

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

Case No: A-19-793315-W

Docket No: 82734

RECORD ON APPEAL VOLUME 1

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A-19-793315-W

James Hayes, Plaintiff(s)

vs.

Nevada State of, Defendant(s)

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27
FILED

APR 15 2019

John H. Clark
CLERK OF COURT

1 Case No. C-16-315718-1
2 Dept. No. XIX

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

5 James H. Hayes
6 Petitioner,

7 v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

A-19-793315-W
Dept: XIX

8 State of Nevada, Warden
9 Respondent: Brian Williams

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison; Nevada Williams
2. Name and location of court which entered the judgment of conviction under attack: Clark County Nevada District Court XIX
3. Date of judgment of conviction: 3-12-2019
4. Case number: C-16-315718-1
5. (a) Length of sentence: 60-174 months

RECEIVED

APR 15 2019

CLERK OF THE COURT

A-19-793315-W
IPWHC
Inmate Filed - Petition for Writ of Habeas
4830706



(b) If sentence is death, state any date upon which execution is scheduled:....

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

Yes ☒ No

If "yes," list crime, case number and sentence being served at this time: Burglary C-16-315125-1
21 to 22 months that expires May 3, 2019

7. Nature of offense involved in conviction being challenged: Attempt Grand Larceny
less than \$3500

8. What was your plea? (check one)

(a) Not guilty

(b) Guilty ☒ Alford Plea

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: Not guilty to the Burglary charge and guilty
to the negotiated charge of Attempt Grand Larceny < \$3500

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

(a) Jury

(b) Judge without a jury ☒

11. Did you testify at the trial? Yes No

12. Did you appeal from the judgment of conviction? Yes No ☒

13. If you did appeal, answer the following:

(a) Name of court:

(b) Case number or citation:

(c) Result:

(d) Date of result:

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

1 14. If you did not appeal, explain briefly why you did not:

2 "Waiver of Rights"

Guilty Plea Agreement

3
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: Clark County District Court, Nevada

8 (2) Nature of proceeding: Motion to correct illegal sentence

9
10 (3) Grounds raised: Double Jeopardy 5th Amendment Violation;
11 INCORRECT PSI; 6th 14th Amendment Violation "Due Process"
12 for illegal sentence

13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

14 (5) Result:

15 (6) Date of result:

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:
17

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court:

20 (2) Nature of proceeding:

21 (3) Grounds raised:

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

23 (5) Result:

24 (6) Date of result:

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:
26

27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
28 them on a separate sheet and attach.

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

3 (1) First petition, application or motion? Yes No ☒

4 Citation or date of decision:

5 (2) Second petition, application or motion? Yes No

6 Citation or date of decision:

7 (3) Third or subsequent petitions, applications or motions? Yes No

8 Citation or date of decision:

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you
10 did not. (You must relate specific facts in response to this question. Your response may be included on paper which
11 is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in
12 length.).....
13

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

16 (a) Which of the grounds is the same: Double Jeopardy; Incorrect P.S.E.;
17 Illegal Sentence

18 (b) The proceedings in which these grounds were raised: Motion to correct an
19 illegal sentence

20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your
22 response may not exceed five handwritten or typewritten pages in length.)

23 NO RESPONSE FOR
Submitted motion as of date not even a date stamp filed copy.

24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or federal, list briefly what grounds were not so presented,
26 and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your
27 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not
28 exceed five handwritten or typewritten pages in length.) DUE PROCESS Violations "No

1 Probable Cause to bound over to District Court"

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

6
7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment
8 under attack? Yes No ☒

9 If yes, state what court and the case number:

10
11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on
12 direct appeal: CONVICTION; MICHAEL JANIT

13
14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
15 attack? Yes No ☒

16 If yes, specify where and when it is to be served, if you know:

17
18 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the
19 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts
20 supporting same.
21
22
23
24
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28

1 (a) Ground ONE: U.S Constitution 5th Amendment and Nebraska
2 Constitution Article 1 Violations: Double Jeopardy
3
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.): Appellant was
6 prosecuted and/or punish twice for the same offense.

7 Whereas, the appellant was arrested on April 2,
8 2016 for the alleged event that occurred on April 9,
9 2013 and charged with the crime(s) of Burglary and
10 Attempt Grand Larceny less than \$3500 by the way
11 of a Criminal Complaint in Justice Court. In which,
12 the appellant posted BOND on both charges and
13 released.

14 Whereas, the state proceeded to preliminary hearing
15 in Justice Court for the crime(s) of Burglary and Attempt
16 Grand Larceny less than \$3500 and ~~and~~ at the completion
17 of the hearing only the charge of Burglary was bound
18 over to District Court leaving the charge of Attempt
19 Grand Larceny less than \$3500 dismissed/dropped for
20 No Corpus Delicti, slight or marginal evidence to bound
21 over to District Court for the 1st time appellant was
22 subjected to jeopardy and appellants bond for Attempt
23 Grand Larceny less than \$3500 exonerated.

24 Whereas, the appellant was subjected to jeopardy
25 for the 2nd time when the state by the way of amended
26 information in District Court drop the charge of Burglary
27 and once again charge appellant with Attempt Grand
28 Larceny less than \$3500 that was filed in open court

"Double Jeopardy"

GROUND ONE CONTINUE:

1. ON November 7, 2018
2. INTEREST, the state for the 3rd TIME subjected
3. APPPELLANT to FACE jeopardy ON February 4, 2019 by a
4. RECORD ON the charge of Attempt Grand Larceny LESS THAN
5. \$3500 AND ISSUED A NO BOND.
6. FINALLY, the state CONVICTED the APPPELLANT ON the
7. charge of Attempt Grand Larceny LESS THAN \$3500 ON
8. March 6, 2019 to ONCE AGAIN for the 4th TIME subject
9. the APPPELLANT to jeopardy for the SAME OFFENSE through
10. PROSECUTION AND/OR PUNISHMENT without a GRAND
11. Jury Indictment.

(b) Ground TWO: U.S. Constitution 6 and 14th Amendment
Violations "Right to Due Process"

Supporting FACTS (Tell your story briefly without citing cases or law.): Appellant contends that it was "Lack of Probable Cause" to bound over to District Court.

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

Whereas, the State did not have the 3 (three) female occupants of said room testify or give written statements that appellant did not have their permission or consent to be in said room. When in fact, one of the female occupants perform fellatio on appellant in bathroom of said room on the night in question. Furthermore, none of the female occupants made statements that any of their belongings were missing or tampered with, so no loss or injury occurred.

Whereas, the victim Joshua Jarvis testified at preliminary hearing that he had no valuables or property in said room only his iPhone that he had on his person.

Whereas, when the appellant was on the charge of Attempt Grand Larceny at prelim for No Corpus Delicti, slight or marginal evidence that the State predicted the intent on for the Burglary charge that the burglary charge should have been dismissed for No corpus delicti, slight or marginal evidence.

"DUE PROCESS"

GRAND TWO CONTINUE:

- 1.
2. WHEREAS, THERE IS NO CORPUS DELICTI, CRIME IS A BREACH
3. OF LAWS OR GOVERNING AUTHORITY. WHILE THIS ALLEGED OFFENSE
4. WAS A VIOLATION OF THE LAW IT WAS NOT A CRIME. NOTWITH-
5. STANDING, PROOF OF THE CORPUS DELICTI IS REQUIRED IN ALL
6. CRIMINAL MATTERS. PROOF OF THE CORPUS DELICTI IS REQUIRED
7. IN ALL CRIMINAL CASES AND THERE ARE THREE BASIC ELEMENTS
8. IN THE PROOF OF A CRIME: (1) THE OCCURRENCE OF LOSS OR INJURY,
9. (2) CRIMINAL CAUSATION OF THAT LOSS OR INJURY AND (3) THE
10. IDENTITY OF THE DEFENDANT AS THE PERPETRATOR OF THE CRIME.
11. WHEREAS, LACK OF EVIDENCE A CHARGE FILED ^{INFORMATION} ~~COMPLAINT~~
12. WITH NO BOND ISSUE, OR CONVICTION ISSUE IS HEARSAY, AND
13. THEREFORE IRRELEVANT, AND IN LEGAL CONTEMPLATION AS IMPERATIVE,
14. AS THOUGH IT HAD NEVER BEEN ISSUED. FOR A CRIME TO EXIST,
15. THERE MUST BE AN INJURED PARTY. "THERE CAN BE NO SANCTION
16. OR PENALTY IMPOSED ON ONE BECAUSE OF THE EXERCISE
17. OF CONSTITUTIONAL RIGHT." WHERE RIGHTS ARE SECURED BY THE
18. CONSTITUTION ARE INVOLVED THERE CAN BE NO RULEMAKING OR
19. LEGISLATION WHICH WOULD ABROGATE THEM. THE CLAIM AND
20. EXERCISE OF A CONSTITUTIONAL RIGHT CANNOT BE CONVERTED
21. INTO A CRIME.
22. WHEREAS, IF APPELLANT IS TO BE SUBJECT TO THE ALLEGED
23. CRIMINAL ACTS IT IS CONCLUDED THAT NO ACT WAS IN FACT
24. BROKEN. BECAUSE THERE IS NO RETIFICATION OF COMMENCEMENT,
25. THE COURTS LACK OF PERSONAM JURISDICTION AND NO CORPUS
26. DELICTI THUS NO JUSTIFIABLE CONTROVERSY OR CAUSE OF

"DUE PROCESS"

Ground Two CONTINUE:

27.

28. action before the court. I motion the court to dismiss/

29. vacate the conviction against me and release me

30. forthwith and posthaste for I am being unlawfully

31. detained.

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(c) Ground THREE: U.S. Constitution 8th Amendment Violation
"Cruel and Unusual Punishment" Illegal
Sentence.

Supporting FACTS (Tell your story briefly without citing cases or law.): Appellant contends that being adjudicated as a habitual criminal is cruel and unusual punishment that shock the conscience as being disproportionate to the crime charged Attempt Grand Larceny less than \$3500 which is a miscarriage of Justice.

Whereas, appellants criminal history at the time was Credit Card Abuse and Fraudulent Use/Poss. of Identifying Information that's a State Jail Crime in Texas that does not carry a prison term, mandatory supervision, nor parole and is not a category A, B, C, D, E felony it's a State Jail Crime that carries only jail time equal to what Nevada considers a Gross Misdemeanor that appellant was convicted of in March 2007. In August 2011 appellant was convicted of a category E felony Attempt poss. of credit or debit card without cardholders consent here in Nevada.

Whereas, at the date the adjudicated charge of Attempt Grand Larceny less than \$3500 occurred the appellant had never been to prison or ever had a violent ~~crime~~ or serious crime charged against him.

Whereas, the state deemed the conviction in Texas

"Illegal Sentence"

GROUND THREE CONTINUE:

- 1.
2. as a felony. Is there any felony in the USA that does
3. not carry a prison term, mandatory supervision or
4. parole? So at the very least you would have to decide
5. that its ambiguous as being a felony conviction so as
6. the light most favorable to the appellant it would not
7. be a felony conviction for enhancement to adjudicate.
8. Whereby, appellant contends that the state breach
9. the Guilty Plea Agreement on impeachable and highly suspect
10. evidence that allegedly occurred in January 2019 that
11. greatly prejudice the appellant case number 19701534X in
12. Dept NO. 14. Whereby, the victim testified at preliminary
13. hearing under oath facing the penalty of perjury that the
14. appellant was NOT the perpetrator of the alleged event
15. and 100% sure not 80%. So there was no corpus delicti,
16. slight, or marginal evidence leaving no causation for the
17. state to breach the terms and spirit of agreement that does
18. not serve the interests of Justice.
19. Whereby, appellant never violated a provision of a statute
20. that would have allowed the District Court to NOT stand
21. by the sentence agreed upon by the parties set forth
22. in the Guilty Plea Agreement. Furthermore, the appellant was
23. never given notice that the District Court would seek
24. habitual treatment if appellant violated a provision of a
25. statute making this an illegal sentence.
26. Whereby, consecutive sentences violates the legislative

"Illegal Sentence"

Ground Three CONTINUE:

27. instant of NRS 176.035 and does not serve the interests
28. of Justice

29. WHEREAS, the instant offense took place on or about
30. April 9, 2013 and was not subsequent to the Burglary
31. conviction that occurred April 2, 2010 but prior to the
32. District Court ERRED by sentencing the appellant to consecutive
33. sentence rather than concurrent.

34. WHEREAS, the appellants bond for the instant offense
35. was exonerated at the conclusion of the preliminary
36. hearing for lack of probable cause [No Corpus Delicti, slight
37. or marginal evidence]. So the appellant should receive
38. time credit from that point to the present towards the
39. instant offense Attempt Grand Larceny.

40.

41.

42.

43.

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51.

INCORRECT PSI

GROUND FOUR: DUE PROCESS VIOLATION

1. Appellants Pre-Sentence Investigation report did have several material
2. facts in error that was objected to and untrue assumptions made by
3. state prosecutor M. Dickerson which work to the extreme detriment
4. of the appellant

5. Whereas, M. Dickersons profile was assumptions that was NOT
6. based on any facts or evidence as he stated appellant was a career
7. "DOOR PUSHER" and NOT ONE of appellants crimes had any evidence
8. of "DOOR PUSHING"

9. Whereas, the appellants PSI had several material facts in error
10. as follows: Convictions should read Felony 2(ONE) NOT 4(FOUR);
11. Misdemeanors 2(two) NOT 3(three)... INCESTUOUS should read
12. PRISON 0(ZERO) NOT 1(ONE) Jail 3(THREE) NOT 5(FIVE)... SUPERVISOR
13. History should read Current 0(ZERO) NOT 1(ONE)... INSTANT OFFENSE
14. C-16-315718-1 WA 1. Burglary 1st(?) 2. Attempt GRAND LARCENY < \$7500(?)
15. should be dated 04-09-2013 NOT 04-02-2016... TEXAS CONVICTIONS
16. 1083785 and 1083786 is 1(ONE) EVENT NOT 2(two) and NOT
17. FELONIES but state jail CRIMES)... Case Number C-16-315125-1
18. should NOT be anywhere on appellants PSI for the instant
19. offense as it occurred sum 3(three) years to the latter.

20. Wherefore, based on the foregoing facts and constitutional
21. violations this Honorable Court is respectfully urged to
22. dismiss/vacate the appellants judgement against him.
23.

24. Dated this 10th day of April, 2019 I, James H. Hayes, do solemnly swear
25. under penalty of perjury that the above writ of Habeas Corpus is accurate
26. correct and true to the best of my knowledge

James H. Hayes #1175077

MAILED 1175642
U.S. 8
P.O. BOX 650
TOMBALL TEXAS, TX
83090

INTAKE
NSF 3763

Clerk County District Courts
"Clerk of the Courts"

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LOS VEGAS, NEVADA

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FILED

MAY 02 2019

[Signature]
CLERK OF COURT

1 PPOW

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 James H Hayes,

6 Petitioner,

7 vs.

8 Nevada State of,

9 Respondent,

Case No: A-19-793315-W
Department 19

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

10
11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on
12 April 15, 2019. The Court has reviewed the Petition and has determined that a response would assist the
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good
14 cause appearing therefore,

15 IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

19 Calendar on the 12th day of August, 20 19, at the hour of

20 8:30 A.M.
21 o'clock for further proceedings.

22
23
24
25
26 RECEIVED
27 MAY 02 2019
28 CLERK OF THE COURT

Will Kph
District Court Judge

[Signature]

A - 19 - 793315 - W
OPWH
Order for Petition for Writ of Habeas Corpus
4833646



87
FILED

MAY 07 2019

CLERK OF COURT

1 Case No. A-19-793315
2 Dept. No. XIX

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

5 JAMES H. HAYES
6 Petitioner,

7 v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

8 State of Nevada: Warden
9 Respondent. Brian Williams

"ADDENDUM"

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert Prison, Clark County Nevada

2. Name and location of court which entered the judgment of conviction under attack: Clark County District Court, Dept XIX

3. Date of judgment of conviction: March 12, 2019

4. Case number: C-315718

Length of sentence: 60-174 months

CLERK OF THE COURT

RECEIVED
MAY 07 2019

A-19-793315-W
ADDM
Addendum
4835243



(b) If sentence is death, state any date upon which execution is scheduled:....

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

Yes ☒ No

If "yes," list crime, case number and sentence being served at this time:

Burglary C-315125

21-22 months

7. Nature of offense involved in conviction being challenged:

Attempt Grand Larceny

8. What was your plea? (check one)

(a) Not guilty

(b) Guilty ☒ Alford Plea

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

NOT GUILTY TO Burglary; Alford Plea to Attempt Grand Larceny

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

(a) Jury

(b) Judge without a jury ☒

11. Did you testify at the trial? Yes No

12. Did you appeal from the judgment of conviction? Yes No ☒

13. If you did appeal, answer the following:

(a) Name of court:

(b) Case number or citation:

(c) Result:

(d) Date of result:

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

1 14. If you did not appeal, explain briefly why you did not:

2 Waiver of Rights which
3 is a Equal Protection and Due Process Violation

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

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: Clark County District Court

8 (2) Nature of proceeding: Motions to correct ILLEGAL SENTENCE/
9 Modify

10 (3) Grounds raised: DOUBLE JEOPARDY; DUE PROCESS VIOLATION;
11 ILLEGAL SENTENCE; INCORRECT PSI

12
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

14 (5) Result: ☐

15 (6) Date of result: ☐

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

17
18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: ☐

20 (2) Nature of proceeding: ☐

21 (3) Grounds raised: ☐

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

23 (5) Result: ☐

24 (6) Date of result: ☐

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

26
27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
28 them on a separate sheet and attach.

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

3 (1) First petition, application or motion? Yes No ☒

4 Citation or date of decision:

5 (2) Second petition, application or motion? Yes No

6 Citation or date of decision:

7 (3) Third or subsequent petitions, applications or motions? Yes No

8 Citation or date of decision:

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you
10 did not. (You must relate specific facts in response to this question. Your response may be included on paper which
11 is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in
12 length.).....

13
14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

16 (a) Which of the grounds is the same:

17
18 (b) The proceedings in which these grounds were raised:

19
20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your
22 response may not exceed five handwritten or typewritten pages in length.)

23 *Motion to correct
Illegal sentence was sent back unfilled.*

24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or federal, list briefly what grounds were not so presented,
26 and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your
27 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not
28 exceed five handwritten or typewritten pages in length.) *Lack of Probable Cause;*

District Court Did Not Divest Jurisdiction; Ineffective Asst. of Counsel

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

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No ☒

If yes, state what court and the case number:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Conviction - Michael J. Swift

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No ☒

If yes, specify where and when it is to be served, if you know:

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground ONE: U.S. Constitution Violation 6 and 14th
Amendments "Ineffective Assistance of Counsel"

Supporting FACTS (Tell your story briefly without citing cases or law.): COUNSEL failed to provide zealous and quality representation.

WHEREAS, COUNSEL failed to investigate the facts of the case; failed to identify defects in the prosecution i.e. Double Jeopardy, Equal Protection, as counsel failed to fully explain to petitioner the rights waived by entering into and signing the Guilty Plea Agreement. When in fact, counsel told petitioner that the agreement was for a gross misdemeanor not felony. Counsel failed to file motions challenging the defects in the charging document and Guilty Plea Agreement. Counsel failed to protect petitioner's rights by waiver or procedural default. Counsel failed to protect the record for collateral review. Counsel failed to investigate and study the case before petitioner's acceptance of the plea agreement. Counsel failed to meet with petitioner in a confidential setting to make sure that petitioner understands the rights he would waive by entering the plea agreement and that it was knowing, voluntary, and intelligent. Counsel failed to completely inform petitioner of the maximum punishment and consequences that he would be exposed to as petitioner was surprised when sentence to habitual offender.

1 (b) Ground TWO: DUE PROCESS VIOLATION

2
3
4
5 Supporting FACTS (Tell your story briefly without citing cases or law.): NO NOTICE TO
6 SEEK HABITUAL TREATMENT

7 WHEREAS, THE STATE DID NOT GIVE WRITTEN
8 NOTICE AND NO AGREEMENT BY BOTH PARTIES THAT
9 THEY WOULD SEEK HABITUAL TREATMENT FOR THE CHARGE
10 OF ATTEMPT GRAND LARCENY LESS THAN \$3500. WHEN
11 IN FACT THE PETITIONER WAS SURPRISED AT SENTENCING
12 WHEN ADJUDICATED HABITUAL AS COUNSEL HAD INFORM
13 PETITIONER THAT THE CHARGE WAS NEGOTIATED TO
14 A GROSS MISDEMEANOR. AS PETITIONER HAS NEVER
15 HAD A SERIOUS OR VIOLENT CHARGE HELD AGAINST
16 HIM AND THE INSTANT CASE THERE WAS NO
17 LOSS OR INJURY, NO CORPUS DELICTI, NO PROBABLE
18 CAUSE AS THE CHARGE WAS DISMISSED IN JUSTICE
19 COURT AT THE CONCLUSION OF THE PRELIMINARY
20 HEARING FOR NO PROBABLE CAUSE AND LACK OF
21 EVIDENCE. NO CLEAR AND CONVINCING EVIDENCE.

22 WHEREAS, ALLEGED VICTIM JOSHUA JARVIS
23 TESTIFIED THAT HE DID NOT HAVE ANY VALUABLES IN
24 THE SAID ROOM ONLY HIS IPHONE THAT WAS ON HIS
25 PERSON AND THE STATE FAILED TO PRESENT THE THREE
26 FEMALE OCCUPANTS OF ROOM AT PRELIM HEARING OR
27 ENTER ANY WRITTEN STATEMENTS FROM ANY OF THE
28 SAID FEMALE OCCUPANTS OF SAID ROOM.

(c) Ground THREE: U.S. Constitution 5th Amendment
Violation and Due Process Violation

Supporting FACTS (Tell your story briefly without citing cases or law.): Double Jeopardy
applies to jeopardy or risk stemming from the
same offense.

Whereas, the petitioner may not lawfully
be subjected to the risk of twice being tried
for the same offense or face multiple punishments
for the same offense (NRS 174.085) in the instant
case the charge for Attempt Grand Larceny less than
\$3500 was dismissed at the conclusion of the
preliminary hearing after the state presented all
their evidence and only the charge of Burglary
was bound over to District Court that was in
error by Justice Court Judge. When in fact as
the state used the the Att. Grand Larceny charge
for the instant for the Burglary charge so when
the Att. Grand Larceny charge was dismissed it
made the Burglary charge fatal and it should
have been dismissed leaving no causation and
no jurisdiction for District Court to proceed.
No substantial evidence and no clear and
convincing evidence for the charge of Burglary
to be bound over to District Court that was
dismissed by the state for the way of Amended
Information to once again charge petitioner with
Attempt Grand Larceny less than \$3500.

BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 17 day of the month of April, 2019.

James H. Hayes

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

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

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

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number 315718 Does not contain the social security number of any person.

