

1 Hayes, James H #1175077

2 In Propria Personam
3 Post Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

FILED

APR 16 2021

Electronically Filed
May 07 2021 04:05 p.m.
Elizabeth A. Brown
Clerk of Court

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF CLARK

7
8 State of Nevada

9
10 Plaintiff,

11 vs.

12 JAMES H. HAYES
13 Defendant.

"HEARING REQUESTED"

Case No. C-16-315718-1

Dept. No. 3

Docket _____

16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
18 JAMES H. HAYES, in and through his proper person, hereby
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or
20 dismissing the

21 Rule 60(b) Motion for Relief

22
23 ruled on the 15 day of March, 2021.

24
25 Dated this 14 day of April, 20 21.

26 Respectfully Submitted,

27 James H. Hayes

28 **RECEIVED**

APR 16 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

RECEIVED
APPEALS

MAY - 4 2021

C-16-315718-1
NOASC
Notice of Appeal (Criminal)
4953273



CERTIFICATE OF SERVICE BY MAILING

I, James H. Heaps, hereby certify, pursuant to NRCP 5(b), that on this 14th day of April, 2021, I mailed a true and correct copy of the foregoing, "Notice of Appeal" Rule 60(b) Motion for Relief" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clerk County District Courts
Office of the Clerk
200 Lewis Ave, 3rd Fl
Las Vegas, NV
89155-1166

Clerk County District Attorney
200 Lewis Ave
Las Vegas, NV
89155-2212

Supreme Court of Nevada
201 S. Carson Street, 201
Carson City, NV
89701

CC:FILE

DATED: this 14th day of April, 2021.

James H. Heaps
1175077
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

3425 #1175677
DOE
c/o BOA 228
edien spruce, NW
89076

LAS VEGAS NV 890
16 APR 2021 PM 5 L



Energy

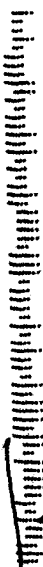
FOREVER / USA

Supreme Court of Nevada
"Office of the Clerk"

201 South Carson Street, Suite 201
Carson City, Nevada
89701

89751

0000000000



Subscribe and share "YOUTUBE" channel...

CLANTONELL

Good!

APR 16 1951

NORTHERN DESERT
CORRECTIONAL CENTER

1 ASTA

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3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 STATE OF NEVADA,

10 Plaintiff(s),

11 vs.

12
13 JAMES HOWARD HAYES
14 aka JAMES HOWARD HAYES, JR.,

15 Defendant(s),

Case No: C-16-315718-1

Dept No: III

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): James H. Hayes

19 2. Judge: Monica Trujillo

20 3. Appellant(s): James H. Hayes

21 Counsel:

22 James H. Hayes #1175077
23 P.O. Box 208
24 Indain Springs, NV 89070

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.

Las Vegas, NV 89101
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: June 14, 2016

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Writ of Habeas Corpus

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 73436, 75173, 77151, 78590, 78622, 80222, 81076,
82734

12. Child Custody or Visitation: N/A

Dated This 4 day of May 2021.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: James H. Hayes

FILED

APR 16 2021

Sharon A. Blinn
CLERK OF COURT

James H. Hayes, 1175077
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

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

State of Nevada

Plaintiff,

vs.

JAMES H. HAYES

Defendant.

CASE No. C-16-315718-1

DEPT. No. 3

DESIGNATION OF RECORD ON APPEAL

TO:

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this _____ day of _____, 20____.

RESPECTFULLY SUBMITTED BY:

James H. Hayes
James H. Hayes # 1175077

Plaintiff/In Propria Persona

RECEIVED
APPEALS

MAY - 4 2021

CLERK OF THE COURT

C-16-315718-1
DROA
Designation of Record on Appeal
4953274



EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-16-315718-1

State of Nevada
vs
James Hayes

§ Location: Department 3
§ Judicial Officer: Trujillo, Monica
§ Filed on: 06/14/2016
§ Case Number History:
§ Cross-Reference Case Number: C315718
§ Defendant's Scope ID #: 2796708
§ ITAG Booking Number: 0
§ ITAG Case ID: 2067407
§ Lower Court Case # Root: 13F10723
§ Lower Court Case Number: 13F10723X
§ Metro Event Number: 1304090843
§ Supreme Court No.: 77151
§ 78590
§ 80222
§ 81076

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
Jurisdiction: District Court					
1. ATTEMPT GRAND LARCENY	205.222.2	F	04/09/2013	Case Status:	04/21/2021 Reopened
PCN: 0028999877 ACN: 1304090843					
Filed As: BURGLARY	F	6/17/2016			
Arrest: 04/02/2016	MET - Metro				

Related Cases

A-19-793315-W (Writ Related Case)

Statistical Closures

03/12/2019 Guilty Plea with Sentence (before trial) (CR)

Bonds

Surety #SV25-4743871 \$13,000.00
2/8/2019 Exonerated
6/1/2016 Active
Counts: 1

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	C-16-315718-1
Court	Department 3
Date Assigned	01/04/2021
Judicial Officer	Trujillo, Monica

PARTY INFORMATION

Lead Attorneys

Defendant Hayes, James Howard

Pro Se

Plaintiff State of Nevada


Wolfson, Steven B
702-671-2700(W)

DATE



















EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

06/14/2016  Criminal Bindover Packet Justice Court
Criminal Bindover (Confidential)

CASE SUMMARY
CASE NO. C-16-315718-1

















06/17/2016	 Information
07/29/2016	 Transcript of Proceedings <i>Transcript of Hearing Held on June 14, 2016</i>
08/26/2016	 Notice of Rescheduling of Hearing
11/18/2016	 Motion for Discovery <i>Defendant's Motion for Discovery</i>
11/21/2016	 Notice of Intent <i>Notice of Intent to Seek Punishment as a Habitual Criminal</i>
11/21/2016	 Notice of Witnesses <i>Notice of Witnesses [NRS 174.234(1)(a)]</i>
12/05/2016	 Response <i>State's Response to Defendant's Motion for Discovery, and State's Request for Reciprocal Discovery</i>
12/12/2016	 Notice of Motion <i>Notice of Motion and Motion for Joinder of Case C315718 into Case C315125</i>
12/16/2016	 Notice of Witnesses <i>Notice of Witnesses [NRS 174.234(1)(a)]</i>
12/16/2016	 Notice of Motion <i>Notice of Motion and Motion to Admit Evidence of Other Acts</i>
12/20/2016	 Opposition to Motion <i>Opposition to the State's Motion to Admit Evidence of Other Acts</i>
01/20/2017	 Order Denying Motion <i>Order Denying State's Motion to Admit Evidence of Other Acts</i>
02/08/2017	 Substitution of Attorney
02/10/2017	 Notice of Department Reassignment
03/23/2017	 Order for Production of Inmate <i>Order for Production of Inmates</i>
05/31/2017	 Motion to Withdraw As Counsel Filed By: Defendant Hayes, James Howard <i>Motion to Withdraw as Attorney of Record for Defendant</i>
06/01/2017	 Certificate of Mailing
08/29/2017	 Receipt of Copy Filed by: Plaintiff State of Nevada

CASE SUMMARY
CASE NO. C-16-315718-1

08/29/2017	 Amended Notice Filed By: Plaintiff State of Nevada <i>Amended Notice of Intent to Seek Punishment as a Habitual Criminal</i>
08/29/2017	 Notice Filed By: Plaintiff State of Nevada <i>Notice to Introduce Certified Copies [NRS 52.260(4)]</i>
10/24/2017	 Receipt of Copy
03/01/2018	 Miscellaneous Filing Filed by: Defendant Hayes, James Howard <i>Courtesy Filing of Defendant's Pro Per Petition</i>
04/06/2018	 Miscellaneous Filing Filed by: Defendant Hayes, James Howard <i>Amended Courtesy Filing of Defendant's Pro Per Petition for Writ of Habeas Corpus</i>
04/25/2018	 Notice of Motion Filed By: Plaintiff State of Nevada <i>State's Notice of Motion and Motion to Dismiss Defendant's Amended Courtesy Filing of Defendant's Pro Per Petition for Writ of Habeas Corpus</i>
05/07/2018	 Notice of Witnesses Party: Defendant Hayes, James Howard <i>Defendant's Notice of Witnesses, Pursuant to NRS 174.234</i>
05/07/2018	 Supplemental Witness List Filed by: Defendant Hayes, James Howard <i>Defendant's Supplemental Notice of Witnesses Pursuant to NRS 174.234</i>
06/12/2018	 Order for Production of Inmate <i>Order for Production of Inmate James Howard Hayes, aka, James Howard Hayes, Jr., BAC #2796708</i>
07/30/2018	 Motion to Withdraw As Counsel Filed By: Defendant Hayes, James Howard <i>Motion to Withdraw as Attorney of Record</i>
09/12/2018	 Order Denying Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Pro Per Petition for Writ of Habeas Corpus</i>
09/18/2018	 Notice of Entry of Order
09/26/2018	 Notice of Appeal (Criminal) <i>Notice of Appeal</i>
10/10/2018	 Case Appeal Statement Filed By: Defendant Hayes, James Howard
11/07/2018	 Amended Information Filed By: Plaintiff State of Nevada

CASE SUMMARY

CASE NO. C-16-315718-1

11/07/2018	 Guilty Plea Agreement <i>Guilty Plea Agreement Pursuant to Alford</i>
12/18/2018	 PSI <i>Pre-Sentence Investigation Report (Unfiled) Confidential</i>
01/11/2019	 NV Supreme Court Clerks Certificate/Judgment - Dismissed <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed</i>
01/31/2019	 Notice of Motion <i>State's Notice of Motion and Motion to Revoke Bail</i>
03/12/2019	 Judgment of Conviction <i>Judgment of Conviction (Plea of Guilty-Alford)</i>
03/28/2019	 Notice of Appeal (Criminal) <i>Notice of Appeal</i>
04/12/2019	 Case Appeal Statement
04/29/2019	 Motion to Dismiss Counsel Party: Defendant Hayes, James Howard <i>Motion to Withdraw Counsel</i>
04/29/2019	 Notice of Motion Filed By: Defendant Hayes, James Howard
06/14/2019	 Certificate Filed By: Defendant Hayes, James Howard <i>Certificate That No Transcript is Being Requested</i>
07/29/2019	 Order Granting Motion Filed By: Plaintiff State of Nevada <i>Order Granting Defendant's Pro Per Motion to Withdraw Counsel</i>
07/31/2019	 Notice of Appeal (Criminal) <i>Notice of Appeal (2nd)</i>
08/09/2019	 Case Appeal Statement Filed By: Defendant Hayes, James Howard
08/30/2019	 Order Filed By: Plaintiff State of Nevada <i>Order for Transcript</i>
09/09/2019	 Motion Filed By: Defendant Hayes, James Howard <i>"Motion in the Nature of a Writ of Coram Nobis"</i>
09/09/2019	 Notice of Motion Filed By: Defendant Hayes, James Howard

CASE SUMMARY

CASE NO. C-16-315718-1

09/25/2019	 Recorders Transcript of Hearing Party: Defendant Hayes, James Howard <i>Transcript of Hearing Held on November 7, 2018</i>
09/26/2019	 Affidavit Filed By: Defendant Hayes, James Howard <i>Affidavit of Granting Motion in the Nature of a Writ of Coram Nobis</i>
10/01/2019	 Opposition to Motion Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion for a Writ of Coram Nobis</i>
10/17/2019	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Pro Per Motion in the Nature of a Writ of Coram Nobis</i>
10/17/2019	 Reply to Opposition Filed by: Defendant Hayes, James Howard <i>"Reply" to the State's Opposition" Motion for a Writ of Coram Nobis</i>
10/28/2019	 Affidavit Filed By: Defendant Hayes, James Howard <i>Affidavit of "No Material Dispute as to the Mistake of Fact" Motion in the Nature of a Writ of Coram Nobis"</i>
11/19/2019	 Notice of Appeal (Criminal) <i>Notice of Appeal</i>
11/19/2019	 Designation of Record on Appeal
12/04/2019	 Notice of Change of Address Filed By: Defendant Hayes, James Howard
12/11/2019	 Case Appeal Statement Filed By: Defendant Hayes, James Howard
12/16/2019	 Motion to Modify Sentence Filed By: Defendant Hayes, James Howard <i>"Motion to Correct an Illegal Sentence"</i>
12/16/2019	 Notice of Motion Filed By: Defendant Hayes, James Howard
12/30/2019	 Opposition to Motion Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion to Correct an Illegal Sentence</i>
01/06/2020	 Affidavit Filed By: Defendant Hayes, James Howard <i>Affidavit of Granting "Motion to Correct an Illegal Sentence" of the Wrongfully Convicted"</i>
01/27/2020	 Reply to Opposition Filed by: Defendant Hayes, James Howard <i>Reply to State's Opposition to "Motion to Correct an Illegal Sentence"</i>

