b) Order the parolee to be placed in residential confinement in accordance with the
10 provisions of NRS 213.15193, 213.15195 and 213.15198; or
11 (c) Suspend his or her parole and return the parolee to confinement.

11 *See Nev. Rev. Stat. Ann. § 213.1517(1).*

12 The Chief must take one of the actions under subsection 1 within:

- 13 (a) Fifteen days if the prisoner was paroled by the Board.
14 (b) Thirty days if the prisoner was paroled by the authority of another state and is
15 under supervision in this state pursuant to NRS 213.215. This paragraph does not
16 apply to a parolee who is retaken by an officer of the sending state.

17 *Id.*

18 The arresting law enforcement agency in Petitioner’s case, the LVMPD, in accordance with
19 NRS § 213.151, notified the NDPP that Petitioner had been arrested and charged with new criminal
20 offenses in or around March 22, 2018. *See Ex. 3*, at 3; *Ex. 4*, at 1. The NDPP appointed officers
21 to conduct the probable cause inquiry, pursuant to NRS § 213.1511, to determine whether there
22 was probable cause to believe that Petitioner had committed acts that would constitute a violation
23 of his parole. *Id.* On March 28, 2018, while Petitioner was in the custody of the Clark County
24 Detention Center, the inquiring officers concluded that there was probable cause to believe that
25 Petitioner had violated his parole and recommended that the board issue a retake warrant, remand
26 Petitioner into the custody of NDOC, and revoke Petitioner’s parole. *See Ex. 4*, at 1-2. However,
27 documents produced by the Board indicate that Petitioner was not granted his due process rights
28 pursuant to NRS § 213.1511 to: (a) Appear and speak on his own behalf; (b) Obtain counsel; (c)



1 Present any relevant letters or other documents and any person who can give relevant information;
2 (d) Confront and question any person who appears against the parolee unless, in the opinion of the
3 inquiring officer, the informant would be subjected to a risk of harm by the disclosure of his or her
4 identity. *See Nev. R. Stat. § 213.1511; see also Ex. 5*, at 1.

5 In fact, it appears from the documents that the NDPP treated Petitioner's arrest on the new
6 charges as if it were a conviction on the new charges, allowing the NDPP to skip the probable
7 cause inquiry hearing in violation of Petitioner's statutory right to due process. *Id.* The Board
8 subsequently violated Petitioner's statutory due process rights by issuing the retake warrant at the
9 recommendation of the NDPP ordering that Petitioner be remanded into NDOC custody and
10 suspending Petitioner's parole without providing Petitioner his due process hearing. *Id. see also*
11 **Ex. 3**, at 3. Indeed, the documents provided by the Board indicate that the Board suspended
12 Petitioner's parole and order Petitioner into NDOC custody without the Chief of the Board ever
13 entering a probable cause decision on the merits of the case.

14
15 ***2. The Board Violated Petitioner's Statutory And Constitutional Due Process***
16 ***Rights By Detaining Petitioner In NDOC Custody Without Due Process.***

17 The due process clause of the Fourteenth Amendment protects individuals against
18 governmental deprivations of "life, liberty or property" without due process of law. *Board of*
19 *Regents v. Roth*, 408 U.S. 564, 570-71, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); *Mullins v. Oregon*,
20 57 F.3d 789, 795 (9th Cir. 1995). A procedural due process violation has two elements. First,
21 plaintiffs must show that the government has deprived them of life, liberty or property. *Mathews*
22 *v. Eldridge*, 424 U.S. 319, 332-33, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). Second, plaintiffs must
23 show that the government deprived them of these constitutionally protected interests without due
24 process of law. *Id.* Both the United States Constitution and the Nevada Constitutions "guarantee
25 that a person must receive due process before the government may deprive him" life, liberty or
26 property. *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007). The Nevada Supreme
27 Court "has recognized that procedural due process 'requires notice and an opportunity to be
28 heard.'" *Id.*



1 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)* (emphasis added). This
5 sixty (60) day parole revocation hearing requirement is intended to ensure that a parolee believed
6 to have violated the terms of his parole is not deprived of his constitutionally protected liberty
7 interests without due process. *Id.* “Due process for parole revocation hearings requires, at a
8 minimum, ‘that finding of a parole violation will be based on verified facts and that the exercise
9 of discretion will be informed by an accurate knowledge of the parolee's behavior.’” *Ramirez v.*
10 *State*, 2016 Nev. App. Unpub. LEXIS 553, *2, 132 Nev. 1021 *quoting Morrissey v. Brewer*, 408
11 U.S. 471, 484, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972); *see also Anaya*, 96 Nev. at 122, 606 P.2d
12 at 157-58 (citing *Morrissey* and setting out the minimum procedures necessary to revoke parole);
13 NRS 213.1513; NRS 213.1517.

14 The due process requirement in NRS § 213.1517 includes one exception. When the
15 “probable cause for continued detention of a paroled prisoner is based on conduct which is the
16 subject of a new criminal charge, the Board may consider the prisoner's case under the provisions
17 of subsection 3 or defer consideration until *not more than 60 days after his or her return to the*
18 *custody of the Department of Corrections* following the final adjudication of the new criminal
19 charge.” *See Nev. Rev. Stat. § 213.1517(4)* (emphasis added).

20 The sixty (60) day parole revocation hearing due process rule in NRS § 213.1517
21 subsection 3, and its exception in subsection 4, both state that the event that triggers the Board’s
22 duty to hold the parole revocation hearing is a parolee’s return to NDOC custody. *Id.* This is
23 because, while the NDPP and the Board have a duty to take custody of a parolee who is arrested
24 for violating their parole within five (5) of the probable cause inquiry hearing, that duty does not
25 apply if there are other, new criminal charges pending in the jurisdiction where the parolee is
26 currently detained. *See Nev. Rev. Stat. Ann. § 213.15103.* Indeed, if the NDPP and Board fails
27 issue a probable cause decision on whether continued detention is necessary within five (5) days
28



1 of the probable cause inquiry hearing, “the sheriff may, if there are no other criminal charges
2 pending or warrants outstanding for the parolee, release the parolee from custody.” *Id.*

3 The exception to the sixty (60) day rule in NRS § 213.1517(4), when looked at in concert
4 with NRS 213.15103, demonstrates legislative intent to permit the NDPP and Board the discretion
5 to postpone retaking custody of the parolee and remand them to NDOC custody in order to permit
6 the parolee to remain in the custody of the jurisdiction where the new offense was committed until
7 the new charges have been adjudicated. A conviction for violation of federal or state law while on
8 parole, other than minor traffic infractions, then establishes probable cause that a violation has
9 occurred, and upon return of the parolee to NDOC custody, the Board must then hold the
10 revocation hearing within sixty (60) days. Regardless of whether there are new charges or not,
11 however, the return of the parolee to NDOC custody trigger’s the Board’s duty to hear the parolee’s
12 case within sixty (60) days. *See Nev. Rev. Stat. § 213.1517(3-4).*

13 In Petitioner’s case, Petitioner was remanded into NDOC custody by the NDPP and the
14 Board between March 30, 2018 and April 11, 2018. *See Ex. 3*, at 3; *Ex. 5*, at 1. Upon return of
15 Petitioner to NDOC custody, the Board was required to hold Petitioner’s parole revocation hearing
16 within sixty (60) days and issue its decision. However, despite Petitioner being remanded to
17 NDOC custody upon probable cause that a parole violation had been committed, the Board chose
18 to defer the final decision to revoke Petitioner’s parole for over a year until Petitioner plead guilty
19 to the new charges. *See Ex. 3*, at 3-13. In deferring the parole revocation hearing for over a year,
20 the Board circumvented the procedure in NRS §§ 213.1513 and 213.1517 depriving Petitioner of
21 his liberty without due process, causing Petitioner to be incarcerated in prison for over a year of
22 “dead time” that did not count toward his prior offense. *Id.*

23 This “dead time” also does not count towards the new offense because NRS § 176.055(2)
24 precludes a parolee arrested for a new charge from getting credit for time served on the new offense
25 for their time incarcerated while awaiting trial on the new offense. *See Nev. Rev. Stat. §*
26 *176.055(2).* NRS § 176.055(2) is the only statutorily authorized penalty imposed on parolees who
27 commit crimes while on parole. *Id.* NRS § 176.055 contemplates, consistent with NRS chapter
28 213, that the Board and NDPP may decide defer the decision to revoke parole by not taking custody



1 of a parolee from the jurisdiction where the new offense is committed until the charges are
2 resolved. *Id.* Allowing the Board and NDPP to take custody of a parolee precluding them from
3 being able post bail, but deferring the decision to revoke parole until after the new charges are
4 resolved permits the Board to impose penalties for disputing charges that were not contemplated
5 nor permitted by the NRS.

6
7 **3. *The BOARD's Decision To Defer Decision On Revocation Of Petitioner's Parole***
8 ***Denied Petitioner His Constitutional Right To Reasonable Bail Under The***
9 ***Nevada Constitution.***

10 “Punishment should follow conviction, not precede it.” *Application of Knast*, 614 P.2d 2,
11 3, 96 Nev. 597, 598 (1980) (*citing Application of Wheeler*, 81 Nev. 495, 406 P.2d 713 (1965)). As
12 such, “[t]he right to bail is consonant with the presumption of innocence that attaches to all
13 defendants prior to conviction.” *Id.* Nevada’s State Constitution provides, in relevant part, that
14 “[a]ll persons shall be bailable by sufficient sureties” except for “murders punishable by life
15 imprisonment without possibility of parole when the proof is evidence or the presumption great.”
16 NEV. CONST. ART. 1 §7 (emphasis added); accord NRS 178.484(4) (“A person arrested for
17 murder of the first degree may be admitted to bail unless the proof is evident or the presumption
18 great by any competent court or magistrate authorized by law to do so in the exercise of discretion,
19 giving due weight to the evidence and to the nature and circumstances of the offense.” (emphasis
20 added)). “Th[ese] words favor bail . . .” *Wheeler*, 406 P.2d at 715, 81 Nev. at 499 (*citing State v.*
21 *Konigsberg*, 33 N.J. 367, 164 A.2d 740 (1960)). “Absent a finding that the proof is evident or the
22 presumption great that such a circumstance is present, bail cannot be constitutionally denied.”
23 *Knast*, 614 P.2d at 3, 96 Nev. at 598.

24 In Nevada, defendants have a fundamental right to reasonable bail set based on statutory
25 factors evaluated on a case by case basis. *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. Adv.
26 Op. 20 (April 9, 2020). “When bail is set in an amount the defendant cannot afford, however, it
27 deprives the defendant of his or her liberty and all its attendant benefits, despite the fact that he or
28 she has not been convicted, and is presumed innocent.” *Id.*, at 3. “A defendant who remains in
custody following arrest is constitutionally entitled to a prompt individualized determination . . .



1 preceded by an adversarial hearing at which the defendant is entitled to present evidence and
2 argument concerning the relevant bail factors.” *Id.* “The judge . . . may impose bail *only if* the
3 State proves by clear and convincing evidence that it is necessary . . . [and] the judge must consider
4 the defendant’s financial resources . . . in setting the amount of bail[.]” *Id.* “Bail in an amount
5 greater than necessary to ensure the defendant’s appearance and the safety of the community is
6 unconstitutional[.]” *Id.*, at 11 (emphasis added). “[B]ecause the right of an individual to reasonable
7 bail before trial is a fundamental one, bail must not be in an amount greater than necessary to serve
8 the State’s interests.” *Id.*, at 12, quoting *U.S. v. Salerno*, 481 U.S. 739, 750 (1987). The United
9 States Supreme Court has held that the denial of reasonable bail violates the due process clause of
10 the Fifth Amendment, and the Eighth Amendment. *Salerno*, 481 U.S. at 750. Nevada’s
11 constitutional right to reasonable and affordable bail applies to equally to new offenders and
12 parolees alike.

13 Not only did the Board’s procedure in Petitioner’s case unconstitutionally imprison him
14 indefinitely for a parole violation without due process, it also denied Petitioner his constitutional
15 right to reasonable bail on the new charges. A parolee who has been remanded to NDOC custody
16 for a parole violation is imprisoned, and, therefore, cannot bail out on the new pending charges. In
17 contrast, if the parolee remains in the custody of the jurisdiction where the new charges were
18 committed, they are entitled to reasonable bail under the Nevada and United States Constitutions.
19 *Valdez-Jimenez*, 136 Nev. Adv. Op. at 20. This is because, for parole violations, the Nevada
20 Revised Statutes reasonably ensure that a parolee alleged to have violated their parole is not denied
21 their liberty without due process requiring: (1) full due process rights at a mandated probable cause
22 hearing to determine if parole will be suspended and the parolee remanded to NDOC custody
23 pending a parole revocation hearing (NRS § 213.1513); and (2) a subsequent parole revocation
24 due process hearing to determine if parole will be formally revoked sixty (60) days after return to
25 NDOC custody. *See Nev. Rev. Stat. §§ 213.1517(3-4)*. Providing a parolee bail is not required or
26 necessary because of these due process protections. *Id.*

27 Here, Petitioner he was granted reasonable bail in the amount of \$7,000.00. *See Ex. 2*, at
28 7. However, because Petitioner was remanded into NDOC custody indefinitely pending the parole



1 revocation hearing, Petitioner was denied his constitutional right to bail on the new charges. *Id.* at
2 9. Had Petitioner not been remanded into NDOC custody, he could have posted bail and been
3 released. At that point, if the Board felt it was necessary to remand Petitioner to NDOC custody
4 pending the parole revocation hearing, it was required to hold the probable cause inquiry hearing,
5 issue a formal decision remanding Petitioner into NDOC custody, and hold the hearing within
6 sixty (60) days thereafter. Nothing in the Nevada Revised Statutes indicates an intent to grant the
7 Board the authority to detain a parolee indefinitely without due process because they have chosen
8 to dispute new charges against them, while simultaneously precluding the parolee from posting
9 bail on the new charges.

10 The consequence of the Board's procedure in Petitioner's case was that Petitioner was
11 unlawfully imprisoned for over one year without conviction on the new charges, without bail on
12 the new charges, and without conviction on the parole violation. Petitioner eventually plead guilty
13 to an amended charge in Clark County, and after pleading guilty the Board finally revoked
14 Petitioner's parole on June 25, 2019, to July 1, 2020. *See Ex. 3*, at 3. Petitioner was then required
15 to serve his yearlong penalty for the parole violation after having already served over a year
16 indefinite incarceration for the alleged parole violation. *Id.* Petitioner's parole on the prior charges
17 was reinstated on July 1, 2020, and Petitioner began serving his term of imprisonment for the new
18 charge. *Id.* at 1-2.

19 Had the Board's held the proceeding in the time period prescribed by the Nevada statutes,
20 Petitioner's parole would have been properly revoked on or around August 7, 2018, and
21 Petitioner's one (1) year penalty for violating his parole would have ran form that date. *See Ex. 3*,
22 at 4-5. Petitioner would then have begun serving his term of imprisonment on the current offense
23 on August 7, 2019, rather than July 1, 2020. *Id.* Further, had the time periods been properly
24 followed, Petitioner would have been eligible for parole on the current offense on August 7, 2018.
25 *Id.* The Nevada statutes on parole violations and revocation do not permit the Board to take custody
26 of and imprison a parolee that has been arrested on new charges, and defer both the probable cause
27 determination and revocation hearing until resolution of the new charges.



CERTIFICATE OF SERVICE

1 Pursuant to NRCP 5(b), I certify that I am an employee of and that on January 12, 2021,
2
3 I caused the foregoing document entitled **PETITION FOR HABEAS CORPUS,**
4 **MANDAMUS OR PROHIBITION** to be served upon those persons designated by the parties
5 in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court
6 eFiling System in accordance with the mandatory electronic service requirements of
7 Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules. Non-parties
8 will be served by mail.
9

10 Steve Wolfson, Esq.
11 Clark County District Attorney
12 200 Lewis Avenue, 3rd Floor
13 Las Vegas, Nevada 89155
14 (702) 455-4711

Dated this 12th day of January, 2021.

15
16 /s/ Michael J. McAvoy-Amaya
17 MICHAEL J. MCAVOY-AMAYA, ESQ.
18 Nevada Bar No.: 14082
19 *Attorney for Petitioner*
20
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Exhibit 1



PRESENTENCE INVESTIGATION REPORT

The Honorable Kathleen E. Delaney
Department XXV, Clark County
Eighth Judicial District Court

Date Report Prepared: July 26, 2019

Prosecutor: Madilyn Cole, Chief DDA
Defense Attorney: Thomas A. Ericsson, Retained

PSI: 576274

I. CASE INFORMATION

Defendant: Breck Warden Smith
C-19-337302-1

[REDACTED]