James H. Hayes

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

CERTIFICATE OF SERVICE BY MAIL

I, James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 17 day of the month of April, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

James H. Hayes #1175077

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

* Print your name and NDOC back number and sign

-9-

Header # 1175011
H. 1.5.2
P.D. 300 650
MADISON SPRINGS, NV
89020

INTAKE
NSF 3763

Clerk County District Courts
Attn: Clerk of the Courts
200 Lewis Ave, 3rd Floor
Las Vegas, Nevada
89155

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MAY 09 2019

CLERK OF COURT

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

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

James H. Hayes
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

ADDENDUM II (Two)

State of Nevada Warden
Respondent. Brian Williams

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison, Nevada
2. Name and location of court which entered the judgment of conviction under attack: Clark County Nevada District Court XIX
3. Date of judgment of conviction: March 12, 2019
4. Case number: C-16-315718-1
5. (a) Length of sentence: 60 to 174 months

RECEIVED

MAY 09 2019

CLERK OF THE COURT

A-19-793315-W
ADDM
Addendum
4835244



(b) If sentence is death, state any date upon which execution is scheduled:....

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

Yes ☒ No

If "yes," list crime, case number and sentence being served at this time: C-16-315125
21 to 22 months

7. Nature of offense involved in conviction being challenged: Attempt Grand Larceny
less than \$13500

8. What was your plea? (check one)

(a) Not guilty

(b) Guilty ☒ Alford Plea

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: Not Guilty to Burglary; Alford Plea to Attempt
Grand Larceny less than \$13500

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

(a) Jury

(b) Judge without a jury ☒

11. Did you testify at the trial? Yes No

12. Did you appeal from the judgment of conviction? Yes No

13. If you did appeal, answer the following:

(a) Name of court:

(b) Case number or citation:

(c) Result:

(d) Date of result:

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

1 14. If you did not appeal, explain briefly why you did not: Waiver of Rights

2
3
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: Clark County District Court, Nevada

8 (2) Nature of proceeding: Motion to correct Illegal Sentence /
9 Modification

10 (3) Grounds raised: Double Jeopardy, Illegal Sentence, Incorrect
11 P.S.I., Due Process Violations

12
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No ☒

14 (5) Result:

15 (6) Date of result:

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:
17

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court:

20 (2) Nature of proceeding:

21 (3) Grounds raised:

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

23 (5) Result:

24 (6) Date of result:

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:
26

27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
28 them on a separate sheet and attach.

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

(1) First petition, application or motion? Yes No ☒

Citation or date of decision:

(2) Second petition, application or motion? Yes No

Citation or date of decision:

(3) Third or subsequent petitions, applications or motions? Yes No

Citation or date of decision:

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.).....

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

(a) Which of the grounds is the same: DOUBLE JEOPARDY, ILLEGAL SENTENCE
INCORRECT PSI, DUE PROCESS VIOLATIONS

(b) The proceedings in which these grounds were raised: MOTION TO CORRECT ILLEGAL
SENTENCE / MODIFICATION

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

MOTIONS TO CORRECT
ILLEGAL SENTENCE / MODIFICATION WAS RETURN UNFILED

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

1 INEFFECTIVE ASSISTANCE OF COUNSEL? Equal protection

2 19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing
3 of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in
4 response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the
5 petition. Your response may not exceed five handwritten or typewritten pages in length.)
6

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment
8 under attack? Yes No ☒

9 If yes, state what court and the case number:
10

11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on
12 direct appeal: CONVICTION Michael Janft
13

14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
15 attack? Yes No ☒

16 If yes, specify where and when it is to be served, if you know:
17

18 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the
19 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts
20 supporting same.
21
22
23
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28

1 (a) Ground ONE: United States and Nevada Constitution violation
2 Ineffective Assistance of Counsel that prejudice the petitioner
3 and is a Miscarriage of Justice that does not serve
4 the interests of Justice

5 Supporting FACTS (Tell your story briefly without citing cases or law.): Wherefore, there is
6 a reasonable probability that, but for counsel's
7 failures and unprofessional errors, the result would
8 have been different. As this was surely inadequate
9 legal representation, when in fact, petitioner has
10 always maintain actual innocence

(b) Ground TWO: U.S. and Nevada Constitution Violations
Double Jeopardy that prejudice the petitioner and is a
miscarriage of justice that does not serve the interests
of Justice.

Supporting FACTS (Tell your story briefly without citing cases or law.): WHEREAS the
petitioner suffered irreparable injury through
prosecutions unprofessional and grossly unethical
conduct as they maliciously failed to proceed on
the facts and the law.

1 (c) Ground THREE:

2 U.S. Constitution violations Equal Protection
3 AND DUE PROCESS. Inappropriate Personal attack
4 AND a Judicial Violation.

5 Supporting FACTS (Tell your story briefly without citing cases or law.): WHEREAS, at sentencing
6 hearing for the INSTANT OFFENSE District Court Judge William
7 Kephart made prejudicial comments about petitioner as
8 he stated that petitioner is smart but will you be able
9 to overcome prior bad acts" referring to a criminal
10 case that is pending in said Judge's court room that
11 due to go to trial May 13, 2019, that petitioner made
12 reference to because the state use this is perjured case
13 to breach the Guilty Plea Agreement entered into by both
14 parties for the INSTANT OFFENSE. When in fact this is
15 impalpable and highly suspect evidence as the victim
16 in-court identification was not of the petitioner and
17 he stated he's 100% sure that petitioner was not the
18 perpetrator of said alleged event and this shows Judge
19 William Kephart's Bias and Prejudice towards the petitioner
20 and this is a Miscarriage of Justice that does not serve
21 the interests of Justice.

22 WHEREAS, the court transcripts and in camera review
23 of said day in question March 6, 2019 would show clear
24 and convincing evidence of Judge Kephart's prejudice and
25 bias displayed towards petitioner throughout the proceedings
26 as he predetermine a Petrocelli hearing ruling instead
27 of proceeding on the facts and the law that hasn't been
28 presented before this Judge for such a ruling at this time
and this is egregious.

BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 26 day of the month of April, 2019.

James H. Hayes

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

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

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

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-16-315218-1 Does not contain the social security number of any person.

James H. Hayes

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

CERTIFICATE OF SERVICE BY MAIL

James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 26 day of the month of April, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

James H. Hayes #1175077

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

* Print your name and NDOC back number and sign

-B-
-9-

HE45 1125082
H050
P.O. Box 650
Tadousa Springs, WV
87020

INTAKE
NSF 3763

Clerk County District Courts

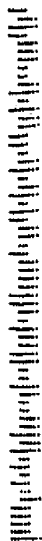
2nd Clerk of the Courts

200 Lewis Ave, 3rd Floor

123 Veggies, Nevada

89155

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FILED

MAY 20 2019

CLERK OF COURT

District Court
Clark County, Nevada

JAMES H. HAYES
Petitioner

CASE NO: A-19-793315-W
Department: 19

vs.

STATE OF NEVADA
Respondent

Motion of Notice
"Peremptory Challenge of Judge"

A-19-793315-W
MOT
Motion
4837646



Comes now, James H. Hayes, in proper person requests that Clark County District Court Judge William "Bill" Kephart be disqualified and transfer the above titled action to ~~another~~ another District Court Judge due to inappropriate personal attack and a judicial violation that occurred on March 6, 2019 that showed Judge's bias and prejudice.

Whereas, the petitioner is concerned that the Judge may be biased or unfair for some reason as he has shown in the past that would not serve the interests of Justice.

Wherefore, petitioner requests that the court grant such relief to which petitioner may be entitled.

RECEIVED

MAY 20 2019

James H. Hayes
James H. Hayes #1175077

4

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, JAMES N. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 15
day of May, 2019, I mailed a true and correct copy of the foregoing, "Motion
of Notice "Peremptory Challenge of Judge""
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Court
200 LEWIS AVE. #2041
LAS VEGAS, NV
89155-1160

CC:FILE

DATED: this 15 day of March, 2019.

James N. Hayes
JAMES N. HAYES # 1175077
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion of
Notice "Peremptory Challenge of Judge"
(Title of Document)

filed in District Court Case number A-19-793315-W

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

James H. Hayes
Signature

5-15-19
Date

JAMES H. HAYES
Print Name

DEBTOR / PROPER PERSON
Title



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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES,
13 #2796708

14 Defendant.

CASE NO: A-19-793315-W

DEPT NO: XIX

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

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

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

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

26 ///

27 ///

28 ///

///

W:\2013\2013F\107\23\13F\10723-RSPN-(HAYES__JAMES)-001.DOCX

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

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

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

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

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

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

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

24 ARGUMENT

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

27 NRS 34.810(1)(a) reads:

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

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

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

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

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

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

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

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

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

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

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

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

11 Then, in an Amended Notice of Intent to Seek Punishment as a Habitual Criminal, the
12 State alleged that Petitioner had been convicted of Credit Card Abuse, a Texas felony, Attempt
13 Possession of Credit or Debit Card Without Cardholder's Consent (Category E Felony), and
14 Burglary (Category B Felony). At sentencing, this Court found that the State carried its burden
15 of proving each. Accordingly, the State was free to argue for habitual treatment under NRS
16 207.010(1)(a).

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

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

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

1 2019. Accordingly, the State was free to argue for habitual treatment. That case, C-19-338412-
2 1, is currently pending before this Court. Once probable cause was found, the State was free
3 to argue for habitual treatment under the plain terms of the GPA. Because Petitioner's ultimate
4 sentence fell within the parameters of the small habitual statute, the Eighth Amendment was
5 not violated.

6 Finally, in Ground 4, Petitioner's claim that his Presentence Investigation Report
7 contained errors is nothing more than a bare and naked allegation. Hargrove, 100 Nev. at 502,
8 686 P.2d at 225. Further, challenges to the Presentence Investigation Report are not cognizable
9 after sentencing. NRS 176.135(1) requires the Division of Parole and Probation to prepare a
10 Presentence Investigation Report for any defendant who pleads guilty of a felony. This Court
11 has previously addressed the importance of a factually accurate PSI at sentencing:

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

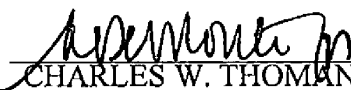
14
15 **CONCLUSION**

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

17 DATED this 26th day of June, 2019.

18 Respectfully submitted,

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

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

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

1 CERTIFICATE OF MAILING

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

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

8
9 BY C. Garcia
10 C. Garcia
11 Secretary for the District Attorney's Office
12
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26
27
28 CWT/jp/cg/L-2

IX

Hayes, James H ID NO. 1175072

FILED

JUL 05 2019

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

Alvin L. Williams
CLERK OF COURT

8th Judicial District Court
Clark County, Nevada

James H. Hayes

petitioner

v.

State of Nevada, Warden B. Williams
respondent

CASE NO.: A-19-793315-W

DEPT. NO.: XIX

DOCKET: _____

Motion for "Judgement of Default" Against the
Respondents and Enforce Procedural Default.

COMES NOW, petitioner, James H. Hayes, herein above respectfully
moves this Honorable Court for an Judgement of Default and/or Enforce
procedural Default

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

DATED: this 1 day of July, 2019

BY: James H. Hayes

James H. Hayes

1175072

Defendant/In Proper Personam

CLERK OF THE COURT

JUL 05 2019

RECEIVED

A-19-793315-W
MOFJ
Motion for Default Judgment
4847097



1 Procedural Background ON CASE: Petitioner filed a writ of Habeas
2 Corpus on April 15, 2019 under case No C-16-315718-1. And
3 subsequently, this court ordered that the respondent "SHALL"
4 have 45 days to reply to the writ of Habeas Corpus. The
5 court has set a date of August 12, 2019 for the parties to
6 appear in court for a hearing on this matter. However;
7 the allowed 45 day deadline has passed, and petitioner
8 Hayes has not received a response to the Habeas Corpus,
9 and one hasn't been filed as of June 21, 2019 at 10:45AM

10 Points and Authorities

11 U.S. Constitution 5th Amend - Due Process of Law
12 U.S. Constitution 14th Amend - Equal protection of Law
13 U.S. Constitution 1st Amend - Right to Petition
14 U.S. Constitution Article 1 Section 9 - Anti-Suspension Clause
15 State, Emp. Sec. Dept. vs. INEBER, 100 Nev. 121 (1984)
16 E.D.C.R # 3.40 (C)
17 E.D.C.R # 3.80
18 Hillis vs. State
19 DEZENI vs. KERN Assoc (2018) LEV11 14
20 BATES vs CHRONISTER, 100 Nev. 625
21 NRS 34.270
22 NRS. 34.390
23 NRS 34.380
24 Polk vs State 233 P.3d 357 (2010)
25

26 LEGAL Argument(s)

1 Failure to respond to an argument within the
2 litigation will be taken as "Confession of Error."

3 Failure to reply to any litigation within a case
4 is a Procedural Bar to that Issue. Also known as
5 "Default" or "Procedural Default"

6 Failure to comply with a Court order is "Contempt
7 of Court" and Disobedience of Order (Writ)

8 "SHALL" the word shall means Mandatory!! It is a
9 must, and is not a discretionary word.

10
11 Failure for any party to respond to an argument within the
12 litigation of a case will be taken as a "Confession of Error";
13 The Nevada Supreme Court ruled that, "We elect to treat
14 the chronister failure to respond to this argument in the
15 3pgs of Arguments in their Answering brief as Confession
16 of Error."

17 Also, under N.R.A.P # 31 - The Court shall not grant
18 additional extensions of time except upon a showing
19 of Extra-ordinary circumstances and extreme need and
20 Respondent has not shown any extreme need.

21
22 Failure of any party to Reply to any litigation within a
23 case is a Procedural Bar to that Issue, also known as
24 "Default" or "Procedural Default". A writ of habeas corpus
25 is a writ civil in nature, because it is a petition. And
26 under U.S. Constitution Art 1 Sec 9 - The Writ of Habeas
27 Corpus shall not be suspended, and under U.S. Constitution

1 1st Amend. Hayes, has the right to petition the gov't for
2 a redress of grievances And for the petitions to be adjudicated
3 based on the merits. And so, since the respondent(s), didn't
4 reply within the Court Ordered 45 day time frame then it is
5 apparent that the State of Nevada and the N.A.S.C can't
6 justify imprisoning Hayes, And Hayes, confinement is
7 illegal and unconstitutional. Whereas, had it been justifiable
8 then the respondent(s) would've justified it, instead the
9 respondent(s) had No rebuttal to ~~the~~ ^{Hayes} meritorious claims
10 and voluntarily chose to go into Default.

11 therefore, James H. Hayes, urges this Honorable court to
12 grant his Petition for Writ of Habeas Corpus, and release
13 Hayes, Immediately. Pursuant To: 34.38D and 34.39D.
14 Also, under Hillis vs. State if a party fails to object then
15 that party has waived any opposition. Hillis vs Brewster
16 failure to respond is treated as consent to grant motion
17 Polk vs State 233 P.3d 357

18
19 Failure to comply with a Court Order is considered a
20 "Contempt of Court". Pursuant to: State Emp. Ser Dept.
21 vs Weber. So, Now Hayes urges this Court to actually
22 hold respondent(s) in Contempt of Court for violating the
23 court's order to respond to Mr. Hayes, Petition for a Writ
24 of Habeas Corpus. And so, NEVER in history has a litigant
25 ever been rewarded or decided in their favor, when the
26 litigant whom is the party in Default, and is in Contempt
27 of a court order. This is Judicial principles outlined

1 in the CSC and NRS Chapter 2. And Hayes, urges that
2 Pursuant to: Hillis vs State respondent(s) is procedurally
3 barred to try and respond now to this Petition for writ
4 of Habeas Corpus based on Hillis vs. State.

5 Wherein, it is well established in Anglo-Saxon Law,
6 that the word "SHALL" means must. And it puts a
7 mandate on the context of the subject As opposed to
8 if the word "May" is used. And in the Court's Order it
9 expressly states that: "It is hereby ordered that respondent
10 "SHALL" within 45 days after the date of this order, Answer
11 or otherwise respond to the Petition and file a return in
12 accordance with the provisions of NRS 34.360 to 34.830
13 INCLUSIVE."

14

15 Under Penalty of Perjury

16 I, James H. Hayes, the undersigned, certify, declare,
17 or state that the foregoing is true and correct, to
18 the best of my knowledge and belief, in
19 accordance with NRS 208.165 and 28 USC
20 § 1746.

21 Executed on the 1st day of July, 2019.

22

23 James H. Hayes #1175077

24

James H. Hayes

25 Wherefore, petitioner requests that the court grant petitioner
26 such relief to which petitioner may be entitled.

27

-6-

28

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 1st
day of July, 2019, I mailed a true and correct copy of the foregoing, "Judgment
of Default and/or Enforce Procedural Default"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Courts
200 Lewis Ave. 30301
Las Vegas, NV 89155-1160

Atty General of Nevada
"Office of the Clerk"
100 North Carson Street
Carson City, NV 89201

CC:FILE

DATED: this 1st day of July, 2019.

James H. Hayes
James H. Hayes # 1190274
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Judgment
of Default and/or Enforce Procedural Default
(Title of Document)

filed in District Court Case number A-19-793315-W

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

James H. Hayes
Signature

7-1-19
Date

JAMES H HAYES
Print Name

PETITIONER / PRO SE
Title

July 1, 2019

DEAR CLERK OF THE COURTS,

CAN YOU PLEASE FILE THE FOLLOWING ENCLOSED
EXHIBITS: Exhibit 1 - AMENDED INFORMATION

Exhibit 2 - INFORMATION

Exhibit 3 - Criminal Complaint

Exhibit 4 - NBS 174.085

Exhibit 5 - Judgment of Conviction

CASE NO. A-19-793315-W

Court. Dept. 19

Thanks...

CLERK OF THE COURT

JUL 05 2019

RECEIVED

James D. Hayes
Defendant/ In prose #1125099

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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

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

14 Defendant.

CASE NO. C-16-315718-1

DEPT NO. XIX

AMENDED
INFORMATION

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

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

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

27 ///

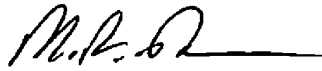
28 ///

EXHIBIT "L" 33

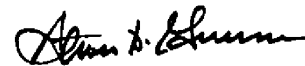
W:\2013\2013F\107\23\13F10723-AINF-(Hayes_James)-002.docx

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

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

6 BY 
7 MICHAEL DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476
10
11
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26 DA#13F10723X /cmj/L2
27 LVMPD EV#1304090843
28 (TK3)



CLERK OF THE COURT

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,
16 Plaintiff,

17 -vs-

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

CASE NO: C-16-315718-1

DEPT NO: XII

INFORMATION

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

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

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

///

///

///

///

EXHIBIT 2

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

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

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

6 BY M.A. Dickerson
7 MICHAEL DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476
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JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

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

Defendant.

1:25 0-5 00

JUSTICE COURT
LAS VEGAS NEVADA

CASE NO: 13F10723X

DEPT NO: 3

CRIMINAL COMPLAINT

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

COUNT 1 - BURGLARY

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

COUNT 2 - ATTEMPT GRAND LARCENY

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

///

///

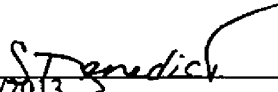
///

///

EXHIBIT 7

P:\WPDOCS\CO..

1 All of which is contrary to the form, force and effect of Statutes in such cases made
2 and provided and against the peace and dignity of the State of Nevada. Said Complainant
3 makes this declaration subject to the penalty of perjury.
4

5 
6 7/23/2013

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24
25
26
27 13F10723X/cb
28 LVMPD EV# 1304090843
(TK3)

HDSP CHECK OUT
LAW LIBRARY
RETURN AFTER 10 DAYS

174.085. Proceedings not constituting acquittal; effect of acquittal on merits; proceedings constituting bar to another prosecution; retrial after discharge of jury; effect of voluntary dismissal.

1. If a defendant was formerly acquitted on the ground of a variance between the indictment, information or complaint and proof, or the indictment, information, or complaint was dismissed upon an objection to its form or substance, or in order to hold a defendant for a higher offense without a judgment of acquittal, it is not an acquittal of the same offense.

2. If a defendant is acquitted on the merits, the defendant is acquitted of the same offense, notwithstanding a defect in the form or substance in the indictment, information, or complaint on which the trial was had.

3. When a defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment, information or complaint, except as otherwise provided in subsections 5 and 6, the conviction, acquittal or jeopardy is a bar to another indictment, information or complaint for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which the defendant might have been convicted under that indictment, information or complaint.

4. In all cases where a jury is discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress of the trial or after the cause is submitted to them, the cause may be again tried.

5. The prosecuting attorney, in a case that the prosecuting attorney has initiated, may voluntarily dismiss a complaint:

(a) Before a preliminary hearing if the crime with which the defendant is charged is a felony or gross misdemeanor; or

(b) Before trial if the crime with which the defendant is charged is a misdemeanor,

without prejudice to the right to file another complaint, unless the State of Nevada has previously filed a complaint against the defendant which was dismissed at the request of the prosecuting attorney. After the dismissal, the court shall order the defendant released from custody or, if the defendant is released on bail, exonerate the obligors and release any bail.

6. If a prosecuting attorney files a subsequent complaint after a complaint concerning the same matter has been filed and dismissed against the defendant:

NV CODE

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EXHIBIT 8

(a) The case must be assigned to the same judge to whom the initial complaint was assigned; and

(b) A court shall not issue a warrant for the arrest of a defendant who was released from custody pursuant to subsection 5 or require a defendant whose bail has been exonerated pursuant to subsection 5 to give bail unless the defendant does not appear in court in response to a properly issued summons in connection with the complaint.

7. The prosecuting attorney, in a case that the prosecuting attorney has initiated, may voluntarily dismiss an indictment or information before the actual arrest or incarceration of the defendant without prejudice to the right to bring another indictment or information. After the arrest or incarceration of the defendant, the prosecuting attorney may voluntarily dismiss an indictment or information without prejudice to the right to bring another indictment or information only upon good cause shown to the court and upon written findings and a court order to that effect.

HISTORY:

1967, p. 1416; 1971, p. 596; 1997, ch. 504, § 1, p. 2391.

NOTES TO DECISIONS

Robbery convictions of defendants who entered guilty pleas did not bar subsequent prosecution for murder committed during the robbery when victim died from his injuries on double jeopardy grounds; robbery and murder are separate and distinct offenses. *Carmody v. Seventh Judicial Dist. Court*, 81 Nev. 83, 398 P.2d 706, 1965 Nev. LEXIS 205 (Nev. 1965) (decision under former similar statute).

A void conviction is not a bar to a second conviction.

Where the initial complaint was fatally defective, the municipal court never acquired jurisdiction over the defendant, since the court was without jurisdiction, the defendant's conviction was void; therefore, the prior conviction is not a bar to the present proceedings, and double jeopardy has not attached. *Williams v. Municipal Judge of Las Vegas*, 85 Nev. 425, 456 P.2d 440, 1969 Nev. LEXIS 391 (Nev. 1969).

The beating administered to a robbery victim with an empty firearm after all the elements of the crime of robbery were complete, constituted a separate offense from the offense of robbery, and trying defendant for assault with intent to kill by virtue of said beating did not constitute double jeopardy. *State v. Feinzelber*, 76 Nev. 142, 350 P.2d 399, 1960 Nev. LEXIS 91 (Nev. 1960) (decision under former similar statute).