CASE SUMMARY
CASE NO. C-16-315718-1

02/24/2020	 Motion Filed By: Defendant Hayes, James Howard <i>"Motion for Ruling" for "Motion to Correct an Illegal Sentence"; Hearing Requested</i>
02/24/2020	 Notice of Motion Filed By: Defendant Hayes, James Howard
02/25/2020	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed</i>
03/30/2020	 Notice of Appeal (Criminal) <i>Notice of Appeal</i>
04/07/2020	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Pro Per Motion for Ruling on Motion to Correct an Illegal Sentence</i>
04/23/2020	 Case Appeal Statement Filed By: Defendant Hayes, James Howard
05/04/2020	 Notice of Motion Filed By: Defendant Hayes, James Howard
05/04/2020	 Motion for Relief Filed By: Defendant Hayes, James Howard <i>"Rule 60b Motion" for Relief from the March 18, 2020 Oder Which Denied Mr. Hayes Motion to "Correct Illegal Sentence"</i>
05/12/2020	 Order Denying Motion <i>Order Denying Defendant's Pro Per Motion to Correct an Illegal Sentence</i>
06/01/2020	 Motion to Vacate Sentence Filed by: Defendant Hayes, James Howard <i>"Motion to Vacate Sentence" (Conviction Invalid)</i>
06/01/2020	 Notice of Motion Filed By: Defendant Hayes, James Howard
06/10/2020	 Opposition to Motion Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Rule 60(b) Motion for Relief from March 18, 2020 Order and Motion to Vacate Sentence</i>
06/26/2020	 Reply to Opposition Filed by: Defendant Hayes, James Howard <i>"Reply" to State's Opposition to Defendant's Motion to Vacate Sentence (Conviction Invalid) Hearing Requested</i>
07/31/2020	 Motion Filed By: Defendant Hayes, James Howard <i>"Judicial of the Subject Matter is Derived from the Law; it Neither can be Waived Nor Conferred by Consent of Accused..." "Motion to Vacate Sentence (Conviction Invalid)"</i>

CASE SUMMARY

CASE NO. C-16-315718-1

09/23/2020	 Order Denying Motion <i>Order Denying Petitioner's Motion for Ruling for Rule 60b Motion for Relief; Motion to Vacate; Amend Petition for Writ of Habeas Corpus</i>
09/28/2020	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed</i>
11/02/2020	 Reply to Opposition Filed by: Defendant Hayes, James Howard <i>Reply to State's Opposition to Defendant's Rule 60(b) Motion for Relief "Hearing Requested"</i>
11/02/2020	 Notice of Motion Filed By: Defendant Hayes, James Howard <i>Notice of Motion "Hearing Requested"</i>
01/04/2021	Case Reassigned to Department 1 <i>Judicial Reassignment to Judge Bita Yeager</i>
01/04/2021	Case Reassigned to Department 3 <i>Judicial Reassignment to Judge Monica Trujillo</i>
02/18/2021	 Motion Filed By: Defendant Hayes, James Howard <i>Motion to Compel Judgment for Rule 606 Motion for Relief and Motion to Vacate</i>
02/18/2021	 Notice of Motion Filed By: Defendant Hayes, James Howard
03/09/2021	 Findings of Fact, Conclusions of Law and Order <i>Findings of Fact, Conclusions of Law, and Order</i>
03/10/2021	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
03/17/2021	 Findings of Fact, Conclusions of Law and Order <i>Findings of Fact, Conclusions of Law, and Order</i>
03/19/2021	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
03/25/2021	 Motion to Modify Sentence Filed By: Defendant Hayes, James Howard <i>Motion to Modify and/or Correct Illegal Sentence "Hearing Requested"</i>
03/25/2021	 Notice of Motion Filed By: Defendant Hayes, James Howard <i>Notice of Motion "Hearing Requested"</i>
04/14/2021	 Notice of Rescheduling of Hearing
04/15/2021	 Motion

CASE SUMMARY**CASE NO. C-16-315718-1**

Filed By: Defendant Hayes, James Howard

Motion and Order for Transportation of Inmate for Court Appearance or, in the Alternative, for Appearance by Telephone or Video Conference

04/15/2021



Notice of Motion

Filed By: Defendant Hayes, James Howard

04/16/2021



Notice of Appeal (Criminal)

Notice of Appeal

04/16/2021



Designation of Record on Appeal

04/21/2021



Motion to Modify Sentence

Filed By: Defendant Hayes, James Howard

Notice of Motion "Reply" Motions for Modification of Sentence and/or Correct Illegal Sentence... "Hearing Requested"

04/22/2021



Opposition to Motion

Filed By: Plaintiff State of Nevada

State's Opposition to Petitioner's Motion to Modify and/or Correct Illegal Sentence

04/22/2021



Opposition

Filed By: Plaintiff State of Nevada

State's Amended Opposition to Petitioner's Motion to Modify and/or Correct Illegal Sentence

05/04/2021



Case Appeal Statement

Filed By: Defendant Hayes, James Howard

*Case Appeal Statement***DISPOSITIONS**

11/07/2018

Plea (Judicial Officer: Kephart, William D.)

1. ATTEMPT GRAND LARCENY

Guilty

PCN: 0028999877 Sequence:

03/06/2019

Disposition (Judicial Officer: Kephart, William D.)

1. ATTEMPT GRAND LARCENY

Guilty

PCN: 0028999877 Sequence:

03/06/2019

Adult Adjudication (Judicial Officer: Kephart, William D.)

1. ATTEMPT GRAND LARCENY

04/09/2013 (F) 205.222.2 (DC56025)

PCN: 0028999877 Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:60 Months, Maximum:174 Months

Consecutive: Case Number -C315125

Credit for Time Served: 10 Days

Comments: Deft. SENTENCED UNDER the SMALL HABITUAL STATUTE

Fee Totals:

Administrative

Assessment Fee

25.00

\$25

Genetic Marker

Analysis AA Fee

3.00

\$3





CASE SUMMARY

CASE NO. C-16-315718-1

Fee Totals \$

28.00

HEARINGS

06/23/2016	 Initial Arraignment (10:00 AM) (Judicial Officer: De La Garza, Melisa) Trial Date Set; Journal Entry Details: <i>Deputized Law Clerk, Kelsey Einhorn appearing for the State. DEFT. HAYES ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, Deft's Request for Discovery is GRANTED pursuant to NRS 174.235 and Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript. BOND 12/27/16 8:30 AM CALENDAR CALL (DEPT. 12) 1/03/16 1:30 PM JURY TRIAL (DEPT. 12);</i>
12/06/2016	 Motion for Discovery (8:30 AM) (Judicial Officer: Leavitt, Michelle) 12/06/2016, 12/08/2016 <i>Defendant's Motion for Discovery</i> Continued; Granted in Part; Journal Entry Details: <i>Deft. not present; PRESENCE WAIVED. COURT ORDERED, as follows: 1. Court noted this request is overly broad, however, it will GRANT it to extent it is required by NRS 174.235. 2. State to comply with NRS 174.234. 3. State to comply with NRS 174.235. 4. State to comply with NRS 174.235. 5. State to comply with NRS 174.235. 6. State to provide anything other than statutory witness fee. 7. State to comply with Brady obligations. 8. State is to disclose prior felony information or crimes involving moral turpitude. 9. MOTION DENIED. 10. If there are any informants, the State is to disclose this information to Court, for determination as to whether the information needs to be turned over. 11. MOTION GRANTED; State to provide defense with all chain of custody regarding evidence. Ms. Sauter to prepare the order. BOND;</i> Continued; Granted in Part; Journal Entry Details: <i>Deft. not present. Ms. Holiday requested Deft's presence be waived, further noting he resides in California and has had excellent communication with Ms. Sauter. Additionally, Ms. Sauter is on vacation, and defense will request a continuance for Ms. Sauter to appear and handle proceedings. COURT ORDERED, matter CONTINUED. Court noted for the record State had filed their written opposition yesterday. Ms. Holiday noted this in her file. BOND 12/08/16 8:30 A.M. DEFT'S MOTION FOR DISCOVERY 12/20/16 8:30 A.M. CALENDAR CALL 1/03/17 1:30 P.M. TRIAL BY JURY;</i>
12/20/2016	 Calendar Call (8:30 AM) (Judicial Officer: Leavitt, Michelle) Set Status Check; Journal Entry Details: <i>Ms. Devaney-Sauter informed Court there is a pending motion to consolidate this case and another criminal case before Judge Eric Johnson on December 22, 2016. Additionally, defense has to do further investigation, and will not be ready for trial. At request of counsel, COURT ORDERED, trial date VACATED; matter SET for status check. BOND 1/26/17 8:30 A.M. STATUS CHECK: FURTHER PROCEEDINGS / RESET TRIAL DATE ;</i>
12/22/2016	 Motion to Admit Evidence (8:30 AM) (Judicial Officer: Leavitt, Michelle) 12/22/2016, 01/12/2017 <i>State's Motion to Admit Evidence of Other Acts</i> Continued; Denied; Journal Entry Details: <i>Mr. Dickerson informed Court Deft. was convicted of burglary in his jury trial. Thereafter, Mr. Dickerson argued in support of the burglary matter to be admitted, and there having been no lawful intent on Deft's acts. Ms. Sauter opposed; and argued as to NRS 48.045, and State having given an overbroad reading of intent. Further arguments as to case law cited by State in the pleadings, State having failed to establish the relief being sought on using any intent evidence, common schemer plan exception, Newman vs. State case law, and prejudice outweighing probative value for Deft. if the act comes in for trial. Ms. Sauter added the State cannot establish introduction of this evidence, and based on a prior, the jury in this case may convict him just on this, and not on any evidence. Further arguments as to Nevada Supreme Court decision. Ms. Sauter requested Court to consider setting an evidentiary hearing on the issue, if Court is inclined to grant State's Motion. Mr. Dickerson stated he will submit a trial transcript from the other case to this Court. Further arguments as to case law being clear. COURT ORDERED, Motion DENIED. Ms. Sauter to prepare the order. BOND 1/26/17 8:30 A.M. STATUS CHECK: FURTHER PROCEEDINGS / RESET TRIAL DATE ;</i>

CASE SUMMARY
CASE NO. C-16-315718-1

MINUTES

Continued;

Denied;

Journal Entry Details:


Deft. not present. Mr. Gaston informed Court Deft. was told he did not have to be here. COURT ORDERED, Deft's presence WAIVED. Mr. Dickerson provided details surrounding the allegations; and argued in support of admission of Deft's other burglary acts from three years prior, and further argued as to State's theory of Deft's probable defense, State needing to prove intent. Court stated it was not provided Deft's Opposition to State's Motion. Ms. Sauter apologized; and provided a copy of the Opposition to Court for consideration. COURT ORDERED, matter CONTINUED for Court to review this Opposition, prior to further arguments. Upon Court's inquiry, Mr. Dickerson clarified the request to consolidate this case and C315125 from Department 20 was denied by Judge Eric Johnson, and Judge Johnson had said he would entertain another bad acts motion by State. Discussions as to trial date of January 3, 2017 already having been vacated by this Court. BOND 1/12/17 8:30 A.M. STATE'S MOTION TO ADMIT EVIDENCE OF OTHER ACTS ;

SCHEDULED HEARINGS


CANCELED All Pending Motions (12/22/2016 at 8:30 AM) (Judicial Officer: Leavitt, Michelle)

Vacated - On in Error

12/22/2016 **CANCELED All Pending Motions** (8:30 AM) (Judicial Officer: Leavitt, Michelle)
Vacated - On in Error

12/22/2016  **Motion to Consolidate** (9:00 AM) (Judicial Officer: Johnson, Eric)
State's Motion for Joinder of Case C315718 into Case C315125
Denied;
Journal Entry Details:
Mr. Rowles and Ms. Devaney-Sauter argued their respective positions. COURT ORDERED, Motion DENIED. BOND;

01/03/2017 **CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Leavitt, Michelle)
Vacated - per Judge

01/26/2017  **Status Check: Reset Trial Date** (8:30 AM) (Judicial Officer: Leavitt, Michelle)
Status Check: Further Proceedings / Reset Trial Date

MINUTES

Trial Date Set;

Journal Entry Details:

COURT ORDERED, trial date SET. CUSTODY 3/14/17 8:30 A.M. CALENDAR CALL 3/21/17 1:30 P.M. TRIAL BY JURY;


SCHEDULED HEARINGS


CANCELED Calendar Call (03/14/2017 at 8:00 AM) (Judicial Officer: Leavitt, Michelle)

Vacated - per Judge

CANCELED Jury Trial (03/21/2017 at 1:30 PM) (Judicial Officer: Leavitt, Michelle)

Vacated - per Judge

02/09/2017  **Minute Order** (3:00 AM) (Judicial Officer: Leavitt, Michelle)
Minute Order Re: Recusal
Minute Order - No Hearing Held;
Journal Entry Details:
The law firm of Colquitt & Abbatangelo, LTD., currently represents the Defendant in this matter. Pursuant to Nevada Code of Judicial Conduct NCJC 3(E)(1)(d)(ii), and to avoid the appearance of impropriety and implied bias, the Court RECUSES itself from the above-entitled case, and ORDERS this matter to be randomly reassigned. The newly assigned Department will need to set a status check hearing to determine a date for Calendar Call and Jury Trial. CLERK'S NOTE: A copy of the above minute order has been forwarded to Clerk's Office Master Calendar for reassignment. /// sj CLERK'S NOTE: Law firm was notified regarding recusal. /// sj;

03/06/2017  **Trial Setting** (8:30 AM) (Judicial Officer: Kephart, William D.)
Trial Date Set;
Journal Entry Details:
Mr. Abbatangelo advised he substituted in as counsel and the case was re-assigned from department 12. Further, Mr.