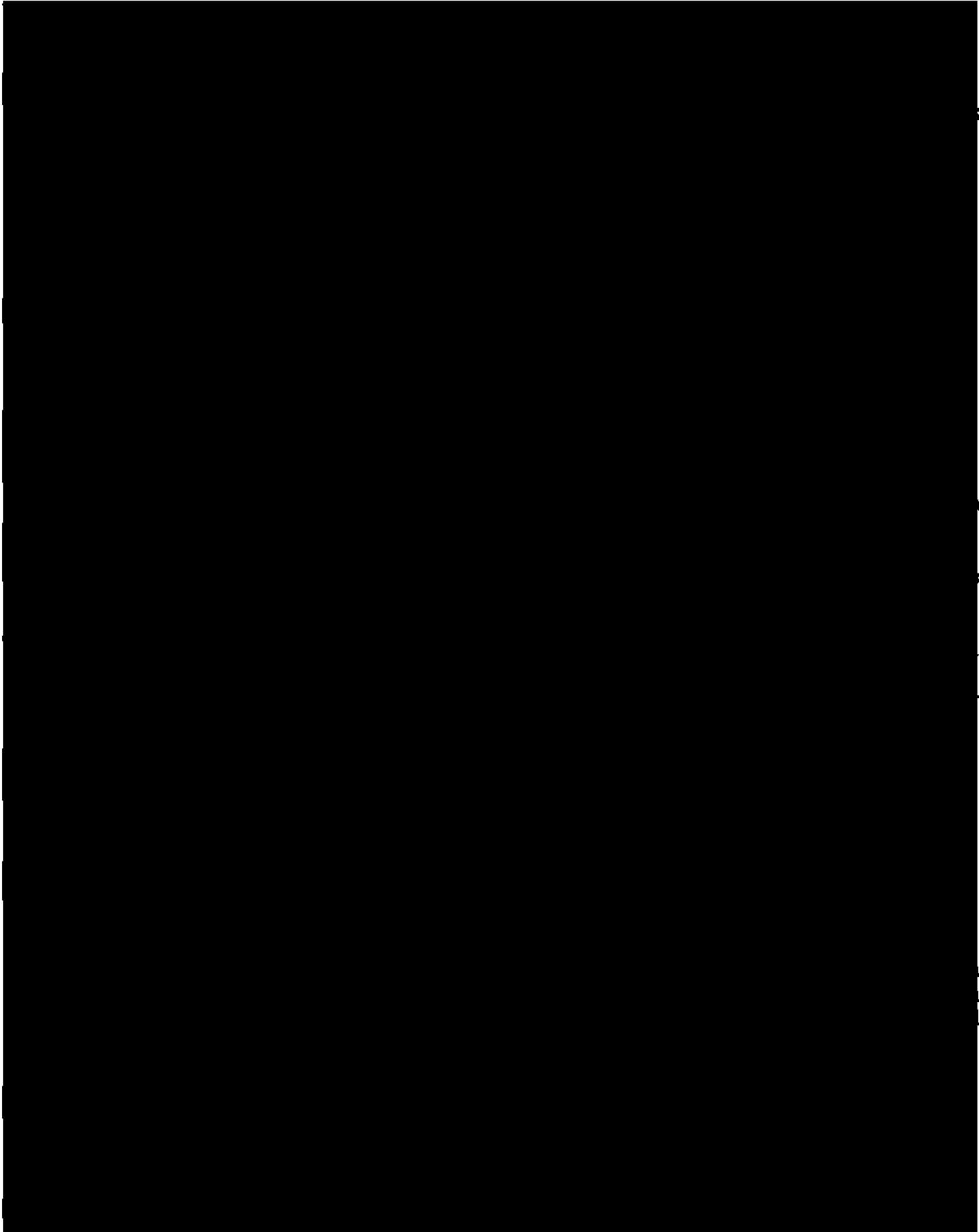
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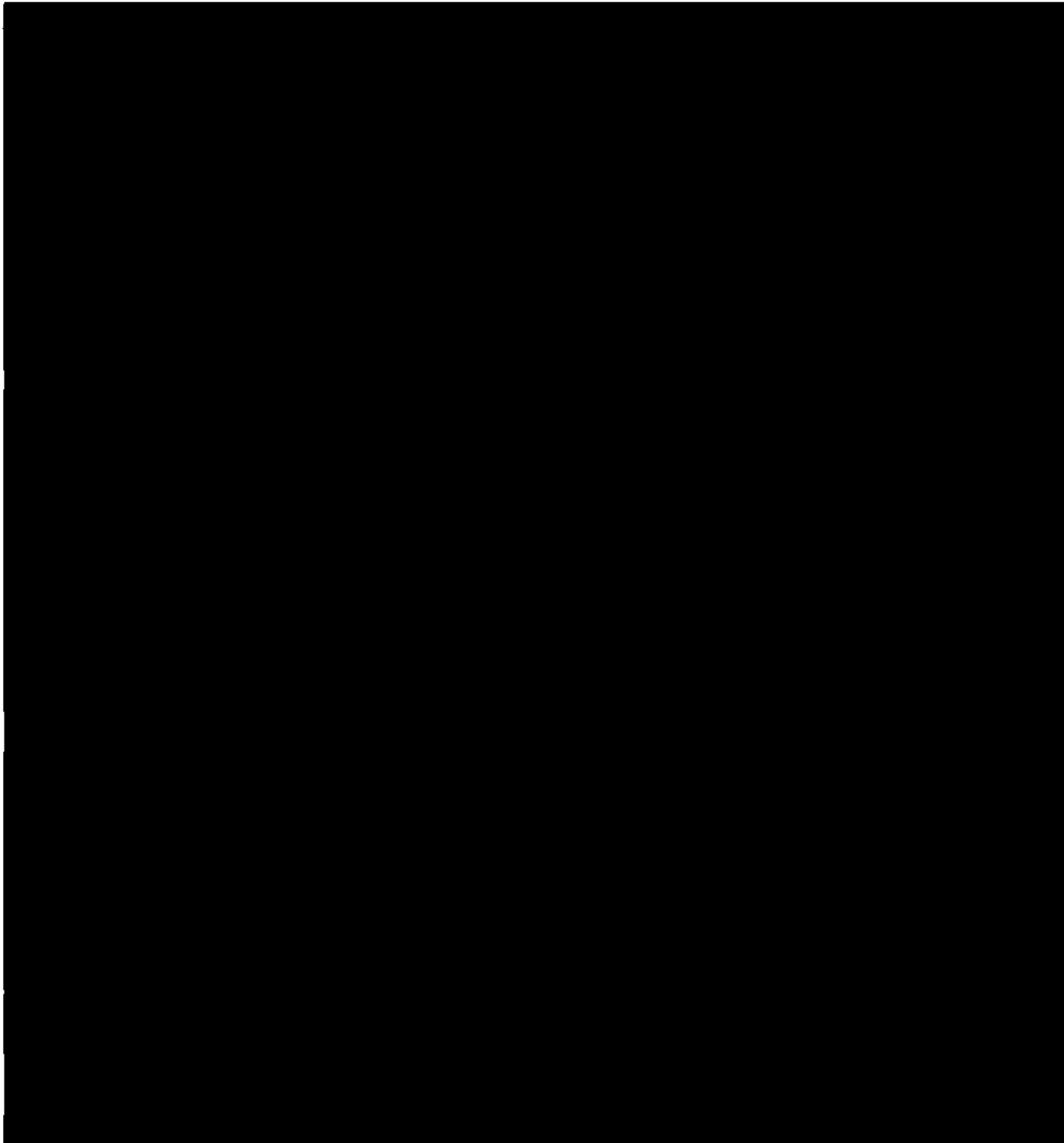
PRESENTENCE INVESTIGATION REPORT
BRECK WARDEN SMITH
CC#: C-19-337302-1

Page 2



PRESENTENCE INVESTIGATION REPORT
BRECK WARDEN SMITH
CC#: C-19-337302-1

Page 3

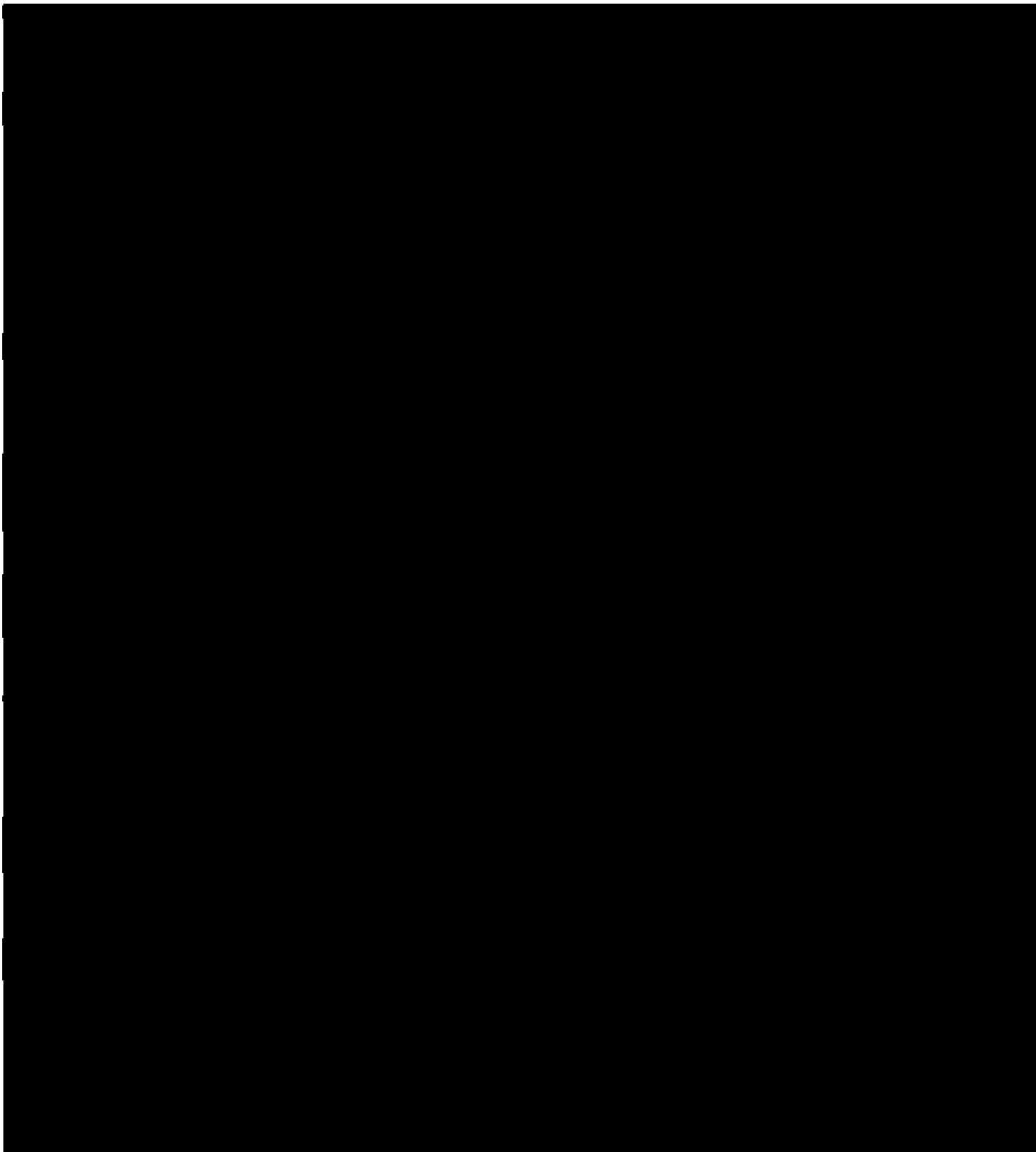


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BRECK WARDEN SMITH
CC#: C-19-337302-1

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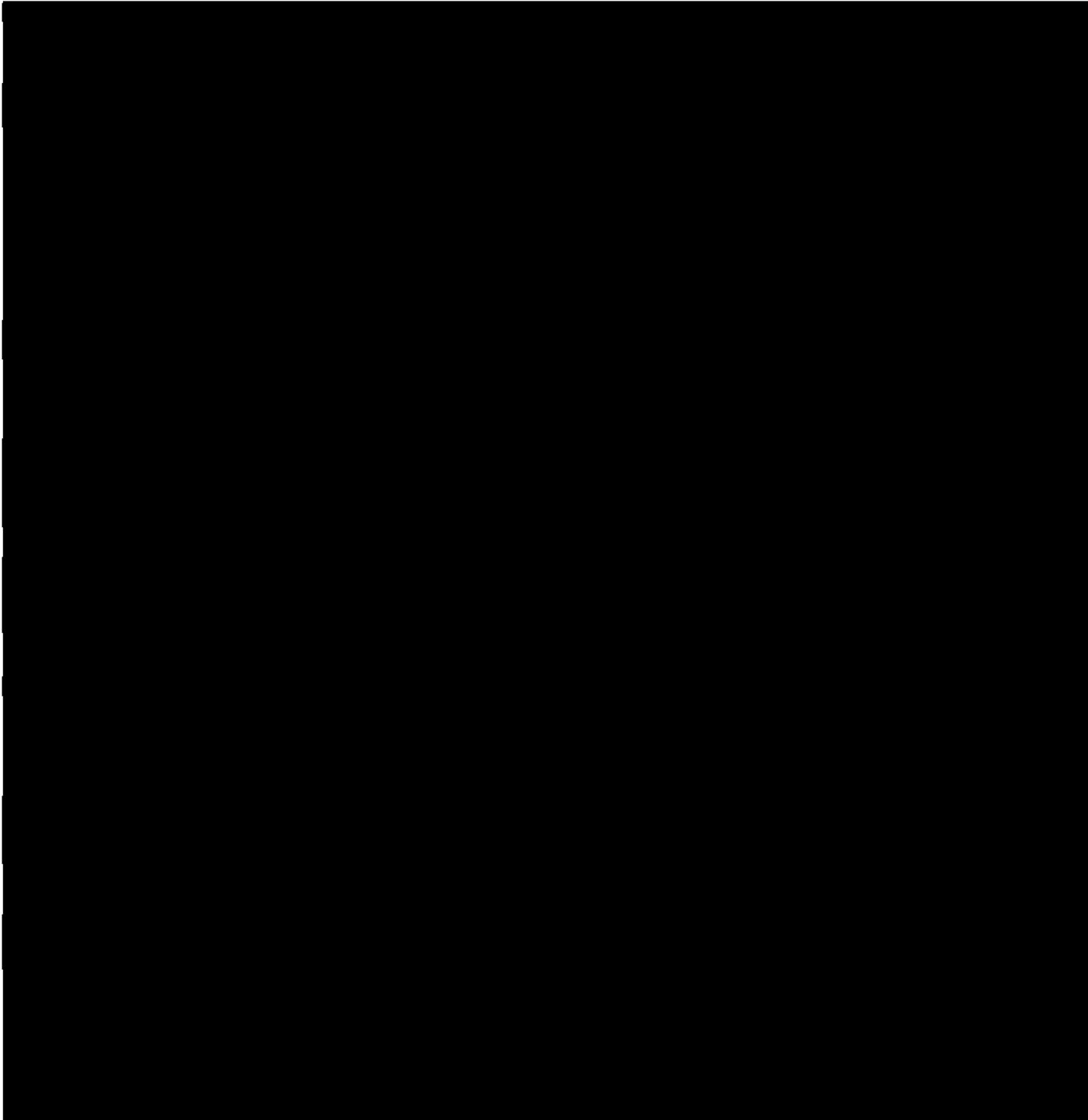
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BRECK WARDEN SMITH
CC#: C-19-337302-1

Page 5



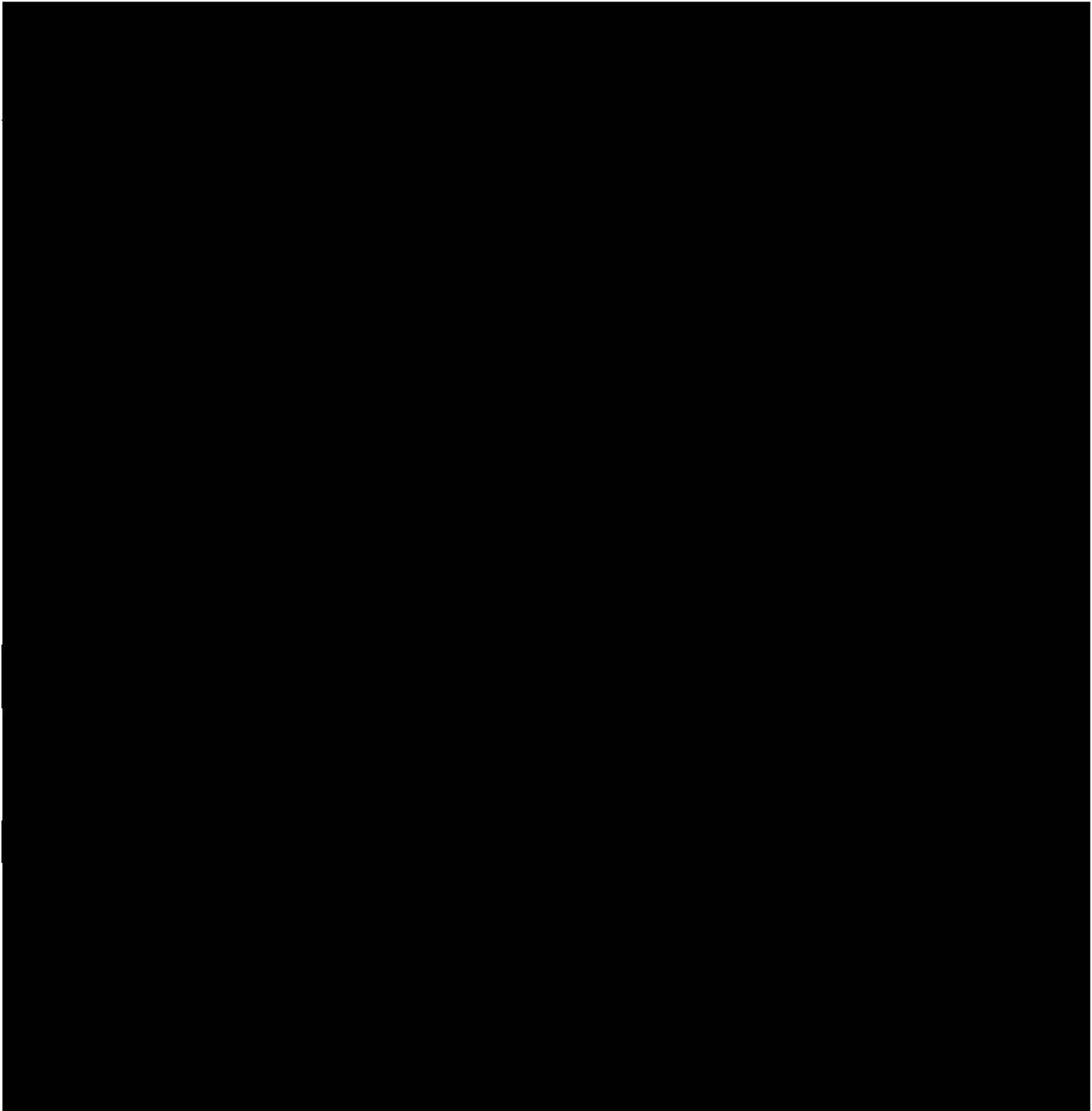
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BRECK WARDEN SMITH
CC#: C-19-337302-1