Where a defendant has been placed in jeopardy in a trial which is terminated prior to an acquittal or a conviction, retrial is not automatically barred; retrial is not prohibited by the double jeopardy bar if a prosecutor demonstrates "manifest necessity" for the mistrial. There was a manifest necessity for the mistrial, where the record established that the witness' own conduct was the sole reason for her failure to appear and the witness' absence would have effectively prevented the state from presenting its case.

NVCODE

2

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Steven D. Grierson

JOCP

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-VS-

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

Defendant.

CASE NO: C-16-315718-1

DEPT NO: XIX

**JUDGMENT OF CONVICTION
(PLEA OF GUILTY-ALFORD)**

The Defendant previously appeared before the Court with counsel and entered a plea of guilty pursuant to Alford Decision to the crime of ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor) in violation of NRS 205.220.1, 205.222.2 193.330; thereafter, on the 6th day of March, 2019, the Defendant was present in court for sentencing with counsel MICHAEL W. SANFT, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense under the felony statute and SMALL HABITUAL Criminal Statute and, in addition to \$25.00 Administrative Assessment Fee plus the \$3.00 DNA Collection Fee, the Defendant is sentenced to - a MAXIMUM of ONE HUNDRED SEVENTY-FOUR (174) MONTHS and a MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to C315125; with TEN (10) DAYS credit for time served. As the \$150.00 DNA Analysis Fee and Genetic Testing have been previously imposed, the Fee and Testing in the current case are WAIVED.

DATED this 12th day of March, 2019.

William D. Kephart
WILLIAM D. KEPHART
DISTRICT COURT JUDGE

☐ Nolle Prosequi (before trial)	☐ Bench (Non-Jury) Trial
☐ Dismissed (after diversion)	☐ Dismissed (during trial)
☐ Dismissed (before trial)	☐ Acquittal
☒ Guilty Plea with Sent (before trial)	☐ Guilty Plea with Sent, (during trial)
☐ Transferred (before/during trial)	☐ Conviction
☐ Other Manner of Disposition	

EXHIBIT 5

YES #1125022
H.B.S.P
D. BOX 650
Nadivul Springs, NV
89040

Master
07/02/2019
US POSTAGE \$003.66g



ZIP 89101
01E12650516

Clark County District Court
"Office of the Clerk"

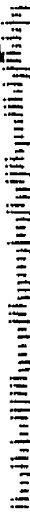
200 LEWIS AVE; 3RD FLOOR

Las Vegas, Nevada

89155-1160

LEGAL
Mail

3762



891553999

HIGH DESERT STATE PRISON
JUN 30 2019
UNIT 6 C/D

FILED

JUL 05 2019

Ann L. Blum
CLERK OF COURT

1 HALES, James H 1175077

2 / In Propria Personam

3 Post Office Box 650 [HDSP]

4 Indian Springs, Nevada 89018

5 8th Judicial District Court
6 Clark County, Nevada

7
8 JAMES H. HALES

9 PETITIONER

10 vs.

11 STATE OF NEVADA; WALDEN B. WILLIAMS

12 RESPONDENT

Case No. A-19-793315-W

Dept No. LIX

Docket _____

14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE, that** _____

17 will come on for hearing before the above-entitled Court on the _____ day of _____, 20____,

18 at the hour of _____ o'clock _____ M. In Department _____ of said Court.

20 CC:FILE

22 DATED: this 1 day of July, 2019.

24 BY:

James H. Hales
JAMES H. HALES

1175077

/In Propria Personam

A-19-793315-W
NOTM
Notice of Motion
4847098



CLERK OF THE COURT

JUL 05 2019

RECEIVED
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8

27

FILED

JUL 05 2019

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

IN THE 84th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

John J. Williams
CLERK OF COURT

James H. Hayes
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

State of Nevada; Warden B. Williams
Respondent.

"Reply to
STATE'S RESPONSE"

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

- 1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison
- 2. Name and location of court which entered the judgment of conviction under attack: Clark County District Court Dept 19; Clark County, Nevada
- 3. Date of judgment of conviction: March 12, 2019
- 4. Case number: C-16-315718-1
- 5. (a) Length of sentence: 60 - 124 months

A-19-793315-W
RPLY
Reply
4847109



CLERK OF THE COURT
JUL - 5 2019
RECEIVED

(a) Ground ONE: Violation of United States and Nevada
Constitution & Federal and State Constitutional
Violations & NRS Violations...

Supporting FACTS (Tell your story briefly without citing cases or law.): THE STATE'S ENTIRE
RESPONSE filed 6-26-19 is MERITLESS and each claim fails because
the charge of Attempt Grand Larceny was dismissed at the conclusion
of the preliminary hearing in Justice Court for lack of evidence,
NO corpus delicti, NO slight or marginal evidence for the charge
to be bound over to District Court. Leaving the District Court
to never have jurisdiction for the charge of Attempt Grand
Larceny or the ground(s) to proceed on the said charge against
petitioner and all the state's claims are belied by the ~~fact~~ RECORD,
the law, and the facts.

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

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

1 CONTINUE: Violation of United States and Nevada
2 (b) ~~§ 200.01~~ Constitution & Federal and State Constitutional
3 Violations & NRS Violations...

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

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

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

1 CONTINUE: Violation of United States and Nevada
2 Constitution & Federal and State Constitutional
3 Violations & NRS Violations...

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

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

1 CONTINUE: Violation of United States and Nevada
2 Constitution & Federal and State Constitutional
3 Violations & NRS Violations...

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

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

CONTINUE:

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

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

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

BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 2nd day of the month of July, 2019.

James H. Hayes

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

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

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

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number A-19-293315-W Does not contain the social security number of any person.

James H. Hayes

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

CERTIFICATE OF SERVICE BY MAIL

I, James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 2nd day of the month of July, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

James H. Hayes

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

* Print your name and NDOC back number and sign

-20-
-17-

Check # 1125822
H.O.S.P.
P.O. Box 602
Roaders Group, NY
89020

HIGH DESERT STATE PRISON
JUL 02 2019
UNIT 6 C/D

LAS VEGAS
NV 890
03 JUL '19
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US POSTAGE \$000.65



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Clerk County District Courts
"Office of the Clerk"

200 Lewis Ave, 3rd Floor

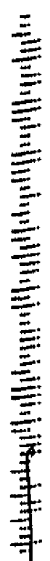
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Des Veggies, Nevada

89155-1160

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89155X1160



FILED

JUL 12 2019

27

AFFIDAVIT OF ISSUANCE of writ of Habeas Corpus

STATE OF NEVADA)
COUNTY OF CLARK) ss: District Court Case No: A-19-793315-W

TO WHOM IT MAY CONCERN:

Dept: 19

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

(1) THAT, James M. Hayes is the Affiant in this affidavit and is currently incarcerated at H.O.S.P brings cause that this Honorable court issue writ of habeas corpus for affiant James Hayes (petitioner).

WHEREAS, the Clark County District Courts did not have subject matter jurisdiction for the offense charged Attempt Grand Larceny.

WHEREAS, neither NRS 173.095, NRS 174.145, NRS 174.085(3) nor this section permits the court the amendment of an information to restate a charge that has been dismissed by the magistrate at the preliminary examination. Once a judicial officer has determined that probable cause does not exist it would be the most naked deprivation of due process and an intolerable interference with the privilege of the writ to retain petitioner in custody.

WHEREAS, the state knowingly and intelligently filed a fraudulent unconstitutional GPA and Amended Info. and it is unconscionable for the state to attempt to insulate a conviction from collateral constitutional review by conditioning its willingness to enter into

A-19-793315-W

AFFI

Affidavit

4860669



RECEIVED

JUL 12 2019

CLERK OF THE COURT

1 plea negotiations on a defendant's "waiver of the rights"

2 where, the GPA was violative of constitutional
3 safeguards and NRS 174.085 violation when the charge of
4 Attempt Grand Larceny was dismissed at the conclusion
5 of preliminary hearing in Justice Court for lack of evidence,
6 no corpus delicti, slight or marginal evidence to proceed to
7 District Court. Thus, District Court had no power to pronounce
8 the sentence and its judgment was void for lack of subject
9 matter jurisdiction. So this court required no jurisdiction
10 of the petitioner or the cause and on its own motion
11 should search the record and take notice that this
12 jurisdictional defect is apparent, and vacate because
13 it is a nullity.

14 where, there was no expectation to support the Att.
15 grand larceny charge and this mistake of fact worked to the
16 extreme detriment of the petitioner. As the guilty plea was the
17 product of ignorance that was discovered after judgment
18 and now the petitioner stands convicted of a crime he
19 did not commit and a conviction upon a charge not
20 made and the judgment shall be collaterally impeached.

21
22 FURTHER, AFFIANT SAYETH NAUGHT.

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

24 IN FRONT OF: Penalties of Perjury

BY James H. Hayes

NDOC #1175078

25 I, James H. Hayes, certify, declare, or state
26 that the foregoing is true and correct, to
27 the best of my knowledge and belief,
28 in accordance with NRS 208.165 and 28
USCA § 1764

Executed on the 8th day of July, 2019

44444 "11950844
H.B.S.P
P.O. Box 652
Tahoe Springs, NV
89042

3762

LAS VEGAS
NV 89042
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Clark County District Courts
"Office of the Clerk"

200 Lewis Ave, 3rd Floor
Las Vegas, Nevada

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UNIT 9 CID
JUL 09 2019
HIGH DESERT STATE PRISON

27

FILED

JUL 24 2019

John L. Williams
CLERK OF COURT

1 JAMES H. HAYES # 1175077
2 /In Propria Personam
3 Post Office ~~Box 650 (HDSF)~~ P.O. Box 509 (PCC)
4 Indian Springs, Nevada ~~89018~~
5 Picoche 89043
6
7

8 State of Nevada)
9 Respondent)
10 vs.)
11 JAMES H. HAYES)
12 Petitioner)
13

Case No. A-19-793315-W
Dept. No. 19
Docket _____

14 NOTICE OF CHANGE OF ADDRESS

15 COMES NOW, Petitioner, James H. Hayes, in Proper Person,
16 hereby gives notice to the above-entitled court, that due to Nevada Department
17 of Corrections action, Mr. Hayes has been transferred from
18 H.D.S.P TO: Picoche Conservation Camp (PCC).
19 Therefore, Petitioner, James H. Hayes, prays that this
20 Honorable Court will henceforth, send all documents/paperwork concerning the
21 above-cited case number to the new address.

22 CC: FILE

23 DATED: this 10 day of July, 2019.

24 Respectfully submitted.

25 RECEIVED

JUL 24 2019

CLERK OF THE COURT

26 BY:

James H. Hayes
JAMES H. HAYES

#1175077

/In Propria Personam

A-19-793315-W
NCOA
Notice of Change of Address
4863913



5

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice of

CHANGE of Address

(Title of Document)

filed in District Court Case number A-19-793315-W

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

James H. Hayes
Signature

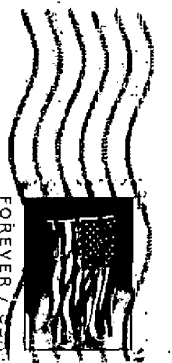
2-10-19
Date

JAMES H. HAYES
Print Name

PETITIONER
Title

Pages #1195079
Pec
P.O. Box 509
Rochester, NY 14604-3 -

LAS VEGAS NV 890
15 JUL 2019 PM 3:1



Clerk County District Courts
Office of the Clerk

200 LEWIS AVE; 3rd Floor

1225 VEGAS, NEVADA

89155-1160

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1 NOH

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

4 James Hayes, Plaintiff(s)

5 vs.

6 Nevada State of, Defendant(s)

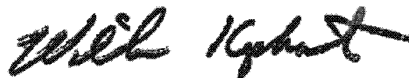
Case No.: A-19-793315-W

Dept: Department 19

7 **AMENDED**
8 **NOTICE OF HEARING FOR**
9 **PETITION OF WRIT OF HABEAS CORPUS**

10 PLEASE TAKE NOTICE that this matter is set for Review on **August 19,**
11 **2019**, at the hour of **8:30 a.m.**, in District Court Department 19 in the Regional Justice
12 Center, 200 Lewis Avenue, 16th Floor Floor, Courtroom 16B, Las Vegas, Nevada. Your
13 presence is required.

14
15 DATED: July 29, 2019



18
19
20 William D. Kephart
21 District Court Judge
22 Department 19
23
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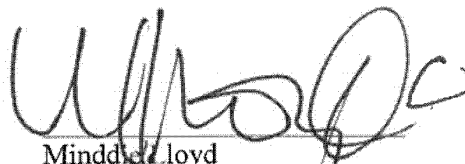
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

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

Steven B Wolfson
Juvenile Division - District Attorney's Office
601 N Pecos Road
Las Vegas, NV 89101



Mindie Lloyd
Judicial Executive Assistant
Department 19

FILED

AUG 09 2019

CLERK OF COURT

AFFIDAVIT OF

factual legitimacy

STATE OF NEVADA)

SS:

8th Judicial District Court

COUNTY OF CLARK)

Case # A-19-793315-IN

TO WHOM IT MAY CONCERN:

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

(1) THAT James H. Hayes, PETITIONER, is currently incarcerated at Pioche Correctional Camp (PCC) allege the following facts supporting a Miscarriage of Justice.

WHEREAS, the state knowingly and voluntarily filed a fraudulent unconstitutional amended information in open court Clark County District Court XIX, to deprive and mislead petitioner to his prejudice that was malicious, unprofessional, and in BAD FAITH.

WHEREAS, a criminal complaint was filed in Justice Court, Las Vegas Township Case #13F10723X on 7-23-2013, charging petitioner having committed the crime(s) Burglary and Attempt Grand Larceny on or about the 9th day of April 2013.

WHEREAS, on or about the 14th day of June 2016 the petitioner face jeopardy on the charge(s) of Burglary and Attempt Grand Larceny by the way of preliminary hearing in Justice Court Dept #3 and at the conclusion of the prelin examination the Burglary charge was bound over to District Court and the charge of Attempt Grand Larceny was dismissed for lack of evidence, no corpus delicti, slight or marginal evidence to proceed to district court and petitioner's bond for Attempt Grand Larceny

A-19-793315-W
AFF
Affidavit
4856244



CLERK OF THE COURT

AUG 09 2019

RECEIVED

1 was executed.

2 Whereas, it is Black Letter Law in the State of Nevada as
3 stated in NRS 174.085 that once the appellant was placed in
4 jeopardy upon the filed criminal complaint in Justice Court
5 and proceeded to preliminary hearing on the said charge
6 and charge dismissed by Justice Court Judge at the conclusion
7 of the hearing that said charge is barred from any subsequent
8 proceedings and the law is clear and unambiguous.

9 Whereas, neither NRS 173.095 or NRS 174.145 permits the
10 court the amendment of an information to restate a charge
11 that has been dismissed by the Justice Court Magistrate
12 at the preliminary examination.

13 Whereas, when the charge of attempted Grand Larceny
14 was dismissed that the state predicated its intent on for
15 the charge of Burglary in the filed criminal complaint in
16 Justice Court, then the Burglary charge was fatal and it
17 to must have been dismissed leaving no charge(s) and
18 no jurisdiction for the District court to proceed at all.

19 Whereas, it is unconscionable for the state to
20 attempt to insulate a conviction from collateral constitutional
21 review by conditioning its willingness to enter into

22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT PCC

this 26th day of July 2019

24 IN FRONT OF:

BY James H. Jones
NDOC # 1175077

1 plea negotiations on appellant's waiver of the rights to
2 pursue post-conviction remedies.

3 Whereas, the state's amended notice to seek punishment
4 as a habitual criminal was for the charge of Burglary not the
5 negotiated charge attempt grand larceny a wobbler in addition
6 the credit card Abuse conviction in Texas is a state jail crime
7 that doesn't carry any prison term, mandatory supervision
8 nor parole and is not a category A, B, C, D, or E felony but a
9 state jail crime that is only punishable by jail time so at
10 best its trivial and shall not been used in adjudication
11 and the Burglary conviction used was not a prior
12 felony as it occurred in 2016 sum three years after the
13 said attempt grand larceny that occurred in 2013. Leaving
14 appellant deemed a habitual criminal on his first time
15 being sentence to prison with one prior felony conviction.

16 Whereas, consecutive sentence imposed by the district court
17 violates the legislative intent of NRS 126.035 and does not
18 serve the interests of Justice, as the instant offense attempt
19 grand larceny took place on or about April 9, 2013 and was not
20 subsequent to Burglary conviction that occurred April 2, 2016
21 but prior. In addition, appellant should have been given
22 credit for time served from the date the attempted grand
23 larceny charge was dismissed and bond exonerated at
24 the conclusion of the preliminary hearing June 14, 2016 to
25 the present towards his sentence.

UNDER PENALTY OF PERJURY

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

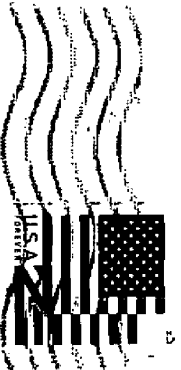
Excuted on the 26th day of July, 2019

James N. Hayes James N. Hayes # 1175077

Name and Prison BAC#, printed

Stages # 1125072
P.C.C
P.O. Box 569
Rochester, NY 891313

LES VEGAS NV 890
07 AUG 2019 PM 4 L



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"Office of the Clerk"

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LAS VEGAS, NEVADA

89155-1160

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OF FILE PLEASE

27

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

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

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Acting Court Division Administrator

October 4, 2019

Case #: A-19-793315-W

James H. Hayes

Vs.

State of Nevada

Mr. Hayes,

The Clerk's Office is in receipt of your "Preemptory Challenge of Judge." The Clerk's office is unable to process your document(s) due to the following:

There is a required Court a filing fee of \$450.00 for Preemptory Challenge in this civil matter, this fee needs to be collected upon this filing. All originals documents are being returned and request that you please resubmit with payment of the required filing fee, (in a form of a money order or Cashier's check, made out to the Clerk of the Court), or *If you are needing to request fee waiver then submit / mail an Application and Order to Proceed in Forma Pauperis Packet, these documents can be located on the District Court website at www.clarkcountycourts.us- forms - under civil /criminal /probate forms.*

Pursuant to Nevada Statute we are not able to provide legal advice or assistance filling out your forms. For help with your pleadings, please consult local law library for information.

TO ENSURE THAT THE DOCUMENTS ARE PROPERLY PROCESSED, PLEASE RETURN THIS LETTER WITH THE REQUESTED CORRECTIONS OR ADDITIONAL DOCUMENTS/FORMS.

Thank you,
Deputy Clerk #27

A-19-793315-W
LSF
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4867431



3

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

JAMES H. HAYES
Petitioner/Plaintiff,

v.

STATE OF NEVADA
Respondent/Defendant

Case No. A-19-793315-1N; C-16-315718-1

Dept. No. 19

Docket No. _____

PREEMPTORY CHALLENGE OF JUDGE

COMES NOW, Petitioner/Plaintiff, JAMES H. HAYES, pro per,
and in Forma Pauperis, pursuant to Supreme Court Rule 48.1, wishes to exercise the right to change Judge.

The current Judge in the above-entitled action is William D. Kephart.

DATED this 26 day of September, 20019

Respectfully submitted,

James H. Hayes
Petitioner/Plaintiff

RECEIVED
OCT - 2 2019
CLERK OF THE COURT

AFFIRMATION PURSUANT TO NRS 239B.030

I, JAMES H. HAYES, NDOC# 1175077,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED PREEMPTORY challenge
of Judge

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

DATED THIS 26 DAY OF September, 2019.

SIGNATURE: James H. Hayes

INMATE PRINTED NAME: JAMES H. HAYES

INMATE NDOC # 1175077

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

PCC
P.O. Box 509
Pioche, NV 89043



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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

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

Defendant.

CASE NO: A-19-793315-W

DEPT NO: XIX

15 **STATE'S RESPONSE TO DEFENDANT'S**
16 **FIRST AND SECOND ADDENDUM TO PETITION FOR WRIT OF HABEAS**
17 **CORPUS (POST-CONVICTION)**

18 DATE OF HEARING: NOVEMBER 18, 2019
19 TIME OF HEARING: 8:30 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and
22 hereby submits the attached Points and Authorities in Response to Defendant's First and
23 Second Addendum to Petition for Writ of Habeas Corpus.

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

27 ///

28 ///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

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

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

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

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

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

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

28 ///

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

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

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

16 On April 15, 2019, Defendant filed a Petition for Writ of Habeas Corpus ("Petition").
17 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the
18 Petition on August 19, 2019, the Court noted that Defendant filed two Addenda to his original
19 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court's
20 order, the State responds to the Addenda as follows:

21 ARGUMENT

22 The Nevada Supreme Court has explained:

23 "[A] guilty plea represents a break in the chain of events which has preceded it
24 in the criminal process. When a criminal defendant has solemnly admitted in
25 open court that he is in fact guilty of the offense with which he is charged, he
26 may not thereafter raise independent claims relating to the deprivation of
constitutional rights that occurred prior to the entry of the guilty plea."

27 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411
28 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea "waive[s] all

1 constitutional claims based on events occurring prior to the entry of the plea[], except those
2 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100
3 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d
4 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be
5 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness
6 of counsel.”). Under NRS 34.810,

7 1. The court *shall* dismiss a petition if the court determines that:

8 (a) The petitioner’s conviction was upon a plea of guilty or guilty but
9 mentally ill and the petition is not based upon an allegation that the plea was
10 involuntarily or unknowingly entered or that the plea was entered without
effective assistance of counsel.

11 ...
12 unless the court finds both cause for the failure to present the grounds and actual
prejudice to the petitioner.

13 (emphasis added). Furthermore, the Nevada Supreme Court has held that “challenges to the
14 validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must
15 first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a
16 direct appeal must be pursued on direct appeal, or they will be *considered waived in*
17 *subsequent proceedings*.” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)
18 (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979
19 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were
20 or could have been presented in an earlier proceeding, unless the court finds both cause for
21 failing to present the claims earlier or for raising them again and actual prejudice to the
22 petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other
23 grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims
24 are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at
25 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

26 A proper petition for post-conviction relief must set forth specific factual allegations
27 that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part, “[Petitioner]
28 must allege specific facts supporting the claims in the petition [he] file[s] seeking relief from

1 any conviction or sentence. Failure to raise specific facts rather than just conclusions may
2 cause the petition to be dismissed.” “Bare” and “naked” allegations are not sufficient to
3 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.
4 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted
5 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,
6 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

7 **I. DEFENDANT’S FIRST ADDENDUM DOES NOT PROVIDE GROUNDS FOR**
8 **RELIEF**

9 **A. Defendant’s Claims of Ineffective Assistance of Counsel are Belied by the**
10 **Record**

11 Defendant’s first claim alleges that his counsel, Michael Sanft, Esq. (“Mr. Sanft”) failed
12 to provide “zealous and quality representation.” First Addendum to Petition for Writ of Habeas
13 Corpus (“1 Add.”) at 6. However, this claim is belied by both the GPA and the record of
14 Defendant’s entry of plea.

15 The text of the GPA includes the following (labeled “VOLUNTARINESS OF PLEA”),
16 in pertinent part:

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

19 ...

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

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

24 ...

25 I am signing this agreement voluntarily, after consultation with my
26 attorney...

27 ...