EIGHTH JUDICIAL DISTRICT COURT


CASE SUMMARY

CASE NO. C-16-315718-1


Abbatangelo advised Defendant has invoked the 60 day rule. Mr. Scow advised the victim has scheduled military leave between 3/20/2017 - 3/31/2017. Colloquy regarding scheduling. COURT ORDERED, matter SET for trial. BOND (COC) 3/22/2017 8:30 AM CALENDAR CALL 3/27/2017 10:00 AM JURY TRIAL;


03/14/2017 **CANCELED Calendar Call** (8:00 AM) (Judicial Officer: Leavitt, Michelle)
Vacated - per Judge


03/21/2017 **CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Leavitt, Michelle)
Vacated - per Judge


03/22/2017  **Calendar Call** (8:30 AM) (Judicial Officer: Kephart, William D.)
Matter Heard;
Journal Entry Details:
Mr. Abbatangelo advised parties have agree to vacate the trial date and set a status check in two (2) weeks to discuss the offers which have been extended by the State. Mr. Dickerson advised this a defense request to continue, State is ready; however, State is not opposing the continuance. Further, Mr. Dickerson advised the only issue would be the availability of the victim who is in the military and the trial will need to be scheduled around victim's leave. Upon Court's inquiry, Defendant agreed to vacate trial. COURT ORDERED, trial VACATED and matter SET for Status Check. BOND (COC) 4/03/2017 8:30 AM STATUS CHECK: NEGOTIATIONS / TRIAL SETTING;

03/27/2017 **CANCELED Jury Trial** (10:00 AM) (Judicial Officer: Kephart, William D.)
Vacated - per Judge

04/03/2017  **Status Check** (8:30 AM) (Judicial Officer: Kephart, William D.)
04/03/2017, 05/01/2017
Status Check: Negotiations / Trial Setting
Matter Continued;
Trial Date Set;
Journal Entry Details:
Mr. Rowles advised he believes the matter is resolved and he has the Guilty Plea Agreement. MATTER TRAILED for Mr. Abbatangelo. RECALLED. Mr. Abbatangelo requested matter be continued sixty days. Mr. Rowles advised the offer is one count of burglary stipulate to a 12 -30 concurrent with C315125 and if Defendant rejects the offer at the next date the offer will be revoked. Court stated he is inclined to set the matter for trial with a status check in thirty days for negotiations. Parties agreed. COURT ORDERED, matter SET for trial and Status Check. BOND (COC-NDC) 5/31/2017 8:30 AM STATUS CHECK: NEGOTIATIONS 8/30/2017 8:30 AM PRE TRIAL CONFERENCE 9/27/2017 8:30 AM CALENDAR CALL 10/02/2017 10:00 AM JURY TRIAL;
Matter Continued;
Trial Date Set;
Journal Entry Details:
Mr. Abbatangelo advised parties are close to a resolution and requested matter be continued thirty days. COURT SO ORDERED. BOND (COC-NDC) CONTINUED TO: 5/01/2017 8:30 AM;

05/31/2017  **Status Check** (8:30 AM) (Judicial Officer: Kephart, William D.)
Status Check: Negotiations
Matter Heard;
Journal Entry Details:
Mr. Colquitt advised the matter is not negotiated and Defendant has rejected the offer. Ms. Derjavina advised the offer has been revoked at this time. COURT ORDERED, trial date STANDS. BOND (COC-NDC);

06/12/2017  **Motion to Withdraw as Counsel** (8:30 AM) (Judicial Officer: Kephart, William D.)
Tony Abbatangelo, Esq's Motion to Withdraw as Attorney of Record
Granted;
Journal Entry Details:
Court noted Defendant not present. Mr. Abbatangelo advised Defendant in custody with Nevada Department of Corrections (NDC) on another case. COURT ORDERED, Motion GRANTED; Public Defender APPOINTED to determine if there will be conflict and matter SET for Status Check. FURTHER ORDERED, State to prepare an Order to Transport. BOND (COC-NDC) 7/10/2017 8:30 AM STATUS CHECK: CONFIRMATION OF COUNSEL (PD);

07/10/2017  **Status Check** (8:30 AM) (Judicial Officer: Kephart, William D.)
Status Check: Confirmation of Counsel (PD)

EIGHTH JUDICIAL DISTRICT COURT





CASE SUMMARY

CASE NO. C-16-315718-1

	<p>Counsel Confirmed; Journal Entry Details: <i>Mr. Rusley confirmed as counsel on behalf of Defendant. COURT ORDERED, trial date STANDS. BOND (COC-NDC);</i></p>
08/30/2017	<p> Pre Trial Conference (8:30 AM) (Judicial Officer: Kephart, William D.)</p> <p>Matter Heard; Journal Entry Details: <i>Upon Court's inquiry, Ms. Murphy stated she believes Ms. DeVaney received most of what was needed and just received two notices from the state who will provide documents. Further, Ms. Murphy stated Deft. filed something in the Nevada Supreme Court, not sure what it is and advised it has been transferred to the Court of Appeals. Colloquy. COURT ORDERED, calendar call and trial dates STAND. Deft. advised he filed a writ of habeas corpus challenging probable cause. Statement by Mr. Dickerson. MATTER RECALLED: Ms. Murphy requested a status check in three weeks for possible negotiations. Colloquy. Mr. Dickerson stated Deft's counsel requested to re-open negotiations and counsel will to entertain and believes status check will facilitate negotiations. COURT ORDERED, matter SET for status check. State to prepare transport order. BOND (COC-NDC) 9/20/17 9:00 AM STATUS CHECK: NEGOTIATIONS;</i></p>
09/27/2017	<p>Calendar Call (9:00 AM) (Judicial Officer: Kephart, William D.)</p> <p>Matter Heard;</p>
09/27/2017	<p>Status Check (9:00 AM) (Judicial Officer: Kephart, William D.)</p> <p>09/27/2017, 10/25/2017 <i>Status Check: Negotiations</i> Matter Continued; Matter Heard; Matter Continued; Matter Heard;</p>
09/27/2017	<p> All Pending Motions (9:00 AM) (Judicial Officer: Kephart, William D.)</p> <p>Matter Heard; Journal Entry Details: <i>CALENDAR CALL ... STATUS CHECK: NEGOTIATIONS Ms. Murphy advised there is an offer which Defendant wants to accept; however, Defendant filed an appeal which a decision has not been reached. COURT ORDERED, trial date VACATED and matter SET for Status Check as to the Supreme Court decision. BOND (COC-NDC) 10/25/2017 8:30 AM STATUS CHECK: SUPREME COURT DECISION ... STATUS CHECK: NEGOTIATIONS;</i></p>
10/02/2017	<p>CANCELED Jury Trial (10:00 AM) (Judicial Officer: Kephart, William D.)</p> <p><i>Vacated - per Judge</i></p>
10/25/2017	<p>Status Check (8:30 AM) (Judicial Officer: Kephart, William D.)</p> <p><i>Status Check: Supreme Court Decision / Trial Setting</i> Trial Date Set;</p>
10/25/2017	<p> All Pending Motions (8:30 AM) (Judicial Officer: Kephart, William D.)</p> <p>Matter Heard; Journal Entry Details: <i>STATUS CHECK: SUPREME COURT DECISION / TRIAL SETTING ... STATUS CHECK: NEGOTIATIONS Mr. Cottner advised the Court of Appeals has dismissed Defendant's pro per writ and requested a trial date be set in ordinary course. COURT ORDERED, matter SET for trial. CUSTODY (COC-NDC) 4/11/2018 8:30 AM PRE TRIAL CONFERENCE 5/09/2018 8:30 AM CALENDAR CALL 5/14/2018 10:00 AM JURY TRIAL;</i></p>
04/11/2018	<p> Pre Trial Conference (8:30 AM) (Judicial Officer: Kephart, William D.)</p> <p>Matter Heard; Journal Entry Details: <i>Ms. Murphy advised she anticipates ready for the current trial date; although she has filed a Petition which is set to be heard on 4/23/2018. COURT ORDERED, trial date STANDS. Ms. Mendoza advised Mr. Dickerson indicated that there may be something pending with the Appellant Court. Ms. Murphy advised Defendant did file a Pro Per Appeal which has since been denied and will not be an issue. Court so noted. BOND (COC-NDC);</i></p>

CASE SUMMARY

CASE NO. C-16-315718-1

04/23/2018	 Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer: Kephart, William D.) 04/23/2018, 05/09/2018 <i>Amended Courtesy Filing Of Defendant's Pro Per Petition For Writ Of Habeas Corpus</i> Matter Heard; Journal Entry Details: <i>Court noted a written opposition has not been filed. Ms. Mendoza advised this is Mr. Dickerson's case who indicated the transcript in this matter was filed 7/2016 making the writ untimely and should be denied; however, if the Court would like a response he would ask for additional time. Court stated he would like a response. COURT ORDERED, State's Response shall be due on or before 4/30/2018 and matter CONTINUED. Ms. Murphy advised she provided Defendant with additional discovery this morning in Open Court as well as spoke with Defendant at length on the phone. Further, Ms. Murphy requested the State mail a copy of their opposition as soon as possible as Defendant is at High Desert. Ms. Mendoza advised Defendant is represented by counsel and counsel will be served with the Opposition. BOND (COC-NDC) 5/9/18 8:30 AM ;</i>
05/09/2018	 Calendar Call (8:30 AM) (Judicial Officer: Kephart, William D.) Matter Heard; Journal Entry Details: <i>Upon Court's inquiry, Ms. Murphy advised Defendant is in the Nevada Department of Corrections and was not transported. Court noted Defendant has an appeal pending with the Supreme Court. Colloquy regarding Defendant's pending appeal. CONFERENCE AT BENCH. COURT ORDERED, trial date VACATED and matter SET for Status Check. BOND (COC-NDC) 6/6/18 8:30 AM STATUS CHECK: SUPREME COURT DECISION/ RESET TRIAL ;</i>
05/09/2018	Motion to Dismiss (8:30 AM) (Judicial Officer: Kephart, William D.) <i>State's Notice of Motion and Motion to Dismiss Defendant's Amended Courtesy Filing of Defendant's Pro Per Petition for Writ of Habeas Corpus</i> Matter Continued;
05/14/2018	CANCELED Jury Trial (10:00 AM) (Judicial Officer: Kephart, William D.) <i>Vacated - per Judge</i>
06/06/2018	 Status Check (8:30 AM) (Judicial Officer: Kephart, William D.) SUPREME COURT DECISION/ RESET TRIAL Matter Heard; Journal Entry Details: <i>Ms. Murphy advised Defendant was not transported from the Nevada Department of Corrections. Mr. Dickerson advised the Supreme Court denied Defendant's Pro Per Petition on 5/15/2018 and requested matter be set for status check to reset the trial date. Further, Mr. Dickerson advised an offer has been extended; however, the offer has not been accepted. COURT ORDERED, matter SET for Status Check and DIRECTED State to prepare the appropriate transport order. BOND (COC-NDC) 7/11/2018 8:30 AM STATUS CHECK: TRIAL SETTING;</i>
07/11/2018	 Status Check: Trial Setting (8:30 AM) (Judicial Officer: Kephart, William D.) Trial Date Set; Journal Entry Details: <i>Ms. Murphy advised Defendant was transported for today. Further, Ms. Murphy advised she provided Defendant with a copy of the Guilty Plea Agreement so that he would be aware of what the State was offering; however, Defendant indicated there are outstanding motions which Defendant filed on his own that he would like to heard by the Court. Additionally, Ms. Murphy advised there appears to be a break down between herself and Defendant as he has left multiple voicemails on her phone stating she is not working on his case and that she is a racist. Upon Court's inquiry, Ms. Murphy advised Defendant previously file a Pro Per Petition for Writ of Habeas Corpus. Colloquy regarding Defendant's Petition. Defendant advised he filed his motion to challenge probable cause in this case. COURT ORDERED, matter SET for Trial and Defendant's Motion SET for Hearing. CUSTODY (COC) 8/15/2018 8:30 AM DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS 10/10/2018 8:30 AM PRE TRIAL CONFERENCE 11/07/2018 8:30 AM CALENDAR CALL 11/13/2018 10:00 AM JURY TRIAL ;</i>
08/15/2018	Petition (8:30 AM) (Judicial Officer: Kephart, William D.) 08/15/2018, 08/29/2018 <i>Defendant's Pro Per Petition for Writ of Habeas Corpus</i> Matter Continued; Matter Continued; Matter Continued; Matter Continued;