Page 6



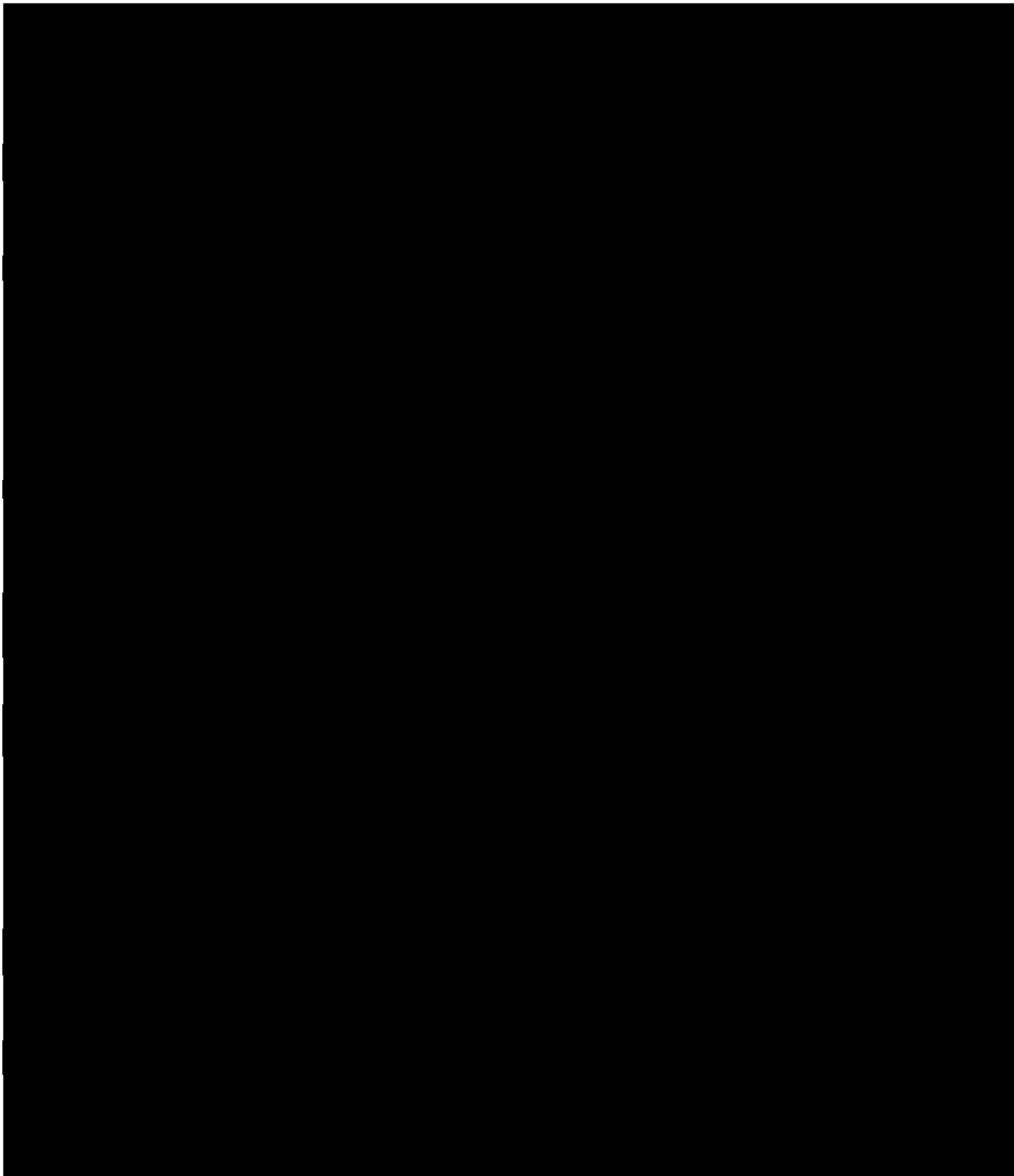
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BRECK WARDEN SMITH
CC#: C-19-337302-1

Page 7

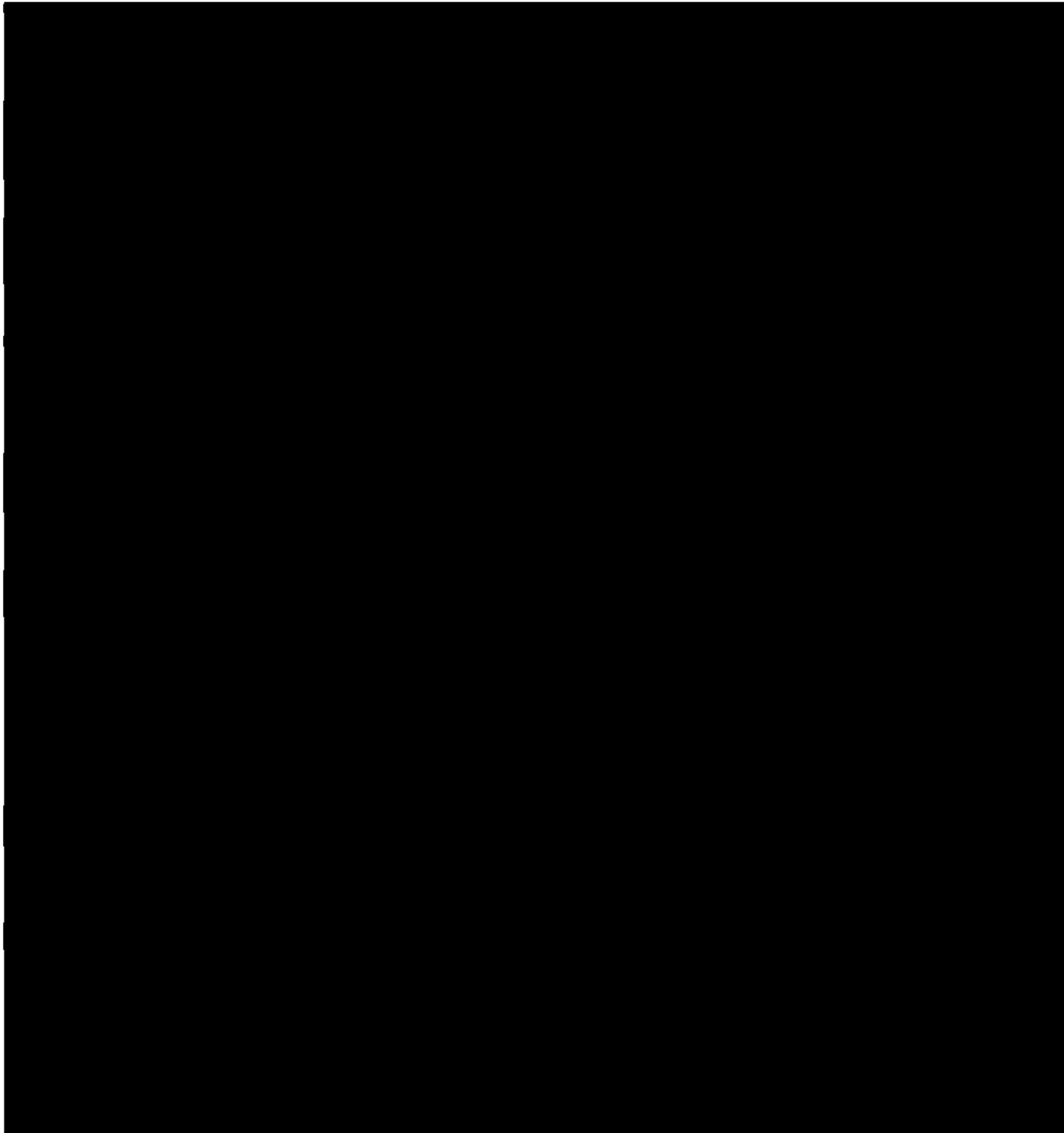


PRESENTENCE INVESTIGATION REPORT
BRECK WARDEN SMITH
CC#: C-19-337302-1

Page 8

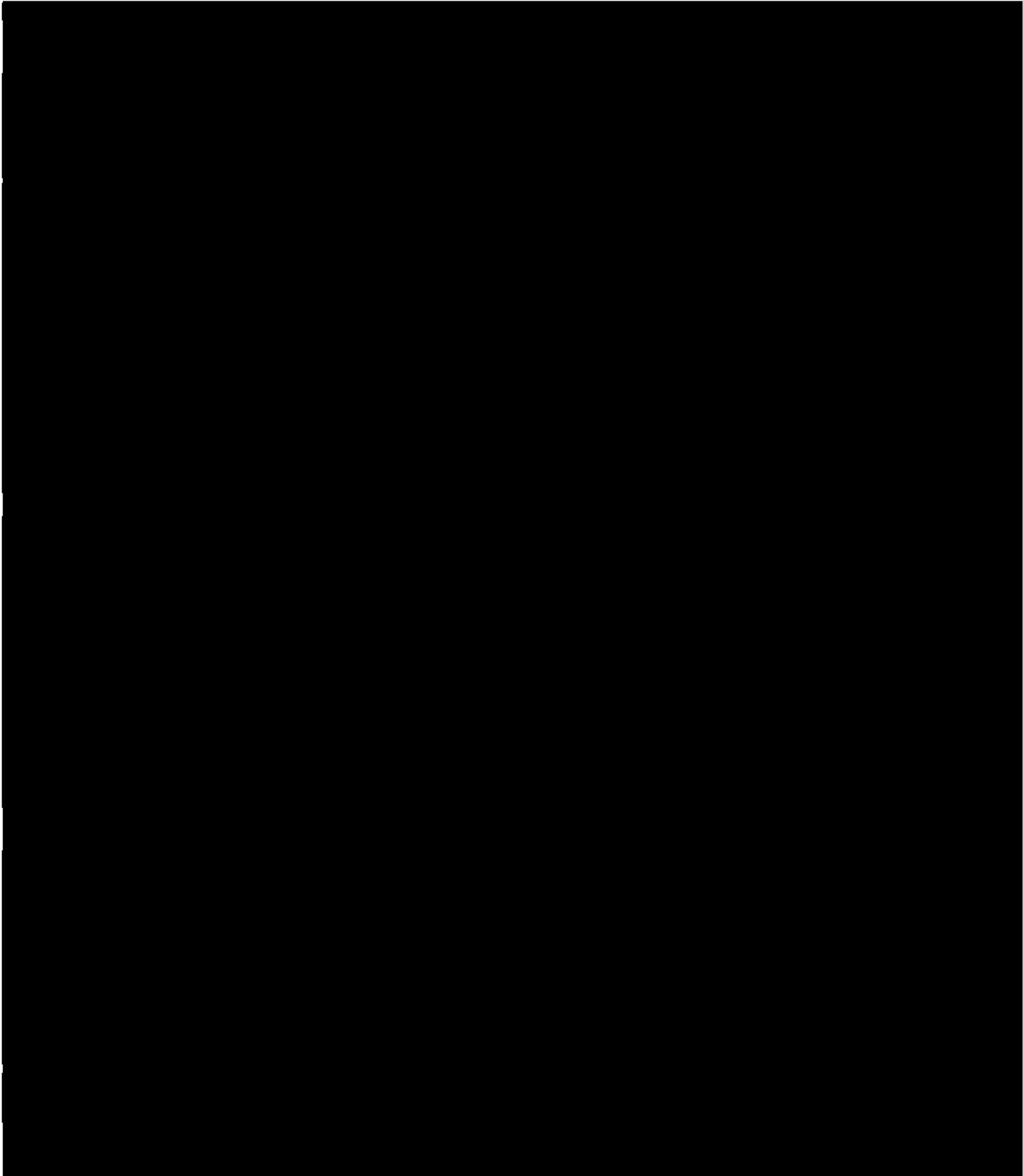


PRESENTENCE INVESTIGATION REPORT
BRECK WARDEN SMITH
CC#: C-19-337302-1



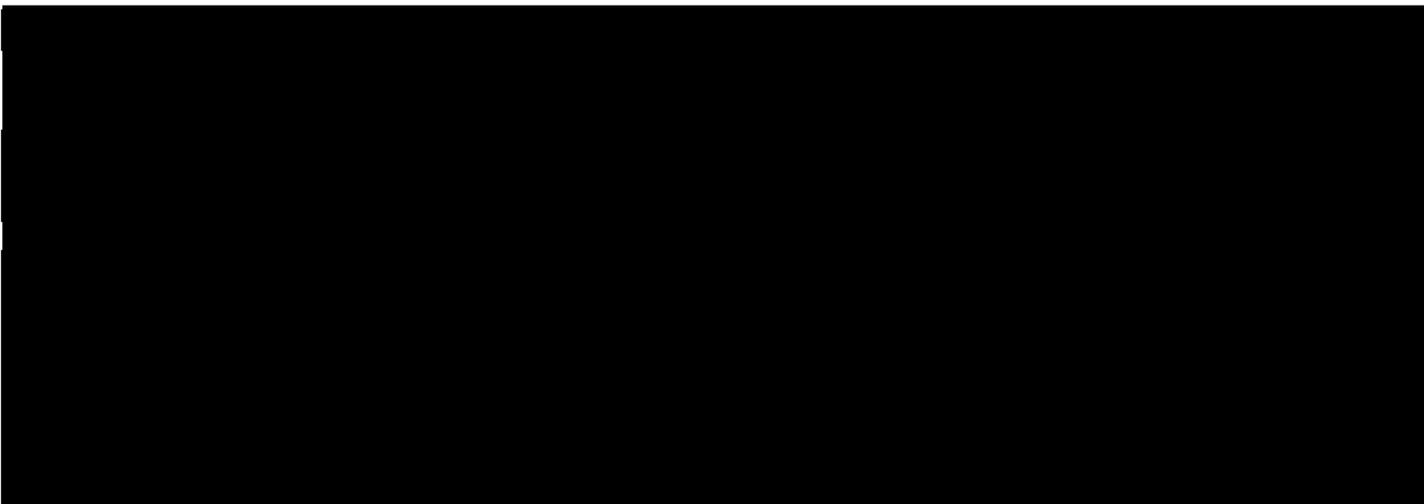
PRESENTENCE INVESTIGATION REPORT
BRECK WARDEN SMITH
CC#: C-19-337302-1

Page 10



**PRESENTENCE INVESTIGATION REPORT
BRECK WARDEN SMITH
CC#: C-19-337302-1**

Page 11



Respectfully Submitted,

Anne K. Carpenter, Chief

Report prepared by: Sandra Richards
DPS Parole and Probation, Specialist III
sccourtservices@dps.state.nv.us

Approved by:

KS Grotelueschen, Digitally signed by KS
Grotelueschen, Supervisor
Date: 2019.07.28 11:22:57 -07'00'
Supervisor
KS Grotelueschen, DPS Parole and Probation Supervisor
Southern Command, Las Vegas
sccourtservices@dps.state.nv.us

PRESENTENCE INVESTIGATION REPORT

Page 12

BRECK WARDEN SMITH**CC#: C-19-337302-1****STANDARD PROBATION AGREEMENT AND RULES IF THE COURT CHOOSES TO GRANT PROBATION:**

1. **Reporting:** You are to report in person to the Division of Parole and Probation as instructed by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.
2. **Residence:** You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.
3. **Intoxicants:** You shall not consume any alcoholic beverages (whatsoever) (to excess). Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood/breath alcohol content. Test results of .08 blood alcohol content or higher shall be sufficient proof of excess.
4. **Controlled Substances:** You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent.
5. **Weapons:** You shall not possess, have access to, or have under your control, any type of weapon.
6. **Search:** You shall submit your person, property, place of residence, vehicle or area under your control to search including electronic surveillance or monitoring of your location, at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.
7. **Associates:** You must have prior approval by the Division of Parole and Probation to associate with any person convicted of a felony, or any person on probation or parole supervision. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by the Division and the correctional institution.
8. **Directives and Conduct:** You shall follow the directives of the Division of Parole and Probation and your conduct shall justify the opportunity granted to you by this community supervision.
9. **Laws:** You shall comply with all municipal, county, state, and federal laws and ordinances.
10. **Out-of-State Travel:** You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
11. **Employment/Program:** You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
12. **Financial Obligation:** You shall pay fees, fines, and restitution on a schedule approved by the Division of Parole and Probation. Any excess monies paid will be applied to any other outstanding fees, fines, and/or restitution, even if it is discovered after your discharge.
13. **Special Conditions:**
 1. You shall submit your digital storage media or any digital storage media that you have access or use, including computers, handheld communication devices and any network applications associated with those devices, including social media and remote storage services to a search and shall provide all passwords, unlock codes and account information associated with those items, with or without a search warrant, by the Division of Parole and Probation or its agent.
 2. Any Other Condition As Determined By the Court.

Steve Sisolak
Governor

James M. Wright
Director



Natalie Wood
Chief

DIVISION OF PAROLE AND PROBATION

July 26, 2019

PROBATION SUCCESS PROBABILITY (PSP) SCORE

Offender: SMITH, BRECK
PSI #: 576274

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
0 = Deliberate

[REDACTED]

Social History:

Age: 3 = 40 or more
Employment/Program: 0 = Almost Non-existent
Financial: 2 = Could be developed
Employability: 2 = Readily/Not Needed/Mental Health

Family Situation: 2 = Moderately Supportive
Education: 2 = High School/GED/Vo-Tech
Military: 1 = Hon Discharge/No Mil Ser

Pre Sentence Adjustment:

Commitment/Ties: 2 = Local/In State
Program Participation: 3 = N/A
Honesty/Cooperation: 1 = Reluctant
Attitude/Supervision: 2 = Positive

Resource Availability: 2 = Available
Substance Drug: 3 = No Use
Substance Alcohol: 3 = Non-Problematic
Attitude/Offense: 1 = Indifferent

[REDACTED]

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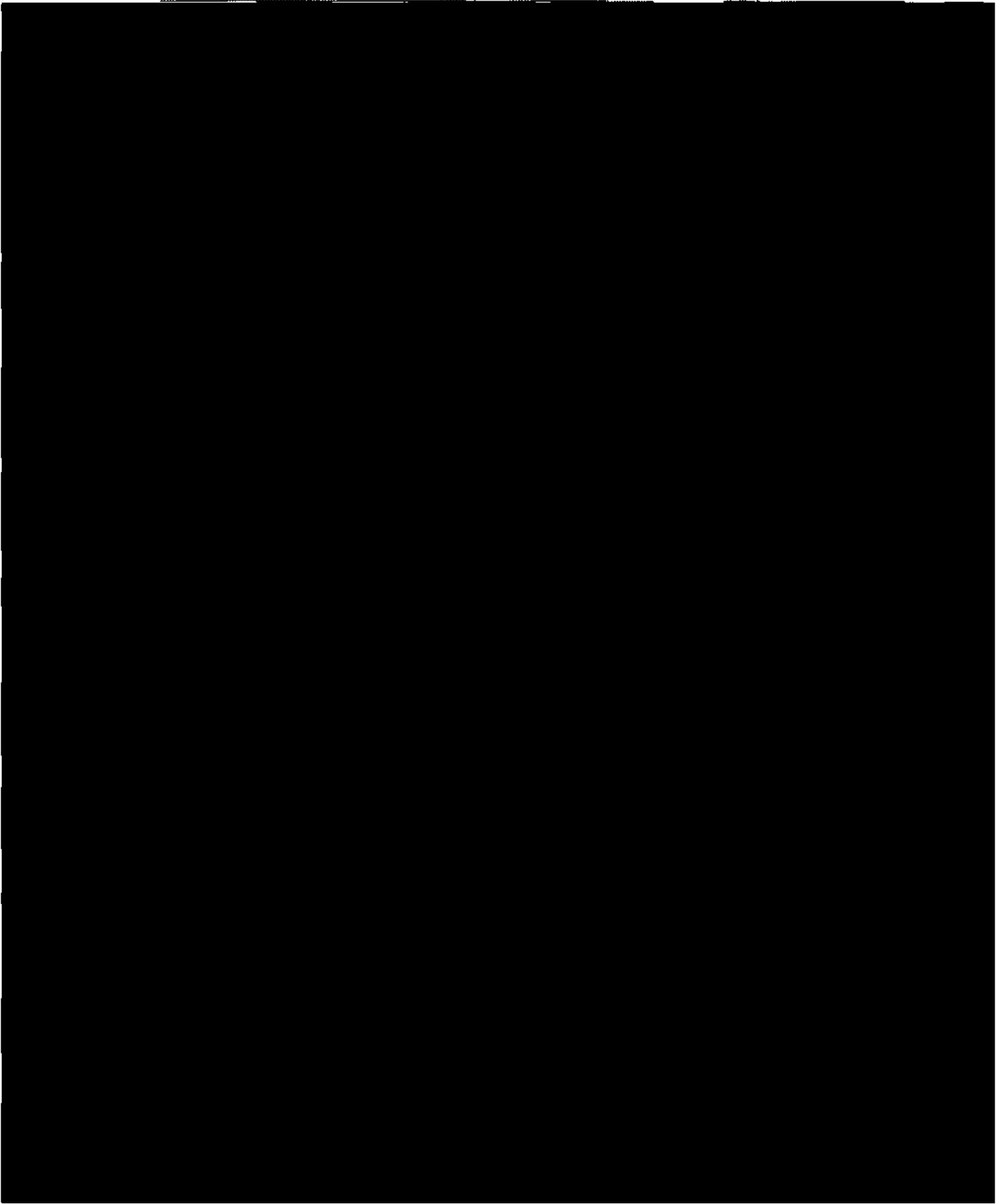
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF PAROLE AND PROBATION
SENTENCE RECOMMENDATION SELECTION SCALE