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

///

///

1 GPA at 5-6. Defendant affirmed that he had read the GPA. Recorder's Transcript of Hearing:
2 November 7, 2018 ("Transcript") at 2:24-25, 3:21-22. Defendant affirmed that Mr. Sanft
3 answered any questions regarding the GPA. Transcript at 3:1-3, 3:23-4:6. Defendant affirmed
4 that he understood the charge in the Amended Information. Id. at 3:4-6, 4:7-9. Defendant
5 affirmed that he signed the GPA. Id. at 3:16-20. Contrary to Defendant's assertion that he was
6 told he was agreeing to a gross misdemeanor, when asked by the Court about his
7 understanding, Defendant acknowledged two possible sentencing outcomes:

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

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

12 THE COURT: Okay.

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

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

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that?

18 THE DEFENDANT: Yes, sir.

19 Id. at 4:16-5:3. Defendant affirmed, both verbally to the court and by signing the GPA, that he
20 knew the terms of the GPA, the potential outcomes of his plea, and that Mr. Sanft answered
21 all the questions Defendant had to Defendant's satisfaction. Therefore, pursuant to Hargrove
22 and Mann, Defendant is not entitled to relief on these claims.

23 Because Defendant's first allegation is belied by the record, this Court should deny
24 Defendant's Petition, and the Addenda thereto.

25 **B. Defendant's Claim Regarding Notice of Intent to Seek Habitual Treatment**
26 **was Waived and is Belied by the Record**

27 Defendant's second claim is that the State failed to properly notice its intent to seek
28 habitual treatment at sentencing. 1 Add. at 7. This claim is not cognizable in a Petition for Writ
of Habeas Corpus and was waived by Defendant's failure to raise it on direct appeal.

Defendant's second claim does not relate to the voluntariness of Defendant's plea, or
the effectiveness of Defendant's counsel. This claim was more appropriate for a direct appeal,

1 and Defendant should have pursued it thus. NRS 34.810(1); Franklin, 110 Nev. at 752, 977
2 P.2d at 1059. In the instant Petition and the Addenda thereto, Defendant fails to show any
3 instance of good cause or prejudice for not bringing these claims on a direct appeal and raising
4 them for the first time only in these habeas proceedings. Indeed, Defendant cannot establish
5 good cause, because Defendant unconditionally waived his right to a direct appeal, “including
6 any challenge based upon reasonable constitutional, jurisdictional or other grounds that
7 challenge the legality of the proceedings.” GPA at 5:3-7. This claim has been affirmatively
8 waived and, therefore, must be summarily denied.

9 Furthermore, Defendant’s allegation is belied by the record. A review of the District
10 Court record reveals that the State filed a Notice of Intent to Seek Punishment as a Habitual
11 Criminal on November 21, 2016. The State further filed an Amended Notice of Intent to Seek
12 Punishment as a Habitual Criminal on August 29, 2017. At the sentencing hearing, the Court
13 found that the State had not only properly noticed but had met its burden to seek punishment
14 as a habitual criminal. See Court Minutes – March 6, 2019 (“Sentencing Minutes”). Pursuant
15 to Hargrove and Mann, Defendant is not entitled to relief on this claim.

16 Because Defendant affirmatively waived this claim, and furthermore because this claim
17 is belied by the record, this Court should Deny Defendant’s Petition and the Addenda thereto.

18 **C. Defendant’s Claim Regarding Double Jeopardy Does Not Entitle Defendant**
19 **to Relief**

20 Defendant’s final claim is that his conviction is invalid because the charge of Attempt
21 Grand Larceny, as alleged in the original Criminal Complaint, was not bound over to the
22 District Court. 1 App. at 8. Like Defendant’s second claim, this claim is not cognizable in a
23 Petition for Writ of Habeas Corpus and was waived by Defendant’s failure to raise it on direct
24 appeal.

25 This claim does not challenge the voluntariness of Defendant’s guilty plea, nor does it
26 allege ineffective assistance of counsel. Therefore, this claim should have been pursued on
27 direct appeal, rather than for the first time in a petition. NRS 34.810(1); Franklin, 110 Nev. at
28 752, 977 P.2d at 1059. Defendant does not attempt to argue good cause or prejudice for raising

1 this claim for the first time in the instant proceedings. Such an argument would be meritless,
2 as Defendant specifically and unconditionally waived his right to a direct appeal on this issue,
3 as discussed in Section I(B), *supra*. GPA at 5:9-13. Therefore, this claim has been
4 affirmatively waived and must be summarily denied.

5 **II. DEFENDANT'S SECOND ADDENDUM DOES NOT PROVIDE GROUNDS**
6 **FOR RELIEF**

7 **A. Defendant Does Not Adequately Claim Ineffective Assistance of Counsel**

8 In Defendant's Petition for Writ of Habeas Corpus, Addendum Two ("2 Add."),
9 Defendant first claims that he received ineffective assistance of counsel. 2 Add. at 6. However,
10 Defendant makes only a bare and naked allegation, which, pursuant to Hargrove does not
11 entitle Defendant to relief.

12 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
13 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of
14 Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64. See also State v.
15 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323. Under Strickland, a defendant must show first
16 that his counsel's representation fell below an objective standard of reasonableness, and
17 second, that but for counsel's errors, there is a reasonable probability that the result of the
18 proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068;
19 see also Lyons, 100 Nev. at 432, 683 P.2d at 505 (adopting the Strickland two-part test).
20 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the
21 inquiry in the same order or even to address both components of the inquiry if the defendant
22 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

23 The Court begins with the presumption of effectiveness and then must determine
24 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
25 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). The role of a court
26 in considering allegations of ineffective assistance of counsel is "not to pass upon the merits
27 of the action not taken but to determine whether, under the particular facts and circumstances
28 of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State,

1 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). In essence, the court must “judge the
2 reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as
3 of the time of counsel's conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

4 Even if a defendant can demonstrate that his counsel’s representation fell below an
5 objective standard of reasonableness, he must still demonstrate prejudice and show a
6 reasonable probability that, but for counsel’s errors, the result of the trial would have been
7 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
8 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
9 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
10 89, 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the
11 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.
12 State, 112 Nev. 980, 988 (1996). For a guilty plea, a defendant “must show that there is a
13 reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
14 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).

15 Defendant simply states, “there is a reasonable probability that, but for counsel’s
16 failures and unprofessional errors, the result would have been different.” 2 Add. at 6:5-8.
17 Defendant fails to provide any specific instance of Mr. Sanft’s perceived ineffectiveness, and
18 Defendant does not attempt to show how, exactly, the results would have been different had
19 Mr. Sanft acted differently. Therefore, Defendant’s allegation amounts to a bare and naked
20 conclusory statement that does not entitle Defendant to relief under Hargrove and does not
21 meet Defendant’s burden under Strickland.

22 Because Defendant does not meet his burden, this Court should deny Defendant’s
23 Petition and the Addenda thereto.

24 **B. Defendant’s Second and Third Claims Do Not Entitle Defendant to Relief**

25 Defendant claims that his conviction is a violation of the prohibition against double
26 jeopardy. 2 Add. at 7. Defendant also claims that he was the subject of an “inappropriate
27 personal attack and a judicial violation.” 2 Add. at 8:2-3. Like the claims in Defendant’s first

28 ///

1 Addendum, these claims are not properly raised for the first time in a Petition for Writ
2 of Habeas Corpus and were waived by Defendant's failure to raise them on direct appeal.

3 Neither of these two claims challenge the validity of Defendant's guilty plea or allege
4 ineffective assistance of counsel. These claims were appropriate for a direct appeal, and
5 Defendant should have pursued them thus. NRS 34.810(1); Franklin, 110 Nev. at 752, 977
6 P.2d at 1059. In the instant Petition, Defendant fails to show any instance of good cause or
7 prejudice for not bringing these claims on a direct appeal and raising them for the first time
8 only in these habeas proceedings. Indeed, he cannot establish good cause, because in his Guilty
9 Plea Agreement, Defendant specifically agreed that he understood he was "unconditionally
10 waiving [his] right to a direct appeal of this conviction, including any challenges based upon
11 reasonable constitutional, jurisdictional or other grounds that challenge the legality of the
12 proceedings as stated in NRS 177.015(4)." GPA at 5:4-7. These claims have been
13 affirmatively waived and, therefore, must be summarily denied.

14 **CONCLUSION**

15 For the foregoing reasons, the State respectfully requests that this Court DENY
16 Defendant's Petition for Writ of Habeas Corpus, and the First and Second Addendum thereto,
17 in their entirety.

18 DATED this 10 day of October, 2019.

19 Respectfully submitted,

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

23 BY

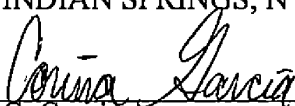

24 TALEEN PANDUKHT
25 Deputy District Attorney
26 Nevada Bar #05734
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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 10th day of
October, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

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

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

TP/jj/cg/L2

James H. Hayes # 1175077
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

27
FILED
NOV 04 2019
CLERK OF COURT

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

James H. Hayes

Petitioner,

vs.

State of Nevada

Respondent(s).

Case No. A-19-793315-W

Dept. No. 19

Docket

"PETITIONER'S REPLY"

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

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

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NOV 04 2019

CLERK OF THE COURT

A-19-793315-W
RPLY
Reply
4874161



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

3 23. -- (a) GROUND ONE: "PETITIONER'S REPLY" AND ITS WORTHWHILE
4 NOTING THAT PETITIONER HAS NOT RECEIVED THE
5 STATE'S RESPONSE AS OF THE DATE OF THIS REPLY.
6 THE 1ST DAY OF NOVEMBER 2019...

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

8 I HAVE EXPLICITLY RESERVED MY RIGHT NOT TO BE
9 COMPELLED TO PERFORM UNDER ANY CONTRACT OR
10 AGREEMENT THAT I HAVE NOT ENTERED INTO KNOWINGLY,
11 VOLUNTARILY, AND INTENTIONALLY AND THAT MY VALID
12 RESERVATION OF RIGHTS HAS PRESERVED ALL MY RIGHTS
13 AND PREVENTED THE LOSS OF ANY SUCH RIGHTS BY
14 APPLICATION OF THE CONCEPTS OF WAIVER OR ESTOPPEL.

15 WHEREAS, IT IS UNCONSCIONABLE FOR THE STATE TO
16 ATTEMPT TO INSULATE A CONVICTION FROM COLLATERAL
17 CONSTITUTIONAL REVIEW BY CONDITIONING ITS WILLINGNESS
18 TO ENTER INTO PLEA NEGOTIATIONS ON PETITIONER'S "WAIVER
19 OF THE RIGHTS" TO PURSUE POST-CONVICTION REMEDIES.

20 WHEREAS, THE PETITIONER IS ENTITLED TO HABEAS
21 CORPUS IF THERE IS NO MATERIAL DISPUTE AS TO A
22 MISTAKE OF FACT RELATING TO HIS CONVICTION (7 R.C.P. 32d)
23 AND SET ASIDE THE JUDGMENT OF CONVICTION AFTER
24 SENTENCE IN ORDER TO CORRECT MANIFEST INJUSTICE.
25 WHERE, AS HERE, BOTH PARTIES AGREE TO THE FACT THAT
26 THE CHARGE OF ATTEMPT GRAND LARCENY WAS DISMISSED
27 AT THE CONCLUSION OF THE PRELIMINARY EXAMINATION

1 23. (b) ~~GROUND TWO~~ PETITIONER'S REPLY "CONTINUE"
2
3
4

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): by
6 magistrate for lack of evidence, no corpus delicti,
7 slight or marginal evidence, and this is clear and
8 convincing dismissal of an action.

9 Whereas, the state did violate NRS 178.562(1)
10 by bringing another prosecution following dismissal
11 of an action to constitute "another prosecution"
12 without another pending vehicle for the prosecution
13 of the charge of Attempt Grand Larceny that runs
14 afoul of the provisions of NRS 178.562(1) and BARS
15 further prosecution of the petitioner on that charge.
16 Where, as here, the state's guilty plea agreement filed
17 in open court November 7, 2018 was a subsequent
18 prosecution for the same offense "Attempt Grand
19 Larceny" that was dismissed at the conclusion
20 of preliminary examination by magistrate without
21 another pending vehicle for prosecution. leaving
22 the charge barred from all district court proceedings,
23 and this jurisprudence set forth is perfectly clear
24 and unambiguous.

25 Whereas the state did violate NRS 174.085(3)
26 when the petitioner was once placed in jeopardy
27 upon the criminal complaint and proceeded
28

23. (c) ~~CONCLUSION~~ PETITIONER'S REPLY CONTINUE

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): to
the preliminary examination and at the conclusion
of the examination the charge of "Attempt Grand
Larceny" was dismissed by magistrate for lack of
evidence, no corpus delicti, slight or marginal
evidence that is a bar to another indictment,
information or complaint for the offense charged
in the former. Thus the state triggered the protection
of NRS 174.085(3)(5) to bar the subsequent prosecution
of the charge of "Attempt Grand Larceny" against the
petitioner in all district court proceedings when the
dismissal occurred before the subsequent form of
prosecution was obtained and no good cause
shown to the court or court order. Where as here,
there is no material dispute of fact that the
charge of Attempt Grand Larceny was dismissed
against petitioner at the conclusion of preliminary
examination and barred from any subsequent
proceedings leaving the district court with no
subject matter jurisdiction against petitioner
for the charge of "Attempt Grand Larceny"

Whereas, the fact remains that courts, ~~and~~
~~which~~ which make a mistake in rendering

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23. (d) ~~GROUND FOR~~ PETITIONER'S REPLY CONTINUE

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): 2
judgment which works to the extreme detriment
of the petitioner will not allow it to stand un-
corrected as justice requires that when a court
errs in its adjudication of petitioner the vacation
of that judgment of conviction must occur.

1 WHEREFORE, JAMES H. HAYES, prays that the court grant Writ of Habeas Corpus
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at SDCC
4 on the 2 day of November 2019.

5
6 James H. Hayes
7 Signature of Petitioner

8 VERIFICATION

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

13
14 James H. Hayes
15 Signature of Petitioner

16
17 PRO PER
18 Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. NOYES, hereby certify, pursuant to NRCP 5(b), that on this 2
day of November, 20 19, I mailed a true and correct copy of the foregoing, "Petitioner's
Reply"

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

Clerk of the Court
200 LEWIS AVE. 3RD FL
LAS VEGAS, NV 89133-4160

Attorney General of Nevada
100 N. CARSON STREET
CARSON CITY, NV 89401

CC:FILE

DATED: this 2 day of November, 20 19.

James H. Noyes
JAMES H. NOYES # 1175074
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding DEFENDANT'S

Replies

(Title of Document)

filed in District Court Case number A-19-793315-W

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

James H. Hayes
Signature

11-1-19
Date

JAMES H. HAYES
Print Name

PRO PER
Title

-8-

41126022
DCE
P.O. Box 208
Indian Springs, NV
89620

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

89155-1160

1362753
Mail

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Heather L. Lamin
CLERK OF THE COURT

COA

DISTRICT COURT

CLARK COUNTY, NEVADA

State of Nevada

Plaintiff(s),

-vs-

James D. Hayes

Defendant(s).

CASE NO. C-16-315218-1; A-19-78315-K

DEPT. NO. 19

NOTICE OF CHANGE OF ADDRESS

To: Clerk of Court; and

To: Opposing Counsel or Litigant

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

☒ Plaintiff or ☒ Defendant has a new mailing address.

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

Telephone number: *N/A*

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

James D. Hayes #1125072
Name

RECEIVED

DEC 04 2019

CLERK OF THE COURT

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

Date: Nov. 26, 2019.

To: Clerk, 8th Judicial District Court
200 LAWS AVE. 3RD FL
LAS VEGAS, NV 89101
89155-1160

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

Subject: REQUEST FOR RECORDS/COURT CASE DOCUMENTS

Case No. C-16-315718-1

Dept. No. 19

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

1). ~~JUDGMENT OF CONVICTION~~

2). CRIMINAL COURT MINUTES

James H. Hayes
Inmate

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

Please send a correspondence directly to Inmate

Labels #1123029
58cc
P.O. Box 208
FREDERICKSBURG NV
89070

Legal
Mail

~~ATTORNEY GENERAL OF THE STATE OF NEVADA~~
~~200 LAUREL AVE. 3RD FLOOR~~
~~LAS VEGAS, NEVADA 89101~~
~~89101~~

LAS VEGAS NV 890
02 DEC 2019 PM 4 L



Clerk County District Courts
"Office of the Clerk"
200 LAUREL AVE. 3RD FLOOR
LAS VEGAS, NEVADA
89105-1160

James H. Hayes 1175022
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

FILED
DEC 20 2019
John J. Blum
CLERK OF COURT

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

James H. Hayes

Petitioner,

vs.

State of Nevada

Respondent(s).

Case No. A-19-793315-W

Dept. No. 19

Docket

Petitioner's Reply "ADDENDUM"

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

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

CLERK OF THE COURT

DEC 20 2019

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

23. (a) GROUND ONE: Violations of United States and Nevada Constitution & Federal and State Constitutional violations & NRS violations... and its worthless noting petitioner still have not received a copy of state's response filed 10-10-19...

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): On or about the 7th day of November 2018 the state knowingly, intelligently, and voluntarily filed in open court a fraudulent amended information and guilty plea Agreement, and the very initiation of the proceedings against MR. Hayes (petitioner) operated to deprive petitioner of due process of law (94 S.C. 2018). In this due process violation "No Real party in Interest" as the state has not been harm by petitioner's alleged actions and there is neither an injured party nor trespass. When in fact, the charge crime of Attempt Grand Larceny was dismissed at the conclusion of the preliminary examination not prior for lack of evidence, no corpus delicti, slight nor marginal evidence (lack of admissible evidence). The state has committed fraud upon the court by prosecuting its case without first establishing that jurisdiction personam or subject-matter exists. The law blatantly shows the state's lack of jurisdiction over petitioner as NRS 124.085(a) and NRS 178.562(1), Rule 11 FRCP provides the authority by which petitioner is immune from prosecution of this case and the charge Attempt

CONTINUING:

23. (b) ~~CRIMINAL~~ _____

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

JURY. THE STATE MAY NOT CONVICT PETITIONER NO MATTER
HOW VALIDLY HIS FACTUAL GUILT IS ESTABLISHED WITHOUT
SUBJECT MATTER JURISDICTION AND THE COURT THAT RENDERED
THE JUDGMENT LACKED JURISDICTION AND HAD NO POWER
TO ENTER THE CONVICTION OR IMPOSE THE SENTENCE. HERE
SUBJECT MATTER JURISDICTION IS NOT WAIVABLE AS THE STATE
CONTENDS AS JURISDICTION OF THE SUBJECT MATTER IS
DERIVED FROM THE LAW AND IT NEITHER CAN BE WAIVED
NOR CONFERRED BY CONSENT OF ACCUSED. LEAVING THE
STATE WITH NO CREDIBLE ARGUMENT TO OVERCOME THE
LACK OF PERSONAM AND SUBJECT MATTER JURISDICTION.

WHEREAS, THIS MANIFEST INJUSTICE AND MISCARriage
OF JUSTICE IS A DIRECT RESULT OF INEFFECTIVE ASSISTANCE
OF COUNSEL E.K. SAUER; T. ABBATEANGELO; MS. MURPHY; M. SENEZ
THAT HAS GREATLY PREJUDICE PETITIONER AND LEFT HIM WITH
IRREPARABLE INJURY AS A RESULT. HERE THE PETITIONER WILL
SATISFY THE TWO PRONG TEST OF STRICKLAND THAT REQUIRES
THE PETITIONER TO SHOW THAT 1) COUNSEL'S PERFORMANCE
WAS DEFICIENT WHERE, AS HERE, COUNSEL'S REPRESENTATION
FELL BELOW THE OBJECTIVE STANDARD OF REASONABLENESS
AS COUNSEL FAILED TO INVESTIGATE THE LAW AND FACTS
WHEN IN FACT, COUNSEL NEVER CHALLENGE THE LACK

23. (c) ^{Continue} ~~CHARGE~~

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): of PERSONAL OR SUBJECT MATTER JURISDICTION that was ~~that~~ blatantly shown on the face of the record as the charge of Attempt Grand Larceny was dismissed by Justice Court magistrate for lack of evidence, NO CORPUS DELICTI, SLIGHT NOR MARGINAL EVIDENCE TO PROCEED TO DISTRICT COURT. That had COUNSEL USE ANY DUE DILIGENCE this egregious mistake would have BEEN KNOWN and would have let PETITIONER know that said charge was BARRIED from District Court and the state's proffered information and GUILTY PLEA AGREEMENT for lack of jurisdiction. Furthermore had COUNSEL challenge probable cause the charge of Burglary would have BEEN dismissed. When in fact the state had used larceny as its intent for the Burglary charge as stated in the filed information dated 6-17-2016. so when the Attempt Grand Larceny was dismissed it left the Burglary charge fatal and it to must have BEEN dismissed once again leaving NO jurisdiction for the District Court to proceed against PETITIONER.

2) Counsel's deficient performance prejudiced PETITIONER to his extreme detriment and if for not counsel's

1 23. ^{CONTINUE:} (d) ~~GROUND FOUR~~: _____

2
3
4
5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): _____

6 UNPROFESSIONAL ERRORS AND LACK OF DUE DILIGENCE
7 TO INVESTIGATE THE FACTS AND THE LAW, THE RESULT
8 OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT.
9 WHERE, AS HERE, PETITIONER WOULD NOT HAVE ENTERED
10 A "ALFORD PLEA" AS THE CHARGE OF ATTEMPT GRAND
11 LARCENY WAS BARRED FROM DISTRICT COURT FOR LACK
12 OF JURISDICTION AND LACK OF ADMISSIBLE EVIDENCE.
13 WHEN IN FACT, NO REASONABLE JURY WOULD HAVE CONVICTED
14 PETITIONER OF ATTEMPT GRAND LARCENY NOR THE CHARGE
15 OF BURGLARY AS THE STATES INSTANT FOR THE BURGLARY
16 CHARGE OF LARCENY HAD BEEN DISMISSED AT PRELIMINARY
17 EXAMINATION FOR NO SLIGHT NOR MARGINAL EVIDENCE
18 AND NO CORPUS DELICTI. AS COUNSEL'S FAILURES ARE
19 SHOWN BY A PREPONDERANCE OF THE EVIDENCE THE
20 RECORD, AND THE LAW. IN ADDITION COUNSEL FAILED
21 TO FILE A NOTICE OF APPEAL AND PERFECT THE APPEAL
22 FAILED TO INFORM PETITIONER OF THE RIGHT TO APPEAL,
23 FAILED TO COMMUNICATE WITH PETITIONER ON MERITORIOUS
24 GROUNDS TO PROCEED ON AND THERE'S NO COTABLE
25 ARGUMENT THAT WOULD ALLOW COUNSEL TO OVERCOME
26 HIS BLATANT FAILURES THAT HAVE LEFT PETITIONER WITH
27 IRREPARABLE INJURY. MOREOVER, PETITIONER STANDS CONVICTED
28 OF A CRIME HE DID NOT COMMIT DUE TO COUNSEL FAILURES!!

1 WHEREFORE, JAMES H. HAYES, prays that the court grant "Writ of habeas corpus"
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at SDCC
4 on the 12 day of December, 2019.