CASE SUMMARY

CASE NO. C-16-315718-1

08/15/2018	<p>Motion to Withdraw as Counsel (8:30 AM) (Judicial Officer: Kephart, William D.) <i>Defendant's Motion to Withdraw as Counsel of Record</i> Granted;</p>
08/15/2018	<p> All Pending Motions (8:30 AM) (Judicial Officer: Kephart, William D.) Matter Heard; Journal Entry Details: <i>DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS ... DEFENDANT'S MOTION TO WITHDRAW AS COUNSEL OF RECORD</i> Court reviewed case history. COURT ORDERED, Motion to Withdraw as Counsel GRANTED; Michael Sanft APPOINTED and Petition CONTINUED in order for Mr. Sanft to review the case. FURTHER ORDERED, matter SET for Confirmation of Counsel. 8/29/2018 8:30 AM CONFIRMATION OF COUNSEL (SANFT) ... DEFENDANT'S PRO PETITION FOR WRIT OF HABEAS CORPUS;</p>
08/29/2018	<p>Confirmation of Counsel (8:30 AM) (Judicial Officer: Kephart, William D.) <i>Confirmation of Counsel (Sanft)</i> Counsel Confirmed;</p>
08/29/2018	<p> All Pending Motions (8:30 AM) (Judicial Officer: Kephart, William D.) Matter Heard; Journal Entry Details: <i>CONFIRMATION OF COUNSEL (SANFT)</i> Mr. Sanft confirmed as counsel and advised he has conveyed the State's offer of an alford plea to attempt grand larceny, a wobbler, State will make no recommendation at sentencing with no opposition to probation with 30 days ccde and 30 days credit for time served. Further, Mr. Sanft advised a counter offer of a stipulation to a gross misdemeanor; however, State has indicated they are not willing to enter that stipulation and would like the Court to make that determination. Mr. Dickerson confirmed representations. COURT ORDERED, matter SET for Status Check. DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS COURT ORDERED, Petition DENIED as it was not filed in compliance with NRS 34.700 and the Court is unable to consider the Petition. BOND (COC) ;</p>
09/26/2018	<p> Status Check (8:30 AM) (Judicial Officer: Kephart, William D.) <i>Status Check: Negotiations / Pre Trial Conference</i> Matter Heard; Journal Entry Details: <i>Mr. Sanft advised his investigator has met with Defendant and the offer extended contemplates credit for time served; although the State will retain the right to argue as to felony or gross misdemeanor treatment. Upon Court's inquiry, Mr. Sanft advised there are no outstanding discovery issues and he anticipates ready for the current trial date. COURT ORDERED, trial date STANDS. BOND (COC-NDC);</i></p>
10/10/2018	<p>CANCELED Pre Trial Conference (8:30 AM) (Judicial Officer: Kephart, William D.) <i>Vacated - per Judge</i></p>
11/07/2018	<p> Calendar Call (8:30 AM) (Judicial Officer: Kephart, William D.) Plea Entered; Journal Entry Details: <i>Amended Information FILED IN OPEN COURT. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. HAYES ARRAIGNED AND PLED GUILTY PURSUANT TO ALFORD TO ATTEMPT GRAND LARCENY (F/GM). State made offer of proof. Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing; trial date VACATED. BOND 3/06/2019 8:30 AM SENTENCING;</i></p>
11/13/2018	<p>CANCELED Jury Trial (10:00 AM) (Judicial Officer: Kephart, William D.) <i>Vacated - per Judge</i></p>
02/04/2019	<p> Motion (8:30 AM) (Judicial Officer: Kephart, William D.) <i>State's Notice of Motion and Motion to Revoke Bail</i> Granted; Journal Entry Details: <i>Mr. Dickerson advised he would submit on the motion and will answer any questions the Court may have. Mr. Sanft reviewed allegations of new charge. COURT ORDERED, Motion GRANTED; BAIL EXONERATED; Defendant</i></p>

CASE SUMMARY

CASE NO. C-16-315718-1

REMANDED INTO CUSTODY on this cas. CUSTODY (COC-NDC);

03/06/2019



Sentencing (8:30 AM) (Judicial Officer: Kephart, William D.)

Defendant Sentenced;

Journal Entry Details:

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

06/03/2019



Motion (8:30 AM) (Judicial Officer: Kephart, William D.)

06/03/2019, 07/15/2019

Defendant's Pro Per Motion to Withdraw Counsel

Matter Continued;

Granted;

Journal Entry Details:

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

Matter Continued;

Granted;

Journal Entry Details:

Mr. Sanft advised he does not believe the motion can be granted as he must file the appeal pursuant to a Supreme Court Order, COURT ORDERED, matter CONTINUED thirty days. NDC CONTINUED TO: 7/15/2019 8:30 AM;

10/07/2019



Motion (8:30 AM) (Judicial Officer: Bonaventure, Joseph T.)

Defendant's Pro Per Motion In the Nature of a Writ of Coram Nobis

Denied;

Journal Entry Details:

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

01/06/2020



Motion to Modify Sentence (8:30 AM) (Judicial Officer: Kephart, William D.)

Defendant's Pro Per Motion to Correct An Illegal Sentence

Off Calendar;

Journal Entry Details:

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

03/18/2020



Motion (8:30 AM) (Judicial Officer: Kephart, William D.)

Defendant's Pro Per Motion for Ruling on Motion to Correct an Illegal Sentence

Denied;

Journal Entry Details:

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

06/01/2020



Motion for Relief (10:15 AM) (Judicial Officer: Kephart, William D.)

06/01/2020, 06/15/2020

Rule 60b Motionf or Relief from the March 18 2020 Oder Which Denied Mr Hayes Motion to Correct Illegal Sentence

Matter Continued;

Off Calendar;


Journal Entry Details:

Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court stated Defendant has filed a motion to disqualify him from the matter; therefore, COURT ORDERED, matter OFF

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-16-315718-1

	<p><i>CALENDAR pending decision. NDC;</i> Matter Continued; Off Calendar; Journal Entry Details: <i>Court noted Defendant was not transported from the Nevada Department of Corrections and ORDERED, matter CONTINUED. Court noted this matter is currently on appeal before the Supreme Court. NDC CONTINUED TO: 6/15/220 10:15 AM;</i></p>
06/22/2020	<p> Motion to Vacate Sentence (10:15 AM) (Judicial Officer: Kephart, William D.) Events: 06/01/2020 Motion to Vacate Sentence <i>Defendant's Motion to Vacate Sentence (Conviction Invalid)</i> Off Calendar; Journal Entry Details: <i>Court noted matter is on calendar for a Motion to Vacate Sentence; however, Defendant has filed a Motion to Disqualify this Court and ORDERED, matter OFF CALENDAR pending the decision of the Motion to Disqualify. NDC;</i></p>
08/24/2020	<p> Motion (10:15 AM) (Judicial Officer: Kephart, William D.) <i>Defendant's Motion to Vacate Sentence (Conviction Invalid)</i> Off Calendar; Journal Entry Details: <i>Court noted this matter is pending appeal based on the Court's previous denial of the motion and COURT ORDERED, matter OFF CALENDAR. NDC;</i></p>
03/15/2021	<p> Motion to Compel (8:30 AM) (Judicial Officer: Trujillo, Monica) 03/15/2021, 03/29/2021 <i>Motion to Compel Judgment for Rule [(60)B] Motion for Relief and Motion to Vacate</i> Continued; Off Calendar; Journal Entry Details: <i>Court notes Defendant not present and presence is waived for these proceedings. Court notes the State was asked to investigate whether Defendants issues had been adjudicated and a Findings of Fact, Conclusions of Law FILED. Upon Court's inquiry, State advised these same issues were addressed in a CIVIL petition which is where the order was filed. COURT FINDS MATTER OFF CALENDAR as these issues are MOOT having already been adjudicated. NDC;</i> Continued; Off Calendar; Journal Entry Details: <i>Court notes a Findings of Fact, Conslusions of Law FILED on 3/9/21 which may render this motion. MATTER CONTINUED for State to respond. NDC CONTINUED TO: 3/29/21 8:30 A..M.;</i></p>
05/10/2021	<p>Motion to Modify Sentence (8:30 AM) (Judicial Officer: Trujillo, Monica) <i>Motion to Modify/Correct Illegal Sentence</i></p>
05/10/2021	<p>Motion (8:30 AM) (Judicial Officer: Trujillo, Monica) <i>Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference</i></p>
05/12/2021	<p>Motion to Modify Sentence (8:30 AM) (Judicial Officer: Trujillo, Monica) Events: 04/21/2021 Motion to Modify Sentence <i>Defendant's Notice of Motion; Motions for Modification of Sentence and/or Correct Illegal Sentence</i></p>

DATE

FINANCIAL INFORMATION

Defendant Hayes, James Howard	
Total Charges	28.00
Total Payments and Credits	0.00
Balance Due as of 5/4/2021	28.00

Heaven S. Smith

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-793315-W

C-16-315718-1

DEPT NO: III

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

DATE OF HEARING: FEBRUARY 1, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court Judge, on the 1st day of February, 2021, the Petitioner not being present, not being represented by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN L. WATERS, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS

1 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross
2 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in
3 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound
4 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

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

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

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

15 I understand and agree that, if...an independent magistrate, by affidavit review,
16 confirms probable cause against me for new criminal charges including reckless
17 driving or DUI, but excluding minor traffic violations, the State will have the
unqualified right to argue for any legal sentence and term of confinement
18 allowable for the crime(s) to which I am pleading guilty, including the use of
any prior convictions I may have to increase my sentence as a habitual criminal
19 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
20 term with the possibility of parole after ten (10) years.

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

24 On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke
25 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace
26 had found probable cause to charge Petitioner with Burglary for acts committed on or around
27 January 26, 2019. The State’s Motion to Revoke Bail was granted after a hearing on February
28 4, 2019.

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

8 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner’s Case Appeal
9 Statement was filed on August 9, 2019 (SCN 78590).

10 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (“Petition”).
11 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the
12 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original
13 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court’s
14 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply
15 to the State’s Response on November 4, 2019. On November 18, 2019, Petitioner’s Petition
16 came before the Court, at which time the Court took the matter OFF CALENDAR due to
17 Petitioner’s pending appeal.

18 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial
19 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN
20 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court’s denial of
21 Petitioner’s Coram Nobis motion. Remittitur issued on October 12, 2020.

22 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner’s Judgment
23 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

24 On February 12, 2020, Petitioner filed an “Amended Petition for Writ of Habeas
25 Corpus” (his “Amended Petition”). This Court ordered a Response to that Amended Petition
26 on March 4, 2020. The State filed its Response to Petitioner’s Amended Petition on April 17,
27 2020. Petitioner replied to the State’s Response on May 15, 2020.

28 //

1 On May 15, 2020, Petitioner also filed an "Affidavit of Actual Innocence not Mere
2 Legal Insufficiency but 'Factual Innocence.'" On May 27, 2020, Petitioner filed a
3 Supplemental Petition. While Petitioner's numerous pleadings were pending, Petitioner filed
4 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.
5 Thereafter, the State filed its Responses to Petitioner's Affidavit of Actual Innocence and
6 Petitioner's Supplemental Petition on June 10, 2020. As a result of Petitioner's Peremptory
7 Challenge, Petitioner's pending matters were taken off calendar on June 15, 2020. On June
8 29, 2020, Petitioner filed his Reply to the State's Response to Petitioner's Affidavit of Actual
9 Innocence.

10 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner's Motion
11 for Peremptory Challenge of Judge Kephart. Chief Judge Bell's Decision and Order was filed
12 on July 8, 2020.

13 On July 23, 2020, Petitioner filed his Reply to the State's Response to Petitioner's
14 Supplemental Petition. Petitioner, that same day, filed a Motion for Ruling for Rule 60b
15 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State
16 filed its Response to Petitioner's Motion for Ruling on September 2, 2020. Petitioner's Motion
17 for Ruling was denied on September 9, 2020.

18 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for "Amended
19 Petition for Writ of Habeas Corpus" 3rd Request. On October 7, 2020, he filed a Motion to
20 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a
21 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;
22 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive
23 pleadings to each of Petitioner's respective filings on November 10, 2020. On November 16,
24 2020, the Court considered, and denied, Petitioner's three Motions. The Court's Order was
25 filed on November 21, 2020.

26 On December 22, 2020, Petitioner filed a "Motion to Compel Judgment Pursuant to
27 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of
28 Habeas Corpus." The State filed its Response to the instant Motion to Compel on January 27,

2021. Contemporaneous with its ruling on the instant Amended Petition, the Court denied Petitioner's Motion to Compel on February 1, 2021.

On February 1, 2021, this matter came on for hearing before this Court. This Court did not accept argument at the time of hearing, but made the following findings and conclusions:

ANALYSIS

I. PETITIONER'S AMENDED PETITION IS BARRED AS SUCCESSIVE

NRS 34.750(3) allows *appointed counsel* to file certain supplemental pleadings within 30 days. However, "[n]o further pleadings may be filed except as ordered by the court." NRS 34.750(5). Additionally, NRS 34.810(2) reads:

A second or successive petition *must be dismissed* if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are 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*.

(Emphasis added). It is strictly the petitioner's burden to demonstrate good cause and prejudice to survive the court's analysis. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also, Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969 972 (2000) (holding, "where a defendant previously has sought relief from the judgment, the defendant's failure to identify all grounds for relief in the first instance should weigh against consideration of the successive motion.")

The Nevada Supreme Court has stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes, "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions *may be dismissed based solely on the fact of the petition*." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (emphasis added). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,

1 497-98 (1991). Application of NRS 34.810(2) is *mandatory*. State v. Eighth Judicial Dist.
2 Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (noting, “[h]abeas corpus
3 petitions that are filed many years after conviction are an unreasonable burden on the criminal
4 justice system.”) The Riker Court further determined that district courts have no discretion
5 regarding application of statutory procedural bars, and such bars “cannot be ignored [by the
6 district court] when properly raised by the State.” Id. at 233.

