

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 JORGE MENDOZA,

5 Appellant,

6 vs.

7 THE STATE OF NEVADA,

8 Respondent.
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S.Ct. No. 82740

Electronically Filed
Apr 12 2021 08:12 a.m.
D.C. No. A-19-804157-W stemming
from C-15-303991-1
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT

CIVIL WRIT OF HABEAS CORPUS
AND
UNDERLYING CRIMINAL CASE
APPEAL

- 14 1. Judicial District: Eighth Judicial District, Clark County, The Honorable
15 Bita Yeager, Department 1 for the postconviction writ of habeas corpus
16 action. Preceded by The Honorable Carolyn Ellsworth previously of
17 Department V, who handled the Jury Trial and Sentencing. District
18 Court A-19-804157-W and C-15-303991-1.
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22 2. Sentence: His sentence was for life with chance of parole after 23
23 years; 800 days jail credit. Three defendants took the case to Jury Trial
24 and were sentenced. 2 other defendants took plea deals and testified for
25 the state. Mr. Mendoza testified, but it was not part of any agreement
26 with the State - rather a result of the ill-fated advice of his disbarred
27 counsel..
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1		Mendoza C-15-303991-1	Laguna C-15-303991-5	Murphy C-15-303991-4
2	Ct 1 Conspiracy to commit robbery	Same	28-72 months	same
3	Ct 2 Burglary while In possession of dangerous weapon	48 to 180 months concurrent to count 1	48-150 months Concurrent to count 1	48 to 180 months concurrent to ct 1
4	Ct 3 Home invasion while in poss of a deadly	48 to 180 months concurrent to count 2	66 to 180 months concurrent to count 2	same
5	Count 4 Attempt Robbery with use of a deadly weapon	36 to 120 months with consecutive weapon enhancement 36 to 120 months concurrent to count 3	48 to 120 months with consecutive weapon enhancement 48 to 120 months concurrent to count 3	48 to 120 months consecutive weapons enhancement 36 to 120 months concurrent to count 3
6				
7	Count 5 Attempt Robbery with use of a deadly weapon	36 to 120 months with consecutive weapons enhancement 36 to 120 months concurrent to count 4	48 to 120 months consecutive weapon enhancement 48 to 120 months concurrent to count 4	48 to 120 months consecutive weapons enhancement 36 to 120 months concurrent to count 4
8				
9	Count 6 Murder with use of a deadly weapon (Codefendants found guilty of 2 nd degree; Mr. Menoza of 1 st degree)	1 st Life with possibility of parole after 20 years consecutive weapons enhancement 48 to 240 months concurrent to count 5	2 nd degree Life with poss of parole after 20 years Consecutive weapons enhancement 36 to 240 months Concurrent to count 5	2 nd degree same
10				
11	Count 7 attempt murder with use of a deadly weapon	48 to 240 months consecutive weapons enhancement 36 to 240 months concurrent to charge 6 800 days credit	84 to 240 months Consecutive weapon enhancement 84 to 240 months consecutive to count 6 Credit for 655 days served	84 to 240 months consecutive weapon enhancement 36 to 240 months consecutive to count 6 719 days credit
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16		23 years to life	27 years to life	23 years to life

17 2 codefendants took plea deals to testify for the State:

18	Codefendants		
19	Robert Figueroa	Sentenced to 28 months to 72 months for count 1 conspiracy to commit robbery and Count 2 robbery with use of a deadly weapon 55 months to 180 months Consecutive enhancement 12 months to 48 months and 786 days credit for time served <u>Aggregate sentence of 67 months to 228 months in the NDC</u>	C-15-303991-2
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24	Summer Larsen	Sentenced on count 1 conspiracy to commit robbery to 12 to 48 months with probation not to exceed 5 years And on count 2 attempt robbery to 16 months to 72 months with 740 days credit and probation not to exceed 5 years for 4 charges of trafficking in controlled substance guilty plea agreement to 1 count of trafficking Felony B sentencing	C-15-303991-3
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b) The Appellant's sentence has not been stayed.

c) The Appellant has not been admitted to bail pending appeal.

3. All attorneys who represented Appellant in District Court were appointed.

4. Attorney filing this docketing statement:

Diane C. Lowe Esq.

Lowe Law, LLC

7350 West Centennial Parkway #3085

Las Vegas, NV 89131

Telephone 725 212 2451

5. Appellate counsel is appointed.

6. Respondent Attorney:

District Attorney Alexander G. Chen, Esq.