6 James H. Hayes
7 Signature of Petitioner

8 **VERIFICATION**

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

14 James H. Hayes
15 Signature of Petitioner

17 PRO PER
18 Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 12th
day of DECEMBER, 2019, I mailed a true and correct copy of the foregoing, "NOT of
HOBBS CORPUS"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

CLERK OF THE COURT
200 LOUIS AVE. 3RD FLOOR
LAS VEGAS, NEVADA
89135-1160

NEVADA ATT. GENERAL
100 NORTH WAGON ST
CARSON CITY, NEVADA
89401

CC:FILE

DATED: this 12 day of DECEMBER, 2019.

James H. Hayes
1195079
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Writ of

Habeas Corpus
(Title of Document)

filed in District Court Case number A-19-293315-W

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-OR-

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

James H. Hayes
Signature

12-12-19
Date

JAMES H. HAYES
Print Name

Pro per
Title

-8-

4pages #1195092
P.O. Box 208
Incline Springs, NV
89320

LAS VEGAS NV 890
18 DEC 2019 PM 5

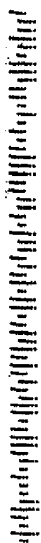


Clerk County District Courts
"Office of the Clerk"

200 Lewis Ave, 3rd Floor
Las Vegas, Nevada
89155-1100

LEGO
Mail

001100000000



01131122N4072

000000

HAYES James H 1125022

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

FILED

FEB 12 2020

CLERK OF COURT

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

JAMES H. HAYES

Petitioner,

VS.

STATE OF NEVADA
WARDEN, JEFF HANSELL

Respondent(s).

"HEARING REQUESTED"

Case No.

A-19-793315-W

Dept. No.

Dept. XIX

Docket

"AMENDED PETITION"

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

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

RECEIVED

FEB 12 2020

CLERK OF THE COURT

A-19-793315-W
PWHC
Petition for Writ of Habeas Corpus
4895674



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

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

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

10 PETITION

11 1. Name of institution and county in which you are presently imprisoned or where and who you
12 are presently restrained of your liberty: Southern DESERT Correctional Center

13 2. Name the location of court which entered the judgment of conviction under attack: _____

14 Clark County, Nevada 8th Jud. District

15 3. Date of judgment of conviction: March 12, 2019

16 4. Case number: C-16-315718-1

17 5. (a) Length of sentence: 60 months to 174 months

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

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

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

22
23 7. Nature of offense involved in conviction being challenged: Attempt Grand

24 LARCENY 2 Category D Felony

- 1 8. What was your plea? (Check one)
- 2 (a) Not guilty _____
- 3 (b) Guilty _____
- 4 (c) Nolo contendere ☒ Alford Plea
- 5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
- 6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: _____
- 7 NEGOTIATED pursuant to North Carolina v Alford
- 8 _____
- 9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)
- 10 (a) Jury _____
- 11 (b) Judge without a jury _____
- 12 11. Did you testify at trial? Yes _____ No _____
- 13 12. Did you appeal from the judgment of conviction?
- 14 Yes ☒ No _____
- 15 13. If you did appeal, answer the following:
- 16 (a) Name of court: Supreme Court of Nevada
- 17 (b) Case number or citation: 28590
- 18 (c) Result: Affirm
- 19 (d) Date of appeal: Notice of Appeal filed March 28, 2019
- 20 (Attach copy of order or decision, if available).
- 21 14.) If you did not appeal, explain briefly why you did not: _____
- 22 _____
- 23 _____
- 24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
- 25 filed any petitions, applications or motions with respect to this judgment in any court, state or
- 26 federal? Yes ☒ No _____
- 27
- 28

16. If your answer to No 15 was "Yes", give the following information:

(a) (1) Name of court: 8th Judicial District Court: Clark County

(2) Nature of proceedings: Petition for writ of Habeas Corpus

(3) Grounds raised: Double Jeopardy (NRS 124.085(1) violation);

Lack of probable cause; Cruel and Unusual punishment;

Errors in PSI

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ___ No ☒

(5) Result: Taken off calendar for lack of Jurisdiction

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: N/A

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ___ No ___

(5) Result: _____

(6) Date of result: _____

(7) If known, citations or any written opinion or date of orders entered pursuant to each result: _____

(c) As to any third or subsequent additional application or motions, give the same information as above, list them on a separate sheet and attach.

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

(1) First petition, application or motion?

Yes ☒ No ☒

Citation or date of decision: _____

(2) Second petition, application or motion?

Yes _____ No _____

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You may relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

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

(a) Which of the grounds is the same: Ineffective Ass't. of Counsel, Cruel and unusual punishment, Mistakes in PSI

(b) The proceedings in which these grounds were raised: Petition for writ of Habeas corpus

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

grounds were never ruled on the petition was taken off calendar for lack of jurisdiction

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages
2 you have attached, were not previously presented in any other court, state or federal, list briefly what
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
6 pages in length). Ineffective assistance of Appellate Counsel order
7 of affirmances handed down on January 14, 2020

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

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

17 Yes ☒ No ☐

18 If "Yes", state what court and the case number: Supreme Court of Nevada
19 _____

20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: Michael Janitz for both but was
22 dismissed prior to completion of appellate process leaving
23 petitioner with no counsel throughout direct appeal proceedings

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

26 Yes ☐ No ☒ If "Yes", specify where and when it is to be served, if you know: _____
27 _____
28 _____

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

3 23. (a) GROUND ONE: MR. HAYES (petitioner) was denied his
4 Constitutionally guaranteed "right to effective
5 assistance of counsel" (Federal and State Constitutional
6 rights 3rd and 14th Amendment Violations:

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

8 WHEREAS, trial counsel failed to provide zealous and
9 quality representation at all stages of the criminal
10 process. Counsel's performance was deficient and representation
11 fell below the objective standard of reasonableness as
12 counsel failed to do appropriate investigation and study
13 of the case, including an analysis of controlling law
14 (NRS 174.085(3); NRS 178.562) and had counsel use due
15 diligence and investigated the facts and the law he
16 would have known that the charge of Attempt Grand
17 Larceny was Perred from District Court against the
18 petitioner as NRS 174.085(3) and NRS 178.562 provides
19 the authority that made petitioner immune from
20 prosecution on charge of Attempt Grand Larceny in
21 District Court. Counsel failed to make certain that the
22 petitioner fully and completely understood the conditions
23 and limits of the plea agreement and the maximum
24 punishment and other consequences the petitioner
25 would be exposed to by entering his "Alford plea"
26 as petitioner was surprised by the habitual criminal
27 sentence. When in fact, even though petitioner signed

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

1 the Burglary charge in case NO C-16-315718-1 that had
2 counsel challenge the Burglary charge was fatal as the
3 state's intent for the charge of Burglary of Attempt
4 Grand Larceny was dismissed following a preliminary
5 hearing in Justice Court, Las Vegas Township on June 14,
6 2016 and the Burglary charge also must have been
7 dismissed leaving no jurisdiction for the district court
8 to proceed with the filed information dated June 17, 2016.
9 Nor the amended information of Attempt Grand Larceny
10 filed November 7, 2018. Where, as here, counsel failures
11 are a clear and convincing showing of prong one
12 of the two prong test of Strickland that has greatly
13 prejudice petitioner and that petitioner's Alford plea
14 was not knowingly, intelligently, or voluntarily entered.

15 WHEREAS, counsel's deficient performance prejudiced
16 petitioner to his extreme detriment causing irreparable
17 injury, and if not for counsel's unprofessional errors
18 and lack of due diligence of failure to investigate
19 the facts and the law the results of the proceedings
20 would have been different. Where as here petitioner
21 would not have entered an "Alford Plea" as the charge(s)
22 of Attempt Grand Larceny was barred from District Court
23 for lack of jurisdiction, lack of admissible evidence,
24 and violation of state law pursuant to NRS 174.085(3)
25 and NRS 178.562 and the Burglary charge case NO.
26 C-16-315718-1 was fatal as the state had no intent.

27 When in fact, no reasonable jury would have convicted
28 petitioner of Attempt Grand Larceny nor the charge

1 of Burglary as the state's intent for the Burglary charge
2 of Larceny in the filed information on June 17, 2016.
3 was dismissed following preliminary hearing for NO
4 slight or marginal evidence, NO corpus delicti, and
5 lack of admissible evidence. As counsel's failures are
6 shown by a preponderance of the evidence, the record,
7 and state law. In addition, counsel failed to file a
8 Notice of appeal and failed to inform petitioner of the
9 right to appeal. Wherein, this is a clear and convincing
10 showing of prong two of the two prong test of Strickland
11 that has greatly prejudiced petitioner and a valid
12 showing that petitioner's Afford plea to the charge
13 of Attempt Grand Larceny was not knowingly,
14 intelligently, or voluntarily entered. What is fact, the
15 petitioner stands convicted of a crime he did not commit!!
16 due to counsel failures. Furthermore this is an affront
17 to justice and due process to hold petitioner to his
18 Afford plea when the conduct upon which the plea
19 was entered did not occur. Finally, for the above
20 reasons, but for counsel's errors and failures petitioner
21 would not have not entered an Afford plea and went
22 to trial on the charge of Burglary and been ~~convicted~~ acquitted.

23 Wherein, appellate counsel failed to provide zealous and
24 quality representation at all stages of appeal process.
25 Counsel's performance was deficient and representation
26 fell below the objective standard of reasonableness as
27 appellate counsel failed to do appropriate investigation
28 of potentially meritorious claims of error and assert

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

1 Revokery conviction was not a prior, so in essence
2 petitioner ~~was~~ first time in prison and ^{and} one prior
3 felony has been treated as a habitual criminal that
4 is easily deemed cruel and unusual punishment,
5 and violates the legislative intent of NRS 207.010.
6 In addition, petitioner was deprived of effective
7 assistance of counsel on direct appeal when district
8 court Judge William Kephart dismissed petitioner's
9 appellate counsel on July 15, 2019 pursuant to
10 motion to withdraw counsel that was granted as
11 District court Judge William Kephart stated his reason
12 for granting and dismissing counsel was that
13 the Supreme Court of Nevada had issued a remittitur.
14 Where, as here, counsel failures are a clear and
15 convincing showing of the prejudice prong of
16 Strickland.
17 Whereby, petitioner requested many times over
18 that counsel file appeal and express to counsel on
19 several occasions his dissatisfaction with the
20 conviction and sentence and counsel failed to do
21 so that easily satisfies the deficient performance
22 of Strickland and shows the prejudice against
23 petitioner cause had counsel use ~~the~~ diligence
24 and raised the meritorious claims and not been
25 withdrawn as counsel prior to the perfection of
26 the appeal petitioner appeal (direct) would have
27 been successful.

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

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Whereas, the breach of issue was not material nor volitional, when in fact, the court was required to hold an evidentiary hearing on the alleged breach which has resulted in dire consequences to petitioner and an additional five(5) to fourteen and a half (14½) years in prison in violation of the bargained for stipulations. That the state entered in BAD FAITH with petitioner as the agreement was unconstitutional, malicious, and a manifest injustice. Indeed, in retelling the factual and procedural history of the case, the state has taken great liberties to continue the sort of narrative that has likely fueled inconsistent and unfair mass incarceration in Nevada.

Whereas, the petitioner knows the record and has tried to contextualize this actual record to reveal that an manifest injustice was done in his specific case. Although his counsel's presented a very unconvincing argument worthy of sanctions and a Bar complaint and is blatant ineffective assistance of counsel that has greatly prejudice petitioner to his extreme detriment causing petitioner irreparable injury.

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

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

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

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

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

19 WHEREAS here, indeed, the boilerplate language
20 regarding "Magistrate to find probable cause" does not
21 explicitly refer to loss of stipulation, but only that "the
22 state will have the UNQUALIFIED right to argue for any
23 legal sentence and term of confinement allowable
24 for the crime to which I am pleading guilty, including
25 the use of any prior convictions I may have to
26 INCREASE my sentence as an habitual criminal to five(5)
27 to twenty(20) years. which in fact, there could not

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

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

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

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

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

20 ~~Whereas~~ as here, petitioner is entitled to habeas
21 corpus if there is no material dispute as to a mistake
22 of fact relating to his conviction (7.R.C.P 32(d))
23 and this court must set aside the judgment of
24 conviction after sentence in order to correct
25 this manifest injustice. As here, both parties agree
26 to the mistake of fact that the charge of Attempt
27 Grand Larceny was dismissed following preliminary
28

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

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

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

1 and unambiguous.

2 WHEREAS the state did violate NRS 174.085(3) when the petitioner
3 was once placed in jeopardy upon the criminal complaint and
4 proceeded to the preliminary hearing and following the preliminary
5 hearing the charge of Attempt grand larceny was dismissed by
6 magistrate, that is a BAR to another indictment, information or
7 complaint for the offense charged in the former. Thus the state
8 triggered the prohibitions of NRS 174.085(3) to bar the subsequent
9 prosecution of the instant offense Attempt grand larceny against
10 the petitioner in all district court proceedings ~~and the district~~
11 ~~court and the subsequent trial of prosecution~~

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

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

23. (d) GROUND FOUR: Violation of Mr. Hayes right to "Due Process" Material mistakes of fact regarding criminal record in PSI that work to his extreme detriment.

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

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

Where, as here, petitioner and his counsel objected to the mistakes at sentencing hearing and sentencing judge continued the proceedings without allowing the corrections to be made. When, in fact, if the judge would have allowed the corrections to be completed in the instant case upon petitioner's objections petitioner's raw score, social score, and the Department of Public Safety Division of Parole and Probation recommendation would have been astronomically different and would have showed that petitioner had never been to prison so there would not have been any habitual offender recommendation for the instant offense of Attempt Grand Larceny. As the instant offense occurred in the year 2013 and at that time petitioner had one felony conviction not four as the PSI read, no prison incarcerations not one as the PSI read; no current supervisor history not one

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

1 23. (d) GROUND ~~FOUR~~ ^{FIVE}: State Violated Mr. Hughes Right to "Due Process"
2 as guaranteed by both the "DUE PROCESS CLAUSE OF THE UNITED
3 STATE'S CONSTITUTION AND THE NARADO CONSTITUTION: "DUE
4 PROCESS VIOLATION guilty plea was NOT EQUALLY VOLUNTARY, KNOWING
5 AND INTELLIGENTLY ENTERED."
6 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): ~~Whereas~~,
7 WAIVERS OF CONSTITUTIONAL RIGHTS NOT ONLY MUST BE VOLUNTARY
8 BUT MUST BE KNOWING, INTELLIGENT ACTS DONE WITH SUFFICIENT
9 AWARENESS OF THE RELEVANT CIRCUMSTANCES AND LIKELY
10 CONSEQUENCES. AS HERE, PETITIONER'S "WAIVER OF HIS FUND-
11 AMENTAL RIGHTS" WAS NOT KNOWINGLY AND INTELLIGENTLY
12 MADE AS THE COURT FAILED TO ADEQUATELY INFORM PETITIONER
13 OF THE FULL CONSEQUENCES OF HIS ALFORD PLEA THAT HAS
14 CREATED A MANIFEST INJUSTICE, BECAUSE THE TRIAL COURT
15 DID NOT STRAIGHTFORWARDLY EXPLAIN CONSEQUENCES OF
16 PETITIONER'S BREACH OF THE AGREEMENT WHILE SWEARING
17 SENTENCING THAT THE STATE WOULD UNILATERALLY IMPOSE
18 AN ENHANCED SENTENCE AS THE BOILERPLATE LANGUAGE WAS
19 AMBIGUOUS AND HAD IMPRECISIONS THAT DID NOT EXPLICITLY
20 STATE LOSS OF STIPULATION. MOST SIGNIFICANTLY, PETITIONER DID
21 NOT INTELLIGENTLY AND KNOWINGLY WAIVE HIS CONSTITUTIONAL
22 RIGHTS WITH FULL KNOWLEDGE OF THE CONSEQUENCES. NOR WAS
23 HE TOLD THAT HIS ALFORD PLEA WOULD STAND REGARDLESS OF WHETHER
24 HE WAS REARRESTED FOR A BURGLARY CHARGE THAT WAS DISMISSED,
25 AFTER ALLEGED VICTIM TESTIFIED AT PRELIMINARY HEARING UNDER
26 OATH FACING THE PENALTY OF PERJURY THAT PETITIONER WAS NOT
27 THE PERPETRATOR OF ALLEGE EVENT AND 100% SURE OF IT.
28 So petitioner has raised sufficient doubt as whether his

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

3 Whereas, the state interpret the court's statement to
4 mean "do you understand that if you breach any of
5 the conditions in guilty plea agreement, this court will
6 sentence you". Yet, that is not what the trial court said.
7 What it is surely equally plausible explanation of the
8 plea colloquy that petitioner would -- were here to breach
9 the agreement -- face trial on the Burglary charge. In
10 particular, it is impossible to conclude that petitioner
11 truly understood that he was waiving his right to be
12 tried on the original charge of Burglary, and agreed
13 instead that were he arrested the state trial court could
14 unilaterally impose a habitual criminal sentence upon him.
15 So it is without question that whatever waiver petitioner
16 agreed to was without adequate knowledge of the
17 consequences flowing from his breach of the plea agreement
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WHEREFORE, James Hayes, prays that the court grant petition
relief to which he may be entitled in this proceeding.

EXECUTED at Southern Desert Correctional Center
on the 10 day of February, 2020

James Hayes
Signature of Petitioner

VERIFICATION

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

James Hayes
Signature of Petitioner

PROPER PERSON
Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 10
day of February, 2020, I mailed a true and correct copy of the foregoing, "AMENDED
petition for writ of habeas corpus"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clark County Dist Court
Office of the Clerk
205 Lewis Ave, 3rd Floor
Las Vegas, NV
89155-1160

Office of the District Atty
205 Lewis Ave
P.O. Box 552212
Las Vegas, NV
89155-2212

Attorney General of Nevada
105 North Carson St
Carson City, NV
89401

**NOTE: Electronic service also
requested...**

CC:FILE

DATED: this 10 day of February, 2020.

James H. Hayes
James H. Hayes # 1175049
/s/ Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Amended

Petition for writ of habeas corpus
(Title of Document)

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

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

James H. Hayes
Signature

2-10-20
Date

James H. Hayes
Print Name

PROPR PERSON
Title

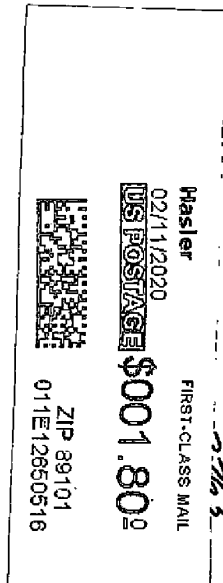
Hager #11750 PE
JWC
P.O. Box 208
Tubers Springs, NV
89290

CONFIDENTIAL

Clark County District Courts
"Office of the Clerk"

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

LEWIS
MAIL



28

FILED

MAR 04 2020

Cheryl L. Williams
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

James H Hayes,
Petitioner,
vs.
Nevada State of,
Respondent,

Case No: A-19-793315-W
Department 19

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on February 12, 2020. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 4th day of May, 2020, at the hour of

8:30 ^{A.M.} o'clock for further proceedings.

Will Kyrst
District Court Judge

B

A-19-793315-W
OPWH
Order for Petition for Writ of Habeas Corpus
4901080



1 Hayes, James H #1175077

2 Defendant In Pro Persona
3 Post Office Box 208 S.D.C.C.
4 Indian Springs, Nevada 89018

27
FILED

MAR 06 2020

CLERK OF COURT

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

8 Case No. A-19-793315-W

9 Dept. No. 19

Docket _____

10 JAMES H. HAYES

11 Petitioner,

12 vs.

13
14 State of Nevada;
15 JERRY HOWELL (WARDEN)

16 Respondent

17 ("Hearing Requested")

18 **PETITION : EXPEDITIOUS JUDICIAL EXAMINATION**
19 **(NRS 34.360 - 34.830)**

20 Date of Hearing: _____

21 Time of Hearing: _____

22 "ORAL ARGUMENT REQUESTED, Yes ☒ No _____"

23 **Comes Now**, defendant, JAMES H. HAYES, proceeding in proper
24 person, hereby moves this Honorable Court for its **ORDER** granting petitioner an
25 Expeditious Judicial Examination of petitioner's Writ of Habeas Corpus. In addition,
26 to hold an **Evidentiary Hearing** for meaningful Habeas Corpus Judicial Review.

27
28 **RECEIVED**

MAR - 6 2020

CLERK OF THE COURT

A-19-793315-W
PET
Petition
4903258



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POINTS AND AUTHORITIES

The Nevada Revised Statute 34.740, **Petition : Expeditious Judicial Examination** states : "The original petition must be presented promptly to a District Judge or a Justice of the Supreme Court by the Clerk of the Court. The Petition must be examined expeditiously by the Judge or Justice to whom it is assigned."

In the **United States Constitution, Article 1, Section 9**. It states: "The Privilege of the Writ of Habeas Corpus **shall not be suspended**, unless when in Cases of Rebellion or Invasion the public safety may require it."

In the **Nevada Constitution, Article 1, Section 5**. It states: "The privilege of the Writ of Habeas Corpus, **shall not be suspended** unless when in cases of rebellion or invasion the public safety may require its suspension."

In accordance with the provisions of **NRS 34.360 - 34.830**, Denial of Due Process which violates the **United States Constitution**, which violates the **5th and 14th Amendment(s)**.

The District Court has essentially **suspended** the petitioner's **Writ of Habeas Corpus**, without rendering a decision in a reasonable time frame, or showing just cause to do so. This is causing the petitioner prejudice, by unreasonable delay and preventing him access to the Judicial Appeals process. Also, this is hindering or delaying justice, and preventing adjudication. The improper suspension of a Writ of Habeas Corpus, would constitute a Due Process violation. By doing so, would be a violation to the United States Constitution. (5th and 14th Amendment)

"The basic purpose of the Writ of Habeas Corpus is to enable those unlawfully incarcerated to obtain their freedom." "Access of prisoners to courts for purpose of presenting petitions for Habeas Corpus may not be **denied** or **obstructed**." (89 S.Ct. 747, Johnson v. Avery)

"This Court has constantly emphasized the fundamental importance of the Writ of Habeas Corpus in our constitutional scheme, and the Congress has demonstrated its solicitude for the vigor of the Great Writ. The Court has steadfastly insisted that there is no higher duty than to maintain it unimpaired. (59 S.Ct. 442, Bowen v. Johnston)

1 "The plight of a man in prison may in these respects be even more acute than
2 the plight of a person on the outside. He may need collateral proceedings to test the
3 legality of his detention or relief against management of the parole system or against
4 defective detainers lodge against him which create burdens in the nature of his
5 incarcerated status." (89 S.Ct. 747, Johnson v. Avery)

6 "Reasonable access to the courts is a right (secured by the Constitution and
7 laws of the United States), being guaranteed as against state action by the Due
8 Process Clause of the 14th Amendment. (65 S.Ct. 978, Write v. Ragen)

9 "The constitutional Writ of Habeas Corpus heretofore used, within defined limits,
10 as a post-conviction procedure to challenge the validity of a conviction, may not be
11 abolished as a post-conviction remedy by legislative fiat." (434 P.2d 437, Marshall v.
12 Warden)

13 This Petition is made and based upon all papers and pleadings on file with the
14 Clerk of the Court which are hereby incorporated by this reference, the Points and
15 Authorities Herein, and attached Affidavit of Defendant.