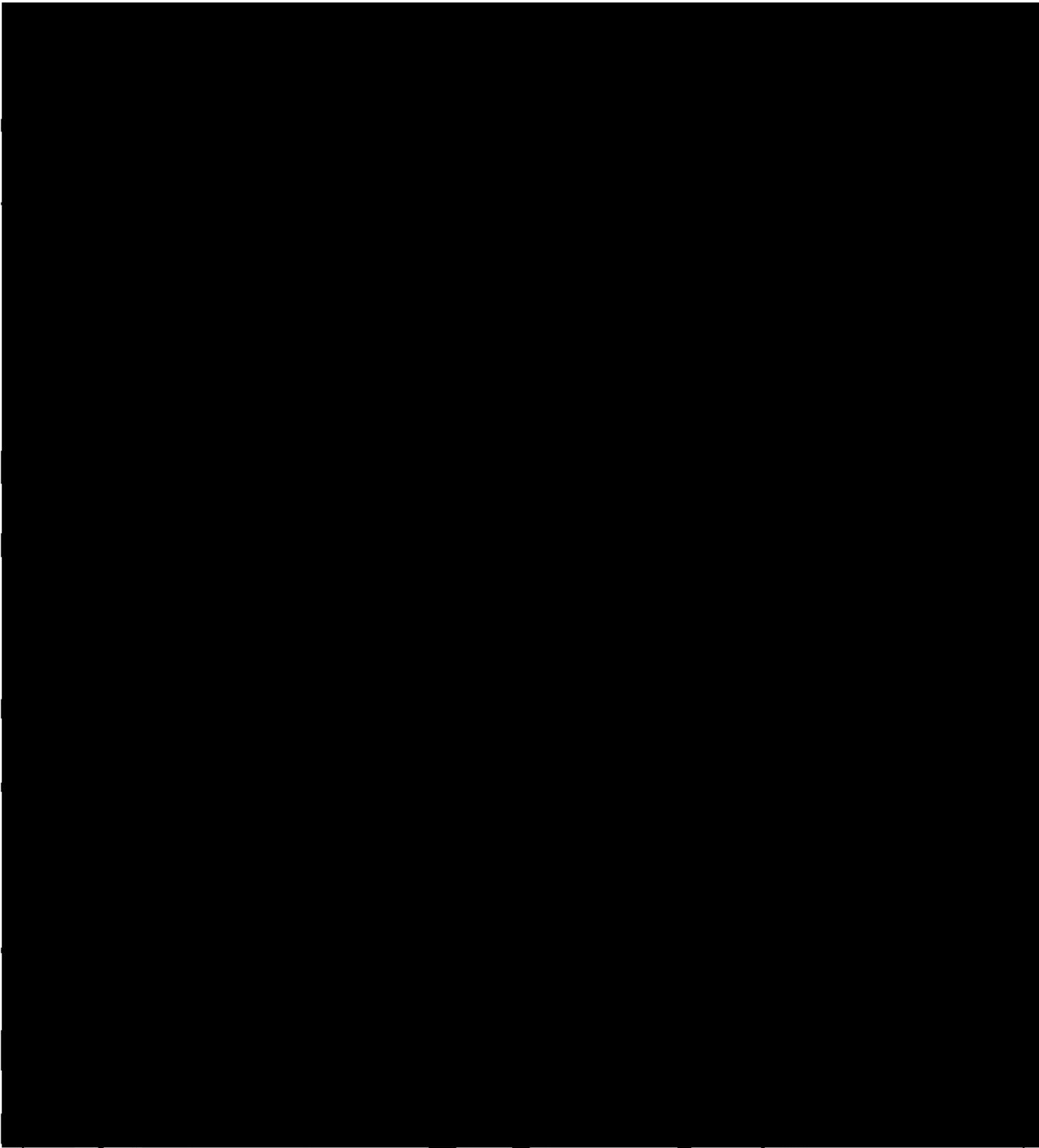
Felony

GM

Defendant's Name: BRECK WARDEN SMITH

CC# C-19-337302-1





Sandra Richards, Specialist III

Digitally signed by Sandra Richards, DN: cn=Sandra Richards, o=Parole and Probation, ou=Parole and Probation, email=srichards@state.tx.us, c=US

3388

Tuesday, July 23, 2019

Specialist:

CID #

Date

KS Grotelueschen, Supervisor

Digitally signed by KS Grotelueschen, DN: cn=KS Grotelueschen, o=Parole and Probation, ou=Parole and Probation, email=kgrotelueschen@state.tx.us, c=US

4336

Friday, July 26, 2019

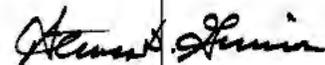
Supervisor:

CID #

Date

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Exhibit 2



CLERK OF THE COURT

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

Breck Warden Smith,

Defendant

District Court Case No.: C-19-337302-1
Dept.: XXV

Justice Court Case No.: 18F05188X

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

Dated this 10th day of January, 2019



Justice of the Peace, Las Vegas Township

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

4 STATE OF NEVADA,

5 Plaintiff,

6 vs.

7 Breck Warden Smith

8 Defendant
9

District Court Case No.:

Justice Court Case No.: 18F05188X

10 **BINDOVER and ORDER TO APPEAR**

11 An Order having been made this day by me that **Breck Warden Smith** be held to
12 answer before the Eighth Judicial District Court, upon the charge(s) of **Att burglary**
13 **[50442]; Att home invasion [50446]; Poss burglary tools [50441]** committed in said
14 Township and County, on March 22, 2018 .

15 **IT IS FURTHER ORDERED** that said defendant is commanded to appear in the
16 Eighth Judicial District Court, Regional Justice Center, Lower Level Arraignment
17 Courtroom "A", Las Vegas, Nevada on January 14, 2019 at 10:00 AM for arraignment
18 and further proceedings on the within charge(s).

19 **IT IS FURTHER ORDERED** that the Sheriff of the County of Clark is hereby
20 commanded to receive the above named defendant(s) into custody, and detain said
21 defendant(s) until he/she can be legally discharged, and be committed to the custody of the
22 Sheriff of said County, until bail is given in the sum of \$7,000/7,000 Total Bail.

23 Dated this 10th day of January, 2019

24 

25 Justice of the Peace, Las Vegas Township
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27
28

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

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5 08/23/18

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27 18F05188X/ckb/L4
28 LVMPD.EV# 1803222077
(TK1)

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

3 THE STATE OF NEVADA, 2018 MAR 26 A 8:35

4 Plaintiff, JUSTICE COURT
LAS VEGAS NEVADA

CASE NO: 18F05188X

5 -vs-

6 BY DEPUTY GEG

DEPT NO: 1

7 BRECK WARDEN SMITH #806628,

8 Defendant.

CRIMINAL COMPLAINT

9 The Defendant above named having committed the crimes of ATTEMPT BURGLARY
10 (Category C Felony - NRS 205.060, 193.330 - NOC 50442) and POSSESSION OF
11 BURGLARY TOOLS (Gross Misdemeanor - NRS 205.080 - NOC 50441), in the manner
12 following, to-wit: That the said Defendant, on or about the 22nd day of March, 2018, at and
13 within the County of Clark, State of Nevada,

14 COUNT 1 - ATTEMPT BURGLARY

15 did willfully, unlawfully, and feloniously attempt to enter, with intent to commit
16 larceny, that certain building located at 10091 Edwardian Street, Las Vegas, Clark County,
17 Nevada, occupied by LEOMER SARMIENTO, by knocking on doors and windows.

18 COUNT 2 - POSSESSION OF BURGLARY TOOLS

19 did willfully and unlawfully have in his possession, a tool, to wit: a utility vest and/or
20 clipboard and/or a badge, which is commonly used for the commission of a burglary, invasion
21 of the home, larceny, and/or other crime, under circumstances evincing an intent to use or
22 employ said tools in the commission of a crime.

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

26 
03/23/18

27 18F05188X/mab
28 LVMPD EV# 1803222077
(TK1)

18F05188X
CRM
Criminal Complaint
9211443



Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

Department: 01



L009218601

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: Public Defender

3/27/2018 7:30:00 AM Initial Appearance (In
Custody)

Result: Matter Heard

PARTIES PRESENT:
State Of Nevada
Attorney
Defendant
Scheible, Melanie L
Gaston, Tyler
Smith, Breck Warden

Judge: Pro Tempore, Judge

Court Reporter: McIntosh, Shawna

Pro Tempore: Hua, Jeannie

Court Clerk: Howard, Erika

PROCEEDINGS

Attorneys: Gaston, Tyler Smith, Breck Warden Added
Public Defender Smith, Breck Warden Added

Hearings: 6/13/2018 9:00:00 AM: Preliminary Hearing Added

Events: **Initial Appearance Completed**
Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint
Public Defender Appointed
Defense waives the 15 day rule
Bail Stands - Cash or Surety Amount: \$7,000.00
Counts: 001; 002 - \$7,000.00/\$7,000.00 Total Bail

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

Department: 01



L009551750

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: C. Benjamin Scroggins

6/13/2018 9:00:00 AM Preliminary Hearing (In custody)

Result: Matter Heard

PARTIES PRESENT:
State Of Nevada Attorney Defendant
Jones, John
Scroggins, C. Benjamin
Smith, Breck Warden

Judge: Walsh, Robert J.
Court Reporter: McIntosh, Shawna
Court Clerk: Howard, Erika

PROCEEDINGS

Hearings: 7/16/2018 7:30:00 AM: Negotiations Added

Events: **Motion to Continue - Defense**

Granted

Continued For Negotiations

Bail Stands - Cash or Surety

Amount: \$7,000.00

Counts: 001; 002 - \$7,000.00/\$7,000.00 Total Bail

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

Department: 01



L009682906

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: Thomas A. Ericsson

7/16/2018 7:30:00 AM Negotiations (In Custody)

Result: Matter Heard

PARTIES PRESENT: State Of Nevada Attorney Jones, John Ericsson, Thomas A.
Judge: Walsh, Robert J.
Court Reporter: McIntosh, Shawna
Court Clerk: Orozco, Evelyn

PROCEEDINGS

Attorneys: Ericsson, Thomas A. Smith, Breck Warden Added

Hearings: 7/30/2018 7:30:00 AM: Negotiations Added

Events: Counsel Substitutes in as Attorney of Record

T. Ericson, Esq.

Motion to Continue - Defense

Granted

Continued For Negotiations

Bail Stands - Cash or Surety

Amount: \$7,000.00

Counts: 001; 002 - \$7,000.00/\$7,000.00 Total Bail

Defendant not Transported

Defendant currently at Nevada State Prison

Custody Comment

Defendant currently at Nevada State Prison

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

Department: 01



L009743529

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: Thomas A. Ericsson

7/30/2018 7:30:00 AM Negotiations (In Custody)

Result: Matter Heard

PARTIES PRESENT:
State Of Nevada
Attorney
Defendant
Scheible, Melanie L
Ericsson, Thomas A.
Smith, Breck Warden

Judge: Walsh, Robert J.
Court Reporter: McIntosh, Shawna
Court Clerk: Orozco, Evelyn

PROCEEDINGS

Hearings: 8/20/2018 7:30:00 AM: Negotiations Added

Events: **Motion to Continue - Defense**

Granted

Continued For Negotiations

Bail Stands - Cash or Surety *Amount: \$7,000.00*

Counts: 001; 002 - \$7,000.00/\$7,000.00 Total Bail

Custody Comment

Defendant is in custody at High Desert State Prison

**Justice Court, Las Vegas Township
Clark County, Nevada**

Court Minutes

Department: 01



L009829601

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: Thomas A. Ericsson

8/20/2018 7:30:00 AM Negotiations (In Custody)

Result: Matter Heard

PARTIES PRESENT: State Of Nevada Wong, Hetty
Attorney Ericsson, Thomas A.
Defendant Smith, Breck Warden

Judge: Walsh, Robert J.

Court Reporter: Grime, Joanie

Court Clerk: Howard, Erika

PROCEEDINGS

Hearings: 9/4/2018 9:00:00 AM: Preliminary Hearing Added

Events: **Matter Not Negotiated - Preliminary Hearing/Trial
Date Set**

Preliminary Hearing Date Reset

Bail Stands - Cash or Surety Amount: \$7,000.00

Counts: 001; 002 - \$7,000.00/\$7,000.00 Total Bail

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: 01

Court Minutes



L009881086

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: Thomas A. Ericsson

8/30/2018 7:30:00 AM Motion (In Custody (High Desert))

Result: Matter Heard

PARTIES PRESENT: State Of Nevada Lexis, Chad
Attorney Ericsson, Thomas A.

Judge: Walsh, Robert J.
Court Reporter: McIntosh, Shawna
Court Clerk: Howard, Erika

PROCEEDINGS

Events: **Motion by State to File an Amended Criminal Complaint**
Granted
Amended Criminal Complaint
Filed in open court
Remand - Cash or Surety
Counts: 001; 002; 003 - \$7,000.00/\$7,000.00 Total Bail
Future Court Date Stands
September 4, 2018 9am
Preliminary Hearing

Charges: **Amended: 003: Possess burglary tools** Amended Complaint Filed
002: Attempted home invasion

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: 01

Court Minutes



L009894145

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: Thomas A. Ericsson

**9/4/2018 9:00:00 AM Preliminary Hearing (In
Custody(Prison))**

Result: Matter Heard

PARTIES PRESENT:	State Of Nevada	Wong, Hetty
	Attorney	Ericsson, Thomas A.
	Defendant	Smith, Breck Warden

Judge: Walsh, Robert J.

Court Reporter: Grime, Joanie

Court Clerk: Howard, Erika

PROCEEDINGS

Hearings: 9/18/2018 7:30:00 AM: Negotiations Added

Events: **Motion to Continue - Defense**

Granted

Continued For Negotiations

Bail Stands - Cash or Surety *Amount: \$7,000.00*

Counts: 001; 002; 003 - \$7,000.00/\$7,000.00 Total Bail

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

Department: 01



L009954301

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: Thomas A. Ericsson

**9/18/2018 7:30:00 AM Negotiations (In custody
(Prison))**

Result: Matter Heard

PARTIES PRESENT: State Of Nevada Wong, Hetty
Attorney Ericsson, Thomas A.
Defendant Smith, Breck Warden

Judge: Pro Tempore, Judge

Court Reporter: Grime, Joanie

Court Clerk: Howard, Erika

Pro Tempore: Jansen, William D.

PROCEEDINGS

Hearings: 10/10/2018 9:00:00 AM: Preliminary Hearing Added

Events: **Preliminary Hearing Date Reset**

**Matter Not Negotiated - Preliminary Hearing/Trial
Date Set**

Bail Stands - Cash or Surety Amount: \$7,000.00

Counts: 001; 002; 003 - \$7,000.00/\$7,000.00 Total Bail

Justice Court, Las Vegas Township
Clark County, Nevada

Court Minutes

Department: 01



L010047599

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: Thomas A. Ericsson, ESQ

10/10/2018 9:00:00 AM Preliminary Hearing (In Custody(Prison))

Result: Matter Heard

PARTIES PRESENT: State Of Nevada Cole, Madilyn
Attorney Ericsson, Thomas A., ESQ
Defendant Smith, Breck Warden

Judge: Walsh, Robert J.
Court Reporter: McIntosh, Shawna
Court Clerk: Orozco, Evelyn

PROCEEDINGS

Hearings: 10/24/2018 7:30:00 AM: Negotiations Added

Events: **Side Bar Conference Held**
Motion to Continue - Defense
Granted

Continued For Negotiations

Presence Waived

for Defendant

Bail Stands - Cash or Surety Amount: \$7,000.00

Counts: 001; 002; 003 - \$7,000.00/\$7,000.00 Total Bail

18F05188X

Smith, Breck Warden Attorney: Ericsson, Thomas A., ESQ

10/24/2018 7:30 AM

ScopeID: 806628

Hearing Type

Hearing Comment



L010098611

Negotiations

In Custody(Prison)

Date	Related Event	Comment
10/10/2018	Bail Stands - Cash or Surety	Counts: 001; 002; 003 - \$7,000.00/\$7,000.00 Total Bail
10/10/2018	Presence Waived	for Defendant

Case Flags: Original Track 01

Sentencing Information

1 Attempted burglary [50442] (3/22/2018) (F) PCN/SEQ: 0025742615 001

Plea:

Disp:

2 Attempted home invasion [50446] (3/22/2018) (F) PCN/SEQ: 0025742615 003

Plea:

Disp:

3 Possess burglary tools [50441] (3/22/2018) (G) PCN/SEQ: 0025742615 002

Plea:

Disp:

MNN
PHR
B STOS
CSS

1/10 9am

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: 09

Court Minutes



L010392483

18F05188X State of Nevada vs. Smith, Breck Warden

Lead Atty: Thomas A. Ericsson, ESQ

1/10/2019 9:00:00 AM Preliminary Hearing (In Custody)

Result: Bound Over

PARTIES PRESENT:	State Of Nevada Attorney Defendant	Cole, Madilyn Ericsson, Thomas A., ESQ Smith, Breck Warden
Judge:	Bonaventure, Joseph M.	
Court Reporter:	Camgemi, Robert	
Court Clerk:	Cardwell, Ryan	

PROCEEDINGS

Events: Unconditional Bind Over to District Court Review Date: 1/11/2019

Defendant unconditionally waives right to Preliminary Hearing. Defendant Bound Over to District Court as Charged. Defendant to Appear in the Lower Level Arraignment Courtroom A.

District Court Appearance Date Set

Jan 14 2019 10:00AM: In Custody

Case Closed - Bound Over

Bail Stands - Cash or Surety *Amount: \$7,000.00*

Counts: 001; 002; 003 - \$7,000.00/\$7,000.00 Total Bail

Plea/Disp: 001: Att burglary [50442]
Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

002: Att home invasion [50446]
Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

003: Poss burglary tools [50441]
Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

**Justice Court, Las Vegas Township
Clark County, Nevada**

Court Minutes

Department: PC



L009205834

PC18F05188X State of Nevada vs. Smith, Breck Warden

**3/23/2018 9:00:00 AM Initial Appearance Justice
Court (PC Review)**

Result: Signing Completed

**PARTIES
PRESENT:**

Judge: Walsh, Robert J.
Court Clerk: Cardenas, Pompeya

PROCEEDINGS

Hearings: 3/27/2018 7:30:00 AM: 72 Hour Hearing Added

Events: **Probable Cause Found**
Bail Reset - Cash or Surety
Counts: 001; 002 - \$7,000.00/\$7,000.00 Total Bail

1 C. BENJAMIN SCROGGINS, ESQ.
Nevada Bar No. 7902
2 HUTCHINGS LAW GROUP, LLC
552 East Charleston Boulevard
3 Las Vegas, Nevada 89104
Tel.: (702) 660-7700
4 Fax: (702) 552-5202
Email: benscrogginsesq@gmail.com

5 *Attorney for Defendant,*
6 *BRECK SMITH*

7 **IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP**

8 **COUNTY OF CLARK, STATE OF NEVADA**

9 THE STATE OF NEVADA,
10 Plaintiff,

11 vs.