7 This Court finds that, in the instant case, Petitioner continues to file supplemental
8 pleadings in the form of multiple addenda as well as the instant “Amended Petition.” However,
9 under NRS 34.750, the right to file supplements lies exclusively with appointed counsel.
10 Furthermore, this Court finds that the factual bases for Petitioner’s claims existed at the time
11 Petitioner filed his first Petition. Therefore, this Court concludes that Petitioner’s pleadings
12 are successive and subject to dismissal absent a showing of good cause and prejudice. NRS
13 34.810(2). Petitioner does not argue good cause nor prejudice. See generally, Amended
14 Petition. Thus, this Court further concludes that Petitioner’s Amended Petition does not entitle
15 Petitioner to relief.

16 **II. PETITIONER’S AMENDED PETITION DOES NOT ENTITLE HIM TO** 17 **RELIEF**

18 The Nevada Supreme Court has explained:

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

23 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411
24 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all
25 constitutional claims based on events occurring prior to the entry of the plea[], except those
26 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100
27 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d
28 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be

1 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness
2 of counsel.”). Under NRS 34.810,

3 I. The court *shall* dismiss a petition if the court determines that:

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

7 ...
8 unless the court finds both cause for the failure to present the grounds and actual
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 A proper petition for post-conviction relief must set forth specific factual allegations
23 that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part, “[Petitioner]
24 must allege specific facts supporting the claims in the petition [he] file[s] seeking relief from
25 any conviction or sentence. Failure to raise specific facts rather than just conclusions may
26 cause the petition to be dismissed.” “Bare” and “naked” allegations are not sufficient to
27 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.
28 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted

1 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,
2 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

3 **A. Petitioner’s Claims of Ineffective Assistance of Counsel are Belied by the Record**

4 Petitioner first claims that his counsel, Mr. Michael Sanft, Esq. (“Mr. Sanft”) was
5 ineffective for 1) failing to appropriately investigate; 2) failing to ensure Petitioner fully
6 understood the conditions of the GPA; 3) failing to file a Motion to Withdraw Guilty Plea; and
7 4) failing to file a Notice of Appeal and/or informing Petitioner of his right to appeal. However,
8 this Court finds that Petitioner’s claims are belied by the record.

9 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
10 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his
11 defense.” The United States Supreme Court has long recognized that “the right to counsel is
12 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
13 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
14 (1993).

15 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
16 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
17 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
18 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation
19 fell below an objective standard of reasonableness, and second, that but for counsel's errors,
20 there is a reasonable probability that the result of the proceedings would have been different.
21 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100
22 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is
23 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the
24 same order or even to address both components of the inquiry if the defendant makes an
25 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

26 The Court begins with the presumption of effectiveness and then must determine
27 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
28 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel

1 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
2 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
3 537 P.2d 473, 474 (1975).

4 Counsel cannot be ineffective for failing to make futile objections or arguments. See
5 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
6 "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
7 any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
8 (2002). Further, a defendant who contends his attorney was ineffective because he did not
9 adequately investigate must show how a better investigation would have rendered a more
10 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

11 Based on the above law, the role of a court in considering allegations of ineffective
12 assistance of counsel is "not to pass upon the merits of the action not taken but to determine
13 whether, under the particular facts and circumstances of the case, trial counsel failed to render
14 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
15 (1978). This analysis does not mean that the court should "second guess reasoned choices
16 between trial tactics nor does it mean that defense counsel, to protect himself against
17 allegations of inadequacy, must make every conceivable motion no matter how remote the
18 possibilities are of success." Id. To be effective, the constitution "does not require that counsel
19 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
20 cannot create one and may disserve the interests of his client by attempting a useless charade."
21 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

22 "There are countless ways to provide effective assistance in any given case. Even the
23 best criminal defense attorneys would not defend a particular client in the same way."
24 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after
25 thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State,
26 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
27 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's

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1 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
2 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

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

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

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

18 ...

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

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

23 ...

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

26 ...

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

26 GPA at 5-6. Petitioner affirmed that he had read the GPA. Recorder’s Transcript of Hearing:
27 November 7, 2018 (“Transcript”) at 2:24-25, 3:21-22. Petitioner affirmed that Mr. Sanft
28 answered any questions regarding the GPA. Transcript at 3:1-3, 3:23-4:6. Petitioner affirmed

1 that he understood the charge in the Amended Information. Id. at 3:4-6, 4:7-9. Petitioner
2 affirmed that he signed the GPA. Id. at 3:16-20. Contrary to Petitioner's assertion that he was
3 told he was agreeing to a gross misdemeanor, when asked by the Court about his
4 understanding, Petitioner acknowledged two possible sentencing outcomes:

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

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

9 THE COURT: Okay.

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

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

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand that?

15 THE DEFENDANT: Yes, sir.

16 Id. at 4:16-5:3. Therefore, this Court finds that Petitioner affirmed, both verbally to the court
17 and by signing the GPA, that he knew the terms of the GPA, the potential outcomes of his
18 plea, and that Mr. Sanft answered all the questions Petitioner had to Petitioner's satisfaction.

19 This Court further finds that a review of the record belies Petitioner's claim regarding
20 his appeal. Petitioner timely filed a notice of appeal on March 12, 2019. Therefore, this Court
21 concludes that Petitioner cannot demonstrate prejudice sufficient to satisfy Strickland, as his
22 appellate rights were not infringed upon.

23 Furthermore, to the extent that Petitioner argues Mr. Sanft was ineffective in his
24 investigation, this Court finds that Petitioner fails to allege, much less show, what a proper
25 investigation would have uncovered, much less how that information would have led
26 Petitioner to reject guilty plea negotiations and proceed to trial. See, Amended Petition at 10-
27 11. Instead, Petitioner relies upon the vague allegation that Mr. Sanft "failed to do appropriate
28 investigation of potentially meritorious claims." Id. at 10. Such vague allegations are
insufficient to warrant relief under Molina. 120 Nev. at 192, 87 P.3d at 538. Furthermore,
Petitioner's lack of specific factual support for his claim leaves the same bare and naked under
Hargrove. 100 Nev. at 502, 686 P.2d at 225.

1 This Court concludes, therefore, that because each of Petitioner's arguments in support
2 of his claim of ineffective assistance of counsel is belied by the record, Petitioner is not entitled
3 to relief on this claim.

4 **B. Petitioner's Claim Against his Breach of the Guilty Plea Agreement is Belied by**
5 **the Record**

6 Petitioner goes on to claim that the State violated his right to Due Process in arguing
7 that Petitioner had surrendered the stipulated sentence in the GPA. Amended Petition at 13.
8 This claim is likewise belied by the record.

9 In the GPA, Petitioner expressly agreed to the clause:

10 I understand and agree that, if I fail to interview with the Department of Parole
11 and Probation (P&P), fail to appear at any subsequent hearings in this case, or
12 an independent magistrate, by affidavit review, confirms *probable cause* against
13 me for new criminal charges including reckless driving or DUI, but excluding
14 minor traffic violations, the State will have *the unqualified right to argue for any*
15 *legal sentence* and term of confinement allowable for the crime(s) to which I am
16 pleading guilty, including the use of any prior convictions I may have to increase
17 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.

18 GPA at 2 (emphasis added). Later in the GPA, Petitioner also expressly agreed: "the
19 sentencing judge has the discretion to order the sentences served concurrently or
20 consecutively." Id. at 3.

21 As stated *supra*, a Justice of the Peace found *probable cause* to charge Petitioner with
22 Burglary in Las Vegas Justice Court case 19F01534X. Therefore, pursuant to the express
23 language of the GPA, this Court agrees that the State regained the *unqualified* right to argue
24 for any legal sentence. GPA at 2.

25 Furthermore, this Court finds that Petitioner's representations that the probable cause
26 in the other case had been erroneously found are also belied by the record. In District Court
27 case C338412, in which the Information was filed after probable cause had been found, there

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1 was no dismissal or other acquittal of Petitioner. In fact, Petitioner *pled guilty* in that case to
2 reduced charges.

3 Because Petitioner's claim consists of arguments that are belied by the record,
4 Petitioner is not entitled to relief.

5 **C. Petitioner's Conviction Does Not Implicate Double Jeopardy**

6 Petitioner's third ground for relief alleges that his conviction is invalid because it
7 violates statutory prohibitions against "Double Jeopardy." See, Amended Petition at 17-19.
8 However, this Court concludes that this claim is not cognizable in a Petition for Writ of Habeas
9 Corpus and was waived by Petitioner's failure to raise it on direct appeal.

10 The Nevada Supreme Court has explained:

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

15 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411
16 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea "waive[s] all
17 constitutional claims based on events occurring prior to the entry of the plea[], except those
18 involving voluntariness of the plea[] [itself]." Warden, Nevada State Prison v. Lyons, 100
19 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d
20 1102, 1114 (1996) ("Where the defendant has pleaded guilty, the only claims that may be
21 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness
22 of counsel."). Under NRS 34.810,

23 I. The court *shall* dismiss a petition if the court determines that:

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

27 ...

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

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

This Court finds that this claim does not challenge the voluntariness of Petitioner’s guilty plea, nor does it allege ineffective assistance of counsel. Therefore, this claim should have been pursued on direct appeal, rather than for the first time in a petition. NRS 34.810(1); Franklin, 110 Nev. at 752, 977 P.2d at 1059. Petitioner does not attempt to argue good cause or prejudice for raising this claim for the first time in the instant proceedings. This Court further finds that such an argument would be meritless, as Petitioner specifically and unconditionally waived his right to a direct appeal on this issue. 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.

Therefore, because Petitioner waived all constitutional issues prior to the entry of his plea, and because his claim does not challenge the voluntariness of Petitioner’s plea, this Court concludes that this claim must be denied.

D. Petitioner’s Claim Regarding his PSI Does Not Warrant Relief

Petitioner then claims that his sentence was based on multiple mistakes regarding his criminal history in his PSI. Amended Petition at 20. However, this Court finds that Petitioner

1 fails to demonstrate that he properly raised this claim before the Court at sentencing. This
2 Court further finds that Petitioner's assertions are belied by a reading of the controlling
3 authority regarding his sentence.

4 When imposing a sentence on a defendant, the district court must base its sentence on
5 accurate information contained in a PSI. Stockmeier v. Bd. of Parole Comm'rs, 127 Nev. 243,
6 247, 255 P.3d 209, 212 (2011). "[I]t is important for a defendant to object to his PSI at the
7 time of sentencing because 'Nevada law does not provide any administrative or judicial
8 scheme for amending a PSI after the defendant is sentenced.'" Sasser v. State, 130 Nev. 387,
9 390, 324 P.3d 1221, 1223 (2014) (quoting Stockmeier, 127 Nev. at 249, 255 P.3d at 213).
10 Furthermore, "if not resolved in the defendant's favor, the objections [to the PSI] *must be*
11 *raised on direct appeal*." Stockmeier, 127 Nev. at 250, 255 P.3d at 213 (emphasis added).

12 Pursuant to Stockmeier, Petitioner should have raised his claims regarding the
13 misinformation in his PSI to the Court at sentencing, then upon direct appeal. 127 Nev. at 250,
14 255 P.3d at 213. This Court finds that Petitioner did neither. Therefore, pursuant to Franklin,
15 this Court finds that Petitioner waived these claims. 110 Nev. at 752, 877 P.2d at 1059.
16 Petitioner does not argue good cause or prejudice to overcome the procedural bars, and could
17 not successfully do so, as these alleged incorrections were available at the time Petitioner
18 pursued his direct appeal.

19 This Court further finds that, to the extent Petitioner claims that the timing of his
20 separate claims was misinterpreted by the sentencing court, his claim is belied by the statute
21 governing treatment as a habitual criminal. Pursuant to NRS 207.010, the analysis of prior
22 convictions occurs at the time of *conviction, not at the time the crime was alleged*. See NRS
23 207.010(1). At the time of sentencing, the State argued in support of habitual criminal
24 treatment, and the Court determined that the State had met its burden pursuant to statute.

25 This Court concludes that, because Petitioner waived this claim, and because this Court
26 has found that it is further belied by the record and by applicable laws, this claim must be
27 summarily denied.

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CERTIFICATE OF SERVICE

I hereby certify that service of the State's Findings of Fact, Conclusions of Law, and Order was made this 26th day of February, 2021, by mail to:

JAMES HAYES, #1175077
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY: /s/ E. GOMEZ
Employee of the District Attorney's Office

13F10723X/JVB/jj/L1

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, Defendant(s)
9

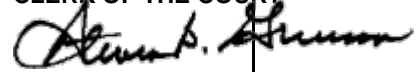
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/9/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov



1 NEO

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

4 JAMES HAYES,

5
6 Petitioner,

Case No: C-16-315718-1

Dept No: III

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

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

10
11 **PLEASE TAKE NOTICE** that on March 9, 2021, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on March 10, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 10 day of March 2021, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

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

23
24 ☒ The United States mail addressed as follows:

James Hayes # 1175077
P.O. Box 208
Indian Springs, NV 89070

25
26
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

Heaven S. Smith

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-793315-W

C-16-315718-1

DEPT NO: III

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

DATE OF HEARING: FEBRUARY 1, 2021
TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court Judge, on the 1st day of February, 2021, the Petitioner not being present, not being represented by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN L. WATERS, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS

1 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross
2 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in
3 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound
4 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

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

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

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

15 I understand and agree that, if...an independent magistrate, by affidavit review,
16 confirms probable cause against me for new criminal charges including reckless
17 driving or DUI, but excluding minor traffic violations, the State will have the
unqualified right to argue for any legal sentence and term of confinement
18 allowable for the crime(s) to which I am pleading guilty, including the use of
any prior convictions I may have to increase my sentence as a habitual criminal
19 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
20 term with the possibility of parole after ten (10) years.