Clark County District Attorney's Office

200 Lewis Avenue, 9th Floor

Las Vegas, Nevada 89155

(702) 671-2750

1 Attorney General Aaron D. Ford

2 Nevada Department of Justice

3 100 North Carson Street

4 Carson City, Nevada 89701

5 Telephone 775 684 1100

6 Client: The State of Nevada

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9 7. Disposition Below: Judgment upon jury trial guilty verdicts on all
10 counts after 19-day jury trial. Post-conviction writ of habeas corpus
11 to overturn conviction due to ineffective assistant of counsel denied.
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14 8. Does this appeal raise an issue concerning a LIFE sentence, death,
15 juvenile, pretrial? Yes insofar as that was his sentence maximum and
16 was not what he expected to get as per his ineffective attorney
17 information.
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20 9. Appellant is not in favor of proceeding in an expedited manner.
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23 10. Prior proceedings in this court: Sup. Ct. 72056 Denied. November 29,
24 2018 Remittitur.

Codefendants who went to jury trial		
Joseph Laguna Court Appt Atty Jessie Lee Folkestad appointed 6/10/2020 supplement due October 8 2020 Hearing 1/18/2021	A-18-78267-W Joseph Laguna vs Warden of High Desert State Prison filed 11/30/18 1/25/21 Petition for Writ of habeas Corpus Judge Carolyn Ellsworth	C-15-303991-5 filed 2/27/15 Reversed and Remand Supreme Court 78866 78867
David Murphy	A-18-782686-W	C-15-303991-4 file date 1/30/15

	A-18-783932-W filed 10/10/18 Petition for writ denied 12/17/18 Went on his own and result denied 2/11/19	Appeal judgment affirmed 12/18/19 SUPREME COURT CASE 77828
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11. Prior proceedings in other courts: District Court A-19-804157-W and C-15-303991-1.

12. Nature of Action. Briefly describe the nature of the action and the result below.

Mr. Mendoza is not a career criminal but had lost his job and needed money. He had a wife and 2 children. He was mentioning to his wife's cousin that he was strapped for cash and Mr. Murphy told him if he ran into a house grabbed a bag and ran out with it, he could get \$30,000. But the victims got a heads up and were waiting in the living room with guns when the door was broken down. The burglars ran away- shots were being fired. Mr. Mendoza got hit was on the ground about 20-40 feet away from the house trying to get away and when shots kept coming he pointed his gun in the direction of the house and after he shot; the victim stepped out from behind a pillar and got struck and died – possibly from Mr. Mendoza's bullet. We can't be sure on that. There were three other defendants right nearby with guns and though there were neighbors who said they saw things – only one says he saw a defendant shoot and that was not Mendoza it was Figueroa his codefendant who was the first into the house and was also injured and trying to make his way down the

1 street. There was a 19-day jury trial. The postconviction writ of habeas
2 corpus action commenced after the unsuccessful appeal; in order to find out
3 whether and where there was ineffective assistance of counsel. According to
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5 Judge Ellsworth in her denial of writ for a codefendant – she stated the
6 evidence was overwhelming so it seemed that no matter what we said she was
7 going to deny our motion.

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9
10 Both the Court of Appeals and the State steadfastly derided the appellate
11 attorney and Mr. Mendoza for challenging the trial court’s failure to give self-
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13 defense jury instructions requested by Attorney Wolbrandt who was trial
14 counsel for Mr. Mendoza. In essence saying it was a ridiculous argument and
15 that Nevada has longstanding law that forbids the first aggressor of a crime to
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17 claim self-defense. Further that there was no support at all – to the argument
18 that the crime had ended since Mr. Mendoza was out of the house trying to
19 get away thus taking him out of the ‘initial aggressor’ category.

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21
22 Attorney Wolfbrandt told his client he had grounds for self-defense under the
23
24 law and that was how they were going to proceed handling the case. Attorney
25 Wolfbrandt, now disbarred on an unrelated matter due to dishonesty, admitted
26 at the post-conviction evidentiary hearing that he did no research at all to
27
28 determine the state of self-defense law. There were a number of other errors

1
2 and oversight which we argued resulted in total failure to test the State's case
3 and de facto denial of counsel entirely, if not, at a minimum, at a critical
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5 stage/s of representation.

6 The Jury found him guilty of all counts charged. He was found guilty of
7 among other things first degree murder - and his codefendants gang members
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9 with criminal records – more of the ring leaders of what took place that day
10 got convicted of all the same only as to murder their conviction was for second
11 degree.