16 DATED: This 1st day of March, 20 20
17 By: James H. Hayes James H. Hayes # 1175072
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FACTS OF THE CASE:

The Petitioner has filed a timely Writ of Habeas Corpus on, April
15th 2019. The Petitioner, still has not received a decision on his Writ of
Habeas Corpus. It has been exactly, TEN (10) months and
sixteen (16) days without a decision.

The Petitioner has shown good cause, to request the **NEVADA SUPREME**
COURT. To **expedite** and **review** the petitioner's Writ of Habeas Corpus for **Judicial**
Review. SEE PAGES FIVE (5) THROUGH TWENTY-TWO (22) OF ADDITIONAL
FACTS:

1
2
3 (a) GROUND ONE: MR. HAYES (petitioner) was denied his
4 Constitutionally guaranteed right to effective
5 assistance of counsel (Federal and State Constitutional
6 rights 3rd 6th and 14th Amendment Violation:

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

8 Whereas, trial counsel failed to provide zealous and
9 quality representation at all stages of the criminal
10 process. Counsel's performance was deficient and representation
11 fell below the objective standard of reasonableness as
12 counsel failed to do appropriate investigation and study
13 of the case, including an analysis of controlling law
14 (NRS 174.085(3); NRS 178.562) and had counsel use due
15 diligence and investigated the facts and the law he
16 would have known that the charge of Attempt Grand
17 Larceny was Perred from District Court against the
18 petitioner as NRS 174.085(3) and NRS 178.562 provides
19 the authority that made petitioner immune from
20 prosecution on charge of Attempt Grand Larceny in
21 District Court. Counsel failed to make certain that the
22 petitioner fully and completely understood the conditions
23 and limits of the plea agreement and the maximum
24 punishment and other consequences the petitioner
25 would be exposed to by entering his "Alford plea"
26 as petitioner was surprised by the habitual criminal
27 sentence. Whereas in fact, even though petitioner signed

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

1 the Burglary charge in case NO C-16-315718-1 that had
2 counsel challenge the Burglary charge was held as the
3 state's intent for the charge of Burglary of Attempt
4 Grand Larceny was dismissed following a preliminary
5 hearing in Justice Court Las Vegas Township on June 14,
6 2016 and the Burglary charge also must have been
7 dismissed leaving no jurisdiction for the district court
8 to proceed with the filed information dated June 17, 2016.
9 Nor the amended information of Attempt Grand Larceny
10 filed November 7, 2018. Where, as here, counsel failures
11 are a clear and convincing showing of prong one
12 of the two prong test of Strickland that has greatly
13 prejudice petitioner and that petitioner's Affid Pet
14 was not knowingly, intelligently, or voluntarily entered.

15 Where, counsel's deficient performance prejudiced
16 petitioner to his extreme detriment causing irreparable
17 injury, and if not for counsel's unprofessional errors
18 and lack of due diligence of failure to investigate
19 the facts and the law the results of the proceedings
20 would have been different. Where as here petitioner
21 would not have entered an "Affid Pet" as the charges
22 of Attempt Grand Larceny was barred from district court
23 for lack of jurisdiction, lack of admissible evidence,
24 and violation of state law pursuant to NRS 174.085(3)
25 and NRS 178.562 and the Burglary charge case NO.
26 C-16-315718-1 was held as the state had no intent.

27 When in fact no reasonable jury would have convicted
28 petitioner of Attempt Grand Larceny nor the charge

1 of Burglary as the state's intent for the Burglary charge
2 of larceny in the filed information on June 12, 2016
3 was dismissed following preliminary hearing for NO
4 slight or marginal evidence, NO corpus delicti, and
5 lack of admissible evidence. As counsel's failures are
6 shown by a preponderance of the evidence, the record,
7 and state law. In addition, counsel failed to file a
8 notice of appeal and failed to inform petitioner of the
9 right to appeal. Wherein, this is a clear and convincing
10 showing of prong two of the two prong test of Strickland
11 that has greatly prejudiced petitioner and a valid
12 showing that petitioner's Afford plea to the charge
13 of Attempt Grand Larceny was not knowingly,
14 intelligently, or voluntarily entered. What is fact, the
15 petitioner stands convicted of a crime he did not commit!!
16 due to counsel failures. Furthermore this is an affront
17 to justice and due process to hold petitioner to his
18 Afford plea when the conduct upon which the plea
19 was entered did not occur. Finally, for the above
20 reasons, but for counsel's errors and failures petitioner
21 would not have not entered an Afford plea and went
22 to trial on the charge of Burglary and been ~~convicted~~ acquitted.

23 Wherein, appellate counsel failed to provide zealous and
24 quality representation at all stages of appeal process.
25 Counsel's performance was deficient and representation
26 fell below the objective standard of reasonableness as
27 appellate counsel failed to do appropriate investigation
28 of potentially meritorious claims of error and assert

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

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

14 Where, as here, counsel failures are a clear and
15 convincing showing of the prejudice prong of
16 Strickland.

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

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

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

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

21 Although his counsel's presented a very unconvincing
22 argument worthy of sanctions and a bar complaint
23 and is blatant ineffective assistance of counsel that
24 has greatly prejudice petitioner to his extreme detriment
25 causing petitioner irreparable injury.

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

28 •••

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

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

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

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

19 WHEREAS here, indeed, the boilerplate language
20 regarding "Magistrate to find probable cause" does not
21 explicitly refer to loss of stipulation, but only that "the
22 state will have the UNQUALIFIED right to argue for any
23 legal sentence and term of confinement allowable
24 for the crime to which I am pleading guilty, including
25 the use of any prior convictions I may have to
26 INCREASE my sentence as an habitual criminal to FIVE(5)
27 to twenty (20) years. Which in fact, there could not

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

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

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

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

Whereas, it is unconscionable for the state to attempt to insulate a conviction from collateral constitutional review by conditioning its willingness to enter into plea negotiations on petitioners "Waiver of the Rights" to pursue post-conviction remedies.

Where, as here, petitioner is entitled to habeas corpus if there is no material dispute as to a mistake of fact relating to his conviction (7.R.C.P 32(d)) and this court must set aside the judgment of conviction after sentence in order to correct this manifest injustice. As here, both parties agree to the mistake of fact that the charge of Attempt Grand Larceny was dismissed following preliminary

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

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

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

1 and unambiguous.

2 WHEREAS, the state did violate NRS 174.085(3) when the petitioner
3 was once placed in jeopardy upon the criminal complaint and
4 proceeded to the preliminary hearing and following the preliminary
5 hearing the charge of Attempt grand larceny was dismissed by
6 magistrate, that is a BAR to another indictment, information or
7 complaint for the offense charged in the former. Thus the state
8 triggered the protections of NRS 174.085(3) to bar the subsequent
9 prosecution of the instant offense Attempt grand larceny against
10 the petitioner in all district court proceedings ~~and the district~~
11 ~~court on the subsequent time of prosecution~~

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

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

23. (d) GROUND FOUR: Violation of MA. Hoyer's right to Due Process Material mistakes of fact regarding criminal record in PSI that work to his extreme detriment.

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

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

Where, as here, petitioner and his counsel objected to the mistakes at sentencing hearing and sentencing judge continued the proceedings without allowing the corrections to be made. When, in fact, if the judge would have allowed the corrections to be completed in the instant case upon petitioner's objections petitioner's raw score, social score, and the Department of Public Safety Division of Probation and Parole recommendation would have been astronomically different and would have showed that petitioner had never been to prison so there would not have been any habitual offender recommendation for the instant offense of ~~Attempt~~ Grand Larceny. As the instant offense occurred in the year 2013 and at that time petitioner had one felony conviction not four as the PSI read; no prison incarcerations not one as the PSI read; no current supervisor history not one

1 as the PSI read; the instant offense should be dated
2 April 9, 2013 NOT April 2, 2016 as the PSI reads;
3 Burglary conviction case NO C-16-315125-1 should NOT
4 be included anywhere on petitioner's PSI for the instant
5 offense as it occurred sum three years later on April
6 2, 2016; Finally the TEXAS CONVICTIONS case NO(s)
7 1083785 and 1083786 was ONE AVEAT NOT TWO as it
8 reads on PSI NOT two felony convictions but ONE
9 state jail conviction for Credit Card Abuse and Fraudulent
10 USE/POSSESSION of Identifying information. Whereas the
11 numerous material mistakes of facts about petitioners
12 criminal record that have worked to his extreme detriment
13 has rise to a manifest injustice and DUE PROCESS
14 violation that cannot stand uncorrected. Furthermore,
15 the Texas crime(s) would not constitute a felony under
16 Nevada law.

1 23. (d) GROUND ~~ONE~~ ^{ONE}: State Violated Mr. Hayes Right to "Due Process"
2 as guaranteed by both the "DUE PROCESS CLAUSE of the United
3 State's Constitution and the Nevada Constitution: "DUE
4 PROCESS VIOLATION guilty plea was NOT equally voluntary, knowing
5 and intelligent."
6

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

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

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

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

STATE OF NEVADA)

COUNTY OF CLARK)

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

TO WHOM IT MAY CONCERN:

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

all statements, facts and events within my foregoing Affidavit are

true and correct of my own knowledge, information and belief, and

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

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

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

a protestation of innocence was constitutionally acceptable

when "a defendant intelligently concludes that his interests

require entry of guilty plea and the record before the judge

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

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

of Attempted Grand Larceny, as the sentencing judge and the state knew

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

examination showed no criminal act of Attempted Grand Larceny,

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

lying criminal conduct that may have justified accepting Mr. Hayes

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

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

statements regarding an admission to the attempted grand larceny

charge nor admitted facts constituting the elements of attempted grand

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

pleaded to.

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

2020.

BY:

James N. Hayes
James N. Hayes # 1173649
Post Office 38x-203 (SDCC)
Indian Springs, Nevada, 89070
Affiant, In Propria Personam:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition:

Expedition Judicial Examination
(Title of Document)

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

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

James H. Hayes
Signature

3-1-20
Date

JAMES H. HAYES
Print Name

PRO PER
Title

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 1st
day of March, 2020, I mailed a true and correct copy of the foregoing, "Petition:
Expeditions Judicial Examination"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clark County Dist Ct.
Office of the Clerk
200 Lewis Ave. 3rd Floor
Las Vegas, Nevada
89155-1160

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada
89401

Clark County Dist Atty
200 Lewis Ave
Las Vegas, Nevada
89155

CC:FILE

DATED: this 1st day of March, 2020.

James H. Hayes
James H. Hayes # 1143097
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

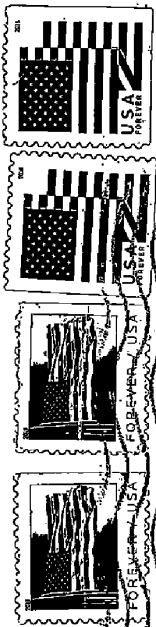
Vegas, J# 1125072

9000

P.O. Box 208

Indian Springs, Nevada

89070



Las Vegas P&DC 89199

WED 04 MAR 2020 PM

Clark County District Courts
"Office of the Clerk"

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada

89155-1160

Legal
Mail

Case No. A-19-0793315-W
Dept. No. 19

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

JAMES H. HAYES
Petitioner,

v.

STATE OF NEVADA;
TERRY HOWELL (WARDEN)
Respondent.

ORDER

Petitioner filed a petition for a Writ of Habeas Corpus on April (month)
15th (day), 2019 (year). The court has reviewed the petition
and has determined that a response would assist the court in determining whether
petitioner is illegally imprisoned and restrained of petitioner's liberty. Respondent
shall, within 45 days after the date of this order, answer or respond to the petition
and file a return in accordance with provisions of NRS 34.360 to 34.830, inclusive.

Dated _____ (month) _____ (day), _____ (year)

Court Judge

1 Hayes, James H #1175077

2 Defendant In Pro Persona
3 Post Office Box 208 S.D.C.C.
4 Indian Springs, Nevada 89018

FILED

MAR 06 2020

CLERK OF COURT

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

Case No. A-19-793315-W

Dept. No. 19

Docket _____

10 JAMES H. HAYES

11 Petitioner,

12 vs.

13
14 State of Nevada;
15 JERRY HOWELL (WARDEN)

16 Respondent

17 ("HERRING REQUEST")

18 **PETITION : EXPEDITIOUS JUDICIAL EXAMINATION**
19 **(NRS 34.360 - 34.830)**

20 Date of Hearing: _____

21 Time of Hearing: _____

22 "ORAL ARGUMENT REQUESTED, Yes ☒ No _____"

23 **Comes Now**, defendant, JAMES H. HAYES, proceeding in proper
24 person, hereby moves this Honorable Court for its **ORDER** granting petitioner an
25 Expeditious Judicial Examination of petitioner's Writ of Habeas Corpus. In addition,
26 to hold an **Evidentiary Hearing** for meaningful Habeas Corpus Judicial Review.

27
28 **RECEIVED**

MAR 6 2020

A-19-793315-W
PET
Petition
4903256



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1 "The plight of a man in prison may in these respects be even more acute than
2 the plight of a person on the outside. He may need collateral proceedings to test the
3 legality of his detention or relief against management of the parole system or against
4 defective detainers lodge against him which create burdens in the nature of his
5 incarcerated status." (89 S.Ct. 747, Johnson v. Avery)

6 "Reasonable access to the courts is a right (secured by the Constitution and
7 laws of the United States), being guaranteed as against state action by the Due
8 Process Clause of the 14th Amendment. (65 S.Ct. 978, Write v. Ragen)

9 "The constitutional Writ of Habeas Corpus heretofore used, within defined limits,
10 as a post-conviction procedure to challenge the validity of a conviction, may not be
11 abolished as a post-conviction remedy by legislative fiat." (434 P.2d 437, Marshall v.
12 Warden)

13 This Petition is made and based upon all papers and pleadings on file with the
14 Clerk of the Court which are hereby incorporated by this reference, the Points and
15 Authorities Herein, and attached Affidavit of Defendant.

16 DATED: This 1st day of March, 20 20
17 By: James H. Hayes James H. Hayes # 1175078
18
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FACTS OF THE CASE:

The Petitioner has filed a timely Writ of Habeas Corpus on, April
15th 2019. The Petitioner, still has not received a decision on his Writ of
Habeas Corpus. It has been exactly, TEN (10) months and
SIXTEEN (16) days without a decision.

The Petitioner has shown good cause, to request the **NEVADA SUPREME**
COURT. To **expedite** and **review** the petitioner's Writ of Habeas Corpus for **Judicial**
Review. SEE PAGES FIVE (5) THROUGH TWENTY-TWO (22) OF ADDITIONAL
FACTS:

1
2
3 (a) GROUND ONE: MR. HAYES (petitioner) was denied his
4 Constitutionally guaranteed "right to effective
5 assistance of counsel" (Federal and State Constitutional
6 rights) 6th and 14th Amendment Violation:

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

8 WHEREAS, trial counsel failed to provide zealous and
9 quality representation at all stages of the criminal
10 process. Counsel's performance was deficient and representation
11 fell below the objective standard of reasonableness as
12 counsel failed to do appropriate investigation and study
13 of the case, including an analysis of controlling law
14 (NRS 174.085(3); NRS 178.562) and had counsel use due
15 diligence and investigated the facts and the law he
16 would have known that the charge of Attempt Grand
17 Larceny was barred from District Court against the
18 petitioner as NRS 174.085(3) and NRS 178.562 provides
19 the authority that made petitioner immune from
20 prosecution on charge of Attempt Grand Larceny in
21 District Court. Counsel failed to make certain that the
22 petitioner fully and completely understood the conditions
23 and limits of the plea agreement and the maximum
24 punishment and other consequences the petitioner
25 would be exposed to by entering his "Alford plea"
26 as petitioner was surprised by the habitual criminal
27 sentence. When in fact, even though petitioner signed

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

1 the Burglary charge in case NO C-16-315718-1 that had
2 counsel challenge the Burglary charge was held as the
3 state's intent for the charge of Burglary of Attempt
4 Grand Larceny was dismissed following a preliminary
5 hearing in Justice Court Las Vegas Township on June 14,
6 2016 and the Burglary charge also must have been
7 dismissed leaving no jurisdiction for the district court
8 to proceed with the filed information dated June 17, 2016,
9 nor the amended information of Attempt Grand Larceny
10 filed November 7, 2018. Where, as here, counsel failures
11 are a clear and convincing showing of prong one
12 of the two prong test of Strickland that has greatly
13 prejudice petitioner and that petitioner's Affidavit
14 was not knowingly, intelligently, or voluntarily entered.

15 Where, counsel's deficient performance prejudiced
16 petitioner to his extreme detriment causing irreparable
17 injury, and if not for counsel's unprofessional errors
18 and lack of due diligence of failure to investigate
19 the facts and the law, the results of the proceedings
20 would have been different. Where as here, petitioner
21 would not have entered an "Affidavit" as the charges
22 of Attempt Grand Larceny was barred from District Court
23 for lack of jurisdiction, lack of Admissible Evidence,
24 and violation of state law pursuant to NRS 174.085(3)
25 and NRS 178.562 and the Burglary charge case NO.
26 C-16-315718-1 was held as the state had no intent.

27 What in fact, no reasonable jury would have convicted
28 petitioner of Attempt Grand Larceny nor the charge

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

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

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

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

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

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

Whereas, the petitioner knows the record and has tried to contextualize this actual record to reveal that a manifest injustice was done in his specific case. Although his counsel's presented a very unconvincing argument worthy of sanctions and a bar complaint and is blatant ineffective assistance of counsel that has greatly prejudice petitioner to his extreme detriment causing petitioner irreparable injury.

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

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

15 Whereas, petitioner's case of "Attempt Grand Larceny"
16 is the one ostensibly before us in this petition which
17 allegedly occurred on April 1, 2013 and was formally
18 charged by way of Criminal Complaint on July 23, 2013
19 that was dismissed following a preliminary hearing in
20 Justice Court, Las Vegas Township on June 14, 2016 for
21 lack of admissible evidence, no corpus delicti, no slight
22 or marginal evidence to proceed to district court
23 leaving the District Court 8th Judicial District with no
24 subject matter jurisdiction for the charge of Attempt
25 Grand Larceny as it was BARRED from subsequent
26 prosecution against petitioner as mandated by state
27 law pursuant to NRS 174.085(3) and NRS 178.562

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

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

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

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

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

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

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

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

Whereas here, petitioner is entitled to habeas corpus if there is no material dispute as to a mistake of fact relating to his conviction (7.R.C.P 32(d)) and this court must set aside the judgment of conviction after sentence in order to correct this manifest injustice. As here, both parties agree to the mistake of fact that the charge of Attempted Grand Larceny was dismissed following preliminary

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

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

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

1 and unambiguous.

2 WHEREAS, the state did violate NCS 174.085(a) when the petitioner
3 was once placed in jeopardy upon the criminal complaint and
4 proceeded to the preliminary hearing and following the preliminary
5 hearing the charge of Attempt grand larceny was dismissed by
6 magistrate, that is a BAR to another indictment, information or
7 complaint for the offense charged in the former. Thus the state
8 triggered the protections of NCS 174.085(3) to bar the subsequent
9 prosecution of the instant offense Attempt grand larceny against
10 the petitioner in all district court proceedings ~~where the offense~~
11 ~~committed before the subsequent time of prosecution~~

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

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

23. (d) GROUND FOUR: Violation of MA. Boyer right to Due Process Material mistakes of fact regarding criminal record in PSI that work to his extreme detriment.

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

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

Where, as here, petitioner and his counsel objected to the mistakes at sentencing hearing and sentencing judge continued the proceedings without allowing the corrections to be made. When, in fact, if the judge would have allowed the corrections to be completed in the instant case upon petitioner's objections petitioner's raw score, social score, and the Department of Public Safety Division of Parole and Probation recommendation would have been astronomically different and would have showed that petitioner had never been to prison so there would not have been any habitual offender recommendations for the instant offense of Attempted Grand Larceny. As the instant offense occurred in the year 2013 and at that time petitioner had one felony conviction not four as the PSI read, no prison incarcerations not one as the PSI read; no current supervisor history not one

25 the PSI read; the instant offense should be dated
April 9, 2013. Not April 2, 2016 as the PSI reads;
Burglary conviction case NO C-16-315125-1 should NOT
be included anywhere on petitioner's PSI for the instant
offense as it occurred sum three years later on April
2, 2016; Finally the Texas conviction(s) case NO(s)
10B3785 and 10B3786 was ONE event not two as it
reads on PSI not two felony convictions but ONE
state jail conviction for Credit Card Abuse and Fraudulent
use/possession of Identifying information. Whereas, the
Numerous material mistakes of facts about petitioner's
criminal record that have worked to his extreme detriment
has rise to a manifest injustice and due process
violation that cannot stand uncorrected. Furthermore,
the Texas crime(s) would not constitute a felony under
Nevada Law.

23. (d) GROUND ~~ONE~~ ^{FIVE}: State Violated Mr. Hayes Right to "DUE PROCESS" as guaranteed by both the "DUE PROCESS CLAUSE of the United States Constitution and the Nevada Constitution: "DUE PROCESS VIOLATION guilty plea was NOT Equally Voluntary, KNOWING AND INTELLIGENTLY MADE."

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

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

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

STATE OF NEVADA)

COUNTY OF CLARK)

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

TO WHOM IT MAY CONCERN:

I, James N. Hayes the undersigned, do hereby swear that
all statements, facts and events within my foregoing Affidavit are
true and correct of my own knowledge, information and belief, and
as to those, I believe them to be True and Correct. Signed under the
penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state
the following: Whereas, In Alford, the court held a plea contain
a protestation of innocence was constitutionally acceptable
when "a defendant intelligently concludes that his interests
require entry of guilty plea and the record before the judge
contains strong evidence of guilt" (400 U.S. at 37). In the instant
case, there was, of course, no evidence of actual guilt of the crime
of Attempted Grand Larceny, as the sentencing judge and the state
Mr. Hayes had no involvement in such a crime. Moreover, when pre-
examination showed no criminal act of Attempted Grand Larceny,
it is clear that no evidence of actual guilt existed on the under-
lying criminal conduct that may have justified accepting Mr. Hayes
plea, therefore Mr. Hayes did not waive his right to complain of the
acceptance of an unconstitutional plea. Mr. Hayes neither made pre-
statements regarding an admission to the attempted grand larceny
charge nor admitted facts constituting the elements of attempted grand
larceny. Mr. Hayes did not understand the elements of the crime that he
pleaded to.

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

BY:

James N. Hayes
James N. Hayes # 1185049
Post Office Box-203 (SDCC)
Indian Springs, Nevada 89070
Affiant, In Propria Personam:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition:

Expedition Judicial Examination
(Title of Document)

filed in District Court Case number C-16-315818-1

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

James H. Hayes
Signature

3-1-20
Date

JAMES H. HAYES
Print Name

PRO PER
Title

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 1st
day of March, 2020, I mailed a true and correct copy of the foregoing, "Petition:
Expeditions Judicial Examination"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Clark County Dist Ct.
Office of the Clerk
200 LEWIS AVE. 3rd Floor
Las Vegas, Nevada
89133-1160

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada
89701

Clark County Dist Atty
200 LEWIS AVE
Las Vegas, Nevada
89133

CC:FILE

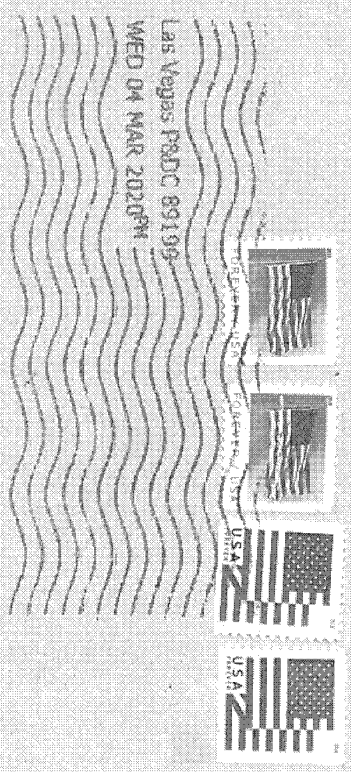
DATED: this 1st day of March, 2020.

James H. Hayes
1173027
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Myers, J # 1195097
Jbce
P.O. Box 228
Indian Springs, Nevada
89070



Clark County District Courts
"Office of the clerk"
200 Lewis Ave; 3rd floor
Las Vegas, Nevada
89155-1120

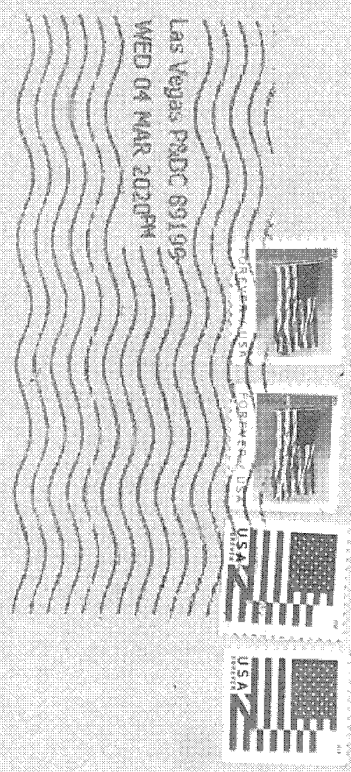


LEGAL
MAIL

Myers, J # 1125092
Jbce
P.O. Box 208
Indian Springs, Nevada
89090



Clerk Chauchel District Courts
"Office of the clerk"
200 Lewis Ave; 3rd floor
Las Vegas, Nevada
89155-1160



Legal
Mail



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

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

9 **JAMES HOWARD HAYES,**
10 **aka James Howard Hayes Jr.,**
11 **#2796708**

11 **Plaintiff,**

CASE NO: A-19-793315-W

12 **-vs-**

13 **THE STATE OF NEVADA,**

14 **Defendant.**

DEPT NO: XIX

15
16 **STATE'S RESPONSE TO PETITIONER'S**
17 **AMENDED PETITION FOR WRIT OF HABEAS CORPUS**
18 **AND**
19 **PETITION: EXPEDITIOUS JUDICIAL EXAMINATION NRS 34.360-34.830**

18 **DATE OF HEARING: MAY 4, 2020**
19 **TIME OF HEARING: 8:30 AM**

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and
22 hereby submits the attached Points and Authorities in Response to Petitioner's Amended
23 Petition for Writ of Habeas Corpus and "Petition: Expeditious Judicial Examination NRS
24 34.360-34.830."

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

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

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

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

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

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

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

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

28 //

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

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

13 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner's Case Appeal
14 Statement was filed on August 9, 2019 (SCN 78590).

15 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition").
16 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the
17 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original
18 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court's
19 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply
20 to the State's Response on November 4, 2019. On November 18, 2019, Petitioner's Petition
21 came before the Court, at which time the Court took the matter OFF CALENDAR due to
22 Petitioner's pending appeal.

23 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial
24 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN
25 80222). As of the date of this Response, Petitioner's appeal was still outstanding.

26 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner's Judgment
27 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

28 //

1 On February 12, 2020, Petitioner filed an “Amended Petition for Writ of Habeas
2 Corpus” (his “Amended Petition”). This Court ordered a Response to that Amended Petition
3 on March 4, 2020. Thereafter, on March 6, 2020, Petitioner filed a “Petition: Expeditious
4 Judicial Examination NRS 34.360-34.830” (his “Petition: EJE”). Pursuant to this Court’s
5 order, and out of an abundance of caution, the State responds to both the Amended Petition
6 and the Petition: EJE, as follows:

7 **ARGUMENT**

8 **I. PETITIONER’S AMENDED PETITION IS BARRED AS SUCCESSIVE**

9 As a preliminary matter, the State respectfully submits that the instant pleadings must
10 be stricken pursuant to statute. NRS 34.750(3) allows *appointed counsel* to file certain
11 supplemental pleadings within 30 days. However, “[n]o further pleadings may be filed except
12 as ordered by the court.” NRS 34.750(5). Additionally, NRS 34.810(2) reads:

13 A second or successive petition *must be dismissed* if the judge or justice
14 determines that it fails to allege new or different grounds for relief and that the
15 prior determination was on the merits or, if new and different grounds are
16 alleged, the judge or justice finds that *the failure of the petitioner to assert those*
grounds in a prior petition constituted an abuse of the writ.

17 (Emphasis added). It is strictly the petitioner’s burden to demonstrate good cause and prejudice
18 to survive the court’s analysis. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d
19 944, 950 (1994); see also, Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969 972 (2000) (holding,
20 “where a defendant previously has sought relief from the judgment, the defendant’s failure to
21 identify all grounds for relief in the first instance should weigh against consideration of the
22 successive motion.”)

23 The Nevada Supreme Court has stated: “Without such limitations on the availability of
24 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
25 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
26 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.
27 The Nevada Supreme Court recognizes, “[u]nlike initial petitions which certainly require a
28 careful review of the record, successive petitions *may be dismissed based solely on the fact of*

1 *the petition.*” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (emphasis added).
2 In other words, if the claim or allegation was previously available with reasonable diligence,
3 it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,
4 497-98 (1991). Application of NRS 34.810(2) is *mandatory*. State v. Eighth Judicial Dist.
5 Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (noting, “[h]abeas corpus
6 petitions that are filed many years after conviction are an unreasonable burden on the criminal
7 justice system.”) The Riker Court further determined that district courts have no discretion
8 regarding application of statutory procedural bars, and such bars “cannot be ignored [by the
9 district court] when properly raised by the State.” Id. at 233.

10 In the instant case, Petitioner continues to file supplemental pleadings in the form of
11 multiple addenda as well as the instant “Amended Petition.” However, under NRS 34.750, the
12 right to file supplements lies exclusively with appointed counsel. Furthermore, the factual
13 bases for Petitioner’s claims existed at the time Petitioner filed his first Petition. Therefore,
14 Petitioner’s pleadings are successive and subject to dismissal absent a showing of good cause
15 and prejudice. NRS 34.810(2). Petitioner does not argue good cause nor prejudice. See
16 generally, Amended Petition. Thus, pursuant to statute, Petitioner’s pleadings “*must be*
17 *dismissed.*” NRS 34.810(2) (emphasis added).

18 **II. PETITIONER’S AMENDED PETITION DOES NOT ENTITLE HIM TO** 19 **RELIEF**

20 The Nevada Supreme Court has explained:

21 “[A] guilty plea represents a break in the chain of events which has preceded it
22 in the criminal process. When a criminal defendant has solemnly admitted in
23 open court that he is in fact guilty of the offense with which he is charged, he
24 may not thereafter raise independent claims relating to the deprivation of
constitutional rights that occurred prior to the entry of the guilty plea.”

25 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411
26 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all
27 constitutional claims based on events occurring prior to the entry of the plea[], except those
28 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100

1 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d
2 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be
3 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness
4 of counsel.”). Under NRS 34.810,

5 I. The court *shall* dismiss a petition if the court determines that:

6 (a) The petitioner’s conviction was upon a plea of guilty or guilty but
7 mentally ill and the petition is not based upon an allegation that the plea was
8 involuntarily or unknowingly entered or that the plea was entered without
effective assistance of counsel.

9 ...
10 unless the court finds both cause for the failure to present the grounds and actual
prejudice to the petitioner.

11 (emphasis added). Furthermore, the Nevada Supreme Court has held that “challenges to the
12 validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must
13 first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a
14 direct appeal must be pursued on direct appeal, or they will be *considered waived in*
15 *subsequent proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)
16 (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979
17 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were
18 or could have been presented in an earlier proceeding, unless the court finds both cause for
19 failing to present the claims earlier or for raising them again and actual prejudice to the
20 petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other
21 grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims
22 are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at
23 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

24 A proper petition for post-conviction relief must set forth specific factual allegations
25 that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part, “[Petitioner]
26 must allege specific facts supporting the claims in the petition [he] file[s] seeking relief from
27 any conviction or sentence. Failure to raise specific facts rather than just conclusions may
28 cause the petition to be dismissed.” “Bare” and “naked” allegations are not sufficient to

1 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.
2 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted
3 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,
4 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

5 **A. Petitioner’s Claims of Ineffective Assistance of Counsel are Belied by the Record**

6 Petitioner first claims that his counsel, Mr. Michael Sanft, Esq. (“Mr. Sanft”) was
7 ineffective for 1) failing to appropriately investigate; 2) failing to ensure Petitioner fully
8 understood the conditions of the GPA; 3) failing to file a Motion to Withdraw Guilty Plea; and
9 4) failing to file a Notice of Appeal and/or informing Petitioner of his right to appeal. However,
10 Petitioner’s claims are belied by the record.

11 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
12 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his
13 defense.” The United States Supreme Court has long recognized that “the right to counsel is
14 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
15 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
16 (1993).

17 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
18 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
19 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
20 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation
21 fell below an objective standard of reasonableness, and second, that but for counsel's errors,
22 there is a reasonable probability that the result of the proceedings would have been different.
23 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100
24 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is
25 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the
26 same order or even to address both components of the inquiry if the defendant makes an
27 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

28 //

1 The Court begins with the presumption of effectiveness and then must determine
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel
4 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of
5 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,
6 537 P.2d 473, 474 (1975).

7 Counsel cannot be ineffective for failing to make futile objections or arguments. See
8 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
9 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
10 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
11 (2002). Further, a defendant who contends his attorney was ineffective because he did not
12 adequately investigate must show how a better investigation would have rendered a more
13 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

14 Based on the above law, the role of a court in considering allegations of ineffective
15 assistance of counsel is “not to pass upon the merits of the action not taken but to determine
16 whether, under the particular facts and circumstances of the case, trial counsel failed to render
17 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
18 (1978). This analysis does not mean that the court should “second guess reasoned choices
19 between trial tactics nor does it mean that defense counsel, to protect himself against
20 allegations of inadequacy, must make every conceivable motion no matter how remote the
21 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel
22 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
23 cannot create one and may disserve the interests of his client by attempting a useless charade.”
24 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

25 “There are countless ways to provide effective assistance in any given case. Even the
26 best criminal defense attorneys would not defend a particular client in the same way.”
27 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after
28 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,

1 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
2 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's
3 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
4 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

5 Even if a defendant can demonstrate that his counsel’s representation fell below an
6 objective standard of reasonableness, she must still demonstrate prejudice and show a
7 reasonable probability that, but for counsel’s errors, the result of the trial would have been
8 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
9 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability
10 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-
11 89, 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the
12 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.
13 State, 112 Nev. 980, 988 (1996). For a guilty plea, a defendant “must show that there is a
14 reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and
15 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).

16 The text of the GPA includes the following (labeled “VOLUNTARINESS OF PLEA”),
17 in pertinent part:

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

20 ...

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

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

25 ...

26 I am signing this agreement voluntarily, after consultation with my
27 attorney...

28 ...

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

//

1 GPA at 5-6. Petitioner affirmed that he had read the GPA. Recorder's Transcript of Hearing:
2 November 7, 2018 ("Transcript") at 2:24-25, 3:21-22. Petitioner affirmed that Mr. Sanft
3 answered any questions regarding the GPA. Transcript at 3:1-3, 3:23-4:6. Petitioner affirmed
4 that he understood the charge in the Amended Information. Id. at 3:4-6, 4:7-9. Petitioner
5 affirmed that he signed the GPA. Id. at 3:16-20. Contrary to Petitioner's assertion that he was
6 told he was agreeing to a gross misdemeanor, when asked by the Court about his
7 understanding, Petitioner acknowledged two possible sentencing outcomes:

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

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

12 THE COURT: Okay.

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

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

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that?

18 THE DEFENDANT: Yes, sir.

19 Id. at 4:16-5:3. Petitioner affirmed, both verbally to the court and by signing the GPA, that he
20 knew the terms of the GPA, the potential outcomes of his plea, and that Mr. Sanft answered
21 all the questions Petitioner had to Petitioner's satisfaction.

22 A review of the record easily belies Petitioner's claim regarding his appeal. As stated
23 *supra*, Petitioner timely filed a notice of appeal on March 12, 2019. Therefore, Petitioner
24 cannot demonstrate prejudice sufficient to satisfy Strickland, as his appellate rights were not
25 infringed upon.

26 Furthermore, to the extent that Petitioner argues Mr. Sanft was ineffective in his
27 investigation, Petitioner fails to allege, much less show, what a proper investigation would
28 have uncovered, much less how that information would have led Petitioner to reject guilty plea
negotiations and proceed to trial. See, Amended Petition at 10-11. Instead, Petitioner merely
relies upon the vague allegation that Mr. Sanft "failed to do appropriate investigation of
potentially meritorious claims." Id. at 10. Such vague allegations are insufficient to warrant

1 relief under Molina. 120 Nev. at 192, 87 P.3d at 538. Furthermore, Petitioner's lack of specific
2 factual support for his claim leaves the same bare and naked under Hargrove, and suitable only
3 for summary dismissal. 100 Nev. at 502, 686 P.2d at 225.

4 Because each of Petitioner's arguments in support of his claim of ineffective assistance
5 of counsel is belied by the record, pursuant to Hargrove and Mann, Petitioner is not entitled to
6 relief on this claim. 100 Nev. at 502, 686 P.2d at 225; 118 Nev. at 354, 46 P.3d at 1230.

7
8 **B. Petitioner's Claim Against his Breach of the Guilty Plea Agreement is Belied by**
9 **the Record**

10 Petitioner goes on to claim that the State violated his right to Due Process in arguing
11 that Petitioner had surrendered the stipulated sentence in the GPA. Amended Petition at 13.
12 This claim is likewise belied by the record.

13 In the GPA, Petitioner expressly agreed to the clause:

14 I understand and agree that, if I fail to interview with the Department of Parole
15 and Probation (P&P), fail to appear at any subsequent hearings in this case, or
16 an independent magistrate, by affidavit review, confirms *probable cause* against
17 me for new criminal charges including reckless driving or DUI, but excluding
18 minor traffic violations, the State will have *the unqualified right to argue for any*
19 *legal sentence* and term of confinement allowable for the crime(s) to which I am
20 pleading guilty, including the use of any prior convictions I may have to increase
21 my sentence as an habitual criminal to five (5) to twenty (20) years, Life without
the possibility of parole, Life with the possibility of parole after ten (10) years,
or a definite twenty-five (25) year term with the possibility of parole after ten
(10) years.

22 GPA at 2 (emphasis added). Later in the GPA, Petitioner also expressly agreed: "the
23 sentencing judge has the discretion to order the sentences served concurrently or
24 consecutively." Id. at 3.

25 As stated *supra*, a Justice of the Peace found *probable cause* to charge Petitioner with
26 Burglary in Las Vegas Justice Court case 19F01534X. Therefore, pursuant to the the express
27 language of the GPA, the State regained the *unqualified* right to argue for any legal sentence.
28 GPA at 2. Petitioner seeks to limit the language of the GPA, where no such language is present.

1 See, Amended Petition at 16 (“the boilerplate language does not explicitly refer to a right to
2 argue for consecutive sentence”).

3 Furthermore, Petitioner’s representations that the probable cause in the other case had
4 been erroneously found is also belied by the record. In District Court case C338412, in which
5 the Information was filed after probable cause had been found, there was no dismissal or other
6 acquittal of Petitioner. In fact, Petitioner *pled guilty* in that case to reduced charges.

7 Because Petitioner’s claim consists of arguments that are belied by the record,
8 Petitioner is not entitled to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

9 **C. Petitioner’s Conviction Does Not Implicate Double Jeopardy**

10 Petitioner’s third ground for relief essentially alleges that his conviction is invalid
11 because it violates statutory prohibitions against “Double Jeopardy.” See, Amended Petition
12 at 17-19. However, this claim is not cognizable in a Petition for Writ of Habeas Corpus and
13 was waived by Petitioner’s failure to raise it on direct appeal.

14 The Nevada Supreme Court has explained:

15 “[A] guilty plea represents a break in the chain of events which has preceded it
16 in the criminal process. When a criminal defendant has solemnly admitted in
17 open court that he is in fact guilty of the offense with which he is charged, he
18 may not thereafter raise independent claims relating to the deprivation of
constitutional rights that occurred prior to the entry of the guilty plea.”

19 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411
20 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all
21 constitutional claims based on events occurring prior to the entry of the plea[], except those
22 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100
23 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d
24 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be
25 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness
26 of counsel.”). Under NRS 34.810,

27 //

28 //

1 I. The court *shall* dismiss a petition if the court determines that:

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

6 ...

7 unless the court finds both cause for the failure to present the grounds and actual
8 prejudice to the petitioner.

9 (emphasis added). Furthermore, the Nevada Supreme Court has held that "challenges to the
10 validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must
11 first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a
12 direct appeal must be pursued on direct appeal, or they will be *considered waived in*
13 *subsequent proceedings.*" Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)
14 (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979
15 P.2d 222 (1999)). "A court must dismiss a habeas petition if it presents claims that either were
16 or could have been presented in an earlier proceeding, unless the court finds both cause for
17 failing to present the claims earlier or for raising them again and actual prejudice to the
18 petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other
19 grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims
20 are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at
21 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

22 This claim does not challenge the voluntariness of Petitioner's guilty plea, nor does it
23 allege ineffective assistance of counsel. Therefore, this claim should have been pursued on
24 direct appeal, rather than for the first time in a petition. NRS 34.810(1); Franklin, 110 Nev. at
25 752, 977 P.2d at 1059. Petitioner does not attempt to argue good cause or prejudice for raising
26 this claim for the first time in the instant proceedings. Such an argument would be meritless,
27 as Petitioner specifically and unconditionally waived his right to a direct appeal on this issue.
28 GPA at 5. Furthermore, Petitioner waived any potential constitutional defect by entering his
guilty plea. Lyons, 100 Nev. at 431, 683 P.2d at 505.

//

1 Because Petitioner waived all constitutional issues prior to the entry of his plea, and
2 because his claim does not challenge the voluntariness of Petitioner's plea, this claim must be
3 summarily denied.

4 **D. Petitioner's Claim Regarding his PSI Does Not Warrant Relief**

5 Petitioner then claims that his sentence was based on multiple mistakes regarding his
6 criminal history in his PSI. Amended Petition at 20. However, Petitioner fails to demonstrate
7 that he properly raised this claim before the Court at sentencing. Further, Petitioner's
8 assertions are belied by a reading of the controlling authority regarding his sentence.

9 When imposing a sentence on a defendant, the district court must base its sentence on
10 accurate information contained in a PSI. Stockmeier v. Bd. of Parole Comm'rs, 127 Nev. 243,
11 247, 255 P.3d 209, 212 (2011). "[I]t is important for a defendant to object to his PSI at the
12 time of sentencing because 'Nevada law does not provide any administrative or judicial
13 scheme for amending a PSI after the defendant is sentenced.'" Sasser v. State, 130 Nev. 387,
14 390, 324 P.3d 1221, 1223 (2014) (quoting Stockmeier, 127 Nev. at 249, 255 P.3d at 213).
15 Furthermore, "if not resolved in the defendant's favor, the objections [to the PSI] *must be*
16 *raised on direct appeal*." Stockmeier, 127 Nev. at 250, 255 P.3d at 213 (emphasis added).

17 Pursuant to Stockmeier, Petitioner should have raised his claims regarding the
18 misinformation in his PSI to the Court at sentencing, then upon direct appeal. 127 Nev. at 250,
19 255 P.3d at 213. Petitioner did neither. Therefore, pursuant to Franklin, Petitioner waived these
20 claims. 110 Nev. at 752, 877 P.2d at 1059. Petitioner does not argue good cause or prejudice
21 to overcome the procedural bars, and could not successfully do so, as these alleged
22 incorrections were available at the time Petitioner pursued his direct appeal.

23 Furthermore, to the extent Petitioner claims that the timing of his separate claims was
24 misinterpreted by the sentencing court, his claim is belied by the statute governing treatment
25 as a habitual criminal. Pursuant to NRS 207.010, the analysis of prior convictions occurs at
26 the time of *conviction, not at the time the crime was alleged*. See NRS 207.010(1). At the time
27 of sentencing, the State argued in support of habitual criminal treatment, and the Court
28 determined that the State had met its burden pursuant to statute.

1 Because Petitioner waived this claim, and because it is further belied by the record and
2 by applicable laws, this claim must be summarily denied.

3 **E. Petitioner's Claim Against Entry of his Guilty Plea is Belied by the Record**

4 Petitioner's final claim is that his guilty plea was not knowingly and voluntarily
5 entered, as he alleges that he did not understand the consequences of a breach of the agreement.
6 Amended Petition at 22. Again, Petitioner's claim is belied by the record.

7 Contrary to Petitioner's assertion that he believed he would simply go to trial if he
8 violated the terms of the GPA (see, Amended Petition at 23), the plain language of the GPA
9 sets forth that, upon a breach, "the State will have the unqualified right to argue for any legal
10 sentence and term of confinement..." GPA at 2. As stated *supra*, the Court thoroughly
11 canvassed Petitioner and determined that Petitioner understood the terms of the GPA. See,
12 Section II(A), *supra*. Furthermore, Petitioner's claim that he was unaware that a sentence as a
13 habitual criminal was possible is belied, as the State Noticed its Intent to Seek Habitual
14 Criminal Treatment on August 29, 2017, and the GPA expressly included the possibility of
15 habitual criminal treatment as a result of Petitioner's breach of the terms of the GPA. GPA at
16 2.

17 Because Petitioner's claim is expressly belied by the record, he is not entitled to relief
18 on the same and his claim should be summarily denied. Hargrove, 100 Nev. at 502, 686 P.2d
19 at 225.