12 BRECK WARDEN SMITH,
13 Defendant.

Case No.: 18F05188X
Dept. No.: 1

14 **NOTICE OF ENTRY OF SUBSTITUTION OF ATTORNEY**

15 TO: THE STATE OF NEVADA;
16 TO: THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE; and
17 TO: THE CLARK COUNTY PUBLIC DEFENDER.

18 YOU AND EACH OF YOU will please take notice that a Substitution of Attorney was
19 filed in the above-referenced case on the 10th day of April, 2018. A true and correct copy of the

20 ///

21 ///

22 ///

FILED

2018 APR 10 P 4:01

JUSTICE COURT
LAS VEGAS NEVADA

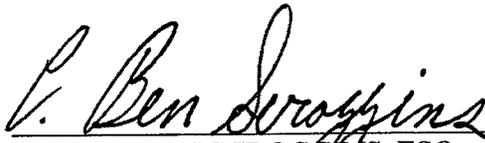
BY _____
DEPUTY



1 Substitution is attached hereto as Exhibit "A." Take due notice thereof and govern yourselves
2 accordingly.

3 GIVEN this 10th day of April, 2018.

4 HUTCHINGS LAW GROUP, LLC

5 

6 C. BENJAMIN SCROGGINS, ESQ.

7 Nevada Bar No. 7902

8 552 East Charleston Boulevard

9 Las Vegas, Nevada 89104

10 *Attorney for Defendant,*

11 *BRECK W. SMITH*

12 **CERTIFICATE OF SERVICE**

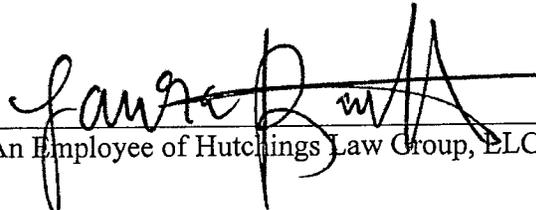
13 I hereby certify that I served a true and correct copy of the foregoing NOTICE OF
14 ENTRY OF SUBSTITUTION OF ATTORNEY on the 10th day of April, 2018, by depositing
15 the same for mailing in the United States mail, postage prepaid, addressed to the following:

16 Clark County Public Defender
17 309 South Third Street
18 Las Vegas, Nevada 89155

19 Clark County District Attorney
20 Criminal Division
21 200 Lewis Avenue
22 Las Vegas, Nevada 89101

23 DATED this 10th day of April, 2018.

24 By:

25 
26 An Employee of Hutchings Law Group, ELC

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Exhibit "A"

FILED

2018 APR 10 A 9:39

JUSTICE COURT
LAS VEGAS NEVADA

BY AMC
DEPUTY

1 C. BENJAMIN SCROGGINS, ESQ.
Nevada Bar No. 7902
2 **HUTCHINGS LAW GROUP, LLC**
552 East Charleston Boulevard
3 Las Vegas, Nevada 89104
Tel.: (702) 660-7700
4 Fax: (702) 552-5202
Email: benscrogginsesq@gmail.com

5 *Attorney for Defendant,*
6 **BRECK SMITH**

7 **IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP**

8 **COUNTY OF CLARK, STATE OF NEVADA**

9 THE STATE OF NEVADA,
10 Plaintiff,

Case No.: 18F05188X
Dept. No.: 1

11 vs.

12 BRECK WARDEN SMITH,
13 Defendant.

14 **SUBSTITUTION OF ATTORNEY**

15 Defendant, BRECK WARDEN SMITH, hereby substitutes C. BENJAMIN
16 SCROGGINS, ESQ. and HUTCHINGS LAW GROUP, LLC as his attorneys in place of the

17 ///

18 ///

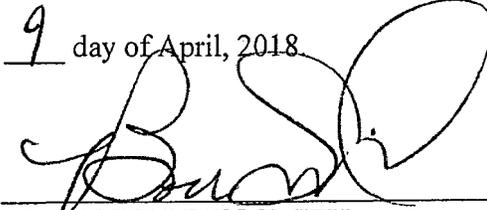
19 ///

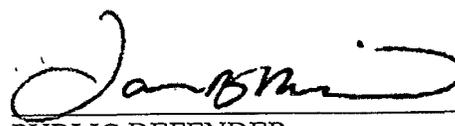
1 Clark County Public Defender. This substitution is made pursuant to JCRLV 30(b)(1).

2 CONSENT to the above substitution is hereby given:

3 This 9 day of April, 2018.

This 10th day of April, 2018.

4
5 By: 
6 BRECK WARDEN SMITH,
Defendant

5 By: 
PUBLIC DEFENDER
309 South Third Street
Las Vegas, Nevada 89155
(702) 455-4685

7 This 10 day of April, 2018.

8
9 By: 
10 C. BENJAMIN SCROGGINS, ESQ.
Nevada Bar No. 7902
11 HUTCHINGS LAW GROUP, LLC
552 East Charleston Boulevard
12 Las Vegas, Nevada 89104
(702) 660-7700

13 SUBMITTED this 10th day of April, 2018.

14
15 
16 C. BENJAMIN SCROGGINS, ESQ.
Nevada Bar No. 7902
17 HUTCHINGS LAW GROUP, LLC
552 East Charleston Boulevard
18 Las Vegas, Nevada 89104
Tel.: (702) 660-7700
19 Fax: (702) 552-5202
benscrogginsesq@gmail.com

20 **RECEIPT OF COPY**

21 I hereby acknowledge that on the ____ day of April, 2018, I received a copy of the
22 foregoing **SUBSTITUTION OF ATTORNEY** filed in Las Vegas Justice Court case number
23

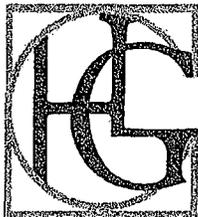
1 18F05188X, STATE OF NEVADA v. BRECK WARDEN SMITH, by hand delivery made at
2 my office located at:

3 The Office of the Clark County District Attorney
4 Criminal Division
5 200 Lewis Avenue
6 Las Vegas, Nevada 89101

7 DATED this 9 day of April, 2018.

8 By: 
9 An Employee of the Office of the Clark
10 County District Attorney

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HUTCHINGS LAW GROUP
ATTORNEYS AT LAW
552 E. Charleston Blvd.
Las Vegas, Nevada 89104
P: (702) 660-7700 F: (702) 552-5202
hutchingslawgroup.com

JC |

FILED

2018 APR 10 A 11:55

JUSTICE COURT
LAS VEGAS NEVADA

BY JW
DEPUTY

April 9, 2018

Sent Via Facsimile and U.S. Mail

Las Vegas Justice Court
Department 1
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Fax: (702) 671-2512

Re: State of Nevada v. Breck Warden Smith
Case number: 18F05188X

To whom it may concern:

Please be advised that this office represents Mr. Breck Warden Smith in the above-referenced case. Please direct all future notices and correspondence in this case to my attention. If you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,

HUTCHINGS LAW GROUP

C. Benjamin Scroggins
C. BENJAMIN SCROGGINS, ESQ.
Of Counsel

cc: Clark County District Attorney's Office

CBS

18F05188X
ACON
Notice of Confirmation of Counsel
9273981



**FAX COVER SHEET**

TO

COMPANY

FAXNUMBER 17026712512

FROM Mark Hutchings

DATE 2018-04-09 17:39:38 GMT

RE LVJC LOR Breck Warden

COVER MESSAGE

Laura Bautista
Legal Assistant
Hutchings Law Group, LLC
552 E. Charleston Blvd.
Las Vegas, NV 89104
P: 702-660-7700
F: 702-552-5202
lbautista@hutchingslawgroup.com

1 C. BENJAMIN SCROGGINS, ESQ.
Nevada Bar No. 7902
2 HUTCHINGS LAW GROUP, LLC
552 East Charleston Boulevard
3 Las Vegas, Nevada 89104
Tel.: (702) 660-7700
4 Fax: (702) 552-5202
Email: benscrogginsesq@gmail.com

5 *Attorney for Defendant,*
6 *BRECK SMITH*

7 **IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP**

8 **COUNTY OF CLARK, STATE OF NEVADA**

9 THE STATE OF NEVADA,
10 Plaintiff,

Case No.: 18F05188X
Dept. No.: 1

11 vs.

12 BRECK WARDEN SMITH,
13 Defendant.

14 **SUBSTITUTION OF ATTORNEY**

15 Defendant, BRECK WARDEN SMITH, hereby substitutes C. BENJAMIN
16 SCROGGINS, ESQ. and HUTCHINGS LAW GROUP, LLC as his attorneys in place of the

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18F05188X
SUBA
Substitution of Attorney
9273060



FILED

2018 APR 10 A 9:39

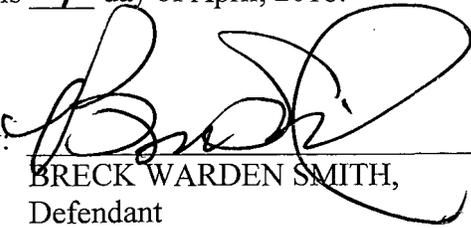
JUSTICE COURT
LAS VEGAS ~~NEVADA~~
BY _____
DEPUTY

1 Clark County Public Defender. This substitution is made pursuant to JCRLV 30(b)(1).

2 CONSENT to the above substitution is hereby given:

3 This 9 day of April, 2018.

This 10th day of April, 2018.

4
5 By: 
BRECK WARDEN SMITH,
6 Defendant

By: 
PUBLIC DEFENDER
309 South Third Street
Las Vegas, Nevada 89155
(702) 455-4685

7 This 10 day of April, 2018.

8
9 By: 
10 C. BENJAMIN SCROGGINS, ESQ.
Nevada Bar No. 7902
11 HUTCHINGS LAW GROUP, LLC
552 East Charleston Boulevard
12 Las Vegas, Nevada 89104
(702) 660-7700

13 SUBMITTED this 10th day of April, 2018.

14
15 
16 C. BENJAMIN SCROGGINS, ESQ.
Nevada Bar No. 7902
17 HUTCHINGS LAW GROUP, LLC
552 East Charleston Boulevard
18 Las Vegas, Nevada 89104
Tel.: (702) 660-7700
19 Fax: (702) 552-5202
benscrogginesq@gmail.com

20 **RECEIPT OF COPY**

21 I hereby acknowledge that on the _____ day of April, 2018, I received a copy of the
22 foregoing **SUBSTITUTION OF ATTORNEY** filed in Las Vegas Justice Court case number
23

1 18F05188X, STATE OF NEVADA v. BRECK WARDEN SMITH, by hand delivery made at
2 my office located at:

3 The Office of the Clark County District Attorney
4 Criminal Division
5 200 Lewis Avenue
6 Las Vegas, Nevada 89101

7 DATED this 9 day of April, 2018.

8 By: 
9 An Employee of the Office of the Clark
10 County District Attorney
11
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1 C. BENJAMIN SCROGGINS, ESQ.
Nevada Bar No. 7902
2 **HUTCHINGS LAW GROUP, LLC**
552 East Charleston Boulevard
3 Las Vegas, Nevada 89104
Tel.: (702) 660-7700
4 Fax: (702) 552-5202
Email: benscrogginsesq@gmail.com

5 *Attorney for Defendant,*
6 *BRECK SMITH*

7 **IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP**
8 **COUNTY OF CLARK, STATE OF NEVADA**

9 THE STATE OF NEVADA,
10 Plaintiff,

11 vs.

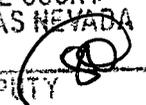
12 BRECK WARDEN SMITH,
13 Defendant.

Case No.: 18F05188X
Dept. No.: 1

FILED

2018 MAY 11 P 12:55

JUSTICE COURT
LAS VEGAS NEVADA

BY  DEPUTY

14 **DEFENDANT'S DEMAND FOR DISCOVERY PURSUANT TO NRS 171.1965**

15 TO: THE STATE OF NEVADA; and

16 TO: THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, its attorneys.

17 Defendant, BRECK WARDEN SMITH, by and through his attorney, C. BENJAMIN
18 SCROGGINS, ESQ. of HUTCHINGS LAW GROUP, LLC, hereby demands, pursuant NRS
19 171.1965, that the prosecuting attorney provide, not less than 5 (FIVE) judicial days before a
20 preliminary examination, copies of any:

21 (a) Written or recorded statements or confessions made by the defendant, or any
22 written or recorded statements made by a witness or witnesses, or any reports of statements or
23 confessions, or copies thereof, within the possession or custody of the prosecuting attorney;

(b) Results or reports of physical or mental examinations, scientific tests or scientific

18F05188X
MISF
Miscellaneous Filing
9415571



1 experiments made in connection with this particular case, or copies thereof, within the
2 possession or custody of the prosecuting attorney; and

3 (c) Books, papers, documents or tangible objects that the prosecuting attorney intends
4 to introduce in evidence during the case in chief of the State, or copies thereof, within the
5 possession or custody of the prosecuting attorney.

6 Please note that any and all evidence responsive to this demand that is within the custody
7 or possession of any investigating agency is deemed to be within your custody or possession.
8 This request is made in addition to, and does not affect, the obligation placed upon you by the
9 Constitution of the State of Nevada or the Constitution of the United States to disclose
10 exculpatory evidence to the defendant. Defendant hereby specifically requests that the State
11 produce any and all potentially exculpatory evidence and/or evidence that provides grounds for
12 the defense to attack the reliability, thoroughness, and good faith of the police investigation, to
13 impeach the credibility of the State's witnesses, or to bolster the defense case as required by the
14 Due Process Clause of the Fourteenth Amendment to the United States Constitution, as
15 interpreted by the Supreme Court of the United States in Brady v. Maryland, 373 U.S. 83 (1963),
16 and its progeny.

17 MADE this 10th day of May, 2018.

18 **HUTCHINGS LAW GROUP, LLC**

19 

20 C. BENJAMIN SCROGGINS, ESQ.
21 Nevada Bar No. 7902
22 552 East Charleston Boulevard
Las Vegas, Nevada 89104

23 *Attorney for Defendant,*
BRECK W. SMITH

AFFIDAVIT OF SERVICE

Case: 18f05188x	Court: District Court	County: Clark, NV	Job: 2287567
Plaintiff / Petitioner: State of Nevada		Defendant / Respondent: Breck W Smith	
Received by: Serve Vegas LLC		For: Hutchings Law Group, LLC	
To be served upon: Las Vegas Metropolitan Police Department			

FILED
2018 MAY 15 P 1:53
JUSTICE COURT
LAS VEGAS NEVADA

I, Jose Arellano, being duly sworn, depose and say: I am over the age of 18 years and not a party to this act. I declare that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Emmie Wood, Badge #15399, 400 S MARTIN L KING BLVD, LAS VEGAS, NV 89106

Manner of Service: Government Agency, May 14, 2018, 11:43 am PDT

Documents: Subpoena Duces Tecum

Additional Comments:

1) Successful Attempt: May 14, 2018, 11:43 am PDT at 400 S MARTIN L KING BLVD, LAS VEGAS, NV 89106 received by Emmie Wood, Badge #15399. Age: 67; Ethnicity: Caucasian; Gender: Female; Weight: 150; Height: 5'8"; Pursuant to NRS 14.020 Documents were served by leaving a true copy, with the person stated above, who is a person of suitable age and discretion at the most recent address of the registered agent shown on the information filed with the Secretary of State.

I declare under penalty of perjury that the foregoing is true and correct.



05/14/2018

Jose Arellano
R-062729

Date

Serve Vegas LLC
9811 W. Charleston Blvd 2-732
Las Vegas, NV 89117
702-478-0520

Dept 1

18F05188X
AFDV
Affidavit
9431735



ORIGINAL

1 STEVEN B. WOLFSON
Clark County District Attorney
2 Nevada Bar #001565
MELANIE SCHEIBLE
3 Deputy District Attorney
Nevada Bar #014266
4 200 Lewis Avenue
Las Vegas, Nevada 89155-2212
5 (702) 671-2500
Attorney for Plaintiff
6

FILED

2018 JUL 20 A 7 43

JUSTICE COURT
LAS VEGAS NEVADA

BY _____
DEPUTY **AMC**

7 JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA
8

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: 18F05188X

12 BRECK WARDEN SMITH,
#806628

DEPT NO: 1

13 Defendant.
14

15 **ORDER FOR PRODUCTION OF INMATE**
16 **BRECK WARDEN SMITH, BAC #77141**

17 DATE OF HEARING: JULY 30, 2018
TIME OF HEARING: 7:30 A.M.

18 TO: BRIAN WILLIAMS, Warden of the High Desert State Prison;

19 TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada

20 Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B.
21 WOLFSON, District Attorney, through MELANIE SCHEIBLE, Deputy District Attorney,
22 and good cause appearing therefor,

23 IT IS HEREBY ORDERED that BRIAN WILLIAMS, Warden of the High Desert State
24 Prison shall be, and is, hereby directed to produce BRECK WARDEN SMITH, in Case
25 Number 18F05188X, on a charge wherein THE STATE OF NEVADA is the Plaintiff,
26 inasmuch as the said BRECK WARDEN SMITH is currently incarcerated in the High Desert

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18F05188X
OPIN
Order for Production of Inmate
9702212



W:\2018\2018F05188\18F05188-OPI-(SMITH, BRECK)001.DOCX

RECEIVED

JUL 16 2018

JUSTICE COURT

1 State Prison located in Indian Springs, Nevada and his presence will be required in Las Vegas,
2 Nevada commencing on JULY 30, 2018, at the hour of 7:30 o'clock A.M. and continuing until
3 completion of the prosecution's case against the said Defendant.

4 IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County,
5 Nevada, shall accept and retain custody of the said BRECK WARDEN SMITH in the Clark
6 County Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark
7 County, or until the further Order of this Court; or in the alternative shall make all
8 arrangements for the transportation of the said BRECK WARDEN SMITH to and from the
9 Nevada State Prison facility which are necessary to insure the BRECK WARDEN SMITH'S
10 appearance in Clark County pending completion of said matter, or until further Order of this
11 Court.

12 DATED this 19th day of July, 2018.

13
14 
15 JUSTICE OF THE PEACE

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

19 BY 
20 MELANIE SCHEIBLE
21 Deputy District Attorney
22 Nevada Bar #014266

23
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27
28 ckb/L4

ORIGINAL FILED

2018 JUL 31 A 8:25

JUSTICE COURT
LAS VEGAS NEVADA

BY GMH
DEPUTY

1 **SUBT**
2 THOMAS A. ERICSSON, ESQ.
3 Nevada Bar No. 4982
4 Oronoz & Ericsson LLC
5 1050 Indigo Drive, Suite 120
6 Las Vegas, Nevada 89145
7 Telephone: (702) 878-2889
8 Facsimile: (702) 522-1542
9 tom@oronozlawyers.com
10 *Attorneys for Defendant*

6 **LAS VEGAS JUSTICE COURT**
7
8 **CLARK COUNTY, NEVADA**

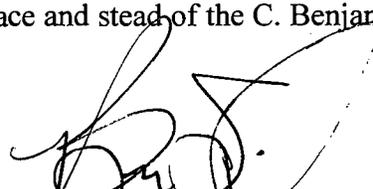
9 THE STATE OF NEVADA,
10 Plaintiff,
11 vs.
12 BRECK SMITH,
13 Respondent.

CASE NO.: 18F05188X
DEPT: 1

14 **SUBSTITUTION OF ATTORNEY**

15 I, BRECK SMITH, do hereby appoint and accept the appointment of THOMAS A.
16 ERICSSON, ESQ., as attorney of record in the place and stead of the C. Benjamin Scroggins.

17 DATED this 30 day of July, 2018.

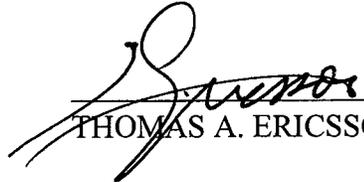
18 
19 BRECK SMITH

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18F05188X
SUBA
Substitution of Attorney
9747209



1 I, THOMAS A. ERICSSON, ESQ., do hereby accept the substitution of attorney
2 regarding BRECK SMITH.

3 DATED this 30 day of July, 2018.

4
5
6 
7 THOMAS A. ERICSSON, ESQ.
8

9 I hereby consent to the foregoing substitution, and hereby release all pleadings and papers
10 I have for BRECK SMITH.

11 DATED this 30th day of July, 2018.
12
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14

15 
16 C. BENJAMIN SCROGGINS
17 552 E. Charleston Blvd.
18 Las Vegas, NV 89104
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Imaged
CV

1 **ROC**
THOMAS A. ERICSSON, ESQ.
2 Nevada Bar No. 4982
Oronoz & Ericsson LLC
3 1050 Indigo Drive, Suite 120
Las Vegas, Nevada 89145
4 Telephone: (702) 878-2889
Facsimile: (702) 522-1542
5 tom@oronozlawyers.com
Attorneys for Defendant

6 **LAS VEGAS JUSTICE COURT**
7 **CLARK COUNTY, NEVADA**

8)
9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 vs.)
12 BRECK SMITH,)
Respondent.)

CASE NO.: 18F05188X
DEPT: 1

13)
14 **RECEIPT OF COPY**

15 RECEIPT OF COPY of the foregoing Substitution of Attorney is hereby acknowledged
16
17 this 31 day of July, 2018.

18
19 

20
21
22 **OFFICE OF THE DISTRICT ATTORNEY**
23 200 Lewis Avenue
24 Las Vegas, NV 89155

ORIGINAL

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

FILED

THE STATE OF NEVADA 2018 AUG 24 P 3: 56

Plaintiff, JUSTICE COURT
LAS VEGAS NEVADA

-vs-

BY ANG
DEPUTY

CASE NO: 18F05188X

DEPT NO: 1

BRECK WARDEN SMITH,
#806628

Defendant.

STATE'S MOTION TO AMEND CRIMINAL COMPLAINT

Upon the application of STEVEN B. WOLFSON, Clark County District Attorney, it is hereby requested that the above entitled matter be placed on the arraignment calendar on the 30th day of August, 2018, at 8:00 o'clock A.M. for the purpose of Motion to Amend Criminal Complaint.

DATED this 24th day of August, 2018.

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

BY Hetty O. Wong
HETTY O. WONG
Chief Deputy District Attorney
Nevada Bar #011324

BY [Signature]
CLERK OF THE COURT

CERTIFICATE OF EMAIL TRANSMISSION

I hereby certify that service of State's Motion to Amend Criminal Complaint was made this 24th day of August, 2018 by email transmission to THOMAS A. ERICSSON, ESQ. at tom@oronozlawyers.com.

BY: [Signature]
Secretary for the District Attorney's Office

ckb/L4
18F05188X
MOF
Motion
9857071



Exhibit 3

**STATE OF NEVADA
CERTIFICATION OF
BOARD OF PAROLE COMMISSIONERS ACTION
ORDER GRANTING PAROLE**

<u>SMITH, BRECK WARDEN</u>	77141	2008-042473	ISOC-U2-C-19-B	07/15/2020
Inmate Name	NDOC Number	Booking #	Location	Date

It is the Order of the Board that Parole is GRANTED. The effective date of parole is: 07/01/2020.

Release to the community or to a consecutive sentence is authorized on the above specified date. If "when eligible" is indicated, release is authorized on or after the date of this hearing upon attaining minimum eligibility, as determined by the Nevada Department of Corrections (NDOC).

You are expected to program and/or work constructively regardless of institutional setting, and you are expected to abide by the rules of the NDOC. Failure to work and/or program constructively, or violation of the rules of the NDOC may result in the rescission of this order and denial of parole.

NOTE: A parolee who violates a condition of his or her parole forfeits all or part of the credits for good behavior earned by the parolee after release on parole at the discretion of the Board. A parolee whose parole is revoked for having violated a condition of parole forfeits all credits for good behavior previously earned to reduce his or her sentence pursuant to NRS 209. The Board may restore any forfeited credits at its discretion.

THIS ACTION APPLIES TO THE FOLLOWING SENTENCE(S):

*Controlling sentence denoted by *, Case #: Count: Offense Description:*

- 232119; 1; BURGLARY
- 232113; 1; HABITUAL CRIMINAL (GREATER)
- 240508; 1; HABITUAL CRIMINAL (GREATER)
- 232109; 1; HABITUAL CRIMINAL (GREATER)

Reason(s) for action:

Grant Reason: The inmate must serve a consecutive sentence.

Recommendation of the panel who conducted the hearing: Grant Parole

- Chairman Christopher Dericco, Grant Parole
- Commissioner Tony Corda, Grant Parole
- Commissioner Mary Baker, Grant Parole

The final action was ratified by the following Members of the Board of Parole Commissioners:

- Chairman Christopher Dericco, Grant Parole
- Commissioner Mary Baker, Grant Parole
- Commissioner Tony Corda, Grant Parole
- Commissioner Susan Jackson, Grant Parole



FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

This document was prepared by MSALLING at 7/22/2020 8:15 AM

**STATE OF NEVADA
CERTIFICATION OF
BOARD OF PAROLE COMMISSIONERS ACTION
ORDER TAKING NO ACTION**

Inmate Name	NDOC Number	Booking #	Location	Date
SMITH BRECK WARDEN	77141	2008-042473	IBCO-U2-C-19-B	04/21/2020

No Action was taken on the above referenced inmate at the parole hearing held on this date.

THIS ACTION APPLIES TO THE FOLLOWING SENTENCE(S):

*Controlling sentence denoted by *, Case #: Court: Offense Description:*

232319; 1; BURGLARY
232113; 1; HABITUAL CRIMINAL (GREATER)
240508; 1; HABITUAL CRIMINAL (GREATER)
232109; 1; HABITUAL CRIMINAL (GREATER)

Reason(s) for action:

Reason for No Action: Public Meeting Cancelled due to COVID-19 Emergency Declaration

Recommendation of the panel who conducted the hearing: No Action

Commissioner Michael Keeler; No Action

NOTE: A "No Action" order does not require ratification by a majority of the Board.


FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

This document was prepared by JMEADOR at 4/21/2020 11:30 AM

STATE OF NEVADA
DEPARTMENT OF TREASURY
DIVISION OF BANKS AND FINANCIAL INSTITUTIONS
REGULATORY ACTION REPORT

REGULATORY ACTION REPORT
77746
280800297
20240222
10/10/2024

Officer: Michael Hill
Branch: Las Vegas
Case No: 202400297
Date: 10/10/2024
Source: Complaint
Subject: Consumer Complaint

Category	Priority	Resolution	Comments
Complaint	High	Resolved	
Law	High	Resolved	
Financial Obligations	High	Resolved	
Other	High	Resolved	

Resolution:

The Board has restored _____ credits.

Comments:

Officer: Michael Hill

Branch: Las Vegas

Case No: 202400297

Date: 10/10/2024

Michael Hill

**STATE OF NEVADA
 BOARD OF PAROLE COMMISSIONERS
 CERTIFICATION OF ACTION
 PAROLE VIOLATION HEARING**

SMITH, BRECK WARDEN 77141 2008-042473 HDSP-U7-B-11-B 05/28/2019
 INMATE NAME NDOC NUMBER BOOKING# LOCATION DATE

Affected Sentences (Controlling sentence denoted by *)

232319;1;BURGLARY
 232113;1;HABITUAL CRIMINAL (GREATER)
 240508;1;HABITUAL CRIMINAL (GREATER)
 *232109;1;HABITUAL CRIMINAL (GREATER)

Warrant # 42117

Warrant Date 04/11/2018

Arrest Date: 03/22/2018

Was the PI Hearing conducted or waived? Waived

Was the notice of rights executed? Yes

Counsel Type: Retained Public Defender

Represented By: Richards

Absconder

No

Stop Date: _____

Restart Date: _____

CHARGES, PLEAS and FINDINGS

Charges	Parolee Plea	Board Finding	Other Action
Conduct	Guilty / Not Guilty	Guilty / Not Guilty	
Laws	Guilty / Not Guilty	Guilty / Not Guilty	
Financial Obligations	Guilty / Not Guilty	Guilty / Not Guilty	
Mand SA eval, prof treat	Guilty / Not Guilty	Guilty / Not Guilty	

ACTION (indicate one):

<input type="checkbox"/>	Parole is revoked to: _____	WARRANT IS SUSTAINED. Parolee is returned to prison for reasons set forth in the retake warrant of which this order is part. Pursuant to NRS 213.1519, all good time credits (stat credits) earned prior to the date of revocation are hereby forfeited. The Board has restored _____ credits.
<input type="checkbox"/>	Continue on Parole: ___ Immediately ___ Upon Plan Approval ___ At Date _____ Parole Credit Forfeiture:	WARRANT IS QUASHED. Parole is continued with the same conditions unless specified as follows: _____ The Board orders the forfeiture of _____ credits earned while on parole for having been found guilty of a violation of parole.
<input checked="" type="checkbox"/>	No Action Taken	<i>Hearing rescheduled to June 25, 2019, pending new criminal charges</i>

Evidence Relied Upon:

Guilty Plea (where applicable)

Report of P&P: Violation Report dated 3/28/2019

Police Report: LVMPD Arrest Report dated 3/22/2018 (2 pages)

Other: CCDC Inmate In-Custody Status 4/07/2018 (2 pages)

Restitution Report: P&P Restitution Account 2017

Other: WestCare 4/03/2018

Other: ASAM Dimension Acute Intoxication and Withdrawal (7 pages)

Other:

Name of P&P Division Representative: Officer Stankus

Name of Parole Board Panel Members Present: Keeler, De La Torre, Christiansen via telephone

Reason for Revocation (where applicable): The Board heard substantial evidence which was presented to prove that you violated the above conditions of your parole by:

The votes of the members who ratified the final action are on file with the Executive Secretary of the Board.

Michael Stankus

FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

**STATE OF NEVADA
 BOARD OF PAROLE COMMISSIONERS
 CERTIFICATION OF ACTION
 PAROLE VIOLATION HEARING**

SMITH, BRECK WARDEN 77141 2008-042473 HDSP-U7-B-11-B 05/28/2019
 INMATE NAME NDOC NUMBER BOOKING# LOCATION DATE

Affected Sentences (Controlling sentence denoted by *)

232319;1;BURGLARY
 232113;1;HABITUAL CRIMINAL (GREATER)
 240508;1;HABITUAL CRIMINAL (GREATER)
 *232109;1;HABITUAL CRIMINAL (GREATER)

Warrant # 42117

Warrant Date 04/11/2018

Arrest Date: 03/22/2018

Was the PI Hearing conducted or waived? Waived

Was the notice of rights executed? Yes

Counsel Type: Retained Public Defender

Represented By: Richards

Absconder

No

Stop Date: _____

Restart Date: _____

CHARGES, PLEAS and FINDINGS

Charges	Parolee Plea	Board Finding	Other Action
Conduct	Guilty / Not Guilty	Guilty / Not Guilty	
Laws	Guilty / Not Guilty	Guilty / Not Guilty	
Financial Obligations	Guilty / Not Guilty	Guilty / Not Guilty	
Mand SA eval, prof treat	Guilty / Not Guilty	Guilty / Not Guilty	

ACTION (indicate one):

<input type="checkbox"/>	Parole is revoked to: _____	WARRANT IS SUSTAINED. Parolee is returned to prison for reasons set forth in the retake warrant of which this order is part. Pursuant to NRS 213.1519, all good time credits (stat credits) earned prior to the date of revocation are hereby forfeited. The Board has restored _____ credits.
<input type="checkbox"/>	Continue on Parole: ___ Immediately ___ Upon Plan Approval ___ At Date _____ Parole Credit Forfeiture:	WARRANT IS QUASHED. Parole is continued with the same conditions unless specified as follows: _____ The Board orders the forfeiture of _____ credits earned while on parole for having been found guilty of a violation of parole.
<input checked="" type="checkbox"/>	No Action Taken	<i>Hearing rescheduled to June 25, 2019, pending new criminal charges</i>

Evidence Relied Upon:

Guilty Plea (where applicable)

Report of P&P: Violation Report dated 3/28/2019

Police Report: LVMPD Arrest Report dated 3/22/2018 (2 pages)

Other: CCDC Inmate In-Custody Status 4/07/2018 (2 pages)

Restitution Report: P&P Restitution Account 2017

Other: WestCare 4/03/2018

Other: ASAM Dimension Acute Intoxication and Withdrawal (7 pages)

Other:

Name of P&P Division Representative: Officer Stankus

Name of Parole Board Panel Members Present: Keeler, De La Torre, Christiansen via telephone

Reason for Revocation (where applicable): The Board heard substantial evidence which was presented to prove that you violated the above conditions of your parole by:

The votes of the members who ratified the final action are on file with the Executive Secretary of the Board.

Michael Stankus

FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

**STATE OF NEVADA
 BOARD OF PAROLE COMMISSIONERS
 CERTIFICATION OF ACTION
 PAROLE VIOLATION HEARING**

SMITH, BRECK WARDEN 77141 2008-042473 HDSP-U7-B-11-B 05/28/2019
 INMATE NAME NDOC NUMBER BOOKING# LOCATION DATE

Affected Sentences (Controlling sentence denoted by *)

232319;1;BURGLARY
 232113;1;HABITUAL CRIMINAL (GREATER)
 240508;1;HABITUAL CRIMINAL (GREATER)
 *232109;1;HABITUAL CRIMINAL (GREATER)

Warrant # 42117

Warrant Date 04/11/2018

Arrest Date: 03/22/2018

Was the PI Hearing conducted or waived? Waived

Was the notice of rights executed? Yes

Counsel Type: Retained Public Defender

Represented By: Richards

Absconder

No

Stop Date: _____

Restart Date: _____

CHARGES, PLEAS and FINDINGS

Charges	Parolee Plea	Board Finding	Other Action
Conduct	Guilty / Not Guilty	Guilty / Not Guilty	
Laws	Guilty / Not Guilty	Guilty / Not Guilty	
Financial Obligations	Guilty / Not Guilty	Guilty / Not Guilty	
Mand SA eval, prof treat	Guilty / Not Guilty	Guilty / Not Guilty	

ACTION (indicate one):

<input type="checkbox"/>	Parole is revoked to: _____	WARRANT IS SUSTAINED. Parolee is returned to prison for reasons set forth in the retake warrant of which this order is part. Pursuant to NRS 213.1519, all good time credits (stat credits) earned prior to the date of revocation are hereby forfeited. The Board has restored _____ credits.
<input type="checkbox"/>	Continue on Parole: ___ Immediately ___ Upon Plan Approval ___ At Date _____ Parole Credit Forfeiture:	WARRANT IS QUASHED. Parole is continued with the same conditions unless specified as follows: _____ The Board orders the forfeiture of _____ credits earned while on parole for having been found guilty of a violation of parole.
<input checked="" type="checkbox"/>	No Action Taken	<i>Hearing rescheduled to June 25, 2019, pending new criminal charges</i>

Evidence Relied Upon:

Guilty Plea (where applicable)

Report of P&P: Violation Report dated 3/28/2019

Police Report: LVMPD Arrest Report dated 3/22/2018 (2 pages)

Other: CCDC Inmate In-Custody Status 4/07/2018 (2 pages)

Restitution Report: P&P Restitution Account 2017

Other: WestCare 4/03/2018

Other: ASAM Dimension Acute Intoxication and Withdrawal (7 pages)

Other:

Name of P&P Division Representative: Officer Stankus

Name of Parole Board Panel Members Present: Keeler, De La Torre, Christiansen via telephone

Reason for Revocation (where applicable): The Board heard substantial evidence which was presented to prove that you violated the above conditions of your parole by:

The votes of the members who ratified the final action are on file with the Executive Secretary of the Board.

Michael Stankus

FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

**STATE OF NEVADA
 BOARD OF PAROLE COMMISSIONERS
 CERTIFICATION OF ACTION
 PAROLE VIOLATION HEARING**

SMITH, BRECK WARDEN 77141 2008-042473 HDSP-U7-B-11-B 02/26/2019
 INMATE NAME NDOC NUMBER BOOKING# LOCATION DATE

Affected Sentences (Controlling sentence denoted by *)

232319;1;BURGLARY
 232113;1;HABITUAL CRIMINAL (GREATER)
 240508;1;HABITUAL CRIMINAL (GREATER)
 *232109;1;HABITUAL CRIMINAL (GREATER)

Warrant # 42117 Warrant Date 04/11/2018 Arrest Date: 03/22/2018

Was the PI Hearing conducted or waived? Waived Was the notice of rights executed? Yes
 Counsel Type: Retained / Public Defender Represented By: Richards

Absconder No Stop Date: _____ Restart Date: _____

CHARGES, PLEAS and FINDINGS

Charges	Parolee Plea	Board Finding	Other Action
Conduct	Guilty / Not Guilty	Guilty / Not Guilty	
Laws	Guilty / Not Guilty	Guilty / Not Guilty	
Financial Obligations	Guilty / Not Guilty	Guilty / Not Guilty	
Mand SA eval, prof treat	Guilty / Not Guilty	Guilty / Not Guilty	

ACTION (indicate one):

<input type="checkbox"/> Parole is revoked to: _____	WARRANT IS SUSTAINED. Parolee is returned to prison for reasons set forth in the retake warrant of which this order is part. Pursuant to NRS 213.1519, all good time credits (stat credits) earned prior to the date of revocation are hereby forfeited. The Board has restored _____ credits.
<input type="checkbox"/> Continue on Parole: <input type="checkbox"/> Immediately <input type="checkbox"/> Upon Plan Approval <input type="checkbox"/> At Date _____ Parole Credit Forfeiture: _____	WARRANT IS QUASHED. Parole is continued with the same conditions unless specified as follows: _____ The Board orders the forfeiture of _____ credits earned while on parole for having been found guilty of a violation of parole.
<input checked="" type="checkbox"/> No Action Taken	Hearing rescheduled to April 2, 2019, pending new criminal charges and inmate not available.