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

24 On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke
25 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace
26 had found probable cause to charge Petitioner with Burglary for acts committed on or around
27 January 26, 2019. The State’s Motion to Revoke Bail was granted after a hearing on February
28 4, 2019.

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

8 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner’s Case Appeal
9 Statement was filed on August 9, 2019 (SCN 78590).

10 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (“Petition”).
11 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the
12 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original
13 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court’s
14 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply
15 to the State’s Response on November 4, 2019. On November 18, 2019, Petitioner’s Petition
16 came before the Court, at which time the Court took the matter OFF CALENDAR due to
17 Petitioner’s pending appeal.

18 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial
19 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN
20 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court’s denial of
21 Petitioner’s Coram Nobis motion. Remittitur issued on October 12, 2020.

22 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner’s Judgment
23 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

24 On February 12, 2020, Petitioner filed an “Amended Petition for Writ of Habeas
25 Corpus” (his “Amended Petition”). This Court ordered a Response to that Amended Petition
26 on March 4, 2020. The State filed its Response to Petitioner’s Amended Petition on April 17,
27 2020. Petitioner replied to the State’s Response on May 15, 2020.

28 //

1 On May 15, 2020, Petitioner also filed an "Affidavit of Actual Innocence not Mere
2 Legal Insufficiency but 'Factual Innocence.'" On May 27, 2020, Petitioner filed a
3 Supplemental Petition. While Petitioner's numerous pleadings were pending, Petitioner filed
4 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.
5 Thereafter, the State filed its Responses to Petitioner's Affidavit of Actual Innocence and
6 Petitioner's Supplemental Petition on June 10, 2020. As a result of Petitioner's Peremptory
7 Challenge, Petitioner's pending matters were taken off calendar on June 15, 2020. On June
8 29, 2020, Petitioner filed his Reply to the State's Response to Petitioner's Affidavit of Actual
9 Innocence.

10 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner's Motion
11 for Peremptory Challenge of Judge Kephart. Chief Judge Bell's Decision and Order was filed
12 on July 8, 2020.

13 On July 23, 2020, Petitioner filed his Reply to the State's Response to Petitioner's
14 Supplemental Petition. Petitioner, that same day, filed a Motion for Ruling for Rule 60b
15 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State
16 filed its Response to Petitioner's Motion for Ruling on September 2, 2020. Petitioner's Motion
17 for Ruling was denied on September 9, 2020.

18 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for "Amended
19 Petition for Writ of Habeas Corpus" 3rd Request. On October 7, 2020, he filed a Motion to
20 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a
21 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;
22 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive
23 pleadings to each of Petitioner's respective filings on November 10, 2020. On November 16,
24 2020, the Court considered, and denied, Petitioner's three Motions. The Court's Order was
25 filed on November 21, 2020.

26 On December 22, 2020, Petitioner filed a "Motion to Compel Judgment Pursuant to
27 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of
28 Habeas Corpus." The State filed its Response to the instant Motion to Compel on January 27,

2021. Contemporaneous with its ruling on the instant Amended Petition, the Court denied Petitioner's Motion to Compel on February 1, 2021.

On February 1, 2021, this matter came on for hearing before this Court. This Court did not accept argument at the time of hearing, but made the following findings and conclusions:

ANALYSIS

I. PETITIONER'S AMENDED PETITION IS BARRED AS SUCCESSIVE

NRS 34.750(3) allows *appointed counsel* to file certain supplemental pleadings within 30 days. However, "[n]o further pleadings may be filed except as ordered by the court." NRS 34.750(5). Additionally, NRS 34.810(2) reads:

A second or successive petition *must be dismissed* if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are 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*.

(Emphasis added). It is strictly the petitioner's burden to demonstrate good cause and prejudice to survive the court's analysis. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994); see also, Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969 972 (2000) (holding, "where a defendant previously has sought relief from the judgment, the defendant's failure to identify all grounds for relief in the first instance should weigh against consideration of the successive motion.")

The Nevada Supreme Court has stated: "Without such limitations on the availability of post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-conviction remedies. In addition, meritless, successive and untimely petitions clog the court system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950. The Nevada Supreme Court recognizes, "[u]nlike initial petitions which certainly require a careful review of the record, successive petitions *may be dismissed based solely on the fact of the petition*." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (emphasis added). In other words, if the claim or allegation was previously available with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,

1 497-98 (1991). Application of NRS 34.810(2) is *mandatory*. State v. Eighth Judicial Dist.
2 Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (noting, “[h]abeas corpus
3 petitions that are filed many years after conviction are an unreasonable burden on the criminal
4 justice system.”) The Riker Court further determined that district courts have no discretion
5 regarding application of statutory procedural bars, and such bars “cannot be ignored [by the
6 district court] when properly raised by the State.” Id. at 233.

7 This Court finds that, in the instant case, Petitioner continues to file supplemental
8 pleadings in the form of multiple addenda as well as the instant “Amended Petition.” However,
9 under NRS 34.750, the right to file supplements lies exclusively with appointed counsel.
10 Furthermore, this Court finds that the factual bases for Petitioner’s claims existed at the time
11 Petitioner filed his first Petition. Therefore, this Court concludes that Petitioner’s pleadings
12 are successive and subject to dismissal absent a showing of good cause and prejudice. NRS
13 34.810(2). Petitioner does not argue good cause nor prejudice. See generally, Amended
14 Petition. Thus, this Court further concludes that Petitioner’s Amended Petition does not entitle
15 Petitioner to relief.

16 **II. PETITIONER’S AMENDED PETITION DOES NOT ENTITLE HIM TO** 17 **RELIEF**

18 The Nevada Supreme Court has explained:

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

23 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411
24 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all
25 constitutional claims based on events occurring prior to the entry of the plea[], except those
26 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100
27 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d
28 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be

1 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness
2 of counsel.”). Under NRS 34.810,

3 I. The court *shall* dismiss a petition if the court determines that:

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

7 ...
8 unless the court finds both cause for the failure to present the grounds and actual
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 A proper petition for post-conviction relief must set forth specific factual allegations
23 that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part, “[Petitioner]
24 must allege specific facts supporting the claims in the petition [he] file[s] seeking relief from
25 any conviction or sentence. Failure to raise specific facts rather than just conclusions may
26 cause the petition to be dismissed.” “Bare” and “naked” allegations are not sufficient to
27 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.
28 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted

1 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,
2 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

3 **A. Petitioner’s Claims of Ineffective Assistance of Counsel are Belied by the Record**

4 Petitioner first claims that his counsel, Mr. Michael Sanft, Esq. (“Mr. Sanft”) was
5 ineffective for 1) failing to appropriately investigate; 2) failing to ensure Petitioner fully
6 understood the conditions of the GPA; 3) failing to file a Motion to Withdraw Guilty Plea; and
7 4) failing to file a Notice of Appeal and/or informing Petitioner of his right to appeal. However,
8 this Court finds that Petitioner’s claims are belied by the record.

9 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal
10 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his
11 defense.” The United States Supreme Court has long recognized that “the right to counsel is
12 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,
13 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323
14 (1993).

15 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove
16 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of
17 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865
18 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation
19 fell below an objective standard of reasonableness, and second, that but for counsel's errors,
20 there is a reasonable probability that the result of the proceedings would have been different.
21 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100
22 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is
23 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the
24 same order or even to address both components of the inquiry if the defendant makes an
25 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

26 The Court begins with the presumption of effectiveness and then must determine
27 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
28 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel

1 does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of
2 competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432,
3 537 P.2d 473, 474 (1975).

4 Counsel cannot be ineffective for failing to make futile objections or arguments. See
5 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the
6 "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if
7 any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167
8 (2002). Further, a defendant who contends his attorney was ineffective because he did not
9 adequately investigate must show how a better investigation would have rendered a more
10 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

11 Based on the above law, the role of a court in considering allegations of ineffective
12 assistance of counsel is "not to pass upon the merits of the action not taken but to determine
13 whether, under the particular facts and circumstances of the case, trial counsel failed to render
14 reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711
15 (1978). This analysis does not mean that the court should "second guess reasoned choices
16 between trial tactics nor does it mean that defense counsel, to protect himself against
17 allegations of inadequacy, must make every conceivable motion no matter how remote the
18 possibilities are of success." Id. To be effective, the constitution "does not require that counsel
19 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel
20 cannot create one and may disserve the interests of his client by attempting a useless charade."
21 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

22 "There are countless ways to provide effective assistance in any given case. Even the
23 best criminal defense attorneys would not defend a particular client in the same way."
24 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after
25 thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State,
26 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784
27 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's

28 //

1 challenged conduct on the facts of the particular case, viewed as of the time of counsel's
2 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

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

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

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

18 ...

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

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

23 ...

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

26 ...

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

26 GPA at 5-6. Petitioner affirmed that he had read the GPA. Recorder’s Transcript of Hearing:
27 November 7, 2018 (“Transcript”) at 2:24-25, 3:21-22. Petitioner affirmed that Mr. Sanft
28 answered any questions regarding the GPA. Transcript at 3:1-3, 3:23-4:6. Petitioner affirmed

1 that he understood the charge in the Amended Information. Id. at 3:4-6, 4:7-9. Petitioner
2 affirmed that he signed the GPA. Id. at 3:16-20. Contrary to Petitioner's assertion that he was
3 told he was agreeing to a gross misdemeanor, when asked by the Court about his
4 understanding, Petitioner acknowledged two possible sentencing outcomes:

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

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

9 THE COURT: Okay.

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

11 THE COURT: Okay. You can also be fined up to \$5,000 if I treat it as a felony.

12 And you could be fined up to \$2,000 if I treat it as a gross misdemeanor?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You understand that?

15 THE DEFENDANT: Yes, sir.

16 Id. at 4:16-5:3. Therefore, this Court finds that Petitioner affirmed, both verbally to the court
17 and by signing the GPA, that he knew the terms of the GPA, the potential outcomes of his
18 plea, and that Mr. Sanft answered all the questions Petitioner had to Petitioner's satisfaction.

19 This Court further finds that a review of the record belies Petitioner's claim regarding
20 his appeal. Petitioner timely filed a notice of appeal on March 12, 2019. Therefore, this Court
21 concludes that Petitioner cannot demonstrate prejudice sufficient to satisfy Strickland, as his
22 appellate rights were not infringed upon.

23 Furthermore, to the extent that Petitioner argues Mr. Sanft was ineffective in his
24 investigation, this Court finds that Petitioner fails to allege, much less show, what a proper
25 investigation would have uncovered, much less how that information would have led
26 Petitioner to reject guilty plea negotiations and proceed to trial. See, Amended Petition at 10-
27 11. Instead, Petitioner relies upon the vague allegation that Mr. Sanft "failed to do appropriate
28 investigation of potentially meritorious claims." Id. at 10. Such vague allegations are
insufficient to warrant relief under Molina. 120 Nev. at 192, 87 P.3d at 538. Furthermore,
Petitioner's lack of specific factual support for his claim leaves the same bare and naked under
Hargrove. 100 Nev. at 502, 686 P.2d at 225.

1 This Court concludes, therefore, that because each of Petitioner's arguments in support
2 of his claim of ineffective assistance of counsel is belied by the record, Petitioner is not entitled
3 to relief on this claim.

4 **B. Petitioner's Claim Against his Breach of the Guilty Plea Agreement is Belied by**
5 **the Record**

6 Petitioner goes on to claim that the State violated his right to Due Process in arguing
7 that Petitioner had surrendered the stipulated sentence in the GPA. Amended Petition at 13.
8 This claim is likewise belied by the record.

9 In the GPA, Petitioner expressly agreed to the clause:

10 I understand and agree that, if I fail to interview with the Department of Parole
11 and Probation (P&P), fail to appear at any subsequent hearings in this case, or
12 an independent magistrate, by affidavit review, confirms *probable cause* against
13 me for new criminal charges including reckless driving or DUI, but excluding
14 minor traffic violations, the State will have *the unqualified right to argue for any*
15 *legal sentence* and term of confinement allowable for the crime(s) to which I am
16 pleading guilty, including the use of any prior convictions I may have to increase
17 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.

18 GPA at 2 (emphasis added). Later in the GPA, Petitioner also expressly agreed: "the
19 sentencing judge has the discretion to order the sentences served concurrently or
20 consecutively." Id. at 3.

21 As stated *supra*, a Justice of the Peace found *probable cause* to charge Petitioner with
22 Burglary in Las Vegas Justice Court case 19F01534X. Therefore, pursuant to the express
23 language of the GPA, this Court agrees that the State regained the *unqualified* right to argue
24 for any legal sentence. GPA at 2.