20 **II. PETITIONER'S PETITION: EJE DOES NOT SET FORTH ANY**
21 **INDEPENDENT GROUNDS FOR RELIEF**

22 A review of Petitioner's Petition: EJE reveals that it is, essentially, a request for a ruling
23 on Petitioner's various Petitions and Addenda. See, Petition: EJE at 2. However, beyond the
24 boilerplate language of Petitioner's Petition: EJE, it appears that Petitioner has affixed mere
25 copies of his five (5) grounds for relief, as alleged in his earlier Petitions and Addenda. See,
26 *id.* at 4-22. As this new Petition: EJE fails to raise any new grounds for relief, for the sake of
27 judicial economy the State hereby incorporates its arguments in its Response to Petitioner's
28 Petition for Writ of Habeas Corpus (Post-Conviction), filed on June 16, 2019, its Response to

1 Petitioner's First and Second Addendum to Petition for Writ of Habeas Corpus (Post-
2 Conviction), filed on October 10, 2019, and its Response to Petitioner's Amended Petition,
3 contained *supra*.

4 Because Petitioner waived certain claims by entering his guilty plea, others by failing
5 to raise them on direct appeal, and because his other claims are belied by the record,
6 Petitioner's Petition and all supplemental pleadings thereto should be dismissed in their
7 entirety and the claims thereof should be denied.

8 **CONCLUSION**

9 For the foregoing reasons, the State respectfully requests that this Court DENY
10 Petitioner's Amended Petition for Writ of Habeas Corpus in its entirety.

11 DATED this 17th day of April, 2020.

12 Respectfully submitted,

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

15 BY

16 BB
17 TALEEN PANDUKHT
Deputy District Attorney
Nevada Bar #05734

18 **CERTIFICATE OF MAILING**

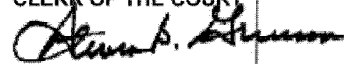
19 I hereby certify that service of the above and foregoing was made this 17th day of
20 April, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

21 JAMES HAYES, BAC #1175077
22 HIGH DESERT STATE PRISON
23 P.O. BOX 650
24 INDIAN SPRINGS, NV, 89070

25 BY

26 Carmen Garcia
27 C. Garcia
Secretary for the District Attorney's Office

28 TP/cg/L2



1 NOR

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4
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 *****

8 JAMES HAYES, PLAINTIFF(S)

CASE NO: A-19-793315-W

9 VS.

10 NEVADA STATE OF, DEFENDANT(S)

DEPARTMENT 19

11
12
13 NOTICE OF RESCHEDULING HEARING

14 Please be advised that the date and time of a
15 hearing set before the **Honorable William D. Kephart**
16 has been changed. The **Petition for Writ of Habeas**
17 **Corpus**, presently scheduled for **May 04, 2020 at 8:30**
18 **AM**, has been rescheduled to **June 15, 2020, at 8:30**
19 **AM**. Please note this date change on your
20 **calendar(s)**.
21
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23

24
25 By: /s/ Minddie Lloyd

Minddie Lloyd

Judicial Executive Assistant

To Judge William D. Kephart

Department 19

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Notice was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

James H Hayes
Bernard B. Zadrowski
Taleen R Pandukht
Steven B Wolfson
Charles W. Thoman
Melanie H. Marland

By: /s/ Minddie Lloyd
Minddie Lloyd
Judicial Executive Assistant
To Judge William D. Kephart
Department 19

HEARING

Requested!!

CASE NO: A-19-793315-W

DEPT: 19

AFFIDAVIT OF actual INNOCENCE NOT mere legal insufficiency
but "actual INNOCENCE"

STATE OF NEVADA)

ss: Amended Petition for Writ of Habeas Corpus **FILED**

COUNTY OF CLARK)

CASE NO: A-19-793315-W

DEPT: 19

MAY 15 2020

TO WHOM IT MAY CONCERN:

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

(1) THAT James H. Hayes is the affiant in this affidavit and is currently incarcerated at Southern Nevada Correctional Center a victim of a fundamental miscarriage of justice trying to overcome a fundamentally unjust incarceration, and all procedural bars against the ruling on the merits of his Amended petition for Writ of Habeas Corpus. When in fact, a fundamental miscarriage of justice would continue from the failure to consider Mr. Hayes claims for relief on the merits.

Whereas, Mr. Hayes is actually innocent of the crime of Attempted Grand Larceny through clear and convincing evidence shown at preliminary examination when magistrate dismissed the charge for lack of evidence, No corpus delicti, No slight or marginal evidence. Moreover, this is a colorable showing that it is more likely than not that no reasonable juror would have convicted Mr. Hayes absent a constitutional violation. Where as that, there was, of course, no evidence of actual guilt of the crime of Attempted Grand Larceny, as the sustaining Judge and the State knew Mr. Hayes had no

1 of 2

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CLERK OF THE COURT

1 involvement in such a crime, as it is clear that no evidence
2 of actual guilt existed on the underlying criminal conduct
3 that may have justified accepting Mr. Hayes' ~~Alford~~ plea
4 to a crime he did not commit, and sentence was based
5 on speculation, not based on the acts Mr. Hayes committed.
6 So here Mr. Hayes has made a colorable showing of cause
7 and prejudice to overcome a procedural default and to
8 ensure fundamental fairness that is the central concern
9 of the writ of habeas corpus. As the instant case, is an
10 extraordinary case, where a constitutional violation has
11 resulted in the conviction of Mr. Hayes who is actually
12 innocent, and it would be an affront to justice and due
13 process to hold Mr. Hayes to his plea when the conduct upon
14 which the plea was entered did not occur. Furthermore,
15 Mr. Hayes received no consideration whatsoever in exchange
16 for his ~~Alford~~ plea to a crime he did not commit as he was
17 induced by the state to plead to a crime not committed and
18 Mr. Hayes' agreement to this unconstitutional guilty plea was
19 predicated on his belief of time credit served for a gross
20 misdemeanor sentence and did not explicitly agree to a
21 period of imprisonment in exchange for a plea.

22 That, this court is fully aware Mr. Hayes was not properly
23 advised or conversed as to the defects he may have waived
24 as part of the negotiations. When in fact, Mr. Hayes never
25 agreed to waive any and all defects in the pleadings so
26 Mr. Hayes never waived claims to "defects" voluntarily, nor
27 did Mr. Hayes waive right to complain of the acceptance
28 of an unconstitutional plea. Furthermore, Mr. Hayes' guilty

1 plea agreement did not explicitly specify waiver to defects and
2 Mr. Hayes was not well-aware of the charges against him
3 nor the surrounding negotiations and the plea canvass is
4 unambiguous evidence of this and confirms Mr. Hayes did
5 not explicitly understand the plea negotiations. Moreover,
6 there is clear and convincing evidence Mr. Hayes did not
7 commit the crime of Attempted Grand Larceny and the
8 charge of Burglary was fatal without the state's intent of
9 Attempt Grand Larceny that's a colorable showing that no
10 jury would have convicted Mr. Hayes of Attempted Grand
11 Larceny nor the underlying crime of Burglary leaving the
12 sentencing judge no factual basis for acceptance of Mr.
13 Hayes Affirmative Plea as he never admitted in open court to
14 committing the acts underlying the offense for which he
15 entered his plea, and the prosecution knew that the evidence
16 was false and without probable cause.

17 That, the record shows without doubt that Mr. Hayes has
18 pleaded Affirmative to a crime that he did not commit, and this
19 court must hesitate to apply technical rules to prevent Mr.
20 Hayes from obtaining relief. What is fact, the cause and
21 prejudice formula of Weinwright v. Sykes is not dispositive
22 when the fundamental fairness of a prisoner's conviction
23 is at issue as in the instant case, that appellate procedural
24 default should not foreclose habeas corpus review of a
25 meritorious constitutional claim that will establish Mr.
26 Hayes innocence. As this is an extraordinary case, where
27 a constitutional violation has resulted in the conviction of
28 one who is actually innocent and this court shall grant the

1 writ even if the absence of a showing of cause and prejudice
2 for the procedural default, when counsel's failure to raise a
3 particular claim on appeal is to be scrutinized under the
4 cause and prejudice standard when that failure is treated
5 as a procedural default would deny Mr. Hayes fundamental
6 fairness and continue this manifest injustice. When the
7 writ of habeas corpus is the fundamental instrument for
8 safeguarding individual freedom against arbitrary and
9 lawless state actions and its well-known history bears
10 repetition. As it has been given explicit protection in our
11 constitution, and the very nature of the writ demands
12 that it be administered with the initiative and flexibility
13 essential to insure that miscarriages of justice within its
14 reach are surfaced and corrected that must occur in the
15 instant case, as there is no rigid procedural rules that
16 prevented the writ's fundamental mission - securing justice
17 from being realized and must yield to the imperative of
18 correcting a fundamentally unjust incarceration and
19 prevent illegal imprisonments.

20 That, the state breached the guilty plea agreement on
21 impeachable and highly suspect evidence as the evidence used
22 was false and the state was well aware that the alleged victim
23 at preliminary examination for the 1st degree Burglary
24 charge (case no: 19701534X) testified under oath facing the
25 penalty of perjury that Mr. Hayes was not the perpetrator
26 of alleged B&E and 100% sure of it and further stated
27 that alleged perpetrator did not enter room only stood in
28 doorway said sorry and close door and left without

1 incident, so Mr. Hayes has showed detrimental reliance since
2 there was no breach and no fault of Mr. Hayes as the
3 Burglary charge was dismissed and Justice court magistrate
4 ruling of probable cause was misplaced as alleged victim
5 testified Mr. Hayes was not perpetrator and Mr. Hayes
6 had a valid room hotel key issued to him from an
7 authorized registered hotel guest, so this is a manifest
8 impropriety in permitting the state to break the agreement
9 when they know Mr. Hayes did not break his promise making
10 the state estopped from asserting right to argue for a
11 different sentence. When there was in essence no substantial
12 breach that warrants releasing state of its promises. What
13 in fact, the agreement did not contain explicit language
14 conditionally releasing the state from its promise for an
15 excusable ruling of probable cause by magistrate as we
16 have in the instant case. Whereby had the sentencing
17 judge held an evidentiary hearing as required to determine
18 if there was a breach per the rulings of the Nevada
19 Supreme Court and the 9th Circuit this fundamental mis-
20 carriage of justice would not have occurred as Mr. Hayes
21 has clear and convincing evidence he did not break
22 his promise and no breach occurred on his behalf.
23 That, habitual adjudication was not just and proper for
24 Mr. Hayes to be punished and segregated as a habitual
25 criminal and the court abused its discretion as crimes
26 use was nonviolent and not a felony under the state
27 and laws of Nevada? Court Card Abuse in Texas and not
28 prior? Burglary in Nevada 2016.3. As the sentencing judge

1 violated legislation intent of NRS 207.010 and failed
2 to serve the purposes of the statute or the interests
3 of justice. When in fact, Mr. Hayes did not warrant
4 the harsh sanction under the habitual criminal statute
5 though past conduct reprehensible simply does not
6 warrant habitual treatment.

7 That, the court that rendered the judgment and
8 sentence lack subject matter jurisdiction per NRS 174.085
9 and NRS 178.562. Whereby jurisdiction of the subject
10 matter is derived from the law; it neither can be
11 waived nor conferred by consent of Mr. Hayes
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22 FURTHER, AFFLIANT SAYETH NAUGHT.

23 EXECUTED AT Southern Desert Correctional Center this 27 day of April 2020

24 IN FRONT OF:

BY Amos H. Hayes
NDOC # 1175077

25
26
27
28
6 of 7

UNDER PENALTY OF PERJURY

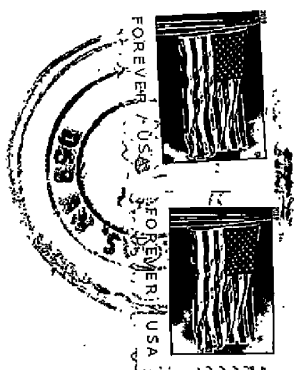
I, the undersigned, certify, declare, or state that the foregoing is true and correct, to the best of my knowledge and belief, in accordance with NRS 208.165 and 28 USCA § 1746.

Excuted on the 27 day of April, 2020

James H. Hayes # 1175072 James H. Hayes
Name and Prison BAC#, printed

7 of 7

Pages # 1195092
50cc
P.O. Box 2008
Indian Springs, NV
89030



Clark County District Courts
"Office of the Clerk"

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada 89155-1160

Important
Notice !!
Enclosed

9510155300 0075

Legal
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Southern Desert
Correctional Center
APR 27 2020

URGENT
Outgoing Mail

Google's

27
Hayes, James H. 1196077

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

FILED

MAY 15 2020

John H. H.
CLERK OF COURT

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

James H. Hayes

Petitioner,

vs.

State of Nevada
WARDEN JERRY HOWEN

Respondent(s).

HEARING REQUESTED

Case No. A-19-793315-W

Dept. No. 19

Docket _____

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

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

RECEIVED

MAY - 4 2020

CLERK OF THE COURT

- 1 -

Reply to State's Response to Petitioner's
Amended Petition for Writ of Habeas Corpus and
Expeditions Judicial Proceedings

It's worthwhile noting that petitioner received the state's response on April 28, 2020 and the hearing date is May 4, 2020 making it impossible for petitioner to have his reply filed prior to hearing.

Hopefully, this court will NOT be persuaded by this grossly incorrect application of law or facts to law argued by the state in its response, and adhere to the Nevada Rules of professional responsibility 3.3 allowing "Justice" to prevail and redress this fundamental miscarriage of Justice.

Petitioner was coerced into entering plea agreement by counsel and state, thereby inducing petitioner to plead to a crime not committed, saying and agreeing it would be a gross-misdemeanor with probation, no suspended prison term, no time period of probation and only one condition: 30 days in Clark County Detention Center with 30 days credit for time served.

Petitioner's NED was constitutionally infirm through ignorance or omission, defense counsel caused or permitted the loss or lack of a crucial defense as in the instant case is in effect denial of counsel, infecting the conviction

Petitioner has not waived right to complain of the acceptance of an unconstitutional plea (105 Nev. 317)

That the "cause and prejudice" formula of *Weinwright v.*

1 Jukes is NOT dispositive when the fundamental fairness
2 of a prisoner's conviction is at issue that appellate
3 procedural default should NOT foreclose Habeas Corpus
4 review of meritorious constitutional claims that may
5 establish a prisoner's innocence. As petitioner many times over
6 have made claim to "actual innocence" not mere legal
7 insufficiency but "factual innocence"!!

8 A guilty plea and any plea bargain which underlying it,
9 does NOT waive any constitutional attack upon a subsequent
10 sentence merely because that sentence records with
11 petitioner's agreement (Barnett v. Hopper 548 F.2d 550)

12 Petitioner's agreement to this unconstitutional condition
13 was predicated on his belief of time credit served for a
14 gross-misdemeanor sentence and did not explicitly agree
15 to a period of imprisonment in exchange for Afford plea

16 Petitioner's guilty plea agreement did not specifically waive
17 to defects and he was not well-aware of the charges
18 against him when the charge Attempted Criminal Homicide was
19 dismissed at conclusion of preliminary examination nor
20 the surrounding negotiations and the plea context is
21 unambiguous evidence of this and confirms petitioner
22 did not explicitly understand the plea negotiations or
23 voluntarily enter Afford plea.

24 District court never confirmed that petitioner understood
25 the state could seek habitual criminal treatment so the state did
26 not sufficiently provide notice of its intent to punish as a
27 habitual criminal, and court never confirmed petitioner understood
28 he was not promised probation with time served credit (Georgia
State 124 Nev. 110)

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

STATE OF NEVADA)

COUNTY OF CLARK)

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

TO WHOM IT MAY CONCERN:

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

all statements, facts and events within my foregoing Affidavit are

true and correct of my own knowledge, information and belief, and

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

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

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

a protestation of innocence was constitutionally acceptable

when "a defendant intelligently concludes that his interests

require entry of guilty plea and the record before the judge

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

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

of Attempted Grand Larceny, as the sentencing judge and the state ki

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

examination showed no criminal act of Attempted Grand Larceny,

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

lying criminal conduct that may have justified accepting Mr. Hay

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

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

statements regarding an admission to the attempted grand larceny

charge nor admitted facts constituting the elements of attempted gra

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

pleaded to.

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

2020.

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

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

23. (a) GROUND ONE: Mr. Hayes (petitioner) was denied his Constitutionally guaranteed right to effective assistance of counsel & Federal and State Constitutional rights 6th and 14th Amendment Violation

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

Petitioner's claim of ineffective assistance of counsel was not belied by the record contrary to state's argument who in fact, had counsel appropriately investigated he would have known that Attempt Grand Larceny was barred from District Court proceedings against petitioner as state laws NRS 174.085(3); NRS 178.562(4); NRS 178.391 provides the authority that made petitioner immune from prosecution on said charge Attempt Grand Larceny leaving District Court with having no subject matter jurisdiction to render convictions nor sentence. When subject-matter jurisdiction is not waivable as the state may confer as jurisdiction is derived from the law and it neither can be waived nor conferred by consent of the petitioner.

Petitioner's counsel failed to ensure petitioner fully understood the conditions of the guilty plea agreement when counsel many times over stated to petitioner that he would receive probation for a gross-misdemeanor with the only condition of the probation being 30 days in CDC with 30 days credit time served with no suspended prison term and no term (year) of probation to be served.

1 Petitioner's counsel failed to afford the petitioner opportunity
2 to withdraw the plea when sentencing was not in accordance
3 with the agreement and was based on speculation, not
4 based on the acts he committed (115 N.B. 209 LEE V. STATE)
5 and never admitted in open court to committing the acts
6 underlying the offense for which he entered his plea.

7 Petitioner's counsel failed his duty of informing petitioner
8 of the procedures for filing appeal and its advantages and
9 disadvantages. In Lozano and the instant case trial counsel
10 acted unreasonably in failing to perfect appeal without
11 petitioner's consent and 9th Circuit implicitly held counsel
12 has duty to discuss petitioner's appeal rights. When in fact,
13 counsel failed to play the role that is critical to the ability
14 of the adversarial system to produce a just result.

15 Whereas, counsel's performance was deficient and
16 counsel's deficient performance prejudiced the petitioner
17 through the lack of a thorough investigation of the law
18 and facts as the charge of Attempt Grand Larceny
19 was barred and had already been dismissed by magistrate
20 for no slight or marginal evidence and the charge of
21 Burglary was fatal without the state's intent of Larceny
22 so there is a reasonable probability that, but for counsel's
23 unprofessional errors, the result of the proceedings
24 would have been different and petitioner would not have
25 entered Alford plea and would have insisted on going
26 to trial on the Burglary charge and been acquitted as no
27 reasonable jury would have convicted petitioner without

28 1. Violates the law

Page 6

1 instant being the element of the crime of Burglary that
2 is essential.

3 State's claim regarding ineffective assistance of
4 appellate counsel is a grossly incorrect application of law
5 or facts to law as prejudice need not be shown what
6 dismissal of appellate counsel leaves appellant completely
7 without representation as ~~we~~ we have here as
8 district court Judge Kenhart dismissed petitioner's
9 appellate counsel on July 15, 2019 pursuant to motion
10 to withdraw counsel stating that the Supreme Court
11 of Nevada had issued its remittitur that is belied
12 by the record leaving petitioner without appellate
13 counsel to perfect his appeal and raise issues appropriate
14 for direct appeal. Petitioner's direct appeal would have
15 been successful if not for this egregious lack of counsel
16 cause by no fault of petitioner.

23. (b) GROUND TWO: State Violated Mr. Hayes (petitioner) right to Due Process as guaranteed by both the Due Process Clause of the United States Constitution and the Nevada Constitution
"Breach of Guilty Plea Agreement on Impelable Evidence"

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

Whereas, Justice of the Peace ruling to have found probable cause is misplaced when in fact, the alleged victim of the ispe dicit Burglary charge testified under oath facing the possibility of perjury that petitioner was not the perpetrator of allege event and that the allege perpetrator never entered room only stood in doorway and "Sorry" and close door without incident, leaving no slight or marginal evidence, no corpus delicti for a just and fair ruling of probable cause for the charge of Burglary and this is clear and convincing evidence that petitioner took no part in the commission of allege event. (Burglary case No: 19701534X)

Petitioner has showed detrimental reliance since there was no breach and no fault of petitioner as the Burglary charge was dismissed. There was no admissible evidence of petitioner in commission of allege event's so the state was estopped from asserting right to argue for different sentence. In fact, at best, it read as a contract - even if petitioner's non-participation in ispe dicit Burglary was deemed to have allowed "a right to argue" any legal sentence, the terms of the agreement themselves do not also claim that all

1 stipulations are automatically invalidated, in the light
2 most favorable to the state, if the excusable misplace
3 ruling of probable cause are found by this court, the stipulations
4 must still remain intact given the requirements and policy
5 of Gamble (604 P.2d 335) and its progeny. ~~is inapposite to~~
6 ~~the process and the rules of law in Nevada~~. When in fact,
7 the state received the benefit of the substantial compliance
8 of petitioner throughout and beyond the plea negotiations
9 process and cannot point to any harm when petitioner
10 excusably did not breach agreement as he played no part
11 in the ispe divit Burglary and the one ultimately has been
12 denied fair process and a victim of a fundamental
13 miscarriage of Justice.

23. (c) GROUND THREE: STATE VIOLATED MA. HOPKIN'S RIGHT TO DUE PROCESS
AS GUARANTEED BY BOTH THE DUE PROCESS CLAUSE OF THE UNITED STATES
CONSTITUTION AND THE NARVATE CONSTITUTION WHEN IT FAILED TO
ADHERE TO STATE LAW (NRS 174.085(a) AND NRS 178.562)

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

STATE'S ARGUMENT THAT THIS CLAIM IS WAIVED FOR FAILURE
TO RAISE ON DIRECT APPEAL IS WITHOUT MERIT WHEN OFFICIAL
INTERFERENCE MADE COMPLIANCE WITH THE PROCEDURAL
REQUIREMENT IMPRACTICABLE AS PETITIONER WAS COMPLETELY
WITHOUT REPRESENTATION WHEN DISMISSAL OF COUNSEL
OCCURRED ON JULY 15, 2020 PRIOR TO PERFECTION OF PETITIONER'S
DIRECT APPEAL BY DISTRICT COURT JUDGE KENNEDY GRANTING OF
MOTION TO DISMISS COUNSEL. (PELLEGRINI 34 P.3D 537) SO, HOPEFULLY
THIS COURT WILL NOT BE PERSUADED BY THE STATE'S GROSSLY
INCORRECT APPLICATION OF LAW OR FACTS TO LAW, AS FAILURE TO
CONSIDER THE CLAIM WOULD RESULT IN A FUNDAMENTAL
MISCARriage OF JUSTICE AND THREAT OF A RULING ON
THE MERITS WOULD OFFEND FUNDAMENTAL NOTIONS OF
HUMAN DIGNITY. MOREOVER THIS IS A JURISDICTIONAL DEFECT
THAT IS NOT WAIVABLE AND INVOLUNTARY, WHERE PREJUDICE
NEED NOT BE SHOWN (BROOKS V. WILKINSON 472 P.2D 397)
ESPECIALLY, WHERE THE RECORD SHOWS WITHOUT DOUBT THAT
PETITIONER HAS PLEADED AFFIRMED TO A CRIME THAT HE DID NOT
COMMIT, THIS COURT SHOULD HESITATE TO APPLY TECHNICAL
RULES TO PREVENT PETITIONER FROM OBTAINING RELIEF (JAMES
BRUGGESS 45 CAL. APP. 3D 290)

**PLEADING
CONTINUES
IN NEXT
VOLUME**