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14 13. Issues Appellant is raising in this appeal:

15 Ineffective assistance of counsel.

- 16
17 - total failure to test the State's case and de facto denial of counsel
18 entirely, if not, at a minimum, at a critical stage/s of representation.
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20 - Failure to provide proper advice on the status of self-defense caselaw
21 including to the jury.
22
23 - Failure to conduct research on the status of self-defense caselaw.
24
25 - Inaccurate law on self-defense - trial counsel's reliance on incorrect
26 interpretation on self-defense for opening statement and closing argument
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28 - Inaccurate advice on the state of self-defense caselaw induced his client to
take the stand and confess to killing the victim; This inducement was a form

1 of coercion that violated his right to remain silent and prohibited him from
2 being able to properly exercise his constitutional right to decide for himself
3 whether he should testify or not.

4
5 - Brought up Mr. Mendoza's Heroin use when he was not charged with it nor
6 was it on the record.

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8 - We argue that prejudice should be presumed given the constitutional
9 magnitude of errors and that even if prejudice is not presumed it should be
10 found given his two co defendants gang members with criminal records and
11 one David Murphy being the ring leader of the crime – were convicted of
12 second degree murder and Mr. Mendoza was convicted of first degree. We
13 believe that we showed and argued that the failure of counsel to test the
14 state's case by focusing on the fact that Mr. Figueroa testified that he - when
15 he was looking back - did not see Mr. Mendoza shooting at the deceased
16 and further that he himself did not ever shoot his weapon when in fact the
17 neighbor testified that he saw him shooting his weapon at the house would
18 have planted reasonable doubt in the minds as to whether Mr. Mendoza was
19 the shooter. Further the fact that there were no questions as to the other 2
20 defendants – of any of the witnesses regarding whether it was possible that
21 they had the same type of bullets in their guns and could have shot at the
22 house and caused the death – whether their homes were searched, whether
23 Mr Figueroa could have turned in the wrong gun when he handed it over to
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1 police or whether any or all of them could have been carrying two guns. All
2 of this could have planted reasonable doubt in the jury's minds and led him
3 to be convicted of second degree like the other 2 defendants instead of first
4 degree as he was.

- 5
- 6 - Failure to subpoena the one living victim with a criminal record - to the
7 trial and failure to object to his father's testimony as to what his son saw
8 and said on confrontation grounds.
- 9
- 10 - Failure to properly move to sever from the other defendants.
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13 14. N/A No known challenges to the Constitutionality of Statutes at issue
14 at this time.

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17 15. Though this case involves a jury conviction from several criminal
18 felony charges including a Felony A crime; under Nevada Rules of
19 Appellate Procedure NRAP 17(b)(7) it is an Appeal from a
20 postjudgment order in a civil case. Thus properly assigned to the Court
21 of Appeal.

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25 16. First Impression? No.

26 Public Interest? No.

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1 17. The jury trial lasted 19 days and the evidentiary hearing postconviction
2 lasted a couple hours.

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5 18. I would object to the submission of this appeal for disposition without
6 oral argument.

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8 **TIMELINESS OF NOTICE OF APPEAL**
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10 19. The District Court announced its decision on Appellant's Writ of
11 Habeas Corpus: February 23, 2021.

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14 20. Date of entry of written judgment or order appealed from Written Order
15 Findings of Fact, Conclusions of Law and Order April 2, 2021.
16 Judgment of Conviction December 2, 2016.

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20 21. If this appeal is from an order granting or denying a petition for a writ
21 of habeas corpus indicate the date written notice of entry of judgment
22 or order was served by the district court: April 2, 2021 by eService
23 Electronic Filing.

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26 22. N/A.

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28 23. The Notice of Appeal was filed on April 5, 2021.

1 24. The statute governing the time limit for filing the Notice of Appeal is
2 NRAP 4(a).

3 25. The statute which grants this Court jurisdiction to review the instant
4 appeal is NRS 34.575(1).
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7

8 **VERIFICATION**

9 I certify that the information provided in this docketing statement is true and
10 complete to the best of my knowledge, information and belief.
11

12 Jorge Mendoza
Name of Appellant

Diane C. Lowe, Esq.
Name of Counsel of Record

13 April 12, 2021
14 Date

/s/ Diane C. Lowe, Esq.
Signature of Counsel of Record

15
16 Dated this 12th day of April, 2021

17 Respectfully submitted,

18 /s/ Diane C. Lowe
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21 (725)212-2451
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22 Counsel for Appellant
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1 **CERTIFICATE OF SERVICE**

2 I certify that on April 12, 2021, an electronic copy of the foregoing
3 DOCKETING STATEMENT was sent via the master transmission list with the
4 Nevada Supreme Court to the following:
5

6 AARON D. FORD, ESQ.
7 Nevada Attorney General

8 ALEXANDER G. CHEN, ESQ.
9 District Attorney

10 /s/ Diane C. Lowe
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