25 Furthermore, this Court finds that Petitioner's representations that the probable cause
26 in the other case had been erroneously found are also belied by the record. In District Court
27 case C338412, in which the Information was filed after probable cause had been found, there

28 //

1 was no dismissal or other acquittal of Petitioner. In fact, Petitioner *pled guilty* in that case to
2 reduced charges.

3 Because Petitioner's claim consists of arguments that are belied by the record,
4 Petitioner is not entitled to relief.

5 **C. Petitioner's Conviction Does Not Implicate Double Jeopardy**

6 Petitioner's third ground for relief alleges that his conviction is invalid because it
7 violates statutory prohibitions against "Double Jeopardy." See, Amended Petition at 17-19.
8 However, this Court concludes that this claim is not cognizable in a Petition for Writ of Habeas
9 Corpus and was waived by Petitioner's failure to raise it on direct appeal.

10 The Nevada Supreme Court has explained:

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

15 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411
16 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea "waive[s] all
17 constitutional claims based on events occurring prior to the entry of the plea[], except those
18 involving voluntariness of the plea[] [itself]." Warden, Nevada State Prison v. Lyons, 100
19 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d
20 1102, 1114 (1996) ("Where the defendant has pleaded guilty, the only claims that may be
21 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness
22 of counsel."). Under NRS 34.810,

23 I. The court *shall* dismiss a petition if the court determines that:

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

27 ...

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

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

This Court finds that this claim does not challenge the voluntariness of Petitioner’s guilty plea, nor does it allege ineffective assistance of counsel. Therefore, this claim should have been pursued on direct appeal, rather than for the first time in a petition. NRS 34.810(1); Franklin, 110 Nev. at 752, 977 P.2d at 1059. Petitioner does not attempt to argue good cause or prejudice for raising this claim for the first time in the instant proceedings. This Court further finds that such an argument would be meritless, as Petitioner specifically and unconditionally waived his right to a direct appeal on this issue. 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.

Therefore, because Petitioner waived all constitutional issues prior to the entry of his plea, and because his claim does not challenge the voluntariness of Petitioner’s plea, this Court concludes that this claim must be denied.

D. Petitioner’s Claim Regarding his PSI Does Not Warrant Relief

Petitioner then claims that his sentence was based on multiple mistakes regarding his criminal history in his PSI. Amended Petition at 20. However, this Court finds that Petitioner

1 fails to demonstrate that he properly raised this claim before the Court at sentencing. This
2 Court further finds that Petitioner's assertions are belied by a reading of the controlling
3 authority regarding his sentence.

4 When imposing a sentence on a defendant, the district court must base its sentence on
5 accurate information contained in a PSI. Stockmeier v. Bd. of Parole Comm'rs, 127 Nev. 243,
6 247, 255 P.3d 209, 212 (2011). "[I]t is important for a defendant to object to his PSI at the
7 time of sentencing because 'Nevada law does not provide any administrative or judicial
8 scheme for amending a PSI after the defendant is sentenced.'" Sasser v. State, 130 Nev. 387,
9 390, 324 P.3d 1221, 1223 (2014) (quoting Stockmeier, 127 Nev. at 249, 255 P.3d at 213).
10 Furthermore, "if not resolved in the defendant's favor, the objections [to the PSI] *must be*
11 *raised on direct appeal*." Stockmeier, 127 Nev. at 250, 255 P.3d at 213 (emphasis added).

12 Pursuant to Stockmeier, Petitioner should have raised his claims regarding the
13 misinformation in his PSI to the Court at sentencing, then upon direct appeal. 127 Nev. at 250,
14 255 P.3d at 213. This Court finds that Petitioner did neither. Therefore, pursuant to Franklin,
15 this Court finds that Petitioner waived these claims. 110 Nev. at 752, 877 P.2d at 1059.
16 Petitioner does not argue good cause or prejudice to overcome the procedural bars, and could
17 not successfully do so, as these alleged incorrections were available at the time Petitioner
18 pursued his direct appeal.

19 This Court further finds that, to the extent Petitioner claims that the timing of his
20 separate claims was misinterpreted by the sentencing court, his claim is belied by the statute
21 governing treatment as a habitual criminal. Pursuant to NRS 207.010, the analysis of prior
22 convictions occurs at the time of *conviction, not at the time the crime was alleged*. See NRS
23 207.010(1). At the time of sentencing, the State argued in support of habitual criminal
24 treatment, and the Court determined that the State had met its burden pursuant to statute.

25 This Court concludes that, because Petitioner waived this claim, and because this Court
26 has found that it is further belied by the record and by applicable laws, this claim must be
27 summarily denied.

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CERTIFICATE OF SERVICE

I hereby certify that service of the State's Findings of Fact, Conclusions of Law, and Order was made this 26th day of February, 2021, by mail to:

JAMES HAYES, #1175077
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY: /s/ E. GOMEZ
Employee of the District Attorney's Office

13F10723X/JVB/jj/L1

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/9/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov

Heather S. Smith

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-793315-W

C-16-315718-1

DEPT NO: III

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

DATE OF HEARING: FEBRUARY 1, 2021

TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court Judge, on the 1st day of February, 2021, the Petitioner not being present, not being represented by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN L. WATERS, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

STATEMENT OF THE CASE

On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS

1 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross
2 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in
3 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound
4 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

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

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

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

15 I understand and agree that, if...an independent magistrate, by affidavit review,
16 confirms probable cause against me for new criminal charges including reckless
17 driving or DUI, but excluding minor traffic violations, the State will have the
unqualified right to argue for any legal sentence and term of confinement
18 allowable for the crime(s) to which I am pleading guilty, including the use of
any prior convictions I may have to increase my sentence as a habitual criminal
19 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
20 term with the possibility of parole after ten (10) years.

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

24 On January 31, 2019, the State filed a State’s Notice of Motion and Motion to Revoke
25 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace
26 had found probable cause to charge Petitioner with Burglary for acts committed on or around
27 January 26, 2019. The State’s Motion to Revoke Bail was granted after a hearing on February
28 4, 2019.

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2 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that
3 Petitioner should be punished under NRS 207.010 (the “Small Habitual Statute”). The Court
4 agreed, and Petitioner was sentenced to sixty (60) to one hundred seventy-four (174) months
5 in the Nevada Department of Corrections (NDOC), consecutive to Petitioner’s sentence in
6 another case (C315125). The Court also awarded Petitioner ten (10) days credit for time
7 served. The Judgment of Conviction in this case was filed on March 12, 2019.

8 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner’s Case Appeal
9 Statement was filed on August 9, 2019 (SCN 78590).

10 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus (“Petition”).
11 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the
12 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original
13 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court’s
14 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply
15 to the State’s Response on November 4, 2019. On November 18, 2019, Petitioner’s Petition
16 came before the Court, at which time the Court took the matter OFF CALENDAR due to
17 Petitioner’s pending appeal.

18 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial
19 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN
20 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court’s denial of his
21 Coram Nobis motion. Remittitur issued on October 12, 2020.

22 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner’s Judgment
23 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

24 On February 12, 2020, Petitioner filed an “Amended Petition for Writ of Habeas
25 Corpus” (his “Amended Petition”). This Court ordered a Response to that Amended Petition
26 on March 4, 2020. Thereafter, on March 6, 2020, Petitioner filed a “Petition: Expeditious
27 Judicial Examination NRS 34.360-34.830” (his “Petition: EJE”). Pursuant to this Court’s

28 //

1 order, the State filed its Response to both filings on April 17, 2020. Petitioner replied to the
2 State's Response on May 15, 2020.

3 On May 15, 2020, Petitioner also filed an "Affidavit of Actual Innocence not Mere
4 Legal Insufficiency but 'Factual Innocence.'" On May 27, 2020, Petitioner filed a
5 Supplemental Petition. While Petitioner's numerous pleadings were pending, Petitioner filed
6 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.
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11 Innocence.

12 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Petitioner's Motion
13 for Peremptory Challenge of Judge Kephart. Chief Judge Bell's Decision and Order was filed
14 on July 8, 2020.

15 On July 23, 2020, Petitioner filed his Reply to the State's Response to Petitioner's
16 Supplemental Petition. Petitioner, that same day, filed a Motion for Ruling for Rule 60b
17 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State
18 filed its Response to Petitioner's Motion for Ruling on September 2, 2020. Petitioner's Motion
19 for Ruling was denied on September 9, 2020.

20 On September 25, 2020, Petitioner filed a Motion for Expeditious Ruling for "Amended
21 Petition for Writ of Habeas Corpus" 3rd Request. On October 7, 2020, he filed a Motion to
22 Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020, Petitioner filed a
23 Motion to Reconsider Order Denying Motion for Ruling for Rule 60b Motion for Relief;
24 Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State filed responsive
25 pleadings to each of Petitioner's respective filings on November 10, 2020. On November 16,
26 2020, the Court considered, and denied, Petitioner's three Motions. The Court's Order was
27 filed on November 21, 2020.

28 //

1 On December 22, 2020, Petitioner filed the instant "Motion to Compel Judgment
2 Pursuant to Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for
3 Writ of Habeas Corpus." The State filed its Response to the instant Motion to Compel on
4 January 27, 2021.

5 On February 1, 2021, this matter came on for hearing before this Court. This Court did
6 not accept argument at the time of hearing, but made the following findings and conclusions:

7 ANALYSIS

8 **I. PETITIONER'S RELIANCE UPON THE FEDERAL RULES OF CIVIL** 9 **PROCEDURE IS INAPPROPRIATE**

10 In support of his instant Motion, Petitioner cites to Federal Rule of Civil Procedure
11 12(c). Instant Motion at 1, 3. However, this Court finds that Petitioner's reliance upon that
12 Rule is improper, as Nevada law clearly details that even the *Nevada* Rules of Civil Procedure
13 only apply in the instant proceedings to the extent that they are not inconsistent with Nevada
14 statutes guiding habeas proceedings. See, NRS 34.780(1); State v. Powell, 122 Nev. 751, 757,
15 138 P.3d 453, 457 (2006); Mazzan v. State, 109 Nev. 1067, 1072, 863 P.2d 1035, 1038 (1993).
16 This Court finds that Petitioner has not offered any rational, much less justification, for his
17 reliance upon the Federal Rule. Therefore, this Court concludes that Petitioner's reliance
18 thereon does not provide relevant support for the relief Petitioner seeks.

19 **II. PETITIONER'S DECISION TO ENTER A GUILTY PLEA RENDERED THE** 20 **PRELIMINARY HEARING RESULT IRRELEVANT**

21 The Nevada Supreme Court has explained that objections to the filing of an Amended
22 Information are waived when they are not asserted in pretrial motions, nor on direct appeal
23 from conviction. Roseneau v. State, 90 Nev. 161, 521 P.2d 369 (1974); NRS 174.105. A
24 review of Petitioner's entry of plea demonstrates that not only did Petitioner fail to object to
25 the Amended Information (charging Petitioner with Attempt Grand Larceny), but Petitioner
26 requested that the Court accept that filing, and Petitioner's guilty plea to the charge contained
27 therein:

28 //

1 THE COURT: Mr. Hayes, I've been handed a copy of an amended
2 information in this case. Have you received a copy of that?

3 THE DEFENDANT: Yes sir.

4 THE COURT: Do you have any objection of it being filed here today?

5 THE DEFENDANT: No, sir.

6 ...

7 THE COURT: ...So how do you plead to the amended information that
8 charges you with attempt grand larceny that took place on or about the 9th day
9 of April, 2013 while you're here in Las Vegas, Clark County, Nevada, where
10 you willfully and lawfully and feloniously and intentionally deprived the owner
11 permanently, thereof, by attempting to steal, take or carry away lawful money
12 of the United States, \$650 or greater, owned by a Joshua Jarvis. And you -- by
13 doing this you were attempting to steal lawful money and an iPhone from Joshua
14 Jarvis. How do you plead to that?

15 THE DEFENDANT: Guilty by the way of *Alford*.

16 Recorder's Transcript of Hearing, dated November 7, 2018 (filed September 25, 2019 in Case
17 No. C-16-315718-1), at 2, 5.

18 This Court finds that Petitioner not only understood the Amended Information, and the
19 charge contained therein, but further asked the Court to accept the same. Therefore, this Court
20 concludes that Petitioner waived any future challenge to that charge and document.

21 **ORDER**

22 THEREFORE, Court ORDERED, because Petitioner James H. Hayes has failed to
23 provide any relevant legal basis for the relief he now seeks, Petitioner's instant Motion to
24 Compel shall be, and is, DENIED.