Evidence Relied Upon:

- Guilty Plea (where applicable)
- Report of P&P: Violation Report dated 3/28/2018
- Police Report: LVMPD Arrest Report dated 3/22/2018 (2 pages)
- Other: CCDC Inmate In-Custody Status 4/07/2018 (2 pages)
- Restitution Report: P&P Restitution Account 2017
- Other: WestCare 4/03/2018
- Other: ASAM Dimension Acute Intoxication and Withdrawal (7 pages)
- Other:

Name of P&P Division Representative: Officer Stankus

Name of Parole Board Panel Members Present: Keeler, Christiansen, ~~DeRiccio~~ via telephone, *RE*

Reason for Revocation (where applicable): The Board heard substantial evidence which was presented to prove that you violated the above conditions of your parole by:

The votes of the members who ratified the final action are on file with the Executive Secretary of the Board.


 FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

**STATE OF NEVADA
BOARD OF PAROLE COMMISSIONERS
CERTIFICATION OF ACTION
PAROLE VIOLATION HEARING**

SMITH, BRECK WARDEN 77141 2008-042473 HDSP-U7-B-11-B 01/22/2019
INMATE NAME NDOC NUMBER BOOKING# LOCATION DATE

Affected Sentences (Controlling sentence denoted by *)

232319;1;BURGLARY
 232113;1;HABITUAL CRIMINAL (GREATER)
 240508;1;HABITUAL CRIMINAL (GREATER)
 *232109;1;HABITUAL CRIMINAL (GREATER)

Warrant # 42117 Warrant Date 04/11/2018 Arrest Date: 03/22/2018

Was the PI Hearing conducted or waived? Waived Was the notice of rights executed? Yes
 Counsel Type: Retained Public Defender Represented By: Richards

Absconder No Stop Date: Restart Date:

CHARGES, PLEAS and FINDINGS

Charges	Parolee Plea	Board Finding	Other Action
Conduct	Guilty / Not Guilty	Guilty / Not Guilty	
Laws	Guilty / Not Guilty	Guilty / Not Guilty	
Financial Obligations	Guilty / Not Guilty	Guilty / Not Guilty	
Mand SA eval, prof treat	Guilty / Not Guilty	Guilty / Not Guilty	

ACTION (indicate one):

<input type="checkbox"/>	Parole is revoked to: _____	WARRANT IS SUSTAINED. Parolee is returned to prison for reasons set forth in the retake warrant of which this order is part. Pursuant to NRS 213.1519, all good time credits (stat credits) earned prior to the date of revocation are hereby forfeited. The Board has restored _____ credits.
<input type="checkbox"/>	Continue on Parole: <input type="checkbox"/> Immediately <input type="checkbox"/> Upon Plan Approval <input type="checkbox"/> At Date _____ Parole Credit Forfeiture: _____	WARRANT IS QUASHED. Parole is continued with the same conditions unless specified as follows: _____ The Board orders the forfeiture of _____ credits earned while on parole for having been found guilty of a violation of parole.
<input checked="" type="checkbox"/>	No Action Taken	Hearing rescheduled to February 26, 2019, pending new criminal charges.

Evidence Relied Upon:

- Guilty Plea (where applicable)**
- Report of P&P:** Violation Report dated 3/28/2018
- Police Report:** LVMPD Arrest Report dated 3/22/2018 (2 pages)
- Other:** CCDC Inmate In-Custody Status 4/07/2018 (2 pages)
- Restitution Report:** P&P Restitution Account 2017
- Other:** WestCare 4/03/2018
- Other:** ASAM Dimension Acute Intoxication and Withdrawal (7 pages)
- Other:**

Name of P&P Division Representative: Officer Bellow

Name of Parole Board Panel Members Present: Keeler, De La Torre, Christiansen via telephone

Reason for Revocation (where applicable): The Board heard substantial evidence which was presented to prove that you violated the above conditions of your parole by:

The votes of the members who ratified the final action are on file with the Executive Secretary of the Board.



FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

**STATE OF NEVADA
 BOARD OF PAROLE COMMISSIONERS
 CERTIFICATION OF ACTION
 PAROLE VIOLATION HEARING**

SMITH, BRECK WARDEN	77141	2008-042473	HDSP-U7-B-11-B	12/04/2018
INMATE NAME	NDOC NUMBER	BOOKING#	LOCATION	DATE

Affected Sentences (Controlling sentence denoted by *)

232319;1;BURGLARY
 232113;1;HABITUAL CRIMINAL (GREATER)
 240508;1;HABITUAL CRIMINAL (GREATER)
 *232109;1;HABITUAL CRIMINAL (GREATER)

Warrant # 42117

Warrant Date 04/11/2018

Arrest Date: 03/22/2018

Was the PI Hearing conducted or waived? Waived

Was the notice of rights executed? Yes

Counsel Type: Retained / Public Defender

Represented By: Cichoski

Absconder: No Stop Date: _____ Restart Date: _____

CHARGES, PLEAS and FINDINGS

Charges	Parolee Plea	Board Finding	Other Action
Conduct	Guilty / Not Guilty	Guilty / Not Guilty	
Laws	Guilty / Not Guilty	Guilty / Not Guilty	
Financial Obligations	Guilty / Not Guilty	Guilty / Not Guilty	
30. Mand SA eval, prof treat	Guilty / Not Guilty	Guilty / Not Guilty	

ACTION (indicate one):

<input type="checkbox"/> Parole is revoked to: _____	WARRANT IS SUSTAINED. Parolee is returned to prison for reasons set forth in the retake warrant of which this order is part. Pursuant to NRS 213.1519, all good time credits (stat credits) earned prior to the date of revocation are hereby forfeited. The Board has restored _____ credits.
<input type="checkbox"/> Continue on Parole: <input type="checkbox"/> Immediately <input type="checkbox"/> Upon Plan Approval <input type="checkbox"/> At Date _____ Parole Credit Forfeiture: _____	WARRANT IS QUASHED. Parole is continued with the same conditions unless specified as follows: _____ The Board orders the forfeiture of _____ credits earned while on parole for having been found guilty of a violation of parole.
<input checked="" type="checkbox"/> No Action Taken	Hearing rescheduled to January 22, 2019, pending new criminal charges.

Evidence Relied Upon:

- Guilty Plea (where applicable)**
- Report of P&P:** Violation Report dated 3/28/2018
- Police Report:** LVMPD Arrest Report dated 3/22/2018 (2 pages)
- Police Report:** CCDCC Inmate In-Custody Status 4/07/2018 (2 pages)
- Restitution Report:** P&P Restitution Account 2017
- Other:** WestCare 4/03/2018
- Other:** ASAM Dimension Acute Intoxication and Withdrawal (7 pages)
- Other:**

Name of P&P Division Representative: Officer Stankus

Name of Parole Board Panel Members Present: Keeler, De La Torre, Christiansen via telephone.

Reason for Revocation (where applicable): The Board heard substantial evidence which was presented to prove that you violated the above conditions of your parole by:

The votes of the members who ratified the final action are on file with the Executive Secretary of the Board.

Michael Keeler
 FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

Exhibit 4



4 cases

VIOLATION REPORT
Date Report Prepared: March 28, 2018

TO THE HONORABLE BOARD OF PAROLE COMMISSIONERS
CARSON CITY, NEVADA

NAME: SMITH, Breck
FILE #: L17-1752
CC #: C232113
NDOC#: 77141
SUPERVISION GRANT: 03-07-2017
EXPIRATION: LIFE

CRIME: CT I: HABITUAL CRIMINAL (GREATER) (CATEGORY A FELONY)
SENTENCE: \$25 ADMINISTRATIVE ASSESSMENT FEE, \$150 DNA COLLECTION FEE, CC WITH C232109. MAXIMUM TERM OF LIFE WITH A MINIMUM PAROLE ELIGIBILITY OF 10 YEARS IN THE NEVADA DEPARTMENT OF CORRECTIONS.

I. VIOLATION:

Conduct; Laws: On March 22, 2018, Breck Smith was arrested by the Las Vegas Metropolitan Police Department and charged with Attempt Burglary and Possession of Burglary Tools in Case# 18F05188X in addition to four counts of Violation of Parole. The subject was placed in custody in the Clark County Detention Center and bail was set at \$7,000. The subject is scheduled to appear in the Las Vegas Justice Court on June 13, 2018.

Financial Obligations: On March 7, 2017, Mr. Smith was ordered to pay \$30 in monthly supervision fees. He is 2 months in arrears for a total of \$60. ~~Current office as of 11/26/18.~~

Special Condition (3) Complete substance abuse evaluation within 30 days release from NDOC: Breck Smith was previously supervised by the Pahrump office and transferred to the Las Vegas office on or about August, 2017. Since that time, the subject has claimed he completed his substance abuse evaluation while in Pahrump however, to date, he has provided no verification that this has been completed.

II. RESPONSE TO SUPERVISION:

This is the subject's first major violation since being released to parole in March of 2017. The subject has not tested positive for any narcotics and has managed to maintain employment. However, his new arrest is most concerning to the Division. The subject is currently being supervised for four parole cases and he has apparently fallen back into his old behavior. Due to the subject's past criminal history with burglary offenses, the Division feels the subject is not an appropriate candidate for continued community supervision.

III. WHEREABOUTS AND AVAILABILITY:

Effective March 22, 2018, the subject is in custody in the Clark County Detention Center.

IV. RECOMMENDATION:

It is recommended that a Retake Warrant be issued and the subject's parole be revoked.

V. LEVEL OF SUPERVISION:

Maximum

Respectfully submitted:

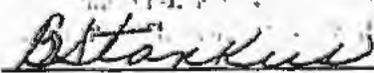
Approved:


S. Brickey, DPS Officer
smbrikey@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV


M. LaPutt, DPS Sergeant
mlaputt@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV

Print name if other than above

Print name if other than above


S. Brandon, DPS Lieutenant
sbrandon@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV

Print name if other than above

III. WHEREABOUTS AND AVAILABILITY:

Effective March 22, 2018, the subject is in custody in the Clark County Detention Center.

IV. RECOMMENDATION:

It is recommended that a Retake Warrant be issued and the subject's parole be revoked.

V. LEVEL OF SUPERVISION:

Maximum

Respectfully submitted:

Approved



S. Brickey, DPS Officer
smbrickey@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV



M. LaPutt, DPS Sergeant
mlaputt@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV

Print name if other than above

Print name if other than above



S. Brandon, DPS Lieutenant
sbrandon@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV



Print name if other than above



VIOLATION REPORT
Date Report Prepared: March 28, 2018

**TO THE HONORABLE BOARD OF PAROLE COMMISSIONERS
CARSON CITY, NEVADA**

NAME: SMITH, Breck
FILE #: L17-1752B
CC #: 08C240508
NDOC#: 77141

SUPERVISION GRANT: 03-07-2017
EXPIRATION: LIFE

CRIME: CT I: HABITUAL CRIMINAL (GREATER) (CATEGORY A FELONY)
SENTENCE: \$25 ADMINISTRATIVE ASSESSMENT FEE, \$150 DNA COLLECTION FEE AND \$3,293.11 RESTITUTION. MAXIMUM TERM OF LIFE WITH A MINIMUM PAROLE ELIGIBILITY OF 10 YEARS IN THE NEVADA DEPARTMENT OF CORRECTIONS.

I. VIOLATION:

Conduct; Laws: On March 22, 2018, Breck Smith was arrested by the Las Vegas Metropolitan Police Department and charged with Attempt Burglary and Possession of Burglary Tools in Case# 18F05188X in addition to four counts of Violation of Parole. The subject was placed in custody in the Clark County Detention Center and bail was set at \$7,000. The subject is scheduled to appear in the Las Vegas Justice Court on June 13, 2018.

Financial Obligations: On March 7, 2017, Mr. Smith was ordered to pay \$3,293.11 restitution in \$50 monthly increments. Division records show that the subject has not made a restitution payment since August 17, 2017. He has a restitution balance of \$867.56 for Case #08C240508.

On March 7, 2017, Mr. Smith was ordered to pay \$30 in monthly supervision fees. He is 2 months in arrears for a total of \$60.

Special Condition (3) Must complete a substance abuse evaluation within 30 days release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider: Breck Smith was previously supervised by the Pahrump office and transferred to the Las Vegas office on or about August, 2017. Since that time, the subject has claimed he completed his substance abuse evaluation while in Pahrump however, to date, he has provided no verification that this has been completed.

Proof of EVAL (Westcree) on 5/24/17
in packet

II. RESPONSE TO SUPERVISION:

This is the subject's first major violation since being released to parole in March of 2017. The subject has not tested positive for any narcotics and has managed to maintain employment. However, his new arrest is most concerning to the Division. The subject is currently being supervised for four parole cases and he has apparently fallen back into his old behavior. Due to the subject's past criminal history with burglary offenses, the Division feels the subject is not an appropriate candidate for continued community supervision.

III. WHEREABOUTS AND AVAILABILITY:

Effective March 22, 2018, the subject is in custody in the Clark County Detention Center.

IV. RECOMMENDATION:

It is recommended that a Retake Warrant be issued and the subject's parole be revoked.

V. LEVEL OF SUPERVISION:

Maximum

Respectfully submitted:

Approved



S. Brickey, DPS Officer
smbrickey@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV



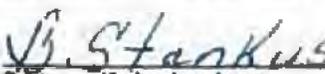
M. LaPutt, DPS Sergeant
mlaputt@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV

Print name if other than above

Print name if other than above



S. Brandon, DPS Lieutenant
sbrandon@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV



Print name if other than above



VIOLATION REPORT
Date Report Prepared: March 28, 2018

TO THE HONORABLE BOARD OF PAROLE COMMISSIONERS
CARSON CITY, NEVADA

NAME: SMITH, Breck
FILE #: L17-1752C
CC #: C232319
NDOC#: 77141

SUPERVISION GRANT: 03-07-2017
EXPIRATION: LIFE

CRIME: COUNT I - BURGLARY (CATEGORY B FELONY)
SENTENCE: \$25 ADMINISTRATIVE ASSESSMENT FEE, \$150 DNA COLLECTION FEE, CONCURRENT WITH C232109, C232113, C24050. MAXIMUM TERM OF LIFE WITH A MINIMUM PAROLE ELIGIBILITY OF 10 YEARS IN THE NEVADA DEPARTMENT OF CORRECTIONS.

I. VIOLATION:

Conduct; Laws: On March 22, 2018, Breck Smith was arrested by the Las Vegas Metropolitan Police Department and charged with Attempt Burglary and Possession of Burglary Tools in Case# 18F05188X in addition to four counts of Violation of Parole. The subject was placed in custody in the Clark County Detention Center and bail was set at \$7,000. The subject is scheduled to appear in the Las Vegas Justice Court on June 13, 2018.

Financial Obligations: On March 7, 2017, Mr. Smith was ordered to pay \$30 in monthly supervision fees. He is 2 months in arrears for a total of \$60.

Special Condition (3) Must complete a substance abuse evaluation within 30 days release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider: Breck Smith was previously supervised by the Pahrump office and transferred to the Las Vegas office on or about August, 2017. Since that time, the subject has claimed he completed his substance abuse evaluation while in Pahrump however, to date, he has provided no verification that this has been completed.

II. RESPONSE TO SUPERVISION:

This is the subject's first major violation since being released to parole in March of 2017. The subject has not tested positive for any narcotics and has managed to maintain employment. However, his new arrest is most concerning to the Division. The subject is currently being supervised for four parole cases and he has apparently fallen back into his old behavior. Due to the subject's past criminal history with burglary offenses, the Division feels the subject is not an appropriate candidate for continued community supervision.

III. WHEREABOUTS AND AVAILABILITY:

Effective March 22, 2018, the subject is in custody in the Clark County Detention Center.

IV. RECOMMENDATION:

It is recommended that a Retake Warrant be issued and the subject's parole be revoked.

V. LEVEL OF SUPERVISION:

Maximum

Respectfully submitted:

Approved



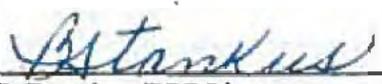
S. Brickey, DPS Officer
smbrickey@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV.



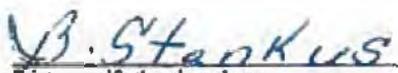
M. LaPutt, DPS Sergeant
mlaputt@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV

Print name if other than above

Print name if other than above



S. Brandon, DPS Lieutenant
sbrandon@dps.state.nv.us
Division of Parole and Probation
Southern Command, Las Vegas, NV



B. Stankus
Print name if other than above

Exhibit 5

STATE OF NEVADA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF PAROLE AND PROBATION

NOTICE OF RIGHTS

You, SMITH, Breck, are herein advised that your return to The Nevada Department of Corrections to answer charges of parole violation before the Nevada Board of Parole Commissioners was determined at your Preliminary Inquiry Hearing held on _____, 20____, at _____
(Place)

You are further advised of your rights as follows:

1. Representation by retained counsel of your own choice and at your own expense. Yes No
(If Yes, list name and address of attorney.) (Initial) BS

2. Representation as an indigent by the State Public Defender. Yes No
(Please indicate on attached Affidavit and Application for Appointment of Counsel.) (Initial) BS

3. If our alleged parole violation is not based on a new conviction, you may present witnesses to testify in your behalf and you may confront witnesses who testified against you. (Initial) _____

4. It will be your responsibility to notify and pay the expenses of witnesses testifying in your behalf. Provide the names below: (Initial) BS

5. Name and agency of the witnesses you wish to confront: (If you intend to refute witness allegations, request they be present.) (Initial) BS

6. You may also present affidavits for the record. (Initial) BS

I hereby certify I have received the following documents:

A. Details and summary of alleged parole violations as charged.

B. Summary of Findings determined at my Preliminary Inquiry Hearing on:

_____, 20____, at _____
(Place)

C. A copy of this, my Notice of Rights.

Signed [Signature]

Date 3-30-17

Witness [Signature]

Date 05/30/14

Inmate In-Custody Status				
ID	Name	Age	Race	Sex
Case	Charge			Status
Related Case	Arrest Date	Detainer	Cash Bail	Surety Bail
Housing	Sched Department	Sched Action	Sched Date	Sched Time
00806628	SMITH, BRECK W	51	White	Male
07C232113	ARREST FOR VIOL OF COND OF PAROLE			Active
	3/22/2018	N	\$0.00	\$0.00
NV2G	PAROLE / PROBATION B	TO NDOC	3/23/2018	1:03 AM
00806628	SMITH, BRECK W	51	White	Male
07C232318	ARREST FOR VIOL OF COND OF PAROLE			Active
	3/22/2018	N	\$0.00	\$0.00
NV2G	PAROLE / PROBATION B	TO NDOC	3/23/2018	1:03 AM
00806628	SMITH, BRECK W	51	White	Male
08C240508	ARREST FOR VIOL OF COND OF PAROLE			Active
	3/22/2018	N	\$0.00	\$0.00
NV2G	PAROLE / PROBATION B	TO NDOC	3/23/2018	1:03 AM
00806628	SMITH, BRECK W	51	White	Male
18F05188X	ATT BURGLARY			Active
	3/22/2018	N	\$7,000.00	\$7,000.00
NV2G	01	PRELIM HEARING	6/13/2018	9:00 AM
00806628	SMITH, BRECK W	51	White	Male
18F05188X	POSS BURGLARY TOOLS			Active
	3/22/2018	N	\$0.00	\$0.00
NV2G	01	PRELIM HEARING	6/13/2018	9:00 AM

Decision ID	Decision Title	Status	Created	Last Modified
0000001	Decision 1	Active	1/1/2000	1/1/2000
0000002	Decision 2	Active	1/1/2000	1/1/2000
0000003	Decision 3	Active	1/1/2000	1/1/2000
0000004	Decision 4	Active	1/1/2000	1/1/2000

Decision ID:

Decision Title:

Status:

Created:

Page

U.S. Army Decision Center

U.S. Army Decision Center

Exhibit 6



**Intermountain[®]
Healthcare**



**AUTHORIZATION FOR USE OR DISCLOSURE OF
MEDICAL RECORDS**

I hereby authorize the physicians or employees of Health Care Partners ^{D med-group} to forward my medical records.
(Doctor/Clinic)

DURATION: *Authorization shall be effective immediately and remain in effect for one year.*

REVOCAION: *Written revocation will be effective upon receipt.*

SPECIFY RECORDS:

Check the box and initial which type of information to be disclosed:

ALL MEDICAL RECORDS - By checking this box you authorize HCP/MED-R to disclose the following information:
HIV/AIDS and STD'S results and or diagnosis, Drug and Alcohol Abuse, Behavioral/Mental Health Treatment, Sexual Assault,
Child/Adult Abuse, Genetic testing, and Psychiatric notes.

- MEDICAL INFORMATION** **ADD /ADHD** **XRAY COPIES ON CD**
 PSYCHIATRIC NOTES **DRUG/ALCOHOL TREATMENT**
 HIV/STD TEST RESULTS **BEHAVIORAL /MENTAL HEALTH TREATMENT**

Please provide records in the following format:

- paper record** **disk** **e-mail** _____
(email address)

Type of Records needed: **Primary Care** **OB/GYN** **Oncology/Hematology** **Specialty**

PLEASE PROVIDE RECORDS FROM THE FOLLOWING SERVICE DATES:

from: March 2017 - present

RELEASE MEDICAL RECORDS FROM:

Doctor/Clinic Dr. Troy Schomacher / HCP med-group

Address: 1397 S. Loop Rd

CITY/STATE/ZIP: Pahrump, NV, 89048

TELEPHONE NUMBER: 775.727.5500 FAX NUMBER: " "

FORWARD MEDICAL RECORDS TO:

Doctor/Clinic/Patient: Mike McAvoy - Amaya atty. at law

Address: 400 South 4th street Suite 500

CITY/STATE/ZIP: Las Vegas, NV, 89101

TELEPHONE NUMBER: 702.299.5083 FAX NUMBER: " "

Patient Name: <u>Breck Smith</u>	Date of Birth: <u>08/01/1986</u>
Patient Signature: <u>Bm S&O</u> <small>Parent/ Legal Guardian or Authorized Representative</small>	Date: <u>09/30/2020</u>
Patient Phone #: <u>206.406.6467</u>	Patient Email: <u>Breck.W.Smith@aol.com</u>

Corporate Office

700 E Warm Springs Rd Ste 110
Las Vegas, NV 89119
(702) 318-2400

Patient: SMITH, BRECK W
81 RUSSELL RD
PAHRUMP, NV 89048

Age/DOB: 54 years 01Aug1966
EMRN: 80-2167436
OMRN: 80-2167436
Home: (775) 513-9236
Work:

Medication List

<u>Medication</u>	<u>Days</u>	<u>Qty</u>	<u>Refills</u>	<u>Start</u>	<u>End</u>	<u>Provider</u> <u>Status</u>
[REDACTED]	90	180 Tablet	3	26Apr2017		SCHUMACHER, TROY Active
[REDACTED]	0	6 Tablet	11	14Jun2017		SCHUMACHER, TROY Active



Patient: BRECK W. SMITH

Home:

Assessment

Reason For Visit

pt here for lab results

Chief Complaint

GI.

Review of Systems

Cardiovascular: as noted in HPI.

Neurological: as noted in HPI.

Problem List

1. Benign essential HTN (I10)
2. Chronic viral hepatitis C (B18.2)
3. Elevated blood pressure reading (R03.0)

Allergies

1. No Known Allergies
Recorded By: Speeth, Carolyn; 3/12/2017 3:53:04 PM

Social History

- Caffeine use (F15.80)
- Current non-drinker of alcohol (Z7B.9)
- Divorced
- Non-smoker (Z7B.9)

Family History

No pertinent family history

Vitals

NV Note Vitals Signs

Recorded: 14Jun2017 10:38AM

Temperature: 96.8 F, Temporal
Blood Pressure: 133 / 82, LUE, Sitting
Heart Rate: 84, R Brachial Artery
Pulse Quality: Normal, R Brachial Artery

Adult Visit Note.

Patient: BRECK W. SMITH
DOS: Jun 14 2017 10:40AM

MRN: 80-2167436

Respiration Quality: Normal
Respiration: 14
O2 Saturation: 100, RA
Height: 5 ft 9 in
Weight: 169 lb 8 oz
BMI Calculated: 25.03
BSA Calculated: 1.93

Physical Exam

Constitutional: Appears in no apparent distress.
Pulmonary: Normal respiratory effort. Normal auscultation. No rhonchi, wheezes, or rales.
Cardiovascular: RRR, no murmur, rub or gallop. Normal S1 and S2 and without S3 or S4.

Results/Data

No recent results

End of Encounter Meds

[REDACTED]

Future Appointments

Date/Time	Provider	Specialty	Site
09/14/2017 11:00 AM	SCHUMACHER, TROY, M.D.	Family Medicine	NV DESERT VIEW 2

Signatures

Electronically signed by : Leona Eichhorn, MA; Jun 14 2017 10:40AM PST (Co-author)
Electronically signed by : TROY SCHUMACHER, M.D.; Jun 14 2017 12:51PM PST (Author)



Patient: BRECK W. SMITH
81 RUSSELL RD
PAHRUMP, NV 89048
Home: (775) 513-9236

MRN: 80-2167436
DOB: Aug 01, 1966
DOS: 04/26/2017 2:00PM

Assessment

1. Benign essential HTN (I10)
 - decreased b/p meds. Check labs. RTC in 2 months.

Plan

Benign essential HTN

- Stop: Lisinopril 20 MG Oral Tablet
- Start: Lisinopril 10 MG Oral Tablet; TAKE 1 TABLET TWICE DAILY
- *CBC (INCLUDES DIFF/PLATELETS); Status:Active; Requested for:26Apr2017;
- *COMPREHENSIVE METABOLIC PANEL W/eGFR GLUCOSE FASTING; Status:Active; Requested for:26Apr2017;
- *TBH, ULTRASENSITIVE; Status:Active; Requested for:26Apr2017;
- HEPATITIS PANEL,ACUTE; Status:Active; Requested for:26Apr2017;
- LIPID PANEL (AMA) FASTING; Status:Active; Requested for:26Apr2017;
- TESTOSTERONE, TOTAL, LC/MS/MS; Status:Active; Requested for:28Apr2017;

Reason For Visit

pt here to EST a PCP wants some labs done get checked out says he has not been to a DR in a while

Chief Complaint

60 y/o male with HTN here today to establish care. Has no complaints. Blood pressure is low and pt is taking meds once per day. Denies any cp/sob/palpitations or n/v/d/c.

Review of Systems

Respiratory: as noted in HPI.
Cardiovascular: as noted in HPI.
Neurological: as noted in HPI.

Problem List

1. Benign essential HTN (I10)
2. Elevated blood pressure reading (R09.0)

Allergies

1. No Known Allergies
Recorded By: Spaeth, Carolyn; 3/12/2017 3:53:04 PM

Social History

- Caffeine use (F15.90)
- Current non-drinker of alcohol (Z78.8)
- Divorced
- Non-smoker (Z78.8)

Family History

No pertinent family history

Adult Visit Note.

Patient: BRECK W. SMITH
DOS: Apr 26 2017 2:00PM

MRN: 80-2167436

Vitals

NV Note Vitals Signs

Recorded: 26Apr2017 02:03PM

Temperature: 97.7 F, Temporal
Blood Pressure: 119 / 74, LUE, Sitting
Heart Rate: 71, R Brachial Artery
Pulse Quality: Normal, R Brachial Artery
Respiration Quality: Normal
Respiration: 14
O2 Saturation: 97, RA
Height: 5 ft 9 in
Weight: 171 lb 6 oz
BMI Calculated: 25.31
BSA Calculated: 1.93

Physical Exam

Constitutional: Appears in no apparent distress.
Pulmonary: Normal respiratory effort. Normal auscultation. No rhonchi, wheezes, or rales.
Cardiovascular: RRR, no murmur, rub or gallop. Normal S1 and S2 and without S3 or S4.

Results/Data

No recent results



Future Appointments

Date/Time	Provider	Specialty	Site
06/07/2017 09:20 AM	, , R.N.		NV DESERT VIEW 2
06/14/2017 10:40 AM	SCHUMACHER, TROY, M.D.	Family Medicine	NV DESERT VIEW 2

Signatures

Electronically signed by : Leona Eichhorn, MA; Apr 26 2017 2:05PM PST (Co-author)
Electronically signed by : TROY SCHUMACHER, M.D.; Apr 26 2017 4:03PM PST (Author)

Exhibit 2

Findings of Fact, Conclusions of Law, and Order

FCL
1 **MCAVOY AMAYA & REVERO ATTORNEYS**
2 MICHAEL J. MCAVOYAMAYA, ESQ. (14082)
3 TIMOTHY E. REVERO (14603)
4 400 S. 4th Street, Suite 500
5 Las Vegas, NV 89101
6 Telephone: 702.685.0879
7 Facsimile: 702.995.7137
8 Mike@mrlawlv.com
9 Tim@mrlawlv.com
10 *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

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

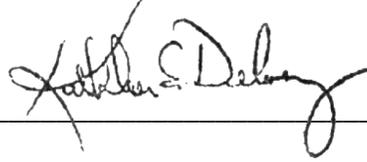
- 5 a. Petitioner’s parole revocation hearing should have been held on June 12, 2018, which
6 is 60 days from April 13, 2018, the date he returned to the custody of NDOC.
- 7 b. The period of Petitioner’s parole revocation penalty should have run from June 12,
8 2018, the date his parole revocation hearing should have been held, to June 17, 2019,
9 the date his one-year penalty would have expired.
- 10 c. NDOC shall ensure that in Case Nos. 07C232109, 07C232113, 07C232319 and
11 08C240508 Petitioner has been awarded flat time and statutory credit from June 12,
12 2018, the date his parole revocation hearing should have been held, to June 17, 2019,
13 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.

Dated this 17th day of February, 2021

4
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. MCAVOY-AMAYA, 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
14 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

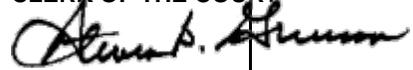
22 Steve Wolfson

motions@clarkcountyda.com

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Exhibit 3

Notice of Entry of Findings of Fact, Conclusions of Law, and Order



1 NEO

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

4 BRECK SMITH,

5
6 Petitioner,

Case No: C-19-337302-1

Dept No: XXV

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on February 17, 2021, the court entered a decision or order in this
12 matter, a 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 February 24, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

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

22 By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

23
24 The United States mail addressed as follows:
Breck Smith # 77141
3955 W. Russell Rd.
Las Vegas, NV 89118

25
26
27 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

FCL
1 **MCAVOY AMAYA & REVERO ATTORNEYS**
2 MICHAEL J. MCAVOYAMAYA, ESQ. (14082)
3 TIMOTHY E. REVERO (14603)
4 400 S. 4th Street, Suite 500
5 Las Vegas, NV 89101
6 Telephone: 702.685.0879
7 Facsimile: 702.995.7137
8 Mike@mrlawlv.com
9 Tim@mrlawlv.com
10 *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 4. On April 11, 2018, the Nevada Board of Parole Commissioners (“Parole Board”)
2 issued a retake warrant in order for Smith to be retaken and returned into the custody of the Nevada
3 Department of Corrections (“NDOC”).

4 5. On April 13, 2018, Petitioner was transferred to the custody of NDOC where he
5 remained during the pendency of the new charges without receiving a parole revocation hearing.

6 6. On June 24, 2019, Petitioner entered an *Alford* plea to Attempted Burglary¹.

7 7. On June 25, 2019, the Parole Board held the parole revocation hearing and revoked
8 Petitioner’s parole on the prior offense.

9 8. The Parole Board issued a one (1) year penalty for Petitioner’s parole violation,
10 revoking Petitioner’s parole until July 1, 2020.

11 9. Petitioner began serving the sentence on the 2019 conviction on July 2, 2020.

12 10. Because of the Parole Board’s decision to defer revoking Petitioner’s parole,
13 Petitioner incurred over one year of unauthorized “dead time,” a term of imprisonment that did not
14 count towards the prior or new offense.

CONCLUSIONS OF LAW

15 11. Chapter 213 of the Nevada Revised Statutes governs parole, and the procedure for
16 revoking parole when there is probable cause to believe a parole violation has occurred.

17 12. When a parolee has been arrested for a suspected violation of the terms of their
18 parole, the Division of Parole and Probation must order NDOC to retake custody of the parolee
19 within five days of the probable cause determination by the Division of Parole and Probation,
20 unless the probable cause determination is based on new criminal charges. *See Nev. Rev. Stat. §*
21 *213.15103.*

22 13. When a parolee is arrested on new criminal charges, the Division of Parole and
23 Probation may defer the probable cause hearing and allow the parolee to remain in the custody of
24 the jurisdiction where the new charges were committed until adjudication of the new charges. *Id.*

25 14. After it has been determined that there is probable cause to believe a parolee has
26 violated their parole, the Division of Parole and Probation must either release the parolee again on
27 parole, order residential confinement, or suspend parole and return the parolee to confinement
28 within fifteen days. *See Nev. Rev. Stat. § 213.1517(1).*

¹ Petitioner was sentenced to 24-60 months in NDOC running consecutively to his other cases with zero days credit for time served.



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

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

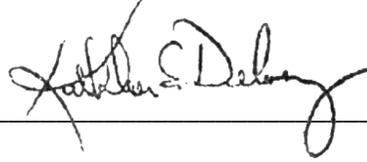
- 5 a. Petitioner’s parole revocation hearing should have been held on June 12, 2018, which
6 is 60 days from April 13, 2018, the date he returned to the custody of NDOC.
- 7 b. The period of Petitioner’s parole revocation penalty should have run from June 12,
8 2018, the date his parole revocation hearing should have been held, to June 17, 2019,
9 the date his one-year penalty would have expired.
- 10 c. NDOC shall ensure that in Case Nos. 07C232109, 07C232113, 07C232319 and
11 08C240508 Petitioner has been awarded flat time and statutory credit from June 12,
12 2018, the date his parole revocation hearing should have been held, to June 17, 2019,
13 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.

Dated this 17th day of February, 2021

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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. MCAVOY-AMAYA, 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
CLARK COUNTY, NEVADA

4
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

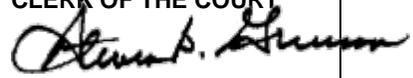
22 Steve Wolfson

motions@clarkcountyda.com

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Exhibit 4

Notice of Appeal



1 NOASC
2 AARON D. FORD
3 Attorney General
4 Katrina A. Samuels (Bar No. 13394)
5 Deputy Attorney General
6 State of Nevada
7 Office of the Attorney General
8 555 E. Washington Ave., Ste. 3900
9 Las Vegas, Nevada 89101-1068
10 (702) 486-3770 (phone)
11 (702) 486-2377 (fax)
12 KSamuels@ag.nv.gov
13 Attorneys for Respondents

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 BRECK SMITH,

11 Petitioner,

12 vs.

13 STATE OF NEVADA,

14 Respondents.

Case No. C-19-337302-1

Dept. No. XXV

NOTICE OF APPEAL

15
16 Notice is hereby given that the State of Nevada, Respondents above named, hereby appeal to the
17 Supreme Court of Nevada from the order granting Petitioner Breck Smith's post-conviction petition for
18 a writ of habeas corpus, entered in this action on February 17, 2021.

19 RESPECTFULLY SUBMITTED this 26th day of March 2021.

20 AARON D. FORD
21 Attorney General

22 By: /s/ Katrina A. Samuels
23 Katrina A. Samuels
24 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 of the
3 Court by using the electronic filing system on the 26th day of March.

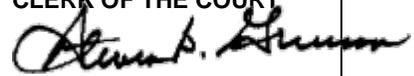
4 The following participants in this case are registered electronic filing system users and will be
5 served electronically:

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

11 /s/ M. Landreth
12 An employee of the Office of the Attorney General
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Exhibit 5

Case Appeal Statement



1 **ASTA**
2 **AARON D. FORD**
3 Attorney General
4 Katrina A. Samuels (Bar No. 13394)
5 Deputy Attorney General
6 State of Nevada
7 Office of the Attorney General
8 555 E. Washington Ave., Ste. 3900
9 Las Vegas, Nevada 89101-1068
10 (702) 486-3770 (phone)
11 (702) 486-2377 (fax)
12 KSamuels@ag.nv.gov
13 Attorneys for Respondents

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

10 BRECK SMITH,

11 Petitioner,

12 vs.

13 STATE OF NEVADA,

14 Respondents.

Case No. C-19-337302-1

Dept. No. XXV

15
16 **CASE APPEAL STATEMENT**
17

18 1. Name of appellant filing this case appeal statement:

19 **State of Nevada**

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

21 **Kathleen E. Delaney**

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

23 **Appellant State of Nevada**

24 **Katrina A. Samuels**
25 **Deputy Attorney General**
26 **555 E. Washington Ave., Ste. 3900**
Las Vegas, NV 89101-1068
(702) 486-3770

27 4. Identify each respondent and the name and address of appellate counsel, if known, for each
28 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**
18 **filed his petition for a writ of habeas corpus.**

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

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

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
9 Las Vegas, NV 89101
10 Mike@mrlawlv.com

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