Dated this 17th day of March, 2021

25 DATED this _____ day of February, 2021.

26 
27 _____
28 DISTRICT COURT JUDGE

29 Respectfully submitted,

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

BB9 076 8B3E 35C3
Monica Trujillo
District Court Judge

33 BY /s/ JONATHAN VANBOSKERCK
34 JONATHAN VANBOSKERCK
35 Chief Deputy District Attorney
36 Nevada Bar #006528

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CERTIFICATE OF SERVICE

I hereby certify that service of the State's Findings of Fact, Conclusions of Law, and Order was made this 26th day of February, 2021, by mail to:

JAMES HAYES, #1175077
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY: /s/ E. GOMEZ

Employee of the District Attorney's Office

13F10723X/JVB/jj/L1

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/17/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov



NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES HAYES,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-16-315718-1

Dept No: III

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

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

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on March 19, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 19 day of March 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

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

☒ The United States mail addressed as follows:

James Hayes # 1175077
P.O. Box 208
Indian Springs, NV 89070

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

Heather S. Smith

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-19-793315-W

C-16-315718-1

DEPT NO: III

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

DATE OF HEARING: FEBRUARY 1, 2021

TIME OF HEARING: 8:30 AM

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court Judge, on the 1st day of February, 2021, the Petitioner not being present, not being represented by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN L. WATERS, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

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25 pleadings to each of Petitioner's respective filings on November 10, 2020. On November 16,
26 2020, the Court considered, and denied, Petitioner's three Motions. The Court's Order was
27 filed on November 21, 2020.

28 //

1 On December 22, 2020, Petitioner filed the instant "Motion to Compel Judgment
2 Pursuant to Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for
3 Writ of Habeas Corpus." The State filed its Response to the instant Motion to Compel on
4 January 27, 2021.

5 On February 1, 2021, this matter came on for hearing before this Court. This Court did
6 not accept argument at the time of hearing, but made the following findings and conclusions:

7 ANALYSIS

8 **I. PETITIONER'S RELIANCE UPON THE FEDERAL RULES OF CIVIL** 9 **PROCEDURE IS INAPPROPRIATE**

10 In support of his instant Motion, Petitioner cites to Federal Rule of Civil Procedure
11 12(c). Instant Motion at 1, 3. However, this Court finds that Petitioner's reliance upon that
12 Rule is improper, as Nevada law clearly details that even the *Nevada* Rules of Civil Procedure
13 only apply in the instant proceedings to the extent that they are not inconsistent with Nevada
14 statutes guiding habeas proceedings. See, NRS 34.780(1); State v. Powell, 122 Nev. 751, 757,
15 138 P.3d 453, 457 (2006); Mazzan v. State, 109 Nev. 1067, 1072, 863 P.2d 1035, 1038 (1993).
16 This Court finds that Petitioner has not offered any rational, much less justification, for his
17 reliance upon the Federal Rule. Therefore, this Court concludes that Petitioner's reliance
18 thereon does not provide relevant support for the relief Petitioner seeks.

19 **II. PETITIONER'S DECISION TO ENTER A GUILTY PLEA RENDERED THE** 20 **PRELIMINARY HEARING RESULT IRRELEVANT**

21 The Nevada Supreme Court has explained that objections to the filing of an Amended
22 Information are waived when they are not asserted in pretrial motions, nor on direct appeal
23 from conviction. Roseneau v. State, 90 Nev. 161, 521 P.2d 369 (1974); NRS 174.105. A
24 review of Petitioner's entry of plea demonstrates that not only did Petitioner fail to object to
25 the Amended Information (charging Petitioner with Attempt Grand Larceny), but Petitioner
26 requested that the Court accept that filing, and Petitioner's guilty plea to the charge contained
27 therein:

28 //

1 THE COURT: Mr. Hayes, I've been handed a copy of an amended
2 information in this case. Have you received a copy of that?

3 THE DEFENDANT: Yes sir.

4 THE COURT: Do you have any objection of it being filed here today?

5 THE DEFENDANT: No, sir.

6 ...

7 THE COURT: ...So how do you plead to the amended information that
8 charges you with attempt grand larceny that took place on or about the 9th day
9 of April, 2013 while you're here in Las Vegas, Clark County, Nevada, where
10 you willfully and lawfully and feloniously and intentionally deprived the owner
11 permanently, thereof, by attempting to steal, take or carry away lawful money
12 of the United States, \$650 or greater, owned by a Joshua Jarvis. And you -- by
13 doing this you were attempting to steal lawful money and an iPhone from Joshua
14 Jarvis. How do you plead to that?

15 THE DEFENDANT: Guilty by the way of *Alford*.

16 Recorder's Transcript of Hearing, dated November 7, 2018 (filed September 25, 2019 in Case
17 No. C-16-315718-1), at 2, 5.

18 This Court finds that Petitioner not only understood the Amended Information, and the
19 charge contained therein, but further asked the Court to accept the same. Therefore, this Court
20 concludes that Petitioner waived any future challenge to that charge and document.

21 **ORDER**

22 THEREFORE, Court ORDERED, because Petitioner James H. Hayes has failed to
23 provide any relevant legal basis for the relief he now seeks, Petitioner's instant Motion to
24 Compel shall be, and is, DENIED.

Dated this 17th day of March, 2021

25 DATED this _____ day of February, 2021.

26 
27 _____
28 DISTRICT COURT JUDGE

29 Respectfully submitted,

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

BB9 076 8B3E 35C3
Monica Trujillo
District Court Judge

33 BY /s/ JONATHAN VANBOSKERCK
34 JONATHAN VANBOSKERCK
35 Chief Deputy District Attorney
36 Nevada Bar #006528

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CERTIFICATE OF SERVICE

I hereby certify that service of the State's Findings of Fact, Conclusions of Law, and Order was made this 26th day of February, 2021, by mail to:

JAMES HAYES, #1175077
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY: /s/ E. GOMEZ
Employee of the District Attorney's Office

13F10723X/JVB/jj/L1

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 James Hayes, Plaintiff(s)

CASE NO: A-19-793315-W

7 vs.

DEPT. NO. Department 3

8 Nevada State of, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 3/17/2021

15 Melissa Boudreaux

mezama@clarkcountynv.gov

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 23, 2016

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

June 23, 2016 10:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kristen Brown

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

BOND

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 06, 2016

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

December 06, 2016 8:30 AM Motion for Discovery

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 08, 2016

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

December 08, 2016 8:30 AM Motion for Discovery

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

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

JOURNAL ENTRIES

- Deft. not present; PRESENCE WAIVED.

COURT ORDERED, as follows:

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

to whether the information needs to be turned over.

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

Ms. Sauter to prepare the order.

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 20, 2016

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

December 20, 2016 8:30 AM Calendar Call

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****December 22, 2016**

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

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

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

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

JOURNAL ENTRIES

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

BOND

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 22, 2016

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

December 22, 2016 9:00 AM Motion to Consolidate

HEARD BY: Johnson, Eric **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Tia Everett
 Natalie Ortega

RECORDER: Angie Calvillo

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND

PRINT DATE: 05/04/2021

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Minutes Date: June 23, 2016

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 26, 2017

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

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

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

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

JOURNAL ENTRIES

- COURT ORDERED, trial date SET.

CUSTODY

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 09, 2017

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

February 09, 2017 3:00 AM Minute Order

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

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

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 06, 2017

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

March 06, 2017 8:30 AM Trial Setting

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC)

3/22/2017 8:30 AM CALENDAR CALL

3/27/2017 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 22, 2017

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

March 22, 2017 8:30 AM Calendar Call

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC)

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 03, 2017

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

April 03, 2017 8:30 AM Status Check

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Patti Slattery

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC-NDC)

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 01, 2017**

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

May 01, 2017 8:30 AM Status Check

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC-NDC)

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

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

9/27/2017 8:30 AM CALENDAR CALL

PRINT DATE: 05/04/2021

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Minutes Date: June 23, 2016

10/02/2017 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 31, 2017

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

May 31, 2017 8:30 AM Status Check

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 12, 2017

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

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

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC-NDC)

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 10, 2017

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

July 10, 2017 8:30 AM Status Check

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 30, 2017

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

August 30, 2017 8:30 AM Pre Trial Conference

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: April Watkins

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

MATTER RECALLED:

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

BOND (COC-NDC)

PRINT DATE: 05/04/2021

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Minutes Date: June 23, 2016

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 27, 2017

C-16-315718-1	State of Nevada vs James Hayes
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September 27, 2017 9:00 AM All Pending Motions

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

- CALENDAR CALL ... STATUS CHECK: NEGOTIATIONS

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

BOND (COC-NDC)

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 25, 2017

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

October 25, 2017 8:30 AM All Pending Motions

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

CUSTODY (COC-NDC)

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

5/09/2018 8:30 AM CALENDAR CALL

5/14/2018 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 11, 2018

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

April 11, 2018 8:30 AM Pre Trial Conference

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett
 Christopher Darling

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 23, 2018**

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

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

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

COURT CLERK: Tia Everett
Chante Williams

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC-NDC)

5/9/18 8:30 AM

PRINT DATE: 05/04/2021

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Minutes Date: June 23, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 09, 2018

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

May 09, 2018 8:30 AM Calendar Call

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Rubina Feda

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC-NDC)

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 06, 2018**

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

June 06, 2018 8:30 AM Status Check

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

BOND (COC-NDC)

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

CUSTODY (COC)

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

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

11/07/2018 8:30 AM CALENDAR CALL

11/13/2018 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 15, 2018

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

August 15, 2018 8:30 AM All Pending Motions

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

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

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 29, 2018

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

August 29, 2018 8:30 AM All Pending Motions

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

- CONFIRMATION OF COUNSEL (SANFT)

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

DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS

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

PRINT DATE: 05/04/2021

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Minutes Date: June 23, 2016

Court is unable to consider the Petition.

BOND (COC)

September 26, 2018

C-16-315718-1	State of Nevada vs James Hayes
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PRESENT:	HAYES, JAMES HOWARD	Defendant
	Holthus, Mary Kay	Attorney
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff

BOND (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 07, 2018

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

November 07, 2018 8:30 AM Calendar Call

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

- Amended Information FILED IN OPEN COURT.

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

BOND

3/06/2019 8:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 04, 2019

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

February 04, 2019 8:30 AM Motion

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

CUSTODY (COC-NDC)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

March 06, 2019 8:30 AM Sentencing

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

COURT CLERK: Tia Everett
 Shannon Emmons

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 03, 2019

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

June 03, 2019 8:30 AM Motion

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

NDC

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 15, 2019

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

July 15, 2019 8:30 AM Motion

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

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

JOURNAL ENTRIES

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 07, 2019

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

October 07, 2019 8:30 AM Motion

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	State of Nevada	Plaintiff
	Wolfson, Steven B	Attorney

JOURNAL ENTRIES

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 06, 2020

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

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

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Brooks, Parker Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 18, 2020**

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

March 18, 2020 8:30 AM Motion

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Brooks, Parker Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

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

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 01, 2020

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

June 01, 2020 10:15 AM Motion for Relief

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	State of Nevada	Plaintiff
	Waters, Steven L	Attorney

JOURNAL ENTRIES

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

NDC

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 15, 2020

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

June 15, 2020 10:15 AM Motion for Relief

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	State of Nevada	Plaintiff
	Waters, Steven L	Attorney

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Further, Court stated Defendant has filed a motion to disqualify him from the matter; therefore, COURT ORDERED, matter OFF CALENDAR pending decision.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 22, 2020

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

June 22, 2020 10:15 AM Motion to Vacate Sentence

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT:	Dunn, Ann Marie	Attorney
	Hayes, James Howard	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted matter is on calendar for a Motion to Vacate Sentence; however, Defendant has filed a Motion to Disqualify this Court and ORDERED, matter OFF CALENDAR pending the decision of the Motion to Disqualify.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 24, 2020

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

August 24, 2020 10:15 AM Motion

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Marland, Melanie H. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- Court noted this matter is pending appeal based on the Court's previous denial of the motion and COURT ORDERED, matter OFF CALENDAR.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 15, 2021

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

March 15, 2021 8:30 AM Motion to Compel

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Alan Castle

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT:	State of Nevada	Plaintiff
	Waters, Steven L	Attorney

JOURNAL ENTRIES

- Court notes a Findings of Fact, Conslusions of Law FILED on 3/9/21 which may render this motion. MATTER CONTINUED for State to respond.

NDC

CONTINUED TO:
3/29/21 8:30 A..M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 29, 2021

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

March 29, 2021 8:30 AM Motion to Compel

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Alan Castle

RECORDER: Rebeca Gomez

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Zadrowski, Bernard B. Attorney

JOURNAL ENTRIES

- Court notes Defendant not present and presence is waived for these proceedings. Court notes the State was asked to investigate whether Defendants issues had been adjudicated and a Findings of Fact, Conclusions of Law FILED. Upon Court's inquiry, State advised these same issues were addressed in a CIVIL petition which is where the order was filed. COURT FINDS MATTER OFF CALENDAR as these issues are MOOT having already been adjudicated.

NDC

EXHIBIT(S) LIST

Case No.: ~~6294840~~ C315718

Hearing / Trial Date: 8/22/2018 3/6/19

Dept. No.: 19

Judge: William Kephart

Court Clerk: Tia Everett /Shannon Emmons

Plaintiff: The State of Nevada

Recorder / Reporter: Christine Erickson

Counsel for Plaintiff: Michael Dickerson & William Roles

VS.

Defendant: James Howard Hayes

Counsel for Defendant: Michael Sanft

HEARING / TRIAL BEFORE THE COURT

STATE'S EXHIBITS

[illegible]

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DESIGNATION OF RECORD ON APPEAL; DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,

Plaintiff(s),

vs.

JAMES HOWARD HAYES
aka JAMES HOWARD HAYES, JR.,

Defendant(s).

Case No: C-16-315718-1

Dept No: III

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 4 day of May 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk