

*Steven D. Grierson*

TONEY A. WHITE  
NDCC NO. 1214172  
HIGH DESERT STATE PRISON  
POST OFFICE BOX 650  
INDIAN SPRINGS, NV,  
89070

Electronically Filed  
May 18 2021 01:54 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

PETITIONER/ APPELLANT  
IN PRO SE

DISTRICT COURT  
CLARK COUNTY, NEVADA

TONEY A. WHITE,  PETITIONER,  VS.  CALVIN JOHNSON, WARDEN,  RESPONDENT.
---

CASE NUMBER  
A-20-824261-W  
C-16-313216-2

DEPT NO. 12

PETITIONER'S SECOND NOTICE  
OF APPEAL AND REQUEST FOR  
APPOINTMENT OF COUNSEL ON  
APPEAL.

ALL PARTIES OF RECORD ARE HEREBY NOTIFIED A  
SECOND TIME (FIRST NOTICE OF APPEAL MAILED APRIL 20,  
2021) THAT PETITIONER HEREBY ELECTS TO APPEAL THE FIND-  
INGS OF FACT, CONCLUSIONS OF LAW AND ORDER FILED APRIL  
08, 2021 AS ERRONEOUS AND IMPROPER.

AS PETITIONER IS INCAPABLE OF EMPLOYING  
COUNSEL HE REQUESTS THAT COUNSEL BE APPOINTED ON  
PCR APPEAL.

RESPECTFULLY SUBMITTED,

DATED: MAY 09, 2021

BY:

*Toney A. White, III*  
TONEY A. WHITE, III  
PETITIONER/ DEFENDANT  
IN PRO SE

RECEIVED

MAY 12 2021

CLERK OF THE COURT

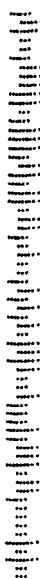
THOMAS A. WHITE-1214177  
HDSP  
P.O. Box 650  
INDIAN SPRINGS, NV,  
89070

LAS VEGAS NV 890  
10 MAY 2021 PM 3 L

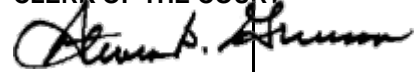
FOREVER / USA

CLERK OF THE COURT  
8TH JUDICIAL DISTRICT COURT  
REGIONAL JUSTICE CENTER  
DEPARTMENT NO. 12  
200 LEGIS AVENUE  
LAS VEGAS, NV 89155

69101-630000



REG MAIL



1 ASTA

2  
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 TONEY ANTHONY WHITE,

13 Defendant(s),

Case No: C-16-313216-2

Dept No: XII

14  
15  
16 **CASE APPEAL STATEMENT**

17  
18 1. Appellant(s): Toney A. White

19 2. Judge: Michelle Leavitt

20 3. Appellant(s): Toney A. White

21 Counsel:

22 Toney A. White #1214172  
23 P.O. Box 650  
24 Indian 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: March 9, 2021

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

Type of Judgment or Order Being Appealed: Post-Conviction Relief

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 78483, 82889

12. Child Custody or Visitation: N/A

Dated This 14 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: Toney A. White

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

State of Nevada  
vs  
Toney White

§ Location: **Department 12**  
§ Judicial Officer: **Leavitt, Michelle**  
§ Filed on: **03/09/2016**  
§ Cross-Reference Case **C313216**  
§ Number:  
§ Defendant's Scope ID #: **8270790**  
§ Grand Jury Case Number: **15AGJ129B**  
§ ITAG Case ID: **1764700**  
§ Supreme Court No.: **78483**

**CASE INFORMATION**

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. CONSPIRACY TO COMMIT ROBBERY	200.380	F	01/20/2016	Case Status:	<b>11/08/2019 Closed</b>
2. BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON	205.060.4	F	01/20/2016		
3. FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON	200.310.1	F	01/20/2016		
4. FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON	200.310.1	F	01/20/2016		
5. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON	200.380	F	01/20/2016		
6. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON	200.380	F	01/20/2016		
7. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM	200.481.2e2	F	01/20/2016		
8. IMPERSONATION OF AN OFFICER	199.430	G	01/20/2016		

**Related Cases**

A-20-824261-W (Writ Related Case)  
C-16-313216-1 (Multi-Defendant Case)  
C-16-313216-3 (Multi-Defendant Case)  
C-16-313216-4 (Multi-Defendant Case)

**Statistical Closures**

11/08/2019 Other Manner of Disposition - Criminal  
03/25/2019 Guilty Plea with Sentence (before trial) (CR)

**Warrants**

Indictment Warrant - White, Toney Anthony (Judicial Officer: Barker, David )  
03/17/2016 4:15 PM Returned - Served  
03/09/2016 11:45 AM Active  
Fine: \$0  
Bond: **\$195,000.00** Any

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number C-16-313216-2  
Court Department 12  
Date Assigned 03/09/2016  
Judicial Officer Leavitt, Michelle

**PARTY INFORMATION**
















**Defendant** **White, Toney Anthony**

*Lead Attorneys*










**Pro Se**

**CASE SUMMARY****CASE NO. C-16-313216-2****Plaintiff****State of Nevada****Wolfson, Steven B**

702-671-2700(W)





DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<b><u>EVENTS</u></b>	
03/09/2016	 Warrant <i>Indictment Warrant</i>	
03/09/2016	 Indictment <i>Indictment</i>	
03/11/2016	 Indictment Warrant Return	
03/25/2016	 Transcript of Proceedings <i>Reporter's Transcript of Proceedings, Grand Jury Hearing, March 8, 2016</i>	
05/18/2016	 Application <i>Defendant White's Application to Recuse Counsel and for Appointment for Alternative Counsel; Memorandum of Points and Authorities</i>	
06/15/2016	 Application <i>Defendant White's Application to Recuse Counsel and for Appointment of Alternative Counsel; Memorandum of Points and Authorities</i>	
10/11/2016	 Notice of Witnesses and/or Expert Witnesses <i>State's Notice of Expert Witnesses (NRS 174.234(2))</i>	
10/18/2016	 Notice <i>Notice of Intent to Seek Punishment as a Habitual Criminal</i>	
10/21/2016	 Order to Release Medical Records <i>Ex Parte Motion and Order Releasing All Medical Records</i>	
11/22/2016	 Motion <i>Motion to Withdraw as Counsel of Record</i>	
12/06/2016	 Petition for Writ of Habeas Corpus <i>Pretrial Petition for Writ of Habeas Corpus</i>	
12/28/2016	 Motion <i>Defendants Motion TO Recuse Counsel And Proceed In Pro Pria Personam In Light Of Counsels Demonstrated Ineffectiveness And Case Neglect And In Light Of Existing Conflict</i>	
03/27/2017	 Motion <i>Defendant White's Motion for Trial Extension for 180 Days; Motion to Recuse Counsel and Application to Proceed in Propria Personam</i>	
05/03/2017	 Objection <i>Defendant White's Objection to Courts Denial of Motion Filed 03/27/17</i>	
05/03/2017	 Petition for Writ of Habeas Corpus <i>Petition for Writ of Habeas Corpus</i>	

**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

05/08/2017	 Supplemental Witness List <i>State's Supplemental Notice of Expert Witnesses(NRS 174.234(2))</i>
10/19/2017	 Guilty Plea Agreement
12/01/2017	 PSI
01/09/2018	 Motion for Withdrawal Filed By: Defendant White, Toney Anthony <i>Motion for Withdrawal of Guilty Plea and for Appointment of New Counsel or Alternatively to Proceed in Pro Per</i>
01/09/2018	 Statement Filed by: Defendant White, Toney Anthony <i>Statement of Facts</i>
01/12/2018	 Motion for Withdrawal Filed By: Defendant White, Toney Anthony <i>Defendant White's Motion for Withdrawal of Guilty Plea and for Appointment of New Counsel or Alternatively to Proceed in Pro Per</i>
05/17/2018	 Recorders Transcript of Hearing <i>Recorder's Transcript Re: DA Request Re: Entry of Plea, Thursday, October 19, 2017</i>
09/05/2018	 Motion to Withdraw Plea Filed By: Defendant White, Toney Anthony <i>Motion to Withdraw Guilty Plea</i>
10/12/2018	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling Hearing</i>
02/12/2019	 Notice of Witnesses and/or Expert Witnesses <i>State's Notice of Witnesses</i>
02/20/2019	 Jury List
02/20/2019	 Amended Indictment
03/11/2019	 PSI - Supplemental PSI
03/15/2019	 Memorandum <i>Sentencing Memorandum</i>
03/25/2019	 Criminal Order to Statistically Close Case <i>Criminal Order to Statistically Close Case</i>
03/27/2019	 Judgment of Conviction <i>Judgment of Conviction (Plea of Guilty)</i>
03/28/2019	 Notice of Appeal (Criminal) Party: Defendant White, Toney Anthony

**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

*Notice of Appeal*

04/01/2019	 Case Appeal Statement Filed By: Defendant White, Toney Anthony <i>Case Appeal Statement</i>
04/15/2019	 Application to Proceed in Forma Pauperis Filed By: Defendant White, Toney Anthony
04/30/2019	 Order for Production of Inmate <i>Order for Production of Inmate Toney White, BAC #1214172</i>
04/30/2019	 Motion Filed By: Defendant White, Toney Anthony <i>Petitioner's Motion to Reduce and/or Quash Restitution</i>
04/30/2019	 Writ Filed by: Defendant White, Toney Anthony <i>Writ of Replevin and for Court Order Directing Return of Property</i>
05/21/2019	 Order <i>Order Appointing Counsel</i>
06/03/2019	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion to Reduce or Quash Restitution</i>
06/04/2019	 Request Filed by: Defendant White, Toney Anthony <i>Request for Transcripts</i>
06/21/2019	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings: Initial Arraignment; Indictment Warrant Return, Thursday, March 17, 2016</i>
06/21/2019	 Recorders Transcript of Hearing <i>Recorders Transcript of Proceedings: Defendant's Application to Recuse Counsel and for Appointment for Alternative Counsel; Memorandum of Points and Authorities; Thursday, June 9, 2016</i>
06/21/2019	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings: Harvey Gruber, Esq.'s Motion to Withdraw as Counsel of Record, Tuesday, December 13, 2016</i>
06/21/2019	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings: Sentencing, Thursday, December 14, 2017</i>
06/21/2019	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings: Sentencing, Thursday, January 18, 2018</i>
06/21/2019	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings: Defendant's Motion for Withdrawal of Guilty Plea and for Appointment of New Counsel, or Alternatively, to Proceed in Pro Per; Sentencing, Tuesday, January 30, 2018</i>



**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

06/21/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Proceedings: Defendant's Motion for Withdrawal of Guilty Plea and for Appointment of New Counsel, or Alternatively, to Proceed in Pro Per; Sentencing, Tuesday, February 6, 2018</i>
06/21/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Proceedings: Status Check: Defendant's Motion to Withdrawal Guilty Plea/Confirmation of Appointed Counsel Michael Sanft; Sentencing, Thursday, February 15, 2018</i>
06/21/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Proceedings: Status Check: Defendant's Motion to Withdrawal Guilty Plea; Sentencing, Thursday, March 29, 2018</i>
07/10/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing: All Pending Motions, Thursday, April 5, 2018</i>
07/10/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing: All Pending Motions, Tuesday, April 24, 2018</i>
07/10/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing: All Pending Motions, Thursday, May 10, 2018</i>
07/10/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing: All Pending Motions, Tuesday, June 5, 2018</i>
07/10/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing: All Pending Motions, Thursday, June 28, 2018</i>
07/10/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing: All Pending Motions, Thursday, September 6, 2018</i>
07/10/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing: All Pending Motions, Thursday, December 20, 2018</i>
07/10/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing: Sentencing, Tuesday, March 19, 2019</i>
07/12/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing, Jury Trial - Day 1, Tuesday, February 19, 2019</i>
07/12/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing, Jury Trial - Day 2, Wednesday, February 20, 2019</i>
07/12/2019	 <b>Recorders Transcript of Hearing</b> <i>Recorder's Transcript of Hearing, Jury Trial - Day 3, Thursday, February 21, 2019</i>
07/26/2019	 <b>Motion for Withdrawal</b> Filed By: Defendant White, Toney Anthony <i>Defendant's Motion to Withdraw Plea of Guilty</i>
07/30/2019	

**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

	 Clerk's Notice of Hearing <i>Clerk's Notice of Hearing</i>
08/30/2019	 Motion Filed By: Defendant White, Toney Anthony <i>Motion for Certification and Request for Remand</i>
09/04/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
09/05/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
09/20/2019	 Order Filed By: Defendant White, Toney Anthony <i>Order</i>
09/20/2019	 Order to Transport Defendant Party: Defendant White, Toney Anthony <i>Order to Transport Defendant</i>
10/07/2019	 Opposition to Motion Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion to Withdraw Guilty Plea</i>
11/08/2019	 Criminal Order to Statistically Close Case <i>Criminal Order to Statistically Close Case</i>
06/11/2020	 Motion to Withdraw As Counsel Filed By: Defendant White, Toney Anthony <i>Motion to Withdraw as Counsel</i>
06/12/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
06/16/2020	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed</i>
06/19/2020	 Motion to Dismiss Counsel Party: Defendant White, Toney Anthony
06/26/2020	 Motion for Order Filed By: Defendant White, Toney Anthony <i>Motion for Court Order Directing Preparation of Transcript of April 18, 2017 Hearing</i>
07/02/2020	 Order to Withdraw as Attorney of Record <i>Order</i>
07/06/2020	 Motion Filed By: Defendant White, Toney Anthony <i>Motion to Obtain a Copy of a Sealed Record (Presentence Investigation Report - NRS 176.156) on an Order Shortening Time</i>

**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

07/13/2020	 Motion for Order Filed By: Defendant White, Toney Anthony <i>Motion for Order for Additional Court Records</i>
08/19/2020	 Motion for Appointment of Attorney Filed By: Defendant White, Toney Anthony <i>Defendant's Renewed Motion for Appointment of PCR Counsel</i>
08/19/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
08/26/2020	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Pro Per Motion For Order For Additional Court Records</i>
09/02/2020	 Opposition to Motion Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Renewed Motion for Appointment of PCR Counsel</i>
09/14/2020	 Motion for Order Filed By: Defendant White, Toney Anthony <i>Motion for Order for Additional Court Records</i>
09/15/2020	 Order Denying Motion <i>Order Denying Defendant's Renewed Motion for Appointment of PCR Counsel</i>
09/23/2020	 Opposition <i>State's Opposition to Defendant's Motion for Credit for Additional Court Records</i>
10/31/2020	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Motion For Credit For Additional Court Records</i>
04/08/2021	 Findings of Fact, Conclusions of Law and Order
04/12/2021	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
05/06/2021	 Notice of Appeal (Criminal) <i>Notice of Appeal</i>
05/07/2021	 Case Appeal Statement Filed By: Defendant White, Toney Anthony <i>Case Appeal Statement</i>
05/13/2021	 Notice of Appeal (Criminal) <i>Second Notice of Appeal</i>
05/13/2021	 Motion for Appointment of Attorney Filed By: Defendant White, Toney Anthony <i>Motion for Appointment of Attorney for Appeal</i>

**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

05/14/2021



Case Appeal Statement

Filed By: Defendant White, Toney Anthony

Case Appeal Statement

**DISPOSITIONS**

10/20/2017

**Disposition** (Judicial Officer: Leavitt, Michelle)

3. FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

Amended Information Filed/Charges Not Addressed

PCN: Sequence:

4. FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

Amended Information Filed/Charges Not Addressed

PCN: Sequence:

5. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

Amended Information Filed/Charges Not Addressed

PCN: Sequence:

6. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

Amended Information Filed/Charges Not Addressed

PCN: Sequence:

7. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL  
BODILY HARM

Amended Information Filed/Charges Not Addressed

PCN: Sequence:

8. IMPERSONATION OF AN OFFICER

Amended Information Filed/Charges Not Addressed

PCN: Sequence:

12/20/2018

**Amended Disposition** (Judicial Officer: Leavitt, Michelle) Reason: Plea Withdrawn Charge(s)  
Reinstated

3. FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

Charge Reinstated

PCN: Sequence:

4. FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

Charge Reinstated

PCN: Sequence:

5. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

Charge Reinstated

PCN: Sequence:

6. ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

Charge Reinstated

PCN: Sequence:

7. BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL  
BODILY HARM

Charge Reinstated

PCN: Sequence:

8. IMPERSONATION OF AN OFFICER





Charge Reinstated

PCN: Sequence:

**HEARINGS**

# CASE SUMMARY

CASE NO. C-16-313216-2

03/09/2016	 <b>Grand Jury Indictment</b> (11:45 AM) (Judicial Officer: Barker, David)  <b>MINUTES</b> <b>Warrant</b> 03/09/2016 Inactive Indictment Warrant Matter Heard; Journal Entry Details: <i>Ann Kling, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 15AGJ129B to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C313216-2, Department 12. Mr. Schwartz requested a warrant and argued bail. COURT ORDERED, WARRANT TO BE ISSUED, \$195,000.00 BAIL and matter SET for initial arraignment. Exhibits 1-35 lodged with Clerk of District Court. I.W. (CUSTODY) 3/17/16 8:30 AM INITIAL ARRAIGNMENT (DEPT 12);</i>  <b>SCHEDULED HEARINGS</b> <b>CANCELED Initial Arraignment</b> (03/17/2016 at 8:30 AM) (Judicial Officer: Leavitt, Michelle) <i>Vacated - On in Error</i>
03/17/2016	<b>CANCELED Initial Arraignment</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle) <i>Vacated - On in Error</i>
03/17/2016	<b>Initial Arraignment</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle) Plea Entered;
03/17/2016	<b>Indictment Warrant Return</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle) Trial Date Set;
03/17/2016	<b>CANCELED All Pending Motions</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle) <i>Vacated - On In Error</i>
03/17/2016	 <b>All Pending Motions</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle) Matter Heard; Journal Entry Details: <i>INITIAL ARRAIGNMENT...INDICTMENT WARRANT RETURN DEFT. WHITE ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter SET for trial. CUSTODY 10/25/16 8:30 A.M. CALENDAR CALL 11/01/16 1:30 P.M. TRIAL BY JURY;</i>
06/09/2016	 <b>Motion</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle) <i>Defendant's Application to Recuse Counsel and for Appointment for Alternative Counsel; Memorandum of Points and Authorities</i> Denied; Journal Entry Details: <i>Court advised Deft. it read his Motion, he did not provide a legal basis for Court to grant his Motion, it appears he is well aware of the facts, and it was made clear in the Motion that he read the discovery and knows the facts of the case. COURT ORDERED, Deft's Motion to dismiss counsel DENIED. Court further advised Deft. he cannot assert other people's constitutional rights, as he does not get the benefit of this; and it appears he wants his attorney in conjunction with another person to somehow suppress evidence, because someone else's constitutional rights were violated. Court further advised Deft. this was probably why his attorney did not file the motion, and his attorney is not permitted to file frivolous motions or motions that have no basis in law. Deft. acknowledged. COURT ORDERED, Motion DENIED. CUSTODY 10/25/16 8:30 A.M. CALENDAR CALL 11/01/16 1:30 P.M. TRIAL BY JURY ;</i>
07/07/2016	 <b>Motion</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle) <i>Defendant's Defendant White's Application to Recuse Counsel and for Appointment of Alternative Counsel; Memorandum of Points and Authorities</i> Off Calendar; Journal Entry Details:

# CASE SUMMARY

CASE NO. C-16-313216-2

COURT ORDERED, motion OFF CALENDAR as previously denied. ;

10/25/2016



**Calendar Call** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

## MINUTES

Vacated and Reset;

Journal Entry Details:

*Based on representations made in Cases C-16-313216-3 & 4, and there being no objection by State, COURT ORDERED, Deft's motion to continue trial date GRANTED; trial date VACATED AND RESET. CUSTODY 3/14/17 8:30 A.M. CALENDAR CALL 3/20/17 1:30 P.M. TRIAL BY JURY;*

## SCHEDULED HEARINGS



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

11/01/2016

**CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Leavitt, Michelle)

*Vacated - per Judge*

12/13/2016



**Motion to Withdraw as Counsel** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

*Harvey Gruber's, Esq, Motion to Withdraw as Counsel of Record*

*Motion Denied; Harvey Gruber's, Esq, Motion to Withdraw as Counsel of Record*

Journal Entry Details:

*Mr. Gruber stated that his relationship with Defendant has become adversarial; that he has been unable to communicate with his client and will not be able to represent him to the best of his ability. Submitted by the State. Court stated if it were to allow counsel to withdraw that this happened it, there would be no attorneys. COURT ORDERED, Motion DENIED. CUSTODY CLERK'S NOTE: The minutes for this hearing have been prepared by a review of the JAVS recording. (tmj:12/22/16);*

01/19/2017



**Motion** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

*Defendants Pro Per Motion to Recuse Counsel and Proceed In Pro Pria Personam In Light of Counsels Demonstrated Ineffectiveness, and Case Neglect, and In Light of Existing Conflict Off Calendar;*

Journal Entry Details:

*Deft. stated he will withdraw the motion, as Mr. Gruber and himself have been talking. Upon Court's inquiry, Mr. Gruber advised it is what it is. COURT ORDERED, Matter OFF CALENDAR. CUSTODY 3/14/17 8:30 A.M. CALENDAR CALL 3/20/17 1:30 P.M. TRIAL BY JURY;*

03/14/2017



**Calendar Call** (8:00 AM) (Judicial Officer: Leavitt, Michelle)

## MINUTES

Vacated and Reset;

Journal Entry Details:

*Court TRAILED and RECALLED matter for Mr. Schwartz and Co-Deft's attorney Mr. Shetler to appear. State announced ready for trial. Mr. Gruber advised he and Co-Deft's counsel are announcing not ready for different reasons, his client was trying to remove him from the case the past two months, a bar complaint was filed, to which defense had stopped working on the case, however, his investigator met with Deft; therefore, defense needs more time for trial, and Mr. Shetler also needs more time. Additionally, an offer was made to Deft, and defense will be requesting a status check hearing be set on possible negotiations; and for trial to be vacated. State objected to trial continuance; and argued it has been over a year and a half, both Defts. are filing motions to dismiss their counsels to purposely manipulate the system and not go to trial, and no real motions were done. Court stated if the case is not Overflow eligible, the Court has to continue this case. Mr. Schwartz added State wants a firm trial setting, and he does not mind a status check hearing set in two weeks. Mr. Schwartz added he just made an offer to Mr. Shelter's client, and if the offers are not accepted by both Defts. during these two weeks, State will revoke all offers and not make any more offers. Due to Court's schedule, COURT ORDERED, trial date VACATED; and status check is SET in two weeks. Court noted it is in a capital case, and its schedule will not allow this trial to go forward next week. Court reminded Deft. if he chooses not to accept the offer, State will revoke the offers and no longer make any more offers; further noting the status*

# CASE SUMMARY

CASE NO. C-16-313216-2

check will be set, including the new trial date. Deft. acknowledged. CUSTODY 3/30/17 8:30 A.M. STATUS CHECK: NEGOTIATIONS 6/06/17 8:30 A.M. CALENDAR CALL 6/13/17 1:30 P.M. TRIAL BY JURY ;

## SCHEDULED HEARINGS



**Calendar Call** (06/06/2017 at 8:30 AM) (Judicial Officer: Leavitt, Michelle)  
**CANCELED Jury Trial** (06/13/2017 at 1:30 PM) (Judicial Officer: Leavitt, Michelle)  
*Vacated - per Judge*

03/20/2017

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

03/30/2017



**Status Check: Negotiations/Trial Setting** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

*Status Check: Negotiations*

Not Settled;

Journal Entry Details:

*Mr. Gruber advised Deft. made the decision not to take State's offer, and he acknowledged this to defense. Court canvassed Deft. on his decision, and Deft. confirmed he rejected the offer.*

*Mr. Schwartz advised there will be no further offers, all current offers are revoked for both Deft. and Co-Deft, and State will be ready for trial. COURT ORDERED, trial date STANDS. CUSTODY 6/06/17 8:30 A.M. CALENDAR CALL 6/13/17 1:30 P.M. TRIAL BY JURY;*

04/18/2017



**Motion** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

*Defendant White's Pro Per Motion for Trial Extension For 180 Days; Motion to Recuse Counsel and Application to Proceed In Propria Personam*

Denied;


Journal Entry Details:

*Court advised Deft. it read his pro per motion, and Court does not believe there is any legal basis. Court further advised Deft. this was discussed, about him filing these motions, his attorney cannot raise somebody else's Fourth Amendment right, and he cannot raise that issue. Deft. stated that is not right. Court advised Deft. that does not matter, he has no standing, and his attorney cannot raise issues that are frivolous. Deft. stated it is more than just the motion, he has been incarcerated for over a year, and he does not have all the discovery. Court asked Deft. what discovery does he think his attorney is not giving him. Mr. Schwartz noted for the record State turned over everything to defense counsel. Mr. Gruber advised he went through the file with Deft, and had also forwarded items to Deft. Deft. stated all evidence from Grand Jury was not provided to him. Mr. Schwartz confirmed the Marcum notice was served. Deft. stated there are 24 pictures not in his possession. Mr. Gruber advised he will re-check his file for the third time. Deft. stated there is a recorded statement to police, he is not sure what is going on, he has transcripts of the victims and Co-Defts, but not his transcripts. Mr. Gruber advised the case file is four inches thick, and he will endeavor and give the information to him again. Court advised Deft. even if his attorney had provided it, Mr. Gruber will provide the information to him. Court asked Deft. if there was anything else. Deft. stated he has no copies of reports. Court advised Deft. he has to be more specific than that. Deft. stated there are reports from 7 officers, which are missing from his report. Court stated generally, there is one report, and not separate ones. Court advised Deft. it does not know, however, just because he thinks there are reports, does not mean there are. Mr. Schwartz confirmed there are a lot of reports in the case, including one from the Crime Scene Analyst. Deft. stated he is concerned about the officer's report. Court advised Deft. multiple reports for one report are unusual, however, the Court will read the report, and if 7 reports exist, he is entitled to them. Court reminded Deft. just because the reports are not available, does not mean the reports exist. COURT ORDERED, Motion DENIED. Mr. Gruber advised he will send his Investigator over to Deft. again, to see what is missing, and make sure Deft. gets the stuff in two weeks. Deft. stated he asked his attorney to get all the material and the file. Court advised Deft. his attorney is not required to do that, and the District Attorney has the obligation to turn information over without a request. Deft. stated he asked why evidence is not turned over, and he was told there is only evidence that is going to be used against him at trial. Court told Deft. that is true, however, State is required to turn over any exculpatory evidence; and his argument that he wants to build his defense on State's evidence is unusual. Deft. stated he does not know the strengths and weaknesses of the case. Court advised Deft. his attorney will know. Deft. argued there has been no communication with his attorney. Mr. Gruber noted for the record he spoke with Deft. on the phone after the bar Complaint was filed, and Deft. has spoken with his staff about the case. CUSTODY 6/06/17 8:30 A.M. CALENDAR CALL 6/13/17 1:30 P.M. TRIAL BY JURY ;*



**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

06/06/2017

 **Calendar Call** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

**MINUTES**

Vacated and Reset;

Journal Entry Details:

*Mr. Gruber advised he sent copies of reports to Deft, Deft. is saying he is missing some, further noting defense also mailed 400 pictures, and Deft. still has not received them. Additionally, the investigator met with Deft, and defense is not ready to go to trial next week due to further investigation needed. Mr. Schwartz objected. Discussions as to Deft. and Mr. Gruber having had a contentious relationship previously, and there having been difficulties with communication. Mr. Gruber stated he does not know why the information was provided yesterday at the meeting, but defense needs to look into it further. Mr. Schwartz argued State is ready, Deft. had discovery all this time, and trial has been continued a few times. COURT ORDERED, Deft's Motion GRANTED; trial date VACATED AND RESET. Court noted parties need to be ready to go on the next trial date. CUSTODY 10/31/17 8:30 A.M. CALENDAR CALL 11/07/17 1:30 P.M. TRIAL BY JURY;*

**SCHEDULED HEARINGS**

**CANCELED Calendar Call** (10/31/2017 at 8:30 AM) (Judicial Officer: Leavitt, Michelle)

*Vacated - per Judge*

**CANCELED Jury Trial** (11/07/2017 at 1:30 PM) (Judicial Officer: Leavitt, Michelle)


*Vacated - per Judge*

06/13/2017

**CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Leavitt, Michelle)

*Vacated - per Judge*

10/19/2017

 **Request** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

*DA Request Re: Entry of Plea*

Plea Entered;

Journal Entry Details:

*AMENDED INDICTMENT FILED IN OPEN COURT. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. WHITE ARRAIGNED AND PLED GUILTY TO COUNT 1- CONSPIRACY TO COMMIT ROBBERY (F) and COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. FURTHER ORDERED, TRIAL VACATED. CUSTODY 12-14-17 8:30 AM SENTENCING (DEPT. XII);*

10/31/2017

**CANCELED Calendar Call** (8:30 AM) (Judicial Officer: Leavitt, Michelle)


*Vacated - per Judge*

11/07/2017

**CANCELED Jury Trial** (1:30 PM) (Judicial Officer: Leavitt, Michelle)

*Vacated - per Judge*

12/14/2017

 **Sentencing** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

**12/14/2017, 01/18/2018, 01/30/2018, 02/06/2018, 02/15/2018, 03/29/2018, 04/05/2018, 04/24/2018, 05/10/2018, 06/05/2018**

*Sentencing*

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**CASE SUMMARY**

**CASE NO. C-16-313216-2**

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**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

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Journal Entry Details:

*Deft. not present; refused to appear. CONFERENCE AT BENCH. COURT ORDERED, sentencing CONTINUED, and hearing on Deft's pro per motion for withdrawal of guilty plea STANDS. CUSTODY 1/30/18 8:30 A.M. DEFT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...SENTENCING;*

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Hearing Set;

Journal Entry Details:

*Deft. not present; refused to be transported. Mr. Gruber not present. At request of defense counsel, which was made to Chambers prior to today's hearing, COURT ORDERED, matter CONTINUED. CUSTODY 1/18/18 8:30 A.M. SENTENCING CLERK'S NOTE: After Court, Clerk notified Mr. Gruber and State regarding continuance date, as Court had granted Co-Deft's attorney's request for sentencing to be heard on or after January 18, 2018, due to scheduling conflicts. /// sb;*

01/30/2018

**Motion to Withdraw as Counsel (8:30 AM) (Judicial Officer: Leavitt, Michelle)**

**01/30/2018, 02/06/2018**

*Defendant's Motion for Withdrawal of Guilty Plea and for Appointment of New Counsel, Or Alternatively, to Proceed In Pro Per*

Continued;  
Set Status Check;  
Continued;  
Set Status Check;

01/30/2018

**Motion for Withdrawal (8:30 AM) (Judicial Officer: Leavitt, Michelle)**

**01/30/2018, 02/06/2018**

*Defendant's Motion for Withdrawal of Guilty Plea and for Appointment of New Counsel, or Alternatively, to Proceed In Pro Per*

Continued;  
Set Status Check;  
Continued;  
Set Status Check;

01/30/2018



**All Pending Motions (8:30 AM) (Judicial Officer: Leavitt, Michelle)**

*All Pending Motions (1/30/2018)*

Matter Heard;  
Journal Entry Details:

**DEFENDANT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR**

# CASE SUMMARY

CASE NO. C-16-313216-2

APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...DEFENDANT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...SENTENCING Mr. Gruber not present. COURT ORDERED, matters CONTINUED. CUSTODY 2/06/18 8:30 A.M. DEFENDANT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...DEFENDANT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...SENTENCING CLERK'S NOTE: Mr. Gruber appeared after Court recessed, and was informed by Clerk regarding continuance date. /// sb;

02/06/2018



**All Pending Motions** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Matter Heard;

Journal Entry Details:

DEFT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...DEFT'S MOTION TO WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...SENTENCING Court advised Deft. it received all of his letters and Motions after his entry of plea. Upon Court's inquiry, Deft. confirmed he wants to move to withdraw his plea. Court noted based on allegations that were made by Deft, the Court will appoint independent counsel to review the case. COURT ORDERED, Attorney Michael Sanft, Esq., APPOINTED as counsel for limited purpose of reviewing the record and making a determination as to whether or not there is a legal basis for Deft. to withdraw his plea. FURTHER, matter SET for confirmation of independent counsel. Mr. Gruber to provide a copy of the case file to Deft. Mr. Gruber noted the case file is rather large. Court advised Deft. if his independent attorney thinks there is a legal basis, the attorney will file a motion; and if there is no legal basis found, Mr. Gruber will remain on the case to handle sentencing, and Deft. can file an appeal or anything else deemed appropriate. Discussion between Court and Deft. regarding his hand and arm being bandaged. CASE RECALLED. Mr. Schwartz is not present. Mr. Sanft is now present in Court. Court informed Mr. Sanft regarding the appointment and this case being continued to February 15, 2018 for him to confirm. Court added Mr. Gruber is going to provide him the file, and Mr. Gruber had indicated the case file is quite large. Court inquired to Mr. Sanft if he needs more time to review the case. Mr. Sanft stated no; and advised this Court did the plea canvass, and he would request a copy of the JAVS recording of this plea canvass, or the transcript. Court advised Mr. Sanft Deft. had written few documents since the plea canvass, that does not appear to be the issue, and he contends there were outside forces. Mr. Sanft stated he understands there may have been some other party that had forced Deft. into taking the negotiation, and maybe the pauses in the canvass would help to determine whether Deft. actually had a problem. Court stated Deft. had told Court nobody had coerced him into entering his plea, during the plea canvass. Court offered to provide a transcript of the plea canvass and the JAVS recording. Mr. Sanft requested only the JAVS CD, and one week to review the record. COURT SO ORDERED. Court advised Mr. Sanft it is warning him that the file is voluminous. COURT ORDERED, sentencing CONTINUED; matter SET for status check. Mr. Sanft advised he thinks the issue is whether or not Deft. enters the plea knowingly and voluntarily, without the issue of coercion, he does not believe reading the entire file is going to be the issue, as that is a fact pattern that goes to something else, and he is only focusing on Deft's entry of plea. Court thanked Mr. Sanft for taking this case; and advised Mr. Sanft to let the Court know if he needs more time. CUSTODY 2/15/18 8:30 A.M. STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA / CONFIRMATION OF APPOINTED COUNSEL MICHAEL SANFT...SENTENCING ;

02/15/2018

**Status Check** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Status Check: Deft's Motion To Withdraw Guilty Plea / Confirmation of Appointed Counsel Michael Sanft

Briefing Schedule Set;

02/15/2018



**All Pending Motions** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Matter Heard;

Journal Entry Details:

STATUS CHECK: DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA/ CONFIRMATION OF COUNSEL MICHAEL SANFT... SENTENCING Mr. Sanft CONFIRMED as Counsel and requested a briefing schedule be set. COURT ORDERED Deft's Supplemental Brief DUE 03/01/18, State's Response DUE 03/15/18, Deft's Reply DUE

**CASE SUMMARY**

**CASE NO. C-16-313216-2**

03/22/18, Status Check date SET. CUSTODY 03/29/18 8:30 A.M. STATUS CHECK:  
DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA... SENTENCING ;

03/29/2018

**Status Check (8:30 AM)** (Judicial Officer: Leavitt, Michelle)

**03/29/2018, 04/05/2018, 04/24/2018, 05/10/2018, 06/05/2018, 06/28/2018**

*Status Check: Defendant's Motion to Withdraw Guilty Plea*

**MINUTES**

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**MINUTES**

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**SCHEDULED HEARINGS**



**All Pending Motions** (03/29/2018 at 8:30 AM) (Judicial Officer: Leavitt, Michelle)

**SCHEDULED HEARINGS**

**Evidentiary Hearing** (06/28/2018 at 10:30 AM) (Judicial Officer: Leavitt, Michelle)

**06/28/2018, 09/06/2018, 12/20/2018**

**SCHEDULED HEARINGS**

**CANCELED Motion to Withdraw Plea** (09/06/2018 at 10:30 AM) (Judicial Officer: Leavitt, Michelle)

*Vacated - Duplicate Entry*

*Defendant's Motion to Withdraw Plea*

03/29/2018



**All Pending Motions** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

# CASE SUMMARY

## CASE NO. C-16-313216-2

Matter Heard;

Journal Entry Details:

*STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING Mr. Sanft appeared for limited purpose regarding Deft's motion to withdraw guilty plea; and informed Court he is seeking more time, he reviewed Deft's issues as to why he wants to file the motion, there is a basis, and a requirement is also getting an affidavit from a person in custody. Deft. provided the name of the person in custody to Mr. Sanft, in open Court. Mr. Sanft stated he needs this person to sign an affidavit, he does not know where the person is housed at, documents were sent to the person, and no response was received. At request of counsel, COURT ORDERED, matters CONTINUED one week for Mr. Sanft to try to locate the person again. CUSTODY 4/05/18 8:30 A.M. STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING ;*

04/05/2018



**All Pending Motions (8:30 AM)** (Judicial Officer: Leavitt, Michelle)

*All Pending Motions (4/05/2018)*

Matter Heard;

Journal Entry Details:

*STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING Mr. Sanft informed Court the person was located, he drafted the affidavit for the person, however, he needs permission from the person's Public Defender first, who is out on vacation. At request of defense counsel, COURT ORDERED, matters CONTINUED two weeks. CUSTODY 4/24/18 8:30 A.M. STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING;*

04/24/2018



**All Pending Motions (8:30 AM)** (Judicial Officer: Leavitt, Michelle)

Matter Heard;

Journal Entry Details:

*STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING Mr. Sanft informed Court he was granted one week to get the affidavit signed by the witness, however, the witness is refusing to sign it, the affidavit was reviewed by the witness, and the witness is afraid to be labeled as a snitch. Additionally, Deft's sister is in custody, and defense is having the investigator come sit down with Deft's sister to get more information about the alleged threat. Mr. Sanft requested one more continuance. Court asked if defense was going to file the motion to withdraw guilty plea. Mr. Sanft advised he has evidence from Deft, however, he wanted an affidavit and declaration signed, further noting Deft's sister may know about the alleged threat, and defense wants to verify it. Ms. Derjavina advised State is fine with the continuance, she does not have the file, and this is Mr. Schwartz's case. COURT ORDERED, matters CONTINUED. CUSTODY 5/10/18 8:30 A.M. STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING;*

05/10/2018



**All Pending Motions (8:30 AM)** (Judicial Officer: Bixler, James)

*All Pending Motions (5/10/2018)*

Continued;

Journal Entry Details:

*STATUS CHECK: DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING Mr. Sanft requested another continuance of two weeks. Court stated a copy of the plea canvass or transcript will need to be provided to defense counsel. Mr. Sanft requested thirty days for the transcript to be provided. COURT SO ORDERED; matters CONTINUED. CUSTODY 6/05/18 8:30 A.M. STATUS CHECK: DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING;*

06/05/2018



**All Pending Motions (8:30 AM)** (Judicial Officer: Leavitt, Michelle)


*All Pending Motions (6/05/2018)*

Matter Heard;






Journal Entry Details:

*STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING Mr. Sanft informed Court he provided a copy of the plea canvass and transcript to Deft, his basis before was basis of coercion, the attorney for the individual said no on signing an affidavit, as the individual does not want to sign an affidavit anymore. Mr. Sanft requested an evidentiary hearing to have a witness come in and provide testimony; and argued in support of relief requested. Court told Mr. Sanft he can file a motion on the issue, the Court would give him an opportunity to bring the witness in, and with everything he is telling the Court, the Court*

**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

	<p>would be inclined to grant an evidentiary hearing. Discussions. Mr. Sanft anticipated the evidentiary hearing will be short. Mr. Kern requested Court to trail the matter for Mr. Schwartzer to appear. Further discussion. COURT ORDERED, status check CONTINUED; matter SET for evidentiary hearing; and briefing schedule is SET as follows: Deft's brief due June 14, 2018, and State's response is due June 21, 2018. CUSTODY 6/28/18 10:30 A.M. EVIDENTIARY HEARING...STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA;</p>
06/28/2018	<p><b>Evidentiary Hearing (10:30 AM)</b> (Judicial Officer: Leavitt, Michelle) <b>06/28/2018, 09/06/2018, 12/20/2018</b></p> <p>Continued; Continued; Off Calendar; Continued; Continued; Off Calendar; Continued; Continued; Off Calendar;</p>
06/28/2018	<p> <b>All Pending Motions (10:30 AM)</b> (Judicial Officer: Leavitt, Michelle)</p> <p>Matter Heard; Journal Entry Details: EVIDENTIARY HEARING...STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA Mr. Sanft informed Court a briefing schedule was set at the last hearing, and he had received a written letter by the Clerk, two days after the last hearing, to which the letter was from Deft, which caused him concern about filing any type of motion in regards to a motion to withdraw guilty plea. Thereafter, Mr. Sanft provided Deft's written letter, which was reviewed by Court. Discussions regarding Deft's handwriting in the letter being exceptionally gifted, clear, and to the point, plus what Deft. wrote in the letter. Mr. Sanft stated the person who allegedly overheard the threats made to Deft, refused to cooperate. Further discussions regarding defense counsel's reasonings of not filing the motion, and defense counsel believing there is a legal basis to file a motion on Deft's behalf. Court reminded defense counsel Deft. does not direct what the strategy is. Mr. Sanft stated the concern was about what Deft. wrote in the letter, Deft's basis was well founded, what he laid out in the letter may set the record for something else, defense wanted to let the Court know what was going on and what Deft's position was, before defense moves forward; and he did not want this to be an issue later on post conviction relief. Court advised Deft. it will make the letter a part of the record, Mr. Sanft is going to continue to represent him, he needs to discuss everything with Mr. Sanft, Mr. Sanft gets to determine what the legal strategy is, he cannot keep stalling the case from going forward, by claiming every attorney Court gives him does not do what he thinks they are supposed to do, the Court has a Guilty Plea Agreement in front of the Court, if he wants to move to withdraw his plea, that is fine, and he can talk to Mr. Sanft about it, however, he does not get to direct legal strategy, Mr. Sanft directs the strategy and is the lawyer, and he is not. Deft. made statements to Court regarding names of witnesses having been given to the investigator. Mr. Sanft stated the investigator followed up with the main person involved, being a witness regarding the alleged threat, and based upon the letter, defense can follow up with the individuals in the letter, if Court wants him to do so. Court stated it is not going to direct Mr. Sanft either, that is not appropriate for Court to do, the Court has faith in him, and he is a competent attorney. Further discussions. Court reminded Deft. again the legal strategy is Mr. Sanft's decision and he needs to speak with Mr. Sanft about the case. At request of Mr. Sanft, COURT ORDERED, CASE CONTINUED; briefing schedule SET as follows: Deft's Motion to withdraw guilty plea due July 19, 2018; State's response due August 9, 2018; and Deft's reply is due August 23, 2018. Hearing SET. Court's Exhibit ADMITTED (See Worksheets.). Mr. Sanft stated the motion is already done, and he held off on filing it, due to Deft's letter. CUSTODY 9/06/18 10:30 A.M. EVIDENTIARY HEARING...DEFT'S MOTION TO WITHDRAW GUILTY PLEA ;</p>
09/06/2018	<p><b>CANCELED Motion to Withdraw Plea (10:30 AM)</b> (Judicial Officer: Leavitt, Michelle) Vacated - Duplicate Entry Defendant's Motion to Withdraw Plea</p>
09/06/2018	<p><b>Motion to Withdraw Plea (10:30 AM)</b> (Judicial Officer: Leavitt, Michelle) <b>09/06/2018, 12/20/2018</b></p>

**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

	<p>Events: 09/05/2018 Motion to Withdraw Plea</p> <p>Continued;</p> <p>Granted;</p> <p>Continued;</p> <p>Granted;</p>
09/06/2018	<p> <b>All Pending Motions</b> (10:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>All Pending Motions (9/06/2018)</i></p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>EVIDENTIARY HEARING...DEFT'S MOTION TO WITHDRAW PLEA Case called during the 8:30 A.M. criminal calendar. Discussions as to Mr. Sanft having filed the written motion yesterday afternoon, being September 5, 2018. At request of State, COURT ORDERED, State to file written response by October 25, 2018. FURTHER, matters CONTINUED. CUSTODY 10/30/18 10:30 A.M. EVIDENTIARY HEARING...DEFT'S MOTION TO WITHDRAW PLEA;</i></p>
12/20/2018	<p> <b>All Pending Motions</b> (10:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>All Pending Motions (12/20/2018)</i></p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Court TRAILED and RECALLED matter for Deft. and counsel to appear. Deft. is present in custody. Mr. Nadig appeared for Mr. Sanft; on behalf of Deft. EVIDENTIARY HEARING...DEFT'S MOTION TO WITHDRAW GUILTY PLEA There being no objection by State, COURT ORDERED, Motion GRANTED; Deft's guilty plea WITHDRAWN. FURTHER, the original charges in the original Indictment filed March 9, 2016 are REINSTATED; Amended Indictment filed on October 19, 2017 is STRICKEN. Mr. Nadig requested Court to set the trial date on a date as soon as possible. COURT ADDITIONALLY ORDERED, trial date SET. CUSTODY 2/12/19 8:30 A.M. CALENDAR CALL 2/19/19 1:30 P.M. TRIAL BY JURY;</i></p>
01/29/2019	<p><b>CANCELED Status Check: Trial Setting</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>Vacated - per Attorney or Pro Per</i></p>
02/12/2019	<p> <b>Calendar Call</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p><b>MINUTES</b></p> <p>Trial Date Set;</p> <p>Journal Entry Details:</p> <p><i>Mr. Sanft advised ready for trial. State indicated 18 - 20 witnesses, 5 - 6 days, and two out of state witnesses. TRIAL DATE STANDS. CUSTODY 2/19/19 10:30 AM JURY TRIAL;</i></p> <p><b>SCHEDULED HEARINGS</b></p> <p> <b>Jury Trial</b> (02/19/2019 at 10:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p><b>02/19/2019-02/21/2019</b></p>
02/19/2019	<p> <b>Jury Trial</b> (10:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p><b>02/19/2019-02/21/2019</b></p> <p>Trial Continues;</p> <p>Trial Continues;</p> <p>Plea Entered;</p> <p>Journal Entry Details:</p> <p><i>OUTSIDE THE PRESENCE OF THE JURY: DEFT. WHITE ARRAIGNED AND PLED GUILTY TO COUNT 1 - CONSPIRACY TO COMMIT ROBBERY (F), COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (F), COUNTS 3-4 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (F), COUNTS 5-6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (F) COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (F) and COUNT 8 - IMPERSONATION OF AN OFFICER (GM). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P &amp; P) and SET for sentencing. JURY PRESENT: Court thanked and excused the jury. CUSTODY 03/14/19 8:30 AM SENTENCING;</i></p>



**CASE SUMMARY**  
**CASE NO. C-16-313216-2**

Trial Continues;

Trial Continues;

Plea Entered;

Journal Entry Details:

*OUTSIDE THE PRESENCE OF THE JURY: Amended Indictment FILED IN OPEN COURT. Mr. Schwartz advised they attempted to transport the Co-Defendant, Marland Dean, and the prison stated they cannot do so until 03/01/19. Mr. Sanft confirmed they are still requesting he be transported. Court stated the Department will contact the prison for transport. Parties stipulated to exhibits #1-233 JURY PRESENT: Jury sworn. Clerk read the Amended Indictment. Testimony and exhibits presented. (See worksheets) OUTSIDE THE PRESENCE OF THE JURY: Pursuant to NRS 50.215 and NRS 50.215(4)(b), COURT STATED the Court is not permitted to Order the Co-Defendant be transported from the prison. JURY PRESENT: Testimony and exhibits presented. (See worksheets);*

Trial Continues;

Trial Continues;

Plea Entered;

Journal Entry Details:

*PROSPECTIVE JURORS PRESENT: Voir Dire. OUTSIDE THE PRESENCE OF THE JURY: Mr. Sanft requested the Co-Defendant, Marlan Dean, be transported as a potential witness for the Defense. COURT ORDERED, Co-Defendant, Marlan Dean, is to be transported on 02/25/19; State to prepare the Transport Order. PROSPECTIVE JURORS PRESENT: Voir Dire. Court Clerk, Teri Berkshire, now present. INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: continued Voir Dire. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY Inquiry regarding named Juror as to whether or not he is a felon. INSIDE THE PRESENCE OF THE PROSPECTIVE JURY Court noted named juror is not a felon. Continued Voir Dire. Following Voir dire, 12 Jurors selected. Court thanked and excused the remaining prospective panel. INSIDE THE PRESENCE OF THE JURY: Court admonished the Jury and instructed them to return tomorrow at the given time. OUTSIDE THE PRESENCE OF THE JURY: Mr. Sanft advised he did not see a reason to not waive the challenges as noted. Court so noted. Court adjourned for the evening. ;*

03/14/2019



**Sentencing (8:30 AM)** (Judicial Officer: Leavitt, Michelle)

**03/14/2019, 03/19/2019**

Matter Continued;

Defendant Sentenced;

Journal Entry Details:

*DEFT WHITE ADJUDGED GUILTY of COUNT 1 - CONSPIRACY TO COMMIT ROBBERY (F), COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (F), COUNTS 3-4 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (F), COUNTS 5-6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (F), COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (F) and COUNT 8 - IMPERSONATION OF AN OFFICER (GM). Statement by Defendant. Arguments by counsel. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$8,831.62 restitution to be paid jointly and severally with Co-Defendant, \$150.00 DNA Analysis fee including testing to determine genetic markers and \$3.00 DNA Collection fee, Deft. SENTENCED as follows: on COUNT 1 - to a MAXIMUM of SEVENTY- TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC); on COUNT 2 - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY-SIX (66) MONTHS, CONCURRENT with COUNT 1 in the NDC; on COUNT 3 - to LIFE with a MINIMUM Parole Eligibility of FIVE (5) YEARS plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM with a parole eligibility of FIVE (5) YEARS for the Use of a Deadly Weapon, CONCURRENT TO COUNT 2 in the NDC; on COUNT 4 - to LIFE with a MINIMUM Parole Eligibility of FIVE (5) YEARS plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM with a parole eligibility of FIVE (5) YEARS for the Use of a Deadly Weapon, CONSECUTIVE with COUNT 3 in the NDC; COUNT 5 - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 4 in the NDC; COUNT 6 - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 5 in the NDC; COUNT 7 - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY-SIX (66)*



# CASE SUMMARY

CASE NO. C-16-313216-2

*MONTHS, CONCURRENT with COUNT 6 in the NDC; and COUNT 8 - to THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC), CONCURRENT with COUNT 7 for and AGGREGATE TOTAL of LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS with ONE THOUSAND ONE HUNDRED THIRTY-FOUR (1,134) DAYS credit for time served. BOND, if any, EXONERATED. NDC CLERK'S NOTE: Subsequent to Court, COURT ORDERED, COUNT 3 CONCURRENT TO COUNT 2. hvp/3/22/19;*

Matter Continued;

Defendant Sentenced;

Journal Entry Details:

*COURT ORDERED, matter CONTINUED. Pre-Sentence Investigation Report provide to Mr. Sanft in open court. CUSTODY CONTINUED TO: 03/19/19 8:30 AM;*

05/09/2019



**Appointment of Counsel** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

*Per Limited Remand from Nevada Supreme Court*

Counsel Confirmed; Per Limited Remand from Nevada Supreme Court

Journal Entry Details:

*Mr. Jackson advised he can accept appointment. COURT SO NOTED and ORDERED, Mr. Jackson APPOINTED as counsel. Mr. Jackson stated he will file the documents appointing him as counsel this week. NDC;*

06/04/2019



**Motion to Reduce** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Events: 04/30/2019 Motion

*Defendant / Petitioner's Motion to Reduce and/or Quash Restitution*

Off Calendar; Defendant / Petitioner's Motion to Reduce and/or Quash Restitution

Journal Entry Details:

*Court noted the Defendant is represented by counsel and directed the Defendant to give his motions to his attorney. COURT STATED Defendant's Motion is a fugitive document and ORDERED, matter OFF CALENDAR. NDC;*

08/29/2019



**Motion to Withdraw Plea** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

*Defendant's Motion to Withdraw Plea of Guilty*

Matter Heard;

This court does not have jurisdiction

Journal Entry Details:

*Defendant not present. Mr. Jackson requested this matter be continued for the Defendant's presence. State requested 45 days to respond. COURT ORDERED, State's Response due 10/10/19; matter SET for Hearing; State to prepare a Transport Order. NDC 10/17/19 8:30 AM HEARING;*

09/24/2019



**Motion** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

*Defendant's Motion for Certification and Request for Remand*

Off Calendar;

Journal Entry Details:

*Defendant not present. Mr. Jackson requested this matter be continued as the State needs to file a response. COURT STATED this matter is on Appeal and this Court has no jurisdiction; therefore, ORDERED, all matter MOOT and OFF CALENDAR. NDC;*

10/17/2019



**Evidentiary Hearing** (8:30 AM) (Judicial Officer: Leavitt, Michelle)

Off Calendar;

Journal Entry Details:

*Defendant not present. COURT ORDERED, matter OFF CALENDAR. NDC;*

06/23/2020



**Motion to Withdraw as Counsel** (12:00 PM) (Judicial Officer: Leavitt, Michelle)

*Motion to Withdraw as Counsel*





Granted; Motion to Withdraw as Counsel

Journal Entry Details:

*Defendant not present. COURT ORDERED, Motion GRANTED; Mr. Jackson to prepare the Order; 07/14/20 hearing VACATED. NDC;*

# CASE SUMMARY

CASE NO. C-16-313216-2

07/14/2020	<p><b>CANCELED Motion to Dismiss</b> (12:00 PM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>Vacated - per Judge</i></p> <p><i>Motion to Relieve Appellate Counsel</i></p>
07/21/2020	<p> <b>Motion for Order</b> (12:00 PM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>Motion for Court Order Directing Preparation of Transcript of April 18, 2017 Hearing</i></p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>Defendant not present. COURT STATED the Defendant has indicated that his family will pay for the transcripts; therefore, ORDERED, once the family pays the Court, the transcripts will be prepared; Pre-Sentence Investigation Report (PSI) is to be mailed to the Defendant; 07/28/20 hearing VACATED. NDC CLERK'S NOTE: The above minute order and PSI has been distributed to: Toney White NDOC No. 1214172 P.O. BOX 650 INDIAN SPRINGS, NEVADA 89070 ;</i></p>
07/28/2020	<p><b>CANCELED Motion</b> (12:00 PM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>Vacated - per Judge</i></p> <p><i>Defendant's Pro Per Motion to Obtain a Copy of a Sealed Record (Presentence Investigation Report - NRS 176.156) on an Order Shortening Time</i></p>
08/11/2020	<p> <b>Motion for Order</b> (12:00 PM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>Motion for Order for Additional Court Records</i></p> <p>Denied;</p> <p>Journal Entry Details:</p> <p><i>Defendant not present. Court noted the history of the case. Court stated the Defendant is now seeking the transcripts at the State's expense and the Defendant has failed to meet his burden; therefore, ORDERED, Motion DENIED; State to prepare the Order. NDC;</i></p>
09/10/2020	<p> <b>Motion for Appointment of Attorney</b> (12:00 PM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>Defendant's Defendant's Renewed Motion for Appointment of PCR Counsel</i></p> <p>Denied Without Prejudice;</p> <p>Journal Entry Details:</p> <p><i>Pursuant to NRS 34.750, COURT ORDERED, Motion DENIED WITHOUT PREJUDICE as there is no Petition pending and this Court cannot make a determination as to whether the issues are difficult due to the Defendant not putting forth anything; it is clear that the Defendant understand the proceedings and the Defendant has not met his burden; State to prepare the Order. NDC;</i></p>
10/06/2020	<p> <b>Motion for Order</b> (12:00 PM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>Motion for Order for Additional Court Records</i></p> <p>Denied;</p> <p>Journal Entry Details:</p> <p><i>Defendant not present. Court stated this is about the third time that the Defendant has filed this Motion. Further, COURT STATED the Defendant has not met his burden pursuant to the Peterson case; the Defendant does not have any type of Petition pending; the Defendant needs to demonstrate to the Court that the points he would raise have merit and that the merit in those points raised would be supported by a review of the record. COURT STATED the Defendant has not done any of that; the Defendant has simply asked for a bunch of transcripts for which he is not entitled to pursuant to Peterson vs Ward 87 Nevada 134; therefore, ORDERED, Motion DENIED; State to prepare the Order. NDC CLERK'S NOTE: The above minute order has been distributed to: Toney White NDOC No. 1214172 P.O. BOX 650 INDIAN SPRINGS, NEVADA 89070 hvp/10/27/20 ;</i></p>
06/03/2021	<p><b>Motion for Appointment of Attorney</b> (8:30 AM) (Judicial Officer: Leavitt, Michelle)</p> <p><i>Motion for Appointment of Attorney for Appeal</i></p>

**FCL**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**ALEXANDER CHEN**  
Chief Deputy District Attorney  
Nevada Bar #010539  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Petitioner

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**TONEY A. WHITE,**  
  
Petitioner,  
  
-vs-  
  
**THE STATE OF NEVADA,**  
  
Respondent.

**CASE NO:** A-20-824261-W  
  
C-16-313216-2  
  
**DEPT NO:** XII

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

**DATE OF HEARING: MARCH 25, 2021  
TIME OF HEARING: 12:30 PM**

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT, District Judge, on the 25th day of March, 2021, the Petitioner not being present, in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BERNARD B. ZADROWSKI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On March 9, 2016, ANTHONY WHITE (hereinafter “Petitioner”) was charged by way  
4 of Grand Jury Indictment with the following charges: CONSPIRACY TO COMMIT  
5 ROBBERY (Category B Felony – NRS 200.380, 199.480 – NOC 50147), BURGLARY  
6 WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony – NRS 205.060 –  
7 NOC – 50426), FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON  
8 (Category A Felony – NRS 200.310, 200.320, 193.165 – NOC 50055), ATTEMPT  
9 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380,  
10 193.330, 193.165 – NOC 50145), BATTERY WITH USE OF A DEADLY WEAPON  
11 RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481 –  
12 NOC 50226), and IMPERSONATION OF AN OFFICER (Gross Misdemeanor – NRS  
13 199.430 – NOC 53013).

14 On October 19, 2017, Petitioner, pursuant to Guilty Plea Agreement (“GPA”), pled  
15 guilty to: COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony – NRS  
16 200.380, NRS 199.480 – NOC 50147) and COUNT 2 – ATTEMPT ROBBERY WITH USE  
17 OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165 – NOC  
18 50145). The parties stipulated to a sentence of nine (9) to twenty-five (25) years in the Nevada  
19 Department of Corrections (“NDOC”) and the State agreed not to file additional charges  
20 regarding the incident.

21 On January 9, 2018, January 12, 2018, and September 5, 2018, respectively Petitioner  
22 filed Motions to Withdraw Guilty Plea. The State did not oppose these motions. The Court  
23 granted Petitioner’s motion, reinstated his original charges in the March 9, 2016 Indictment,  
24 and set the matter for a February 19, 2019 Jury Trial.

25 On February 19, 2019, Petitioner’s Jury Trial commenced. On February 21, 2019,  
26 Petitioner pled guilty to the following charges in the Amended Indictment: CONSPIRACY  
27 TO COMMIT ROBBERY (Category B Felony – NRS 200.380, 199.480 – NOC 50147),  
28 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony –

1 NRS 205.060 – NOC – 50426), FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY  
2 WEAPON (Category A Felony – NRS 200.310, 200.320, 193.165 – NOC 50055), ATTEMPT  
3 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380,  
4 193.330, 193.165 – NOC 50145), BATTERY WITH USE OF A DEADLY WEAPON  
5 RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481 –  
6 NOC 50226), and IMPERSONATION OF AN OFFICER (Gross Misdemeanor – NRS  
7 199.430 – NOC 53013).

8 On March 19, 2019, the Court sentenced Petitioner to an aggregate term of life with a  
9 minimum parole eligibility after twenty (20) years. The Judgment of Conviction was filed on  
10 March 27, 2019. On March 28, 2019, Petitioner filed a Notice of Appeal.

11 On July 26, 2019, Petitioner filed a Motion to Withdraw Plea. On August 29, 2019, the  
12 Court ordered the State to respond by October 10, 2019. On August 30, 2019, Petitioner filed  
13 a Motion for Certification and Request for Remand. On September 24, 2019, Petitioner's  
14 counsel requested a continuance for the State to respond to his Motion for Certification and  
15 Request for Remand, but the Court stated that because the case was on Appeal, the Court had  
16 no jurisdiction. Accordingly, the Court denied the matter as moot. The State filed its  
17 Opposition to Petitioner's Motion to Withdraw Plea on October 7, 2019.

18 On June 11, 2020, Petitioner's counsel filed a Motion to Withdraw as Counsel. On May  
19 11, 2020, the Nevada Supreme Court affirmed Defendant's Judgment of Conviction with  
20 remittitur issuing on June 5, 2020.

21 On June 19, 2020, Petitioner filed a Motion to Dismiss Counsel. On June 23, 2020, the  
22 Court granted Petitioner's counsel's Motion to Withdraw as Counsel.

23 On July 26, 2020, Petitioner filed a Motion to Obtain a Copy of a Sealed Record  
24 (Presentence Investigation Report – NRS 176.156) on an Order Shortening Time. On July 13,  
25 2020, Petitioner filed a Motion for Order for Additional Court Records. On July 21, 2020, the  
26 Court stated that Petitioner indicated that his family could pay for his records, so the Court  
27 ordered the transcripts requested and that Defendant's PSI would be mailed to him. On August  
28 11, 2020, the Court denied Defendant's Motion for Order for Additional Court Records

1 because he had now requested transcripts at the State's expense and Defendant had failed to  
2 meet his burden.

3 On August 19, 2020, Defendant filed the instant Renewed Motion for Appointment of  
4 PCR Counsel. The State filed its Opposition on September 2, 2020. On September 10, 2020,  
5 the Court denied Defendant's Motion without prejudice because there was no Petition for Writ  
6 of Habeas Corpus pending and Defendant had failed to meet his burden.

7 On September 14, 2020, Defendant filed a Motion for Credit for Additional Records.  
8 The State filed its Opposition on September 23, 2020. On October 6, 2020, the Court denied  
9 Petitioner's Motion.

10 On November 5, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus  
11 (Post-Conviction) (hereinafter "Petition"). Petitioner also filed a Motion to File Under Seal  
12 Exhibits 1 Thru 4, Appendix Volume I, and Appendix Volume II. On January 7, 2021,  
13 Petitioner filed Amended Petitioner's Motion for Filing Exhibits 1-4 Under Seal. The State  
14 filed its Response on March 9, 2021. On March 25, 2021, the Court denied Petitioner's Petition  
15 and found as follows.

### 16 FACTS

17 Petitioner's Supplemental Presentence Investigation Report (hereinafter "PSI") stated  
18 the facts as follows:

19 On January 20, 2016, Henderson Police dispatch received a call for service  
20 at a local Henderson apartment community in reference to a loud verbal  
21 dispute taking place in an apartment and a possible home invasion. Upon the  
22 officer's arrival, he observed a male standing behind a Jeep Cherokee. The  
23 officer briefly spoke with the male, identified as one of the co-defendants,  
24 Kevin Wong, as the officer approached the door. Screaming was heard from  
25 the apartment and a male victim (**Victim 2**) was found lying on the floor  
26 handcuffed and bleeding. The officer freed the handcuffs from the victim and  
also found a female victim (**Victim 1**) and secured the apartment. At this  
time, Mr. Wong entered his Jeep and fled the scene eventually being stopped  
by patrol units for several driving infractions.

27 **Victim 2** was transported to the hospital with significant head injuries to  
28 include lacerations and loss of teeth. He also suffered from numerous strikes  
from a baton to the head and torso area. Photographs were taken of his

1 injuries. A detective arrived at the scene and interviewed **Victim 1**. She stated  
2 she was sitting on the couch and heard someone knocking at the door. She  
3 answered and there was a female, identified as codefendant, Amanda Sexton  
4 and two male suspects, identified as co-defendants Marland Dean, and Toney  
5 White who forcibly opened the door and entered the apartment. Firearms  
6 were drawn and aimed at both of the victims. Ms. Sexton placed **Victim 1** in  
7 handcuffs and Mr. White and Mr. Dean began to yell at **Victim 2** stating,  
8 “We have a search warrant, US Marshals; get on the ground.” Mr. White and  
9 Mr. Dean began beating **Victim 2** with metal batons and struck him in the  
10 head and face.

11 A detective responded to a traffic stop location involving Mr. Wong. Mr.  
12 Wong gave the detective consent to search his vehicle. The detective  
13 observed a purse on the passenger seat and located a Nevada Identification  
14 card with Amanda Sexton’s name on it. Mr. White, Mr. Dean, and Ms.  
15 Sexton met up with Mr. Wong and forced their way into the victim’s  
16 apartment. Mr. Wong stated he observed officers arriving so he left the  
17 complex when he saw Mr. White, Mr. Dean, and Ms. Sexton flee the  
18 residence.

19 All four subjects were arrested, transported to the Henderson Detention  
20 Center and booked accordingly.

21 PSI, filed Mar. 11, 2019, at 8-9.

## 22 ANALYSIS

### 23 **I. INEFFECTIVE ASSISTANCE OF COUNSEL STANDARD**

24 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal  
25 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
26 defense.” The United States Supreme Court has long recognized that “the right to counsel is  
27 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
28 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
(1993).

29 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
30 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
31 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
32 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
33 representation fell below an objective standard of reasonableness, and second, that but for

1 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
2 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison  
3 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).  
4 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
5 inquiry in the same order or even to address both components of the inquiry if the defendant  
6 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

7 The court begins with the presumption of effectiveness and then must determine  
8 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
9 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
10 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
11 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
12 537 P.2d 473, 474 (1975).

13 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
14 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
15 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
16 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
17 (2002).

18 Based on the above law, the role of a court in considering allegations of ineffective  
19 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
20 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
21 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
22 (1978). This analysis does not mean that the court should “second guess reasoned choices  
23 between trial tactics nor does it mean that defense counsel, to protect himself against  
24 allegations of inadequacy, must make every conceivable motion no matter how remote the  
25 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
26 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
27 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
28 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).



1 “There are countless ways to provide effective assistance in any given case. Even the  
2 best criminal defense attorneys would not defend a particular client in the same way.”  
3 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
4 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
5 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
6 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
7 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
8 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

9 Even if a defendant can demonstrate that his counsel’s representation fell below an  
10 objective standard of reasonableness, he must still demonstrate prejudice and show a  
11 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
12 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
13 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
14 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
15 694, 104 S. Ct. at 2064-65, 2068).

16 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
17 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
18 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
19 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
20 be supported with specific factual allegations, which if true, would entitle the petitioner to  
21 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
22 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
23 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
24 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
25 petition to be dismissed.” (emphasis added).

26 Additionally, there is a strong presumption that appellate counsel’s performance was  
27 reasonable and fell within “the wide range of reasonable professional assistance.” See United  
28 States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104

1 S. Ct. at 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-  
2 prong test set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114  
3 (1996). In order to satisfy Strickland's second prong, the defendant must show that the omitted  
4 issue would have had a reasonable probability of success on appeal. Id.

5 The professional diligence and competence required on appeal involves "winnowing  
6 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
7 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In  
8 particular, a "brief that raises every colorable issue runs the risk of burying good arguments .  
9 . . in a verbal mound made up of strong and weak contentions." Id. at 753, 103 S. Ct. at 3313.  
10 "For judges to second-guess reasonable professional judgments and impose on appointed  
11 counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very  
12 goal of vigorous and effective advocacy." Id. at 754, 103 S. Ct. at 3314.

13 However, to establish a claim of ineffective assistance of counsel for advice regarding  
14 a guilty plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon,  
15 281 F.3d 851, 880 (9th Cir. 2002). When a conviction is the result of a guilty plea, a defendant  
16 must show that there is a "reasonable probability that, but for counsel's errors, he would not  
17 have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52,  
18 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988,  
19 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).  
20 "A reasonable probability is a probability sufficient to undermine confidence in the outcome."  
21 McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466  
22 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068). Ultimately, while it is counsel's duty to  
23 candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a  
24 plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

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**A. Ground 1: The District Court Did Not Err When It Did Not Allow Petitioner to Represent Himself and Appellate Counsel was Not Ineffective for Failing to Raise the Issue in a Particular Way**

Under his first ground, Petitioner argues that the Court erred in not permitting him to represent himself at trial as well as refusing to canvas Petitioner on March 21, 2017 and appellate counsel was ineffective for failing to raise that issue as a claim in his direct appeal with the complete record. Petition at 8-15. Specifically, he claims that appellate counsel failed to order transcripts for hearings on April 18, 2017, March 27, 2017, and May 3, 2017 to provide the appellate court with the complete record and properly frame his claim to include the Court's denial of Petitioner's request on March 27, 2017 and April 18, 2017. Petition at 8, 12. He asserts that appellate counsel should have "weeded out" the February 6, 2018 denial of his request that was raised on direct appeal and replaced it with a Faretta claim stemming from March 27, 2017 and April 18, 2017. Petition at 14-15. Additionally, in a footnote, Petitioner claims that the district court abused its discretion by failing, prior to trial, to address his *pro per* filings on May 18, 2016, June 15, 2016, December 6, 2016, December 28, 2016, March 27, 2017, May 3, 2017, December 14, 2017, January 9, 2018, January 12, 2018, and March 28, 2019. Petition at 9.

Petitioner correctly concedes that appellate counsel raised his Faretta claim on direct appeal and is thus barred by the law of the case doctrine. "The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV.

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1 CONST. Art. VI § 6. Here, the Nevada Court of Appeals concluded such claim was meritless  
2 and stated:

3 A district court may properly deny a request for self-representation if the  
4 request is equivocal. *Lyons v. State*, 106 Nev. 438, 443, 796 P.2d 210, 213  
5 (1990), *clarified on other grounds by Vanisi v. State*, 117 Nev. 330, 341, 22  
6 P.3d 1164, 1171-72 (2001). The record reveals that White filed a motion  
7 requesting to withdraw his guilty plea and for either the appointment of  
8 substitute counsel or permission to represent himself. The district court held  
9 a hearing concerning White's motion, discussed the motion with White, and  
10 clarified White's desire to move for the withdrawal of his guilty plea.  
11 Following the discussion, the district court decided to appoint substitute  
12 counsel. White acknowledged he understood the district court's decision to  
13 appoint substitute counsel and agreed that the district court had addressed his  
concerns. A review of White's motion and the transcript of the pertinent  
hearing demonstrates he did not make an unequivocal request to represent  
himself and the district court appropriately addressed White's motion and  
concerns without conducting a *Faretta* canvass. Therefore, White fails to  
demonstrate he is entitled to relief.

14 Order of Affirmance, Docket No. 78483, filed May 11, 2020, at 1-2. Thus, Petitioner's claim  
15 is barred by the law of the case doctrine.

16 To the extent Petitioner now claims that appellate counsel was ineffective because he  
17 failed to frame the issue regarding the March 27, 2018 request and April 18, 2017 denial of  
18 his request and failed to order such transcripts, his claim is still meritless as he cannot  
19 demonstrate that such claim would have been meritorious as he was making the same request:  
20 to represent himself. Accordingly, Petitioner cannot demonstrate that framing his claim in this  
21 way would have been successful especially in light of the Nevada Court of Appeals rejecting  
22 his claim.

23 Generally, a criminal defendant has the right to representation by counsel under the  
24 Sixth Amendment of the United States Constitution and the Nevada Constitution. See U.S.  
25 CONST. AMEND. VI; NEV. CONST. ART. 1, § 8, cl. 1. However, a defendant can waive this right  
26 and, where he chooses to represent himself, he must satisfy the court that his waiver of the  
27 right to counsel is knowing and voluntary. *Faretta*, 422 U.S. at 818-19, 835, 95 S. Ct. at 2525;  
28 *Vanisi v. State*, 117 Nev. 330, 337-38, 22 P.3d 1164, 1169-70 (2001).

1 Both the United States Supreme Court and this Court have recognized that “the right  
2 to defend is given directly to the accused; for it is he who suffers the consequences if the  
3 defense fails.” Johnson v. State, 117 Nev. 153, 162, 17 P.3d 1008 (2001) (quoting Faretta,  
4 422 U.S. at 819-20, 95 S. Ct. at 2533). The Court further emphasized that “[i]t is the defendant  
5 . . . who must be free personally to decide whether in his particular case counsel is to his  
6 advantage. And although he may conduct his own defense ultimately to his own detriment, his  
7 choice must be honored out of that respect for the individual which is the lifeblood of the  
8 law.” Id. Indeed, once a defendant is found competent to stand trial, so long as he freely,  
9 intelligently, and knowingly waives his right to counsel a district court has little power to  
10 prevent the defendant from representing himself: “[I]n the absence of some indication that  
11 Johnson's attempt to waive counsel was not knowing, intelligent and voluntary, or that some  
12 other factor warranted denial of the right to self-representation under this court's holding in  
13 Tanksley, the district court could not properly preclude Johnson from waiving his right to  
14 counsel.” Id. at 164, 17 P.3d 1008.

15 While this Court “indulge[s] in every reasonable presumption against waiver of the  
16 right to counsel,” it gives deference to the lower court’s decision to grant a defendant’s waiver  
17 of his right to counsel. Hooks v. State, 124 Nev. 48, 55, 57, 176 P.3d 1081, 1085-86 (2008).  
18 “Through face-to-face interaction in the courtroom, the trial judges are much more competent  
19 to judge a defendant’s understanding” of his rights than the appellate court since a “cold record  
20 is a poor substitute for demeanor observation.” Graves v. State, 112 Nev. 118, 124, 912 P.2d  
21 234, 238 (1996). Indeed, “[e]ven the omission of a canvass is not reversible error if it appears  
22 from the whole record that the defendant knew his rights and insisted upon representing  
23 himself.” Hooks, 124 Nev. at 55, 176 P.3d at 1085 (quotation marks and citation omitted).

24 In assessing a waiver, the inquiry is whether the defendant can knowingly and  
25 voluntarily waive his right to counsel, not whether the defendant can competently represent  
26 himself. Tanksley v. State, 113 Nev. 997, 1000-01, 946 P.2d 148, 150 (1997). A defendant’s  
27 technical knowledge is not relevant to the inquiry and a request for self-representation may  
28 not be denied solely because the defendant lacks legal skills. Id. However, a request *may* be

1 denied if the request is equivocal, the defendant abuses his right by disrupting the judicial  
2 process, or the defendant is incompetent to waive his right to counsel. Id.

3 Moreover, Petitioner's allegation that the district court abused its discretion by failing,  
4 prior to trial, to address his *pro per* filings on May 18, 2016, June 15, 2016, December 6, 2016,  
5 December 28, 2016, March 27, 2017, May 3, 2017, December 14, 2017, January 9, 2018,  
6 January 12, 2018, and March 28, 2019 is waived, belied by the record, and meritless. Petition  
7 at 9. As a preliminary matter, this is a substantive claim that is waived. NRS 34.810(1) reads:

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

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

13 (b) The petitioner's conviction was the result of a trial and the  
14 grounds for the petition could have been:

15 [...]

16 (2) Raised in a direct appeal or a prior petition for a writ of habeas  
17 corpus or postconviction relief.

18 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims  
19 of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction  
20 proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on  
21 direct appeal, or they will be *considered waived in subsequent proceedings.*" Franklin v. State,  
22 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other  
23 grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a  
24 habeas petition if it presents claims that either were or could have been presented in an earlier  
25 proceeding, unless the court finds both cause for failing to present the claims earlier or for  
26 raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-  
27 47, 29 P.3d 498, 523 (2001). In other words, substantive claims are beyond the scope of habeas  
28 and waived. NRS 34.724(2)(a); Evans, 117 Nev. at 646-47, 29 P.3d at 523 (2001); Franklin,  
110 Nev. at 752, 877 P.2d at 1059, disapproved on other grounds, Thomas, 115 Nev. at 148,  
979 P.2d at 222.

Moreover, Petitioner's claim is waived because a defendant cannot enter a guilty plea  
then later raise independent claims alleging a deprivation of his rights before entry of his plea.

1 State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting  
2 Tollett v. Henderson, 411 U.S. 258, 267 (1973). Generally, the entry of a guilty plea waives  
3 any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91  
4 Nev. 469, 538 P.2d 164 (1975). “[A] guilty plea represents a break in the chain of events  
5 which has preceded it in the criminal process [...] [A defendant] may not thereafter raise  
6 independent claims relating to the deprivation of constitutional rights that occurred prior to the  
7 entry of the guilty plea.” Id. (quoting Tollett, 411 U.S. at 267).

8 Additionally, Petitioner’s claim is largely belied by the record. Hargrove, 100 Nev. at  
9 502, 686 P.2d at 225. Indeed, the record indicates that on June 9, 2016, the Court denied  
10 Petitioner’s Application to Recuse Counsel and for Appointment for Alternative Counsel:  
11 Memorandum of Points and Authorities filed on May 18, 2016. On July 7, 2016, the Court  
12 addressed Petitioner’s additional Application to Recuse Counsel and for Appointment of  
13 Alternative Counsel: Memorandum of Points and Authorities filed on June 15, 2016 and  
14 ordered it off calendar as having been previously denied. On January 19, 2017, Petitioner  
15 withdrew his Motion to Recuse Counsel And Proceed In Pro Pria Personam In Light Of  
16 Counsels Demonstrated Ineffectiveness And Case Neglect And In Light Of Existing Conflict  
17 filed on December 28, 2016 in open court. On April 18, 2017, the Court denied Petitioner’s  
18 Motion for Trial Extension for 180 Days; Motion to Recuse Counsel and Application to  
19 Proceed in Propria Personam filed on March 27, 2017. Petitioner alleges the Court failed to  
20 address a December 14, 2017, but the record does not show that Petitioner filed a pleading that  
21 day. On February 6, 2018, the Court addressed his Motions for Withdrawal of Guilty Plea and  
22 for Appointment of New Counsel or Alternatively to Proceed in Pro Per filed on January 9,  
23 2018 and January 12, 2018. The only filing by Petitioner on March 28, 2019 was a Notice of  
24 Appeal to the Nevada Supreme Court, which was not a matter this Court could address.

25 The only two (2) filings the Court did not address prior to Petitioner’s trial was his  
26 pretrial petition for writ of habeas corpus filed on December 6, 2016 and his petition for writ  
27 of habeas corpus as well as his Objection to Court’s Denial of Motion filed May 3, 2017.  
28 However, as discussed *supra*, not only is this a substantive claim that is waived, but also

1 Petitioner cannot demonstrate prejudice because these pleadings were meritless. Indeed, in his  
2 December 6, 2016 Petition, Petitioner's sole claim was that he should be released from custody  
3 because the State violated Marcum. As discussed *infra* in Section F, Petitioner was given  
4 "reasonable notice." Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, even if the Court had  
5 addressed this petition, it would have failed. Additionally, Petitioner has not and cannot  
6 demonstrate that he was prejudiced by the Court failing to address his Objection to Court's  
7 Denial of Motion that he filed on May 3, 2017. Indeed, such document does not amount to a  
8 cognizable motion as Petitioner claimed in such document he was merely preserving the issue  
9 for appellate review. To the extent Petitioner was seeking rehearing by filing such document,  
10 he cannot demonstrate that the Court would have granted rehearing and more importantly  
11 whether that would have caused him not to plead guilty and proceed with trial. Hill, 474 U.S.  
12 at 59, 106 S.Ct. at 370; *see also* Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev.  
13 at 190-91, 87 P.3d at 537. Likewise, Petitioner's petition for writ of habeas corpus filed on  
14 May 3, 2017, is meritless as discussed *infra* in Section B, Petitioner's Fourth Amendment  
15 complaints are meritless. Thus, Petitioner cannot demonstrate good cause or prejudice and his  
16 claims are denied.

## 17 **B. Ground 2: Petitioner's Fourth Amendment Violation Claim**

18 Petitioner claims his fourth amendment rights were violated for the following reasons:  
19 (1) Wong, the alleged unauthorized driver of Petitioner's vehicle, did not have standing to  
20 consent to the search of Petitioner's vehicle as well as Co-Defendant Sexton's purse and thus  
21 the items found in such search were fruit of the poisonous tree (Petition at 17-21); (2) law  
22 enforcement committed a warrantless "surreptitious surveillance" of one of Petitioner's  
23 residences (Petition at 21-22); and (3) the affidavits attached to the search warrants for  
24 Petitioner's vehicle and apartment contained "misrepresentations, distortions, omissions,  
25 inaccuracies, and/or falsities" (Petition at 22-26).

26 As a preliminary matter Petitioner's claims are waived in two (2) ways. First,  
27 Petitioner's claims are substantive and therefore waived. NRS 34.724(2)(a); Evans, 117 Nev.  
28 at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059, disapproved on other



1 grounds, Thomas, 115 Nev. at 148, 979 P.2d at 222. Second, Petitioner's claims are waived  
2 because he is alleging a deprivation of rights that would have occurred prior to entry of his  
3 guilty plea. Eighth Judicial District Court, 121 Nev. at 225, 112 P.3d at 1070, n.24; See Webb,  
4 91 Nev. at 469, 538 P.2d at 164. Regardless, Petitioner's claims are meritless and are thus  
5 denied.

### 6 **1. Alleged Warrantless Search**

7 Petitioner's claim that his rights were violated because Wong consented to the search  
8 of Petitioner's vehicle during a traffic stop is not only waived, but it is also barred by the  
9 doctrine of res judicata. Re-litigation of this issue is precluded by the doctrine of res judicata.  
10 Exec. Mgmt. v. Ticor Titles Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998) (citing  
11 Univ. of Nev. v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)). "The doctrine  
12 is intended to prevent multiple litigation causing vexation and expense to the parties and  
13 wasted judicial resources..." Id.; see also Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005)  
14 (recognizing the doctrine's availability in the criminal context); York v. State, 342 S.W. 3d  
15 528, 553 (Tex. Crim. App. 2011); Bell v. City of Boise, 993 F.Supp.2d 1237 (D. Idaho 2014)  
16 (finding res judicata applies in both civil and criminal contexts).

17 Here, Petitioner raised this issue in his Motion for Trial Extension for 180 Days; Motion  
18 to Recuse Counsel and Application for Proceed in Properia Personam filed on March 27, 2017.  
19 This Court denied the Motion and found that Petitioner's claim regarding Wong was meritless  
20 because Petitioner did not have standing to raise another individual's Fourth Amendment  
21 Right. Defendant White's Pro Per Motion for Trial Extension for 180 Days; Motion to Recuse  
22 Counsel and Application to Proceed in Properia Personam Hearing Minutes, Apr. 18, 2017.  
23 Regardless, the claim is meritless as Wong, the driver of the vehicle, could properly give  
24 consent to the search. United States v. Eldridge, 984 F.2d 943, 948 (8th Cir. 1993); See United  
25 States v. Matlock, 415 U.S. 164, 171, 94 S.Ct. 988, 993, 39 L.Ed.2d 242 (1974). Therefore,  
26 Petitioner's claim is denied.

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1                   **2. Pre-arrest Surreptitious Surveillance of Petitioner**

2           In addition to being waived, Petitioner's argument that his rights were violated because  
3 law enforcement conducted a warrantless "surreptitious surveillance" of Petitioner's residence  
4 is meritless. Petitioner cites to one (1) of the law enforcement incident reports which states  
5 that the officers surveilled an apartment on foot, from their vehicle, and searched the apartment  
6 with consent. Petitioner has not and cannot cite any legal authority that states that surveilling  
7 from a lawful position is a violation of an individual's fourth amendment right. Regardless,  
8 Petitioner has not alleged that he would have proceeded with trial and not pled guilty.  
9 Therefore, Petitioner's claim is denied.

10                   **3. Oath or Affirmation**

11           Also in addition to being waived, Petitioner's complaint that his Fourth Amendment  
12 right was violated because some of the contents of the warrant affidavits were false is meritless.

13           The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const.  
14 Amend. IV. The Fourth Amendment states that "no warrants shall issue, but upon probable  
15 cause, supported by oath or affirmation, and particularly describing the place to be searched,  
16 and the persons or things to be seized." U.S. Const. Amend. IV; Draper v. United States, 358  
17 U.S. 307, 79 S. Ct. 329 (1959). "'Probable cause' requires that law enforcement officials have  
18 trustworthy facts and circumstances which would cause a person of reasonable caution to  
19 believe that it is more likely than not that the specific items to be searched for are: seizable  
20 and will be found in the place to be searched." Keesee v. State, 110 Nev. 997, 1002, 879 P.2d  
21 63, 66 (1994).

22           While the information contained in every warrant must be truthful, this "does not mean  
23 'truthful' in the sense that every fact recited in the warrant affidavit is necessarily correct, for  
24 probable cause may be founded upon hearsay and upon information received from informants,  
25 as well as upon information within the affiant's own knowledge that sometimes must be  
26 garnered hastily." Franks v. Delaware, 438 U.S. 154, 165, 98 S.Ct. 2674, 2681 (1978). Further,  
27 in U.S. v. Rettig, 589 F.2d 418 (9th Cir.1979), the Court held:

28   //

1 Where factual inaccuracy of the affidavit is alleged, a warrant is invalidated  
2 only if it is established that the affiant was guilty of deliberate falsehood or  
3 reckless disregard for the truth, and if with the affidavit's false material set  
4 to one side, the information remaining in the affidavit is inadequate to  
5 support probable cause. Id. at 422 (Citing Franks v. Delaware, 438 U.S.  
6 154, 98 S. Ct 2674 (1978)).

7 Here, Petitioner complains that nowhere in the dispatch records did it state "home  
8 invasion." However, Petitioner has omitted information from other reports indicating that  
9 officers received information of forcible entry into the apartment. See e.g., Petitioner's  
10 Appendix, Volume 1, at 35, 37, 84. Regardless, Petitioner has not explained the relevance of  
11 such information or more importantly whether a difference in such information would have  
12 caused him to proceed with trial instead of ultimately pleading guilty. Additionally, Petitioner  
13 claims there were misrepresentations of what certain individuals observed or did not observe.  
14 Not only has Petitioner failed to explain why he believes such information to be false, but also  
15 his assertions are pure speculation as he cannot state what other people witnessed. Moreover,  
16 Petitioner alleges additional information that he believes to be false, but he has not  
17 demonstrated that even if any of the information was indeed false, a point not conceded, the  
18 affiant was guilty of deliberate falsehood or had a reckless disregard for the truth. Franks, 438  
19 U.S. at 165, 98 S.Ct. at 2681. Indeed, Petitioner cannot show prejudice or that counsel would  
20 have succeeded in suppressing the evidence obtained from the Search Warrant Affidavits. The  
21 submitting detective based the information on the statements of first responding patrol officers.  
22 There is nothing indicating that he intentionally misrepresented the facts. Furthermore,  
23 Petitioner has not indicated that the information in the affidavits was so inadequate that they  
24 do not support a finding of probable cause. Id. Therefore, Petitioner's claim is denied.

### 25 **C. Ground 3: The State Did Not Breach its Duty Under Brady v. Maryland**

26 Petitioner argues that the State breached its duty under Brady v. Maryland for failing to  
27 disclose the following: (1) criminal histories of victims and the State's witnesses; (2) the search  
28 warrant and return on the victim's apartment; (3) police reports and criminal documents  
criminally charging Cliff; (4) body camera footage of Petitioner's arrest. Petition at 26-28.

1 As a preliminary matter, Petitioner's claim is substantive and thus waived. NRS  
2 34.724(2)(a); Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d  
3 at 1059, disapproved on other grounds, Thomas, 115 Nev. at 148, 979 P.2d at 222.  
4 Additionally, the claim is waived because Petitioner is asserting a constitutional claim that  
5 occurred prior to entering his guilty plea. Eighth Judicial District Court, 121 Nev. at 225, 112  
6 P.3d at 1070, n.24; See Webb, 91 Nev. at 469, 538 P.2d at 164. Regardless, Petitioner's claim  
7 is belied by the record as well as bare and naked. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

8 It is well-settled that Brady and its progeny require a prosecutor to disclose evidence  
9 favorable to the defense when that evidence is material either to guilt or to punishment. See  
10 Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25 (2000); Jimenez v. State, 112 Nev. 610, 618-  
11 19, 918 P.2d 687 (1996). “[T]here are three components to a Brady violation: (1) the evidence  
12 at issue is favorable to the accused; (2) the evidence was withheld by the state, either  
13 intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material.”  
14 Mazzan 116 Nev. at 67. “Where the state fails to provide evidence which the defense did not  
15 request or requested generally, it is constitutional error if the omitted evidence creates a  
16 reasonable doubt which did not otherwise exist. In other words, evidence is material if there is  
17 a reasonable probability that the result would have been different if the evidence had been  
18 disclosed.” Id. at 66 (internal citations omitted). “In Nevada, after a specific request for  
19 evidence, a Brady violation is material if there is a reasonable *possibility* that the omitted  
20 evidence would have affected the outcome. Id. (original emphasis), *citing Jimenez v. State*,  
21 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996); Roberts v. State, 110 Nev. 1121, 1132, 881  
22 P.2d 1, 8 (1994).

23 “The mere possibility that an item of undisclosed information might have helped the  
24 defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the  
25 constitutional sense.” United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392, 2399-400  
26 (1976). Favorable evidence is material, and constitutional error results, “if there is a reasonable  
27 probability that the result of the proceeding would have been different.” Kyles v. Whitley, 514  
28 U.S. 419, 433-34, 115 S.Ct. 1555, 1565 (1995), *citing United States v. Bagley*, 473 U.S. 667,

1 682, 105 S.Ct. 3375, 3383 (1985). A reasonable probability is shown when the nondisclosure  
2 undermines confidence in the outcome of the trial. Kyles at 434, 115 S.Ct. 1565.

3 Due Process does not require simply the disclosure of “exculpatory” evidence.  
4 Evidence must also be disclosed if it provides grounds for the defense to attack the reliability,  
5 thoroughness, and good faith of the police investigation or to impeach the credibility of the  
6 State’s witnesses. See Kyles 514 U.S. at 442, 445-51, 1115 S. Ct. 1555 n. 13. Evidence cannot  
7 be regarded as “suppressed” by the government when the defendant has access to the evidence  
8 before trial by the exercise of reasonable diligence. United States v. White, 970 F.2d 328, 337  
9 (7<sup>th</sup> Cir. 1992). “Regardless of whether the evidence was material or even exculpatory, when  
10 information is fully available to a defendant at the time of trial and his only reason for not  
11 obtaining and presenting the evidence to the Court is his lack of reasonable diligence, the  
12 defendant has no Brady claim.” United States v. Brown, 628 F.2d 471, 473 (5<sup>th</sup> Cir. 1980).

13 “While the [United States] Supreme Court in Brady held that the [g]overnment may not  
14 properly conceal exculpatory evidence from a defendant, it does not place any burden upon  
15 the [g]overnment to conduct a defendant’s investigation or assist in the presentation of the  
16 defense’s case.” United States v. Marinero, 904 F.2d 251, 261 (5<sup>th</sup> Cir. 1990); *accord* United  
17 States v. Pandozzi, 878 F.2d 1526, 1529 (1<sup>st</sup> Cir. 1989); United States v. Meros, 866 F.2d 1304,  
18 1309 (11<sup>th</sup> Cir. 1989). When defendants miss the exculpatory nature of documents in their  
19 possession or to which they have access, they cannot miraculously resuscitate their defense  
20 after conviction by invoking Brady. White, 970 F.2d at 337.

21 The Nevada Supreme Court has followed the federal line of cases in holding that Brady  
22 does not require the State to disclose evidence which was available to the defendant from other  
23 sources, including diligent investigation by the defense. Steese v. State, 114 Nev. 479, 495,  
24 960 P.2d 321, 331 (1998). In Steese, the undisclosed information stemmed from collect calls  
25 that the defendant made. This Court held that the defendant certainly had knowledge of the  
26 calls that he made and through diligent investigation the defendant’s counsel could have  
27 obtained the phone records independently. Id. Based on that finding, this Court found that

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1 there was no Brady violation when the State did not provide the phone records to the defense.  
2 Id.

3 First, Petitioner's claim that the State failed to provide certain discovery is belied by  
4 the record as counsel for the State, an officer of the court, stated that the State provided all  
5 discovery to defense counsel. Hargrove, 100 Nev. at 502, 686 P.2d at 225; Defendant White's  
6 Pro Per Motion for Trial Extension for 180 Days; Motion to Recuse Counsel and Application  
7 to Proceed in Propria Personam Hearing Minutes, Apr. 18, 2017. To the extent Petitioner  
8 claims that the State's record was false, he has failed to provide any support for why he  
9 believes such record was false. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Regardless,  
10 Petitioner has not demonstrated the materiality of the information he now self-servingly claims  
11 he did not receive and whether it truly would have resulted in him not pleading guilty.  
12 Therefore, his claim is denied.

#### 13 **D. Ground 4: Ineffective Assistance of Counsel Claims**

14 Petitioner argues that counsel was ineffective for: (1) "failing to acquire certain  
15 information from Petitioner at their initial interviewing of him including his physical and  
16 mental health and his immediate medical needs," including his alleged medical, mental health,  
17 and duress claims, (2) failing to hire a medical and mental health expert to evaluate Petitioner  
18 prior to trial, (3) failing to consult and discuss with Petitioner the grand jury process including  
19 Petitioner's right to testify and failing to challenge the Marcum notice error as well as present  
20 evidence and impeach victims at such hearing, (4) failing to communicate all anticipated  
21 tactics and strategies, including failing to explore Petitioner's desire to suppress evidence and  
22 pursuing a diminished capacity defense, (5) failing to retrieve certain witness affidavits and  
23 interview witnesses, including Trina Potluck. Petition at 31, 33-36. Additionally, he complains  
24 that appellate counsel was ineffective for failing to comply with ADKT 411. Petition at 32.

25 A defendant who contends his attorney was ineffective because he did not adequately  
26 investigate must show how a better investigation would have rendered a more favorable  
27 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

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1        *1. Harvey Gruber Complaints*

2        Petitioner argues that counsel was ineffective for several reasons. As an initial threshold  
3 matter, Petitioner cannot demonstrate any error by Mr. Gruber prejudiced Petitioner because  
4 Mr. Gruber did not represent Petitioner at trial. Regardless, Petitioner's claims are meritless.

5        First, Petitioner complains that counsel was ineffective for failing to ensure Petitioner  
6 was provided a timely Marcum notice and was given an opportunity to testify as well as present  
7 evidence at the grand jury hearing. Petition at 36. However, Petitioner cannot claim ineffective  
8 assistance of counsel for an action taken by the State. Indeed, Petitioner's claim appears to be  
9 a waived substantive claim that he attempted to disguise as an ineffective assistance of counsel  
10 claim. NRS 34.724(2)(a); Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at  
11 752, 877 P.2d at 1059, disapproved on other grounds, Thomas, 115 Nev. at 148, 979 P.2d at  
12 222. Regardless, Petitioner's claim is meritless because it is belied by the record. The record  
13 indicates that the State served Marcum Notice on February 23, 2016 and Petitioner's counsel  
14 acknowledged notification on February 24, 2016. See State's Exhibit A; Henderson Justice  
15 Court Minutes, Feb. 24, 2016. Petitioner's Grand Jury Hearing was held March 25, 2016. One  
16 month was "reasonable notice" for Petitioner to decide whether he wished to testify or present  
17 evidence at the hearing. NRS 172.241. Moreover, Petitioner has not demonstrated what he  
18 would have testified about, what evidence he would have presented if given the opportunity,  
19 and whether he ultimately would not have pled guilty and proceeded with his trial. Hill, 474  
20 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120  
21 Nev. at 190-91, 87 P.3d at 537.

22        Second, Petitioner claims that counsel was ineffective for failing to investigate the basis  
23 for Petitioner's pre-trial petition for writ of habeas corpus, which sought a Franks and  
24 suppression hearing due to the State allegedly illegally obtaining evidence. Petition at 36. As  
25 discussed *supra* in Section B, Petitioner has failed to demonstrate that a Franks suppression  
26 hearing would have been successful or that the State illegally obtained evidence. Accordingly,  
27 counsel cannot be deemed ineffective for not filing frivolous motions and Petitioner cannot  
28 establish prejudice. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

1 Third, as discussed in Section C *supra*, Petitioner's claim that the State failed to abide  
2 by its discovery obligation and provide discovery pursuant to Brady is belied by the record  
3 and he has failed to demonstrate why he believes the State's record on the matter was false,  
4 let alone the materiality of the information he was seeking, and whether it would have changed  
5 his decision of pleading guilty. Thus, it would have been futile for counsel to pursue the matter  
6 and he cannot demonstrate he was prejudiced by counsel's failure to do so. Ennis, 122 Nev. at  
7 706, 137 P.3d at 1103.

8 Fourth, Petitioner complains that counsel failed to object, interject, and "treat the  
9 record" at the April 18, 2017 hearing to ensure Petitioner's Sixth Amendment right to self-  
10 representation. Petition at 36. This is a bare and naked claim suitable only for summary denial  
11 as Petitioner has failed to even attempt to allege how counsel should have objected, interjected,  
12 and "treated the record." Moreover, the minutes from said hearing show counsel's active  
13 participation at the hearing. Regardless, he does not demonstrate that had counsel acted in such  
14 a way he would, for a fact, not have pled guilty and proceeded with his trial. Hill, 474 U.S. at  
15 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev.  
16 at 190-91, 87 P.3d at 537.

17 Fifth, Petitioner claims counsel was ineffective for failing to conduct pre-trial  
18 investigation of Petitioner's mental health history, medical history, diminished capacity,  
19 duress defenses, and diminished capacity defenses as well as his competency during the crime.  
20 Petition at 36. He also reiterates that counsel should have hired an expert for this purpose. Id.  
21 Such claim is belied by the record as Petitioner indicated during his plea canvass with the  
22 Court:

23 THE COURT: Okay. And you had a chance to discuss any defenses that you  
24 would have to these charges?

25 THE DEFENDANT: Yeah.

26 THE COURT: You discussed them with your attorney?

27 THE DEFENDANT: Yeah.

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1 Recorder's Transcript of Hearing: Jury Trial – Day 3, filed July 12, 2019, at 13; Hargrove, 100  
2 Nev. at 502, 686 P.2d at 225. Regardless, Petitioner's claim that counsel did not investigate  
3 Petitioner's medical history and mental health history is belied by Petitioner's own Exhibit to  
4 the instant Petition. Indeed, Petitioner's Appendix, Volume II, pages 314 through 331, reveal  
5 that counsel did in fact obtain medical records on Petitioner's behalf. To the extent Petitioner  
6 complains that counsel should have investigated further, he has not proven what that  
7 investigation would have shown whether the information received would have caused him not  
8 to plead guilty or more importantly provided a better outcome. Molina, 120 Nev. at 192, 87  
9 P.3d at 538. Similarly, Petitioner has not demonstrated what an expert would have said, let  
10 alone whether hiring an expert would have rendered a better outcome. Id. Therefore,  
11 Petitioner's claim is denied.

12 Sixth, Petitioner claims counsel failed to investigate evidence and witnesses for his  
13 case. Petition at 36. Specifically, he claims that counsel failed to investigate "Sexton, Burton,  
14 Cousert, White, Bennett, Hoyer, Cliff, Burkhalter, Portlock, Deann, Perry, and Wong" to assist  
15 in Petitioner's defenses even though counsel had the Affidavit from Portluck. Id. Petitioner's  
16 claim fails as he has not and cannot demonstrate whether these witnesses would have assisted  
17 in his defense and provided a better outcome. Molina, 120 Nev. at 192, 87 P.3d at 538. Thus,  
18 Petitioner's claim is bare and naked and suitable only for summary dismissal. Hargrove, 100  
19 Nev. at 502, 686 P.2d at 225. Moreover, Petitioner concedes that counsel possessed Portluck's  
20 Affidavit, so his claim regarding counsel's investigation of Portluck is also belied by the record  
21 he has provided this Court. Id. Regardless, Petitioner does not allege what further investigation  
22 Petitioner should have conducted in light of this Affidavit. Therefore, Petitioner's claim is  
23 denied.

24 Seventh, Petitioner complains that counsel was ineffective for failing to investigate  
25 facts surrounding Deann's alleged threats and coercion that induced Petitioner's October 19,  
26 2017 later withdrawn guilty plea. Petition at 37. However, this claim fails as Petitioner cannot  
27 demonstrate prejudice because his first plea withdrawal request was granted. As it relates to  
28 his second plea, Petitioner cannot demonstrate how investigating his prior plea would have

1 changed the outcome of his later guilty plea. In other words, regardless of whether counsel  
2 investigated Deann's alleged threats prior to Petitioner's first guilty plea, Petitioner cannot  
3 demonstrate how investigating this prior plea allegation would have caused him not to enter  
4 his second guilty plea and proceed with trial. Hill, 474 U.S. at 59, 106 S.Ct. at 370; see also  
5 Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev. at 190-91, 87 P.3d at 537.  
6 Therefore, Petitioner's claim is denied.

7 Eighth, Petitioner claims counsel was ineffective for failing to pursue a mental health  
8 defense in light of Petitioner's mental health records. Petition at 37. Petitioner's claim fails as  
9 he cannot demonstrate that had counsel pursued such a defense, he would not have pled guilty  
10 and proceeded to trial because he does not know if such defense would have been successful.  
11 Hill, 474 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107;  
12 Molina, 120 Nev. at 190-91, 87 P.3d at 537. Regardless, Petitioner acknowledged during his  
13 plea canvass with the Court that he went over all defenses with counsel and still proceeded to  
14 enter his guilty plea. Recorder's Transcript of Hearing: Jury Trial – Day 3, filed July 12, 2019,  
15 at 13. Therefore, Petitioner's claim is denied.

## 16 2. *Michael Sanft Complaints*

17 First, Petitioner claims counsel was ineffective for failing to pursue the basis for his  
18 pretrial petition for writ of habeas corpus and request a Franks hearing as well as a suppression  
19 hearing regarding allegedly illegally obtained evidence. As discussed *supra* in Section B as well  
20 as the previous section, Petitioner cannot demonstrate that the pursuit of such matter would  
21 have been successful. Thus, counsel cannot be faulted for failing to pursue a futile motion and  
22 Petitioner cannot demonstrate prejudice. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

23 Second, Petitioner again complains that counsel was ineffective for failing to detect and  
24 pursue the Marcum notice violation. As discussed *supra*, Petitioner's claim fails because it  
25 belied by the record which indicates that Petitioner received "reasonable notice" regarding the  
26 grand jury hearing. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

27 Third, Petitioner again complains that counsel was ineffective for failing to investigate  
28 Petitioner's mental health history, medical history, diminished capacity, intoxication, duress,

1 and competency defenses as well as failed to hire an expert to evaluate Petitioner. Petition at  
2 38. This claim fails because, as discussed *supra*, Mr. Gruber obtained some of Petitioner's  
3 medical records. Thus, Mr. Sanft obtaining the same record would have been futile. Moreover,  
4 to the extent Petitioner complains that counsel should have investigated further, he has not  
5 proven what that investigation would have shown whether the information received would  
6 have caused him not to plead guilty or more importantly provided a better outcome. Molina,  
7 120 Nev. at 192, 87 P.3d at 538. Similarly, Petitioner has not demonstrated what an expert  
8 would have said, let alone whether hiring an expert would have rendered a better outcome. Id.  
9 Therefore, Petitioner's claim is denied.

10 Fourth, Petitioner reiterates that counsel was ineffective for failing to investigate the  
11 evidence as well as "Sexton, Burton, Cousert, White, Bennett, Hoyer, Cliff, Burkhalter,  
12 Portlock, Deann, Perry, and Wong" to assist in Petitioner's defenses. Petition at 38. As  
13 discussed *supra*, Petitioner has not and cannot demonstrate whether these witnesses would  
14 have assisted in his defense and provided a better outcome. Molina, 120 Nev. at 192, 87 P.3d  
15 at 538. Thus, Petitioner's claim is bare and naked and suitable only for summary dismissal.  
16 Hargrove, 100 Nev. at 502, 686 P.2d at 225.

17 Fifth, Petitioner repeats that counsel was ineffective for failing to discover the  
18 challenged Brady materials. Petition at 38. As discussed *supra* in Section C as well as the  
19 previous section, Petitioner's claim, that the State failed to provide discovery pursuant to  
20 Brady, is belied by the record. Moreover, he has failed to indicate why he believes the State's  
21 record was false, let alone that he would have received information that would have changed  
22 his decision to end his trial and plead guilty. Thus, it would have been futile for counsel to  
23 pursue this matter and his claim is denied. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

24 Sixth, Petitioner complains that counsel failed to "adequately cross examine witnesses  
25 and subject the prosecutor's case to rigorous testing." Petition at 38. However, Petitioner  
26 cannot show counsel was ineffective because Petitioner pled guilty during his trial. Thus, any  
27 efforts by counsel was extinguished when Petitioner elected to end his trial early and pled  
28 guilty to his charges. Therefore, Petitioner's claim is denied.

1 Seventh, Petitioner argues that counsel failed to impeach the following State's  
2 witnesses with their criminal histories: Burkhalter, White, Cliff, Burton, Perry, and Cousert.  
3 Petition at 38. As a preliminary matter, out of the aforementioned list only Burkhalter and Cliff  
4 had testified before Petitioner decided to end his trial and plead guilty. Thus, as discussed with  
5 his previous claim, Petitioner can only attempt to demonstrate prejudice as to Burkhalter and  
6 Cliff. Regardless, Petitioner's claim fails because it is a bare and naked claim suitable only for  
7 summary denial. Indeed, Petitioner does not provide the crimes of moral turpitude to which he  
8 is referring and fails to provide any indication that such witnesses were convicted of such  
9 crimes. Hargrove, 100 Nev. at 502, 686 P.2d at 225. It bears noting that the State did question  
10 Cliff about his 2016 conviction for attempt grand larceny and 2017 conviction for using and  
11 possession of identification of another. Regardless, Petitioner cannot demonstrate that had  
12 Burkhalter and Cliff been questioned about the crimes of moral turpitude they allegedly  
13 committed, he would not have pled guilty and permitted his trial to proceed. Hill, 474 U.S. at  
14 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev.  
15 at 190-91, 87 P.3d at 537. Therefore, Petitioner's claim is denied.

16 Eighth, Petitioner complains that counsel was ineffective for failing to call a single  
17 witness at trial. Petition at 38. However, his claim fails because it is a bare and naked claim  
18 suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Indeed,  
19 Petitioner has failed to indicate which witnesses he believes should have been called in  
20 addition to the State's witnesses, let alone whether such witnesses would have been willing to  
21 testify. While it appears that counsel stated he did not anticipate that he would call witnesses  
22 to the stand, but instead would cross-examine the State's witness, it bears noting that counsel  
23 later requested Co-Defendant Marland be transported from the prison as a potential witness  
24 for the defense. Recorder's Transcript of Hearing: Jury Trial – Day 1, filed July 12, 2019, at  
25 7-8, 38-40. Ultimately, however, which witnesses to call is counsel's responsibility and  
26 Petitioner has failed to demonstrate that he would have elected to proceed with trial instead of  
27 pleading guilty had these unnamed witnesses testified. Rhyne, 118 Nev. at 8, 38 P.3d at 167;

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1 Hill, 474 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107;  
2 Molina, 120 Nev. at 190-91, 87 P.3d at 537. Therefore, Petitioner's claim is denied.

3 Ninth, Petitioner complains that counsel based all of Petitioner's defenses on the State's  
4 evidence and witnesses in its case in chief. Petition at 38. This is also a bare and naked claim  
5 suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner has  
6 failed to indicate how counsel was ineffective in basing Petitioner's defense on the State's  
7 evidence and witnesses and that doing so was "gross error." Turner v. Calderon, 281 F.3d 851,  
8 880 (9th Cir. 2002). Indeed, which defenses to pursue it ultimately a strategic decision and  
9 counsel's responsibility. Rhyne, 118 Nev. at 8, 38 P.3d at 167; Dawson, 108 Nev. at 117, 825  
10 P.2d at 596; see also Ford, 105 Nev. at 853, 784 P.2d at 953. More importantly, he has not  
11 demonstrated that he would have elected to proceed with trial instead of pleading guilty. Hill,  
12 474 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina,  
13 120 Nev. at 190-91, 87 P.3d at 537. Therefore, Petitioner's claim is denied.

14 Tenth, Petitioner claims counsel was ineffective for failing to detect and acknowledge  
15 that he was suffering from mental illness as well as coercion when he entered his plea, failing  
16 to detect Petitioner's alleged June 11, 2018 mental health court specialty court referral, and  
17 not obtaining a mental health expert to evaluate Petitioner. Petition at 38. As discussed *infra*  
18 in Section G, Petitioner's claim that he was suffering from mental illness and coercion at the  
19 time he entered his plea is belied by his own responses to the Court. Hargrove, 100 Nev. at  
20 502, 686 P.2d at 225. Indeed, Petitioner stated multiple times that he was not facing coercion  
21 and was on his medication which did not affect his ability to understand the proceedings.  
22 Accordingly, hiring a mental health expert to evaluate Petitioner would have been futile. See  
23 Ennis, 122 Nev. at 706, 137 P.3d at 1103. Furthermore, the record is silent as to whether  
24 Petitioner had a June 11, 2018 mental health specialty court referral and he has failed to  
25 provide any documentation to support his allegation. Hargrove, 100 Nev. at 502, 686 P.2d at  
26 225. Therefore, Petitioner's claim is denied.

27 Eleventh, Petitioner argues counsel was ineffective for failing to file a Sentencing  
28 Memorandum on Petitioner's behalf for mitigation purposes. Petition at 38. While counsel did

1 not file a Sentencing Memorandum, he did argue on Petitioner's behalf during the sentencing  
2 hearing to mitigate the State's requested sentence. Recorder's Transcript of Hearing:  
3 Sentencing, filed July 10, 2019, at 8-11. Ultimately, Petitioner cannot demonstrate that filing  
4 a Sentencing Memorandum with the specific points he now alleges counsel should have raised,  
5 would have changed the sentencing outcome as he plead guilty to the charges. Hill, 474 U.S.  
6 at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev.  
7 at 190-91, 87 P.3d at 537. Thus, Petitioner's claim is denied.

8 Twelfth, Petitioner asserts that counsel was ineffective for counsel failing to object to  
9 the Court imposition of restitution. As discussed *infra* in Section I, Petitioner's claim, that the  
10 Court improperly imposed restitution when he was not specifically canvassed on restitution,  
11 is meritless because Petitioner acknowledged he understood the consequences of his plea and  
12 the sentencing decision, including the restitution imposed, was ultimately in the Court's  
13 discretion. Moreover, due to the sentence being in the Court's ultimate discretion, any error  
14 would have been harmless. Thus, any objection by counsel would have been futile. See Ennis,  
15 122 Nev. at 706, 137 P.3d at 1103. Therefore, Petitioner's claim is denied.

### 16 3. Appellate Counsel Complaints

17 Petitioner claims appellate counsel was ineffective for failing to obtain the complete  
18 record on appeal, expanding Petitioner's Faretta claim, and briefing the facts of Ann White's  
19 Affidavit to challenge the involuntariness of Petitioner's guilty plea. Petition at 38-41.  
20 However, his claims are meritless.

21 As for Petitioner's complaint regarding appellate counsel failing to obtain the complete  
22 record on appeal and expanding his Faretta claim, as discussed *supra* in Section A, such claim  
23 is meritless. Although Petitioner asserts that counsel improperly framed the Faretta issue on  
24 direct appeal and failed to obtain more transcripts, he has not and cannot demonstrate that such  
25 claim would have been meritorious as he was making the same request to represent himself.  
26 He has not indicated how the Nevada Court of Appeals' analysis would have changed had  
27 counsel referenced the other hearings in which Petitioner requested to represent himself.  
28 Accordingly, Petitioner cannot demonstrate how obtaining additional transcripts would have

1 changed the futility in appellate counsel framing the issue the way Petitioner now believes was  
2 the correct way to frame the issue. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. For this same  
3 reason, Petitioner cannot demonstrate prejudice.

4 As for Petitioner's claim regarding the Ann White Affidavit, Petitioner's claim also  
5 fails. Motion for Seal, at Exhibit 1, Exhibit A, Exhibit B. Although Petitioner and the author  
6 of such affidavit claim that appellate counsel was sent the affidavit, Petitioner has failed to  
7 provide proof that appellate counsel did in fact receive such document. Regardless, briefing  
8 such document would have been futile as Petitioner failed to pursue a challenge to his guilty  
9 plea prior to the entry of his Judgment of Conviction. See Ennis, 122 Nev. at 706, 137 P.3d at  
10 1103; Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (186), superseded by statute on  
11 other grounds as stated in Hart v. State, 116 Nev. 558, 562 n.3, 1 P.3d 969, 971 n.3 (2000)  
12 (concluding that a defendant may not "challenge the validity of a guilty plea on direct appeal  
13 from the judgment of conviction" in the first instance). Therefore, Petitioner's claim is denied.

#### 14 **E. Ground 5: Petitioner's Plea was Knowingly and Voluntarily Entered**

15 Petitioner argues that his guilty plea should be withdrawn because it was the result of  
16 coercion, intervening psychosis due to not being given his alleged anti-psychotic and seizure  
17 medications, he was not competent to understand the rights he was forfeiting, and his guilty  
18 plea was the result of counsel not advising Petitioner prior to his plea. Petition at 41-45.  
19 Specifically, Petitioner claims that a person named "Deann" threatened Petitioner's family the  
20 week before his trial. Petition at 41-44.

21 As a preliminary matter, Petitioner cannot raise constitutional claims that occurred prior  
22 to his guilty plea. Eighth Judicial District Court, 121 Nev. at 225, 112 P.3d at 1070, n.24; See  
23 Webb, 91 Nev. at 469, 538 P.2d at 164.

24 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
25 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
26 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
27 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
28 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,

337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

To determine whether a guilty plea was voluntarily entered, the Court will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at 367. A proper plea canvass should reflect that:

[T]he defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishments; and (4) the defendant understood the nature of the charge, i.e., the elements of the crime.

Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev. 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975).

This standard requires the court accepting the plea to personally address the defendant at the time he enters his plea in order to determine whether he understands the nature of the charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply on a written plea agreement without some verbal interaction with a defendant. Id. Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a formal setting, such as that occurring between an official sitting in judgment of an accused at plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require the articulation of talismanic phrases,” but only that the record demonstrates a defendant entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct. 1463, 1470 (1970).

Nevada precedent reflects “that where a guilty plea is not coerced and the defendant [is] competently represented by counsel at the time it [is] entered, the subsequent conviction



1 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.  
2 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83  
3 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined  
4 that a defendant lacked standing to challenge the validity of a plea agreement because he had  
5 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.  
6 468, 477, 958 P.2d 91, 96 (1998).

7 Furthermore, the Nevada Supreme Court has explained:

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

12 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411  
13 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all  
14 constitutional claims based on events occurring prior to the entry of the plea[], except those  
15 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,  
16 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only  
17 claims that may be raised thereafter are those involving the voluntariness of the plea itself and  
18 the effectiveness of counsel.”).

19 Here, Petitioner’s claim that his plea was involuntary because he was coerced is belied  
20 by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. During his extensive plea canvass  
21 with the Court, the Court repeatedly ensured that Petitioner was entering his plea freely and  
22 voluntarily:

23 THE COURT: Are you entering into this plea today freely and  
24 voluntarily?

25 THE DEFENDANT: Yeah.

26 THE COURT: Did anyone threaten or coerce you into entering into  
27 this plea? THE DEFENDANT: No.

28 THE COURT: So, you’re entering into this plea today of your own  
free will? THE DEFENDANT: Yeah.

[...]

1 THE COURT: Has anyone made you any promises?

2 THE DEFENDANT: No.

3 [...]

4 THE COURT: Okay. And Mr. White, you are pleading guilty today  
because you are in truth and in fact guilty of these offenses?

5 THE DEFENDANT: Yeah.

6 THE COURT: And you do not want to proceed and go to trial?

7 THE DEFENDANT: No.

8 THE COURT: I mean, we picked a jury, we've gone through several  
witnesses; but you think it's in your best interest to just plead straight  
up to these charges?

9 THE DEFENDANT: Yeah.

10 THE COURT: Okay. And, again, you are doing this freely and  
voluntarily?

11 THE DEFENDANT: Yeah.

12 [...]

13 THE COURT: Okay. And, again, this is what you want to do and  
you're entering into this plea freely and voluntarily?

14 THE DEFENDANT: Yeah.

15 THE COURT: Okay.

16 Recorder's Transcript of Hearing: Jury Trial – Day 3, filed July 12, 2019, at 6-19. In fact, the  
17 State asked the Court to go even further and ensure that no one was coercing Petitioner or his  
18 family:

19 THE COURT: Okay. So, no one has threatened or coerced you into  
entering into this plea, correct?

20 THE DEFENDANT: No.

21 THE COURT: No one in the Clark County Detention Center?

22 THE DEFENDANT: No.

23 THE COURT: No one in the Nevada Department of Corrections?

24 THE DEFENDANT: No.

25 THE COURT: No one on the planet earth?

26 THE DEFENDANT: No.

27 THE COURT: Okay, no one has threatened you, correct?

28 THE DEFENDANT: Yeah.

THE COURT: Including, has – have you spoken to Marland Dean?

THE DEFENDANT: No.

THE COURT: Okay. I know you indicated to me the other day your  
mom had spoken to him.

THE DEFENDANT: Yeah.

THE COURT: Were any threats communicated to you through your  
mom?

1 THE DEFENDANT: No.

2 THE COURT: Okay. And you are satisfied with your representation  
3 of Mr. Sanft?

4 THE DEFENDANT: Yeah.

5 THE COURT: Okay. And you're satisfied with how the trial has gone  
6 so far?

7 THE DEFENDANT: Yeah.

8 THE COURT: I guess with the exception that the victims testified. I  
9 mean I'm --

10 THE DEFENDANT: Yeah.

11 THE COURT: But, again, you think this is in your best interest?

12 THE DEFENDANT: Yeah.

13 THE COURT: And you want me to accept your plea?

14 THE DEFENDANT: Yeah.

15 MR. SCHWARTZER: Thank you, Your Honor.

16 Id. at 19-21.

17 Moreover, Petitioner's claim that he did not have the opportunity to discuss his plea  
18 with counsel and did not understand the rights he was forfeiting is also belied by the record.  
19 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Indeed, Petitioner confirmed with the Court  
20 multiple times that he had spoken to counsel about his decision to plead guilty during his  
21 canvass and he understood the rights he was giving up:

22 THE COURT: And you've had a chance to talk to your attorney? Is that a  
23 yes -- I've got to make sure you're paying attention to me --

24 THE DEFENDANT: Yeah. I am.

25 THE COURT: -- because you've already withdrawn one plea with me. So, I  
26 just want to make sure you're paying attention. So, you let me know when  
27 you are done looking at that document.

28 [...]

THE COURT: Okay. And you had a chance to discuss all this  
with Mr. Sanft?

THE DEFENDANT: Yeah.

THE COURT: And that's what you want to do. Correct?

THE DEFENDANT: Yes, ma'am.

[...]

THE COURT: You also understand you are giving up all your trial rights by  
entering into this plea today?

THE DEFENDANT: Yeah.

1 THE COURT: You understand that you do have a right to a speedy and  
2 public trial; that if the matter went to trial the State would be required to  
3 prove each of the elements as alleged in their charging document by proof  
beyond a reasonable doubt. Do you understand that?

4 THE DEFENDANT: Yeah.

5 THE COURT: And, your attorney did explain to you on each count what the  
State would have to prove. Is that correct?

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay. Do you have any questions about what the State would  
have to prove if this matter went to trial?

8 THE DEFENDANT: No.

9 THE COURT: Okay. And you had a chance to discuss any defenses that you  
would have to these charges?

10 THE DEFENDANT: Yeah.

11 THE COURT: You discussed them with your attorney?

12 THE DEFENDANT: Yeah.

13 THE COURT: You understand at the time of trial you would have the right  
14 to testify, to remain silent, to have others come in and testify for you, to be  
confronted by the witnesses against you and crossexamine them, to appeal  
any conviction and to be represented by counsel throughout all critical stages  
of the proceedings. Do you understand all these trial rights?

15 THE DEFENDANT: Yeah.

16 THE COURT: And you understand that you will be giving them up by  
entering into this plea today?

17 THE DEFENDANT: Yeah.

18 [...]

19 THE COURT: You had a chance to discuss all this with your lawyer and all  
the consequences?

20 THE DEFENDANT: Yeah.

21 Id. at 4-19. In fact, Petitioner even went to far as to answer that he was satisfied with counsel's  
services:

22 THE COURT: Okay. And you are satisfied with your representation of Mr.  
23 Sanft?

24 THE DEFENDANT: Yeah.

25 Id. at 21.

26 Additionally, Petitioner's claim that he was not competent when he entered his plea  
27 because he was not administered his medications is unsupported and suitable only for summary  
28 denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Nevada law requires a court to suspend

1 proceedings “if doubt arises as to the competence of the defendant...until the question of  
2 competence is determined.” NRS 178.405. NRS 178.400 defines an incompetent person who  
3 cannot be tried or adjudged guilty:

4 1. A person may not be tried or adjudged to punishment for a public offense  
5 while incompetent.

6 2. For the purposes of this section, “incompetent” means that the person does  
7 not have the present ability to:

8 (a) Understand the nature of the criminal charges against the person;

9 (b) Understand the nature and purpose of the court proceedings; or

10 (c) Aid and assist the person’s counsel in the defense at any time during the  
11 proceedings with a reasonable degree of rational understanding.

12 Under Dusky, a defendant is competent to stand trial if he “has sufficient present ability  
13 to consult with his lawyer with a reasonable degree of rational understanding” and “he has a  
14 rational as well as factual understanding of the proceedings against him.” Calvin, 147 P.3d at  
15 1100, citing Dusky v. U.S., 362 U.S. 402, 402, 80 S.Ct. 788 (1960). In Calvin, the Nevada  
16 Supreme Court held that Nevada’s statutory competency standard conformed to that of Dusky  
17 and thus satisfied constitutional requirements. Consistent with Dusky, under Nevada statutory  
18 law, a defendant is incompetent to stand trial if he either “is not of sufficient mentality to be  
19 able to understand the nature of the criminal charges against him” or he “is not able to aid and  
20 assist his counsel in the defense interposed upon the trial or against the pronouncement of the  
21 judgment thereafter.” Calvin, 122 Nev. at 1182-83.

22 A formal hearing to determine competency is only required “when there is ‘substantial  
23 evidence’ that the defendant may not be competent to stand trial”—that is, evidence that  
24 “raises a reasonable doubt about the defendant’s competency to stand trial.” Olivares v. State,  
25 124 Nev. 1142, 1148, 195 P.3d 864, 868 (2008).

26 When reviewing whether a defendant was competent to stand trial, the Nevada Supreme  
27 Court will review the record to determine if the defendant has adequately shown that he was  
28 incompetent. Morales v. State, 116 Nev. 19, 22, 992 P.2d 252, 254 (2000); Warden v. Graham,  
93 Nev. 277, 278, 564 P.2d 186, 187 (1977). In Morales, the defendant broke into his  
attorney’s office with a gun in an attempt to retrieve a document. 116 Nev. at 22, 992 P.2d at  
254. The Court concluded that the defendant’s actions did not indicate incompetency, but an

1 attempt to assist his attorney, however illegally. Id. The Court further concluded that “[t]he  
2 record contains no evidence that [the defendant] was unable to remember the events relating  
3 to his drug arrest, communicate with his attorney or otherwise assist in his own defense.” Id.  
4 Similarly, in Graham, the Nevada Supreme Court concluded that based on the psychiatric  
5 evaluations and the defendant’s actions in court, specifically during the guilty plea canvass,  
6 there was no indication that the defendant was incompetent. 93 Nev. at 278, 564 P.2d at 187.  
7 However, in Olivares v. State, 124 Nev. 1142, 1148-49, 195 P.3d 864, 868-69 (2008), the  
8 Court held that the district court erred in finding the defendant competent when doctors  
9 concluded that he was incompetent to stand trial and statements from the defendant indicated  
10 that he believed his attorneys were colluding with the court and the State.

11 To the extent Petitioner claims that counsel was ineffective for allowing him to proceed  
12 with his guilty plea despite his alleged medical ailments, Petitioner provides no evidence that  
13 his counsel was aware Petitioner was suffering from any actual mental health issues. Counsel  
14 cannot be deemed ineffective when she had no information or reason to believe that Petitioner  
15 had “particular psychological conditions or disorders that may have shown prior mental  
16 disturbance or impaired mental state.” Riley v. State, 110 Nev. 638, 650, 878 P.2d 272, 280  
17 (1994), overruled on other grounds by Riley v. McDaniel, 786 F.3d 719 (9th Cir. 2015).

18 Most importantly, Petitioner’s claim that he was not on his prescribed medications is  
19 belied by both his counsel’s representations on the record as an officer of the Court as well as  
20 Petitioner’s responses to the Court during his canvass:

21 MR. SANFT: [...] *I believe that, at this particular point, that Mr. White is*  
22 *not under any type of influence of alcohol or drugs that would impair his*  
23 *thinking here today with regards to his decision to enter into this plea. And*  
24 *I don’t believe as well that, based upon my communication with Mr. White,*  
25 *that there’s been any type of threat made against him. I have not received that*  
26 *as well. I just want to make sure that that’s on the record because I know that*  
27 *was a concern the last time we were in court with regards to that.*

28 THE COURT: Okay. And that’s all true, correct?

THE DEFENDANT: Yeah.

THE COURT: You’re not on any kind of medication?

1 THE DEFENDANT: *Just the medication that I take, my meds, but they're*  
2 *not impacting my decision to plead.*

3 THE COURT: *What kind of medication are you on?*

4 THE DEFENDANT: *Psych meds.*

5 THE COURT: *Okay. And you don't think it's affecting your ability to enter*  
6 *into this plea today?*

7 THE DEFENDANT: *No.*

8 THE COURT: *Okay. And, again, you want to stop the trial and you just want*  
9 *to accept responsibility. Is that correct?*

10 THE DEFENDANT: *Yeah.*

11 THE COURT: *Well, why did you decide to do it today?*

12 THE DEFENDANT: *I just -- I slept on it. After seeing the victims yesterday*  
13 *and then hearing what -- hearing from the victim.*

14 THE COURT: *So, after hearing the victims' testimony you just -- you'd*  
15 *heard enough?*

16 THE DEFENDANT: *Yeah.*

17 Recorder's Transcript of Hearing: Jury Trial – Day 3, filed July 12, 2019, at 22-23 (emphasis  
18 added). Regardless, mental health issues do not provide automatic mitigation at sentencing. In  
19 Ford v. State, the Nevada Supreme Court affirmed the murder convictions and death sentence  
20 for a defendant who drove her car onto a crowded sidewalk in downtown Reno. 102 Nev. 126,  
21 127–28, 717 P.2d 27, 28 (1986). Despite her known significant mental health and competency  
22 issues, the Court held that the defendant's mental health issues did not diminish the imposed  
23 sentence. Id. at 137, 717 P.2d at 35. The facts of this case sufficiently outweigh any mitigating  
24 effect and the sentence would have been the same. Thus, not only did Petitioner enter his plea  
25 knowingly and voluntarily, counsel was not ineffective. Therefore, Petitioner's claims are  
26 denied.

#### 27 **F. Ground 6: Petitioner was not Improperly Adjudicated as a Habitual Offender**

28 Petitioner argues that he was improperly adjudicated a habitual offender because the  
State argued that Petitioner had six (6) felonies instead of the four (4) felonies the State listed  
in its Notice of Intent to Seek Habitual Criminal Treatment filed October 18, 2016, the State  
failed to comply with the habitual criminal statute, and the amendment to the habitual criminal  
statute effective July 1, 2020 should apply to Petitioner. Petition at 45-47. However,  
Petitioner's claim is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Despite

1 being canvassed that the State could intend to argue habitual criminal treatment, Petitioner was  
2 never adjudicated a habitual criminal. Therefore, Petitioner's claim is denied.

3 **G. Ground 7: Petitioner's Claim He was Not Informed of His Restitution Obligation**

4 Petitioner claims that his guilty plea should be withdrawn because the Court failed to  
5 inform Petitioner of his restitution obligation during his plea canvass. Petition at 47-48. As a  
6 preliminary matter, this is a substantive claim that is waived. Evans, 117 Nev. at 646-47, 29  
7 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059, disapproved on other grounds,  
8 Thomas, 115 Nev. at 148, 979 P.2d at 222. Petitioner failed to challenge the amount of  
9 restitution ordered at his sentencing hearing. District courts "are cautioned to rely on reliable  
10 and accurate evidence in setting restitution." Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d  
11 133, 135 (1999). While defendants are not entitled to a full evidentiary hearing when  
12 challenging the amount of restitution ordered; they are entitled to present their own evidence  
13 in support of their challenge. Id. Moreover, "[a] defendant's obligation to pay restitution to the  
14 victim may not, of course, be reduced because a victim is reimbursed by insurance proceeds."  
15 Id. at 12, 974 P.2d at 135. Petitioner had the opportunity challenge the restitution calculation  
16 at sentencing. His failure to do so waives his ability to challenge it on a post-conviction habeas  
17 matter.

18 Regardless, even though the Court did not specifically canvass Petitioner regarding  
19 restitution, the totality of the circumstances demonstrates that Petitioner understood the  
20 consequences of his guilty plea. McConnell v. State, 125 Nev. 243, 251, 212 P.3d 307, 313  
21 (2009), as corrected (July 24, 2009) (concluding that although a district court did not inform a  
22 defendant that restitution was a consequence of his plea, the totality of the circumstances  
23 demonstrated the defendant understood the consequences of his plea). Indeed, during its  
24 canvass, the Court ensured that Petitioner understood the consequences of his plea and the  
25 sentencing decision was strictly up to the Court prior to accepting it:

26 THE COURT: You had a chance to discuss all this with your lawyer and all  
27 the consequences?

28 THE DEFENDANT: Yeah.

[...]



1 THE COURT: And you understand that sentencing is completely within the  
2 discretion of the Court, that no one can make you any promises regarding  
3 what will happen at the time of sentencing. Do you understand that?

4 THE DEFENDANT: Yeah.

5 Recorder's Transcript of Hearing – Jury Trial Day 3, filed July 12, 2019, at 12, 19. Thus,  
6 because Petitioner acknowledged he understood the consequences of his plea and the  
7 sentencing decision, including the restitution imposed, was ultimately in the Court's  
8 discretion, any error would have been harmless. Therefore, Petitioner's claim is denied.

9 **H. Ground 8: The Court, Trial Counsel, and the State Did Not Have a Conflict of  
10 Interest**

11 Petitioner argues that because he filed a civil action against the Court, counsel Gruber,  
12 and the assigned prosecutor, such individuals had a conflict of interest during the pendency of  
13 Petitioner's case. Petition at 48-49.

14 As an initial matter, Petitioner's claim is waived because it is substantive. NRS  
15 34.724(2)(a); Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d  
16 at 1059, disapproved on other grounds, Thomas, 115 Nev. at 148, 979 P.2d at 222.  
17 Additionally, it is waived because it is an allegation that his rights were deprived prior to  
18 entering his guilty plea. Eighth Judicial District Court, 121 Nev. at 225, 112 P.3d at 1070,  
19 n.24; See Webb, 91 Nev. at 469, 538 P.2d at 164.

20 Additionally, Petitioner's claim is a bare and naked allegation that is suitable only for  
21 summary denial. Indeed, Petitioner has provided no case law to support his claim that because  
22 there is a civil suit pending there is an automatic conflict of interest or bias. Hargrove, 100  
23 Nev. at 502, 686 P.2d at 225. Regardless, his claim is meritless.

24 NRS 1.235 mandates the procedure to be followed when seeking judicial recusal:

- 25 1. Any party to an action or proceeding pending in any court other  
26 than the Supreme Court or the Court of Appeals, who seeks to  
27 disqualify a judge for actual or implied bias or prejudice must file  
28 an affidavit specifying the facts upon which the disqualification is  
sought. The affidavit of a party represented by an attorney must be  
accompanied by a certificate of the attorney of record that the  
affidavit is filed in good faith and not interposed for delay.

[ . . . ]

4. At the time the affidavit is filed, a copy must be served upon the judge sought to be disqualified.

[ . . . ]

5. The judge against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter and shall:

(a) Immediately transfer the case to another department of the court . . . or

(b) File a written answer with the clerk of the court . . . admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of the judge's disqualification.

Further, while Towbin Dodge, L.L.C. v. Eighth Judicial Dist., 121 Nev. 251, 260, 112 P.3d 1063, 1069 (2005), contemplated a route to disqualification via the Nevada Code of Judicial Conduct, it set procedural requirements that must be met to make such a motion:

[A] party may file a motion to disqualify based on Canon 3E as soon as possible after becoming aware of the new information. The motion must set forth facts and reasons sufficient to cause a reasonable person to question the judge's impartiality, and the challenged judge may contradict the motion's allegations. . . . [T]he motion must be referred to another judge.

Importantly, a party must comply with NRS 1.235 unless the “grounds for a judge’s disqualification are discovered after the time limits in NRS 1.235(1) have passed.” Id. at 260, 112 P.3d at 1069; accord Lioce v. Cohen, 124 Nev. 1, 25 n.44, 174 P.3d 970, 985 n.44 (2008) (“Lioce argues that, should we decide a new trial is warranted, his case must be remanded to a different district court judge because Judge Bell was biased toward him. We conclude that this argument is without merit, and we also direct Lioce to NRS 1.235(1).”).

Considering the standards established by the Nevada Supreme Court, the Nevada Legislature, and the Code of Judicial Conduct, disqualification was unwarranted. “A judge has an obligation not to recuse himself where there is no occasion to do so. . . . A judge's decision not to recuse himself voluntarily is given ‘substantial weight’ and will be affirmed absent an abuse of discretion.” Kirksey v. State, 112 Nev. 980, 1005-06, 923 P.2d 1102, 1118 (1996) (citations omitted). A judge must “‘preside to the conclusion of all proceedings, in the absence

1 of some statute, rule of court, ethical standard, or other compelling reason to the contrary.”  
2 City of Las Vegas v. Eighth Judicial Dist. Ct., 116 Nev. 640, 643, 5 P.3d 1059, 1061 (2000)  
3 (quoting Ham v. Dist. Ct., 93 Nev. 409, 415, 566 P.2d 420, 424 (1977)); accord CJC 2.7 (“A  
4 judge shall hear and decide all matters assigned to the judge except when disqualification is  
5 required by Rule 2.11 or other law.”).

6 It was Petitioner’s burden to establish that the Court “displays ‘a deep-seated favoritism  
7 or antagonism that would make fair judgment impossible[,]” Walker v. State, 113 Nev. 853,  
8 864, 944 P.2d 762, 769 (1997) (quoting Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct.  
9 1147, 1157 (1994)), cert. denied, 525 U.S. 950, 119 S. Ct. 377 (1998), and must set “forth  
10 facts and reasons sufficient to cause a reasonable person to question the judge’s impartiality.”  
11 Towbin Dodge, 121 Nev. at 260, 112 P.3d at 1069. A reviewing court should look for actual  
12 manifestations of bias on the part of the judicial officer. A Minor v. State, 86 Nev. 691, 695,  
13 476 P.2d 11, 12 (1970). “Disqualification must be based on facts, rather than mere  
14 speculation.” Rippo v. State, 113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (1997) (citing PETA  
15 v. Bobby Berosini, 111 Nev. 431, 437, 894 P.2d 337, 341 (1995)).

16 “[R]ulings and actions of a judge during the course of official judicial proceedings do  
17 not establish legally cognizable grounds for disqualification.” In re Petition to Recall  
18 Dunleavy, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). To do otherwise “would nullify  
19 the court’s authority and permit manipulation of justice, as well as the court.” Id.

20 In this case, it is clear that Petitioner did not follow the mandated procedures for judicial  
21 recusal. Moreover, Petitioner has failed to demonstrate how the Court, counsel Guber, or the  
22 State acted in a manner that demonstrated a conflict of interest. Hargrove, 100 Nev. at 502,  
23 686 P.2d at 225; Jefferson v. State, 133 Nev. 874, 879, 410 P.3d 1000, 1004 (Nev. App. 2017)  
24 (internal citations omitted) (“a criminal defendant’s decision to file such an action against  
25 appointed counsel does not require disqualification unless the circumstances demonstrate an  
26 actual conflict of interest.”). Also, Petitioner has not demonstrated that had another Court,  
27 other counsel, or another district attorney handled his case he would not have pled guilty and  
28 decided to proceed with trial. Hill, 474 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev.

1 at 988, 923 P.2d at 1107; Molina, 120 Nev. at 190-91, 87 P.3d at 537. Therefore, Petitioner's  
2 claim is denied.

## 3 **II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

4 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

5 1. The judge or justice, upon review of the return, answer and all supporting  
6 documents which are filed, shall determine whether an evidentiary hearing is  
7 required. A petitioner must not be discharged or committed to the custody of a  
8 person other than the respondent *unless an evidentiary hearing is held*.

9 2. If the judge or justice determines that the petitioner is not entitled to relief  
10 and an evidentiary hearing is not required, he shall dismiss the petition without  
11 a hearing.

12 3. If the judge or justice determines that an evidentiary hearing is required, he  
13 shall grant the writ and shall set a date for the hearing.

14 The Nevada Supreme Court has held that if a petition can be resolved without  
15 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
16 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A  
17 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
18 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled  
19 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100  
20 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction  
21 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the  
22 record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it  
23 existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is  
24 improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth  
25 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court  
26 considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as  
27 complete a record as possible.' This is an incorrect basis for an evidentiary hearing.").

28 Further, the United States Supreme Court has held that an evidentiary hearing is not  
required simply because counsel's actions are challenged as being unreasonable strategic  
decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge

1 post hoc rationalization for counsel's decision making that contradicts the available evidence  
2 of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis  
3 for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain  
4 issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing  
5 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
6 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466  
7 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

8 Petitioner's Petition does not require an evidentiary hearing. An expansion of the record  
9 is unnecessary because Petitioner has failed to assert any meritorious claims and the Petition  
10 can be disposed of with the existing record. Marshall, 110 Nev. at 1331, 885 P.2d at 605;  
11 Mann, 118 Nev. at 356, 46 P.3d at 1231.

12 **ORDER**

13 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
14 and Request for an Evidentiary Hearing shall be, and are, hereby denied.

15 DATED this \_\_\_\_ day of April, 2021.

Dated this 8th day of April, 2021

16 

17 \_\_\_\_\_  
DISTRICT JUDGE

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

A7A 653 C606 A19E  
Michelle Leavitt  
District Court Judge

20  
21 BY /s/ ALEXANDER CHEN

22 ALEXANDER CHEN  
23 Chief Deputy District Attorney  
Nevada Bar #010539

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing was made this \_\_\_\_ day of  
3 April, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4 TONEY WHITE, BAC #1214172  
5 HIGH DESERT STATE PRISON  
6 22010 COLD CREEK ROAD  
7 P.O. BOX 650  
8 INDIAN SPRINGS, NEVADA 89070

9 BY /s/ L.M.  
10 Secretary for the District Attorney's Office  
11  
12  
13  
14  
15  
16  
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19  
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21  
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28 16FH0191B/AC/bg/lm/GU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Toney White, Plaintiff(s)

CASE NO: A-20-824261-W

7 vs.

DEPT. NO. Department 12

8 Calvin Johnson, Warden,  
9 Defendant(s)

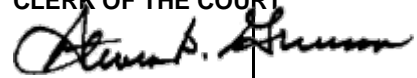
10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 4/8/2021

16 Dept 12 Law Clerk

dept12lc@clarkcountycourts.us



NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

TONEY WHITE,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-16-313216-2

Dept No: XII

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

**PLEASE TAKE NOTICE** that on April 8, 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 April 12, 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 12 day of April 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-

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**TONEY A. WHITE,**  
  
Petitioner,  
  
-vs-  
  
**THE STATE OF NEVADA,**  
  
Respondent.

**CASE NO:** A-20-824261-W  
  
C-16-313216-2  
  
**DEPT NO:** XII

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

**DATE OF HEARING: MARCH 25, 2021  
TIME OF HEARING: 12:30 PM**

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT, District Judge, on the 25th day of March, 2021, the Petitioner not being present, in proper person, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through BERNARD B. ZADROWSKI, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **PROCEDURAL HISTORY**

3 On March 9, 2016, ANTHONY WHITE (hereinafter “Petitioner”) was charged by way  
4 of Grand Jury Indictment with the following charges: CONSPIRACY TO COMMIT  
5 ROBBERY (Category B Felony – NRS 200.380, 199.480 – NOC 50147), BURGLARY  
6 WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony – NRS 205.060 –  
7 NOC – 50426), FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON  
8 (Category A Felony – NRS 200.310, 200.320, 193.165 – NOC 50055), ATTEMPT  
9 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380,  
10 193.330, 193.165 – NOC 50145), BATTERY WITH USE OF A DEADLY WEAPON  
11 RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481 –  
12 NOC 50226), and IMPERSONATION OF AN OFFICER (Gross Misdemeanor – NRS  
13 199.430 – NOC 53013).

14 On October 19, 2017, Petitioner, pursuant to Guilty Plea Agreement (“GPA”), pled  
15 guilty to: COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony – NRS  
16 200.380, NRS 199.480 – NOC 50147) and COUNT 2 – ATTEMPT ROBBERY WITH USE  
17 OF A DEADLY WEAPON (Category B Felony – NRS 200.380, 193.330, 193.165 – NOC  
18 50145). The parties stipulated to a sentence of nine (9) to twenty-five (25) years in the Nevada  
19 Department of Corrections (“NDOC”) and the State agreed not to file additional charges  
20 regarding the incident.

21 On January 9, 2018, January 12, 2018, and September 5, 2018, respectively Petitioner  
22 filed Motions to Withdraw Guilty Plea. The State did not oppose these motions. The Court  
23 granted Petitioner’s motion, reinstated his original charges in the March 9, 2016 Indictment,  
24 and set the matter for a February 19, 2019 Jury Trial.

25 On February 19, 2019, Petitioner’s Jury Trial commenced. On February 21, 2019,  
26 Petitioner pled guilty to the following charges in the Amended Indictment: CONSPIRACY  
27 TO COMMIT ROBBERY (Category B Felony – NRS 200.380, 199.480 – NOC 50147),  
28 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony –

1 NRS 205.060 – NOC – 50426), FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY  
2 WEAPON (Category A Felony – NRS 200.310, 200.320, 193.165 – NOC 50055), ATTEMPT  
3 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380,  
4 193.330, 193.165 – NOC 50145), BATTERY WITH USE OF A DEADLY WEAPON  
5 RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony – NRS 200.481 –  
6 NOC 50226), and IMPERSONATION OF AN OFFICER (Gross Misdemeanor – NRS  
7 199.430 – NOC 53013).

8 On March 19, 2019, the Court sentenced Petitioner to an aggregate term of life with a  
9 minimum parole eligibility after twenty (20) years. The Judgment of Conviction was filed on  
10 March 27, 2019. On March 28, 2019, Petitioner filed a Notice of Appeal.

11 On July 26, 2019, Petitioner filed a Motion to Withdraw Plea. On August 29, 2019, the  
12 Court ordered the State to respond by October 10, 2019. On August 30, 2019, Petitioner filed  
13 a Motion for Certification and Request for Remand. On September 24, 2019, Petitioner's  
14 counsel requested a continuance for the State to respond to his Motion for Certification and  
15 Request for Remand, but the Court stated that because the case was on Appeal, the Court had  
16 no jurisdiction. Accordingly, the Court denied the matter as moot. The State filed its  
17 Opposition to Petitioner's Motion to Withdraw Plea on October 7, 2019.

18 On June 11, 2020, Petitioner's counsel filed a Motion to Withdraw as Counsel. On May  
19 11, 2020, the Nevada Supreme Court affirmed Defendant's Judgment of Conviction with  
20 remittitur issuing on June 5, 2020.

21 On June 19, 2020, Petitioner filed a Motion to Dismiss Counsel. On June 23, 2020, the  
22 Court granted Petitioner's counsel's Motion to Withdraw as Counsel.

23 On July 26, 2020, Petitioner filed a Motion to Obtain a Copy of a Sealed Record  
24 (Presentence Investigation Report – NRS 176.156) on an Order Shortening Time. On July 13,  
25 2020, Petitioner filed a Motion for Order for Additional Court Records. On July 21, 2020, the  
26 Court stated that Petitioner indicated that his family could pay for his records, so the Court  
27 ordered the transcripts requested and that Defendant's PSI would be mailed to him. On August  
28 11, 2020, the Court denied Defendant's Motion for Order for Additional Court Records

1 because he had now requested transcripts at the State's expense and Defendant had failed to  
2 meet his burden.

3 On August 19, 2020, Defendant filed the instant Renewed Motion for Appointment of  
4 PCR Counsel. The State filed its Opposition on September 2, 2020. On September 10, 2020,  
5 the Court denied Defendant's Motion without prejudice because there was no Petition for Writ  
6 of Habeas Corpus pending and Defendant had failed to meet his burden.

7 On September 14, 2020, Defendant filed a Motion for Credit for Additional Records.  
8 The State filed its Opposition on September 23, 2020. On October 6, 2020, the Court denied  
9 Petitioner's Motion.

10 On November 5, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus  
11 (Post-Conviction) (hereinafter "Petition"). Petitioner also filed a Motion to File Under Seal  
12 Exhibits 1 Thru 4, Appendix Volume I, and Appendix Volume II. On January 7, 2021,  
13 Petitioner filed Amended Petitioner's Motion for Filing Exhibits 1-4 Under Seal. The State  
14 filed its Response on March 9, 2021. On March 25, 2021, the Court denied Petitioner's Petition  
15 and found as follows.

### 16 FACTS

17 Petitioner's Supplemental Presentence Investigation Report (hereinafter "PSI") stated  
18 the facts as follows:

19 On January 20, 2016, Henderson Police dispatch received a call for service  
20 at a local Henderson apartment community in reference to a loud verbal  
21 dispute taking place in an apartment and a possible home invasion. Upon the  
22 officer's arrival, he observed a male standing behind a Jeep Cherokee. The  
23 officer briefly spoke with the male, identified as one of the co-defendants,  
24 Kevin Wong, as the officer approached the door. Screaming was heard from  
25 the apartment and a male victim (**Victim 2**) was found lying on the floor  
26 handcuffed and bleeding. The officer freed the handcuffs from the victim and  
also found a female victim (**Victim 1**) and secured the apartment. At this  
time, Mr. Wong entered his Jeep and fled the scene eventually being stopped  
by patrol units for several driving infractions.

27 **Victim 2** was transported to the hospital with significant head injuries to  
28 include lacerations and loss of teeth. He also suffered from numerous strikes  
from a baton to the head and torso area. Photographs were taken of his

1 injuries. A detective arrived at the scene and interviewed **Victim 1**. She stated  
2 she was sitting on the couch and heard someone knocking at the door. She  
3 answered and there was a female, identified as codefendant, Amanda Sexton  
4 and two male suspects, identified as co-defendants Marland Dean, and Toney  
5 White who forcibly opened the door and entered the apartment. Firearms  
6 were drawn and aimed at both of the victims. Ms. Sexton placed **Victim 1** in  
7 handcuffs and Mr. White and Mr. Dean began to yell at **Victim 2** stating,  
8 “We have a search warrant, US Marshals; get on the ground.” Mr. White and  
9 Mr. Dean began beating **Victim 2** with metal batons and struck him in the  
10 head and face.

11 A detective responded to a traffic stop location involving Mr. Wong. Mr.  
12 Wong gave the detective consent to search his vehicle. The detective  
13 observed a purse on the passenger seat and located a Nevada Identification  
14 card with Amanda Sexton’s name on it. Mr. White, Mr. Dean, and Ms.  
15 Sexton met up with Mr. Wong and forced their way into the victim’s  
16 apartment. Mr. Wong stated he observed officers arriving so he left the  
17 complex when he saw Mr. White, Mr. Dean, and Ms. Sexton flee the  
18 residence.

19 All four subjects were arrested, transported to the Henderson Detention  
20 Center and booked accordingly.

21 PSI, filed Mar. 11, 2019, at 8-9.

## 22 ANALYSIS

### 23 **I. INEFFECTIVE ASSISTANCE OF COUNSEL STANDARD**

24 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal  
25 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
26 defense.” The United States Supreme Court has long recognized that “the right to counsel is  
27 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
28 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
(1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
representation fell below an objective standard of reasonableness, and second, that but for

1 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
2 been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison  
3 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).  
4 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
5 inquiry in the same order or even to address both components of the inquiry if the defendant  
6 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

7 The court begins with the presumption of effectiveness and then must determine  
8 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
9 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
10 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
11 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
12 537 P.2d 473, 474 (1975).

13 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
14 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
15 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
16 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
17 (2002).

18 Based on the above law, the role of a court in considering allegations of ineffective  
19 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
20 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
21 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
22 (1978). This analysis does not mean that the court should “second guess reasoned choices  
23 between trial tactics nor does it mean that defense counsel, to protect himself against  
24 allegations of inadequacy, must make every conceivable motion no matter how remote the  
25 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
26 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
27 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
28 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

1 “There are countless ways to provide effective assistance in any given case. Even the  
2 best criminal defense attorneys would not defend a particular client in the same way.”  
3 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
4 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
5 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
6 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
7 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
8 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

9 Even if a defendant can demonstrate that his counsel’s representation fell below an  
10 objective standard of reasonableness, he must still demonstrate prejudice and show a  
11 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
12 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
13 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
14 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89,  
15 694, 104 S. Ct. at 2064-65, 2068).

16 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
17 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
18 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
19 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
20 be supported with specific factual allegations, which if true, would entitle the petitioner to  
21 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
22 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
23 34.735(6) states in relevant part, “[Petitioner] *must* allege specific facts supporting the claims  
24 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
25 petition to be dismissed.” (emphasis added).

26 Additionally, there is a strong presumption that appellate counsel’s performance was  
27 reasonable and fell within “the wide range of reasonable professional assistance.” See United  
28 States v. Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990); citing Strickland, 466 U.S. at 689, 104

1 S. Ct. at 2065. A claim of ineffective assistance of appellate counsel must satisfy the two-  
2 prong test set forth by Strickland. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114  
3 (1996). In order to satisfy Strickland's second prong, the defendant must show that the omitted  
4 issue would have had a reasonable probability of success on appeal. Id.

5 The professional diligence and competence required on appeal involves "winnowing  
6 out weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
7 few key issues." Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313 (1983). In  
8 particular, a "brief that raises every colorable issue runs the risk of burying good arguments .  
9 . . in a verbal mound made up of strong and weak contentions." Id. at 753, 103 S. Ct. at 3313.  
10 "For judges to second-guess reasonable professional judgments and impose on appointed  
11 counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very  
12 goal of vigorous and effective advocacy." Id. at 754, 103 S. Ct. at 3314.

13 However, to establish a claim of ineffective assistance of counsel for advice regarding  
14 a guilty plea, a defendant must show "gross error on the part of counsel." Turner v. Calderon,  
15 281 F.3d 851, 880 (9th Cir. 2002). When a conviction is the result of a guilty plea, a defendant  
16 must show that there is a "reasonable probability that, but for counsel's errors, he would not  
17 have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52,  
18 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988,  
19 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).  
20 "A reasonable probability is a probability sufficient to undermine confidence in the outcome."  
21 McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466  
22 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068). Ultimately, while it is counsel's duty to  
23 candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a  
24 plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

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**A. Ground 1: The District Court Did Not Err When It Did Not Allow Petitioner to Represent Himself and Appellate Counsel was Not Ineffective for Failing to Raise the Issue in a Particular Way**

Under his first ground, Petitioner argues that the Court erred in not permitting him to represent himself at trial as well as refusing to canvas Petitioner on March 21, 2017 and appellate counsel was ineffective for failing to raise that issue as a claim in his direct appeal with the complete record. Petition at 8-15. Specifically, he claims that appellate counsel failed to order transcripts for hearings on April 18, 2017, March 27, 2017, and May 3, 2017 to provide the appellate court with the complete record and properly frame his claim to include the Court's denial of Petitioner's request on March 27, 2017 and April 18, 2017. Petition at 8, 12. He asserts that appellate counsel should have "weeded out" the February 6, 2018 denial of his request that was raised on direct appeal and replaced it with a Faretta claim stemming from March 27, 2017 and April 18, 2017. Petition at 14-15. Additionally, in a footnote, Petitioner claims that the district court abused its discretion by failing, prior to trial, to address his *pro per* filings on May 18, 2016, June 15, 2016, December 6, 2016, December 28, 2016, March 27, 2017, May 3, 2017, December 14, 2017, January 9, 2018, January 12, 2018, and March 28, 2019. Petition at 9.

Petitioner correctly concedes that appellate counsel raised his Faretta claim on direct appeal and is thus barred by the law of the case doctrine. "The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV.

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1 CONST. Art. VI § 6. Here, the Nevada Court of Appeals concluded such claim was meritless  
2 and stated:

3 A district court may properly deny a request for self-representation if the  
4 request is equivocal. *Lyons v. State*, 106 Nev. 438, 443, 796 P.2d 210, 213  
5 (1990), *clarified on other grounds by Vanisi v. State*, 117 Nev. 330, 341, 22  
6 P.3d 1164, 1171-72 (2001). The record reveals that White filed a motion  
7 requesting to withdraw his guilty plea and for either the appointment of  
8 substitute counsel or permission to represent himself. The district court held  
9 a hearing concerning White's motion, discussed the motion with White, and  
10 clarified White's desire to move for the withdrawal of his guilty plea.  
11 Following the discussion, the district court decided to appoint substitute  
12 counsel. White acknowledged he understood the district court's decision to  
13 appoint substitute counsel and agreed that the district court had addressed his  
concerns. A review of White's motion and the transcript of the pertinent  
hearing demonstrates he did not make an unequivocal request to represent  
himself and the district court appropriately addressed White's motion and  
concerns without conducting a *Faretta* canvass. Therefore, White fails to  
demonstrate he is entitled to relief.

14 Order of Affirmance, Docket No. 78483, filed May 11, 2020, at 1-2. Thus, Petitioner's claim  
15 is barred by the law of the case doctrine.

16 To the extent Petitioner now claims that appellate counsel was ineffective because he  
17 failed to frame the issue regarding the March 27, 2018 request and April 18, 2017 denial of  
18 his request and failed to order such transcripts, his claim is still meritless as he cannot  
19 demonstrate that such claim would have been meritorious as he was making the same request:  
20 to represent himself. Accordingly, Petitioner cannot demonstrate that framing his claim in this  
21 way would have been successful especially in light of the Nevada Court of Appeals rejecting  
22 his claim.

23 Generally, a criminal defendant has the right to representation by counsel under the  
24 Sixth Amendment of the United States Constitution and the Nevada Constitution. See U.S.  
25 CONST. AMEND. VI; NEV. CONST. ART. 1, § 8, cl. 1. However, a defendant can waive this right  
26 and, where he chooses to represent himself, he must satisfy the court that his waiver of the  
27 right to counsel is knowing and voluntary. *Faretta*, 422 U.S. at 818-19, 835, 95 S. Ct. at 2525;  
28 *Vanisi v. State*, 117 Nev. 330, 337-38, 22 P.3d 1164, 1169-70 (2001).

1 Both the United States Supreme Court and this Court have recognized that “the right  
2 to defend is given directly to the accused; for it is he who suffers the consequences if the  
3 defense fails.” Johnson v. State, 117 Nev. 153, 162, 17 P.3d 1008 (2001) (quoting Faretta,  
4 422 U.S. at 819-20, 95 S. Ct. at 2533). The Court further emphasized that “[i]t is the defendant  
5 . . . who must be free personally to decide whether in his particular case counsel is to his  
6 advantage. And although he may conduct his own defense ultimately to his own detriment, his  
7 choice must be honored out of that respect for the individual which is the lifeblood of the  
8 law.” Id. Indeed, once a defendant is found competent to stand trial, so long as he freely,  
9 intelligently, and knowingly waives his right to counsel a district court has little power to  
10 prevent the defendant from representing himself: “[I]n the absence of some indication that  
11 Johnson's attempt to waive counsel was not knowing, intelligent and voluntary, or that some  
12 other factor warranted denial of the right to self-representation under this court's holding in  
13 Tanksley, the district court could not properly preclude Johnson from waiving his right to  
14 counsel.” Id. at 164, 17 P.3d 1008.

15 While this Court “indulge[s] in every reasonable presumption against waiver of the  
16 right to counsel,” it gives deference to the lower court’s decision to grant a defendant’s waiver  
17 of his right to counsel. Hooks v. State, 124 Nev. 48, 55, 57, 176 P.3d 1081, 1085-86 (2008).  
18 “Through face-to-face interaction in the courtroom, the trial judges are much more competent  
19 to judge a defendant’s understanding” of his rights than the appellate court since a “cold record  
20 is a poor substitute for demeanor observation.” Graves v. State, 112 Nev. 118, 124, 912 P.2d  
21 234, 238 (1996). Indeed, “[e]ven the omission of a canvass is not reversible error if it appears  
22 from the whole record that the defendant knew his rights and insisted upon representing  
23 himself.” Hooks, 124 Nev. at 55, 176 P.3d at 1085 (quotation marks and citation omitted).

24 In assessing a waiver, the inquiry is whether the defendant can knowingly and  
25 voluntarily waive his right to counsel, not whether the defendant can competently represent  
26 himself. Tanksley v. State, 113 Nev. 997, 1000-01, 946 P.2d 148, 150 (1997). A defendant’s  
27 technical knowledge is not relevant to the inquiry and a request for self-representation may  
28 not be denied solely because the defendant lacks legal skills. Id. However, a request *may* be

1 denied if the request is equivocal, the defendant abuses his right by disrupting the judicial  
2 process, or the defendant is incompetent to waive his right to counsel. Id.

3 Moreover, Petitioner's allegation that the district court abused its discretion by failing,  
4 prior to trial, to address his *pro per* filings on May 18, 2016, June 15, 2016, December 6, 2016,  
5 December 28, 2016, March 27, 2017, May 3, 2017, December 14, 2017, January 9, 2018,  
6 January 12, 2018, and March 28, 2019 is waived, belied by the record, and meritless. Petition  
7 at 9. As a preliminary matter, this is a substantive claim that is waived. NRS 34.810(1) reads:

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

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

13 (b) The petitioner's conviction was the result of a trial and the  
14 grounds for the petition could have been:

15 [...]

16 (2) Raised in a direct appeal or a prior petition for a writ of habeas  
17 corpus or postconviction relief.

18 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims  
19 of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction  
20 proceedings.... [A]ll other claims that are appropriate for a direct appeal must be pursued on  
21 direct appeal, or they will be *considered waived in subsequent proceedings.*" Franklin v. State,  
22 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other  
23 grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a  
24 habeas petition if it presents claims that either were or could have been presented in an earlier  
25 proceeding, unless the court finds both cause for failing to present the claims earlier or for  
26 raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-  
27 47, 29 P.3d 498, 523 (2001). In other words, substantive claims are beyond the scope of habeas  
28 and waived. NRS 34.724(2)(a); Evans, 117 Nev. at 646-47, 29 P.3d at 523 (2001); Franklin,  
110 Nev. at 752, 877 P.2d at 1059, disapproved on other grounds, Thomas, 115 Nev. at 148,  
979 P.2d at 222.

Moreover, Petitioner's claim is waived because a defendant cannot enter a guilty plea  
then later raise independent claims alleging a deprivation of his rights before entry of his plea.

1 State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting  
2 Tollett v. Henderson, 411 U.S. 258, 267 (1973). Generally, the entry of a guilty plea waives  
3 any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91  
4 Nev. 469, 538 P.2d 164 (1975). “[A] guilty plea represents a break in the chain of events  
5 which has preceded it in the criminal process [...] [A defendant] may not thereafter raise  
6 independent claims relating to the deprivation of constitutional rights that occurred prior to the  
7 entry of the guilty plea.” Id. (quoting Tollett, 411 U.S. at 267).

8 Additionally, Petitioner’s claim is largely belied by the record. Hargrove, 100 Nev. at  
9 502, 686 P.2d at 225. Indeed, the record indicates that on June 9, 2016, the Court denied  
10 Petitioner’s Application to Recuse Counsel and for Appointment for Alternative Counsel:  
11 Memorandum of Points and Authorities filed on May 18, 2016. On July 7, 2016, the Court  
12 addressed Petitioner’s additional Application to Recuse Counsel and for Appointment of  
13 Alternative Counsel: Memorandum of Points and Authorities filed on June 15, 2016 and  
14 ordered it off calendar as having been previously denied. On January 19, 2017, Petitioner  
15 withdrew his Motion to Recuse Counsel And Proceed In Pro Pria Personam In Light Of  
16 Counsels Demonstrated Ineffectiveness And Case Neglect And In Light Of Existing Conflict  
17 filed on December 28, 2016 in open court. On April 18, 2017, the Court denied Petitioner’s  
18 Motion for Trial Extension for 180 Days; Motion to Recuse Counsel and Application to  
19 Proceed in Propria Personam filed on March 27, 2017. Petitioner alleges the Court failed to  
20 address a December 14, 2017, but the record does not show that Petitioner filed a pleading that  
21 day. On February 6, 2018, the Court addressed his Motions for Withdrawal of Guilty Plea and  
22 for Appointment of New Counsel or Alternatively to Proceed in Pro Per filed on January 9,  
23 2018 and January 12, 2018. The only filing by Petitioner on March 28, 2019 was a Notice of  
24 Appeal to the Nevada Supreme Court, which was not a matter this Court could address.

25 The only two (2) filings the Court did not address prior to Petitioner’s trial was his  
26 pretrial petition for writ of habeas corpus filed on December 6, 2016 and his petition for writ  
27 of habeas corpus as well as his Objection to Court’s Denial of Motion filed May 3, 2017.  
28 However, as discussed *supra*, not only is this a substantive claim that is waived, but also

1 Petitioner cannot demonstrate prejudice because these pleadings were meritless. Indeed, in his  
2 December 6, 2016 Petition, Petitioner's sole claim was that he should be released from custody  
3 because the State violated Marcum. As discussed *infra* in Section F, Petitioner was given  
4 "reasonable notice." Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, even if the Court had  
5 addressed this petition, it would have failed. Additionally, Petitioner has not and cannot  
6 demonstrate that he was prejudiced by the Court failing to address his Objection to Court's  
7 Denial of Motion that he filed on May 3, 2017. Indeed, such document does not amount to a  
8 cognizable motion as Petitioner claimed in such document he was merely preserving the issue  
9 for appellate review. To the extent Petitioner was seeking rehearing by filing such document,  
10 he cannot demonstrate that the Court would have granted rehearing and more importantly  
11 whether that would have caused him not to plead guilty and proceed with trial. Hill, 474 U.S.  
12 at 59, 106 S.Ct. at 370; *see also* Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev.  
13 at 190-91, 87 P.3d at 537. Likewise, Petitioner's petition for writ of habeas corpus filed on  
14 May 3, 2017, is meritless as discussed *infra* in Section B, Petitioner's Fourth Amendment  
15 complaints are meritless. Thus, Petitioner cannot demonstrate good cause or prejudice and his  
16 claims are denied.

## 17 **B. Ground 2: Petitioner's Fourth Amendment Violation Claim**

18 Petitioner claims his fourth amendment rights were violated for the following reasons:  
19 (1) Wong, the alleged unauthorized driver of Petitioner's vehicle, did not have standing to  
20 consent to the search of Petitioner's vehicle as well as Co-Defendant Sexton's purse and thus  
21 the items found in such search were fruit of the poisonous tree (Petition at 17-21); (2) law  
22 enforcement committed a warrantless "surreptitious surveillance" of one of Petitioner's  
23 residences (Petition at 21-22); and (3) the affidavits attached to the search warrants for  
24 Petitioner's vehicle and apartment contained "misrepresentations, distortions, omissions,  
25 inaccuracies, and/or falsities" (Petition at 22-26).

26 As a preliminary matter Petitioner's claims are waived in two (2) ways. First,  
27 Petitioner's claims are substantive and therefore waived. NRS 34.724(2)(a); Evans, 117 Nev.  
28 at 646-47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059, disapproved on other

1 grounds, Thomas, 115 Nev. at 148, 979 P.2d at 222. Second, Petitioner's claims are waived  
2 because he is alleging a deprivation of rights that would have occurred prior to entry of his  
3 guilty plea. Eighth Judicial District Court, 121 Nev. at 225, 112 P.3d at 1070, n.24; See Webb,  
4 91 Nev. at 469, 538 P.2d at 164. Regardless, Petitioner's claims are meritless and are thus  
5 denied.

### 6 **1. Alleged Warrantless Search**

7 Petitioner's claim that his rights were violated because Wong consented to the search  
8 of Petitioner's vehicle during a traffic stop is not only waived, but it is also barred by the  
9 doctrine of res judicata. Re-litigation of this issue is precluded by the doctrine of res judicata.  
10 Exec. Mgmt. v. Ticor Titles Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998) (citing  
11 Univ. of Nev. v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)). "The doctrine  
12 is intended to prevent multiple litigation causing vexation and expense to the parties and  
13 wasted judicial resources..." Id.; see also Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005)  
14 (recognizing the doctrine's availability in the criminal context); York v. State, 342 S.W. 3d  
15 528, 553 (Tex. Crim. App. 2011); Bell v. City of Boise, 993 F.Supp.2d 1237 (D. Idaho 2014)  
16 (finding res judicata applies in both civil and criminal contexts).

17 Here, Petitioner raised this issue in his Motion for Trial Extension for 180 Days; Motion  
18 to Recuse Counsel and Application for Proceed in Properia Personam filed on March 27, 2017.  
19 This Court denied the Motion and found that Petitioner's claim regarding Wong was meritless  
20 because Petitioner did not have standing to raise another individual's Fourth Amendment  
21 Right. Defendant White's Pro Per Motion for Trial Extension for 180 Days; Motion to Recuse  
22 Counsel and Application to Proceed in Properia Personam Hearing Minutes, Apr. 18, 2017.  
23 Regardless, the claim is meritless as Wong, the driver of the vehicle, could properly give  
24 consent to the search. United States v. Eldridge, 984 F.2d 943, 948 (8th Cir. 1993); See United  
25 States v. Matlock, 415 U.S. 164, 171, 94 S.Ct. 988, 993, 39 L.Ed.2d 242 (1974). Therefore,  
26 Petitioner's claim is denied.

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1                   **2. Pre-arrest Surreptitious Surveillance of Petitioner**

2           In addition to being waived, Petitioner's argument that his rights were violated because  
3 law enforcement conducted a warrantless "surreptitious surveillance" of Petitioner's residence  
4 is meritless. Petitioner cites to one (1) of the law enforcement incident reports which states  
5 that the officers surveilled an apartment on foot, from their vehicle, and searched the apartment  
6 with consent. Petitioner has not and cannot cite any legal authority that states that surveilling  
7 from a lawful position is a violation of an individual's fourth amendment right. Regardless,  
8 Petitioner has not alleged that he would have proceeded with trial and not pled guilty.  
9 Therefore, Petitioner's claim is denied.

10                   **3. Oath or Affirmation**

11           Also in addition to being waived, Petitioner's complaint that his Fourth Amendment  
12 right was violated because some of the contents of the warrant affidavits were false is meritless.

13           The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const.  
14 Amend. IV. The Fourth Amendment states that "no warrants shall issue, but upon probable  
15 cause, supported by oath or affirmation, and particularly describing the place to be searched,  
16 and the persons or things to be seized." U.S. Const. Amend. IV; Draper v. United States, 358  
17 U.S. 307, 79 S. Ct. 329 (1959). "'Probable cause' requires that law enforcement officials have  
18 trustworthy facts and circumstances which would cause a person of reasonable caution to  
19 believe that it is more likely than not that the specific items to be searched for are: seizable  
20 and will be found in the place to be searched." Keese v. State, 110 Nev. 997, 1002, 879 P.2d  
21 63, 66 (1994).

22           While the information contained in every warrant must be truthful, this "does not mean  
23 'truthful' in the sense that every fact recited in the warrant affidavit is necessarily correct, for  
24 probable cause may be founded upon hearsay and upon information received from informants,  
25 as well as upon information within the affiant's own knowledge that sometimes must be  
26 garnered hastily." Franks v. Delaware, 438 U.S. 154, 165, 98 S.Ct. 2674, 2681 (1978). Further,  
27 in U.S. v. Rettig, 589 F.2d 418 (9th Cir.1979), the Court held:

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1 Where factual inaccuracy of the affidavit is alleged, a warrant is invalidated  
2 only if it is established that the affiant was guilty of deliberate falsehood or  
3 reckless disregard for the truth, and if with the affidavit's false material set  
4 to one side, the information remaining in the affidavit is inadequate to  
5 support probable cause. Id. at 422 (Citing Franks v. Delaware, 438 U.S.  
6 154, 98 S. Ct 2674 (1978)).

7 Here, Petitioner complains that nowhere in the dispatch records did it state "home  
8 invasion." However, Petitioner has omitted information from other reports indicating that  
9 officers received information of forcible entry into the apartment. See e.g., Petitioner's  
10 Appendix, Volume 1, at 35, 37, 84. Regardless, Petitioner has not explained the relevance of  
11 such information or more importantly whether a difference in such information would have  
12 caused him to proceed with trial instead of ultimately pleading guilty. Additionally, Petitioner  
13 claims there were misrepresentations of what certain individuals observed or did not observe.  
14 Not only has Petitioner failed to explain why he believes such information to be false, but also  
15 his assertions are pure speculation as he cannot state what other people witnessed. Moreover,  
16 Petitioner alleges additional information that he believes to be false, but he has not  
17 demonstrated that even if any of the information was indeed false, a point not conceded, the  
18 affiant was guilty of deliberate falsehood or had a reckless disregard for the truth. Franks, 438  
19 U.S. at 165, 98 S.Ct. at 2681. Indeed, Petitioner cannot show prejudice or that counsel would  
20 have succeeded in suppressing the evidence obtained from the Search Warrant Affidavits. The  
21 submitting detective based the information on the statements of first responding patrol officers.  
22 There is nothing indicating that he intentionally misrepresented the facts. Furthermore,  
23 Petitioner has not indicated that the information in the affidavits was so inadequate that they  
24 do not support a finding of probable cause. Id. Therefore, Petitioner's claim is denied.

### 24 **C. Ground 3: The State Did Not Breach its Duty Under Brady v. Maryland**

25 Petitioner argues that the State breached its duty under Brady v. Maryland for failing to  
26 disclose the following: (1) criminal histories of victims and the State's witnesses; (2) the search  
27 warrant and return on the victim's apartment; (3) police reports and criminal documents  
28 criminally charging Cliff; (4) body camera footage of Petitioner's arrest. Petition at 26-28.

1 As a preliminary matter, Petitioner's claim is substantive and thus waived. NRS  
2 34.724(2)(a); Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d  
3 at 1059, disapproved on other grounds, Thomas, 115 Nev. at 148, 979 P.2d at 222.  
4 Additionally, the claim is waived because Petitioner is asserting a constitutional claim that  
5 occurred prior to entering his guilty plea. Eighth Judicial District Court, 121 Nev. at 225, 112  
6 P.3d at 1070, n.24; See Webb, 91 Nev. at 469, 538 P.2d at 164. Regardless, Petitioner's claim  
7 is belied by the record as well as bare and naked. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

8 It is well-settled that Brady and its progeny require a prosecutor to disclose evidence  
9 favorable to the defense when that evidence is material either to guilt or to punishment. See  
10 Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25 (2000); Jimenez v. State, 112 Nev. 610, 618-  
11 19, 918 P.2d 687 (1996). “[T]here are three components to a Brady violation: (1) the evidence  
12 at issue is favorable to the accused; (2) the evidence was withheld by the state, either  
13 intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material.”  
14 Mazzan 116 Nev. at 67. “Where the state fails to provide evidence which the defense did not  
15 request or requested generally, it is constitutional error if the omitted evidence creates a  
16 reasonable doubt which did not otherwise exist. In other words, evidence is material if there is  
17 a reasonable probability that the result would have been different if the evidence had been  
18 disclosed.” Id. at 66 (internal citations omitted). “In Nevada, after a specific request for  
19 evidence, a Brady violation is material if there is a reasonable *possibility* that the omitted  
20 evidence would have affected the outcome. Id. (original emphasis), *citing Jimenez v. State*,  
21 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996); Roberts v. State, 110 Nev. 1121, 1132, 881  
22 P.2d 1, 8 (1994).

23 “The mere possibility that an item of undisclosed information might have helped the  
24 defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the  
25 constitutional sense.” United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392, 2399-400  
26 (1976). Favorable evidence is material, and constitutional error results, “if there is a reasonable  
27 probability that the result of the proceeding would have been different.” Kyles v. Whitley, 514  
28 U.S. 419, 433-34, 115 S.Ct. 1555, 1565 (1995), *citing United States v. Bagley*, 473 U.S. 667,

1 682, 105 S.Ct. 3375, 3383 (1985). A reasonable probability is shown when the nondisclosure  
2 undermines confidence in the outcome of the trial. Kyles at 434, 115 S.Ct. 1565.

3 Due Process does not require simply the disclosure of “exculpatory” evidence.  
4 Evidence must also be disclosed if it provides grounds for the defense to attack the reliability,  
5 thoroughness, and good faith of the police investigation or to impeach the credibility of the  
6 State’s witnesses. See Kyles 514 U.S. at 442, 445-51, 1115 S. Ct. 1555 n. 13. Evidence cannot  
7 be regarded as “suppressed” by the government when the defendant has access to the evidence  
8 before trial by the exercise of reasonable diligence. United States v. White, 970 F.2d 328, 337  
9 (7<sup>th</sup> Cir. 1992). “Regardless of whether the evidence was material or even exculpatory, when  
10 information is fully available to a defendant at the time of trial and his only reason for not  
11 obtaining and presenting the evidence to the Court is his lack of reasonable diligence, the  
12 defendant has no Brady claim.” United States v. Brown, 628 F.2d 471, 473 (5<sup>th</sup> Cir. 1980).

13 “While the [United States] Supreme Court in Brady held that the [g]overnment may not  
14 properly conceal exculpatory evidence from a defendant, it does not place any burden upon  
15 the [g]overnment to conduct a defendant’s investigation or assist in the presentation of the  
16 defense’s case.” United States v. Marinero, 904 F.2d 251, 261 (5<sup>th</sup> Cir. 1990); *accord* United  
17 States v. Pandozzi, 878 F.2d 1526, 1529 (1<sup>st</sup> Cir. 1989); United States v. Meros, 866 F.2d 1304,  
18 1309 (11<sup>th</sup> Cir. 1989). When defendants miss the exculpatory nature of documents in their  
19 possession or to which they have access, they cannot miraculously resuscitate their defense  
20 after conviction by invoking Brady. White, 970 F.2d at 337.

21 The Nevada Supreme Court has followed the federal line of cases in holding that Brady  
22 does not require the State to disclose evidence which was available to the defendant from other  
23 sources, including diligent investigation by the defense. Steese v. State, 114 Nev. 479, 495,  
24 960 P.2d 321, 331 (1998). In Steese, the undisclosed information stemmed from collect calls  
25 that the defendant made. This Court held that the defendant certainly had knowledge of the  
26 calls that he made and through diligent investigation the defendant’s counsel could have  
27 obtained the phone records independently. Id. Based on that finding, this Court found that

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1 there was no Brady violation when the State did not provide the phone records to the defense.  
2 Id.

3 First, Petitioner's claim that the State failed to provide certain discovery is belied by  
4 the record as counsel for the State, an officer of the court, stated that the State provided all  
5 discovery to defense counsel. Hargrove, 100 Nev. at 502, 686 P.2d at 225; Defendant White's  
6 Pro Per Motion for Trial Extension for 180 Days; Motion to Recuse Counsel and Application  
7 to Proceed in Propria Personam Hearing Minutes, Apr. 18, 2017. To the extent Petitioner  
8 claims that the State's record was false, he has failed to provide any support for why he  
9 believes such record was false. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Regardless,  
10 Petitioner has not demonstrated the materiality of the information he now self-servingly claims  
11 he did not receive and whether it truly would have resulted in him not pleading guilty.  
12 Therefore, his claim is denied.

#### 13 **D. Ground 4: Ineffective Assistance of Counsel Claims**

14 Petitioner argues that counsel was ineffective for: (1) "failing to acquire certain  
15 information from Petitioner at their initial interviewing of him including his physical and  
16 mental health and his immediate medical needs," including his alleged medical, mental health,  
17 and duress claims, (2) failing to hire a medical and mental health expert to evaluate Petitioner  
18 prior to trial, (3) failing to consult and discuss with Petitioner the grand jury process including  
19 Petitioner's right to testify and failing to challenge the Marcum notice error as well as present  
20 evidence and impeach victims at such hearing, (4) failing to communicate all anticipated  
21 tactics and strategies, including failing to explore Petitioner's desire to suppress evidence and  
22 pursuing a diminished capacity defense, (5) failing to retrieve certain witness affidavits and  
23 interview witnesses, including Trina Potluck. Petition at 31, 33-36. Additionally, he complains  
24 that appellate counsel was ineffective for failing to comply with ADKT 411. Petition at 32.

25 A defendant who contends his attorney was ineffective because he did not adequately  
26 investigate must show how a better investigation would have rendered a more favorable  
27 outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

28 //

1        *1. Harvey Gruber Complaints*

2        Petitioner argues that counsel was ineffective for several reasons. As an initial threshold  
3 matter, Petitioner cannot demonstrate any error by Mr. Gruber prejudiced Petitioner because  
4 Mr. Gruber did not represent Petitioner at trial. Regardless, Petitioner's claims are meritless.

5        First, Petitioner complains that counsel was ineffective for failing to ensure Petitioner  
6 was provided a timely Marcum notice and was given an opportunity to testify as well as present  
7 evidence at the grand jury hearing. Petition at 36. However, Petitioner cannot claim ineffective  
8 assistance of counsel for an action taken by the State. Indeed, Petitioner's claim appears to be  
9 a waived substantive claim that he attempted to disguise as an ineffective assistance of counsel  
10 claim. NRS 34.724(2)(a); Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at  
11 752, 877 P.2d at 1059, disapproved on other grounds, Thomas, 115 Nev. at 148, 979 P.2d at  
12 222. Regardless, Petitioner's claim is meritless because it is belied by the record. The record  
13 indicates that the State served Marcum Notice on February 23, 2016 and Petitioner's counsel  
14 acknowledged notification on February 24, 2016. See State's Exhibit A; Henderson Justice  
15 Court Minutes, Feb. 24, 2016. Petitioner's Grand Jury Hearing was held March 25, 2016. One  
16 month was "reasonable notice" for Petitioner to decide whether he wished to testify or present  
17 evidence at the hearing. NRS 172.241. Moreover, Petitioner has not demonstrated what he  
18 would have testified about, what evidence he would have presented if given the opportunity,  
19 and whether he ultimately would not have pled guilty and proceeded with his trial. Hill, 474  
20 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120  
21 Nev. at 190-91, 87 P.3d at 537.

22        Second, Petitioner claims that counsel was ineffective for failing to investigate the basis  
23 for Petitioner's pre-trial petition for writ of habeas corpus, which sought a Franks and  
24 suppression hearing due to the State allegedly illegally obtaining evidence. Petition at 36. As  
25 discussed *supra* in Section B, Petitioner has failed to demonstrate that a Franks suppression  
26 hearing would have been successful or that the State illegally obtained evidence. Accordingly,  
27 counsel cannot be deemed ineffective for not filing frivolous motions and Petitioner cannot  
28 establish prejudice. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

1 Third, as discussed in Section C *supra*, Petitioner's claim that the State failed to abide  
2 by its discovery obligation and provide discovery pursuant to Brady is belied by the record  
3 and he has failed to demonstrate why he believes the State's record on the matter was false,  
4 let alone the materiality of the information he was seeking, and whether it would have changed  
5 his decision of pleading guilty. Thus, it would have been futile for counsel to pursue the matter  
6 and he cannot demonstrate he was prejudiced by counsel's failure to do so. Ennis, 122 Nev. at  
7 706, 137 P.3d at 1103.

8 Fourth, Petitioner complains that counsel failed to object, interject, and "treat the  
9 record" at the April 18, 2017 hearing to ensure Petitioner's Sixth Amendment right to self-  
10 representation. Petition at 36. This is a bare and naked claim suitable only for summary denial  
11 as Petitioner has failed to even attempt to allege how counsel should have objected, interjected,  
12 and "treated the record." Moreover, the minutes from said hearing show counsel's active  
13 participation at the hearing. Regardless, he does not demonstrate that had counsel acted in such  
14 a way he would, for a fact, not have pled guilty and proceeded with his trial. Hill, 474 U.S. at  
15 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev.  
16 at 190-91, 87 P.3d at 537.

17 Fifth, Petitioner claims counsel was ineffective for failing to conduct pre-trial  
18 investigation of Petitioner's mental health history, medical history, diminished capacity,  
19 duress defenses, and diminished capacity defenses as well as his competency during the crime.  
20 Petition at 36. He also reiterates that counsel should have hired an expert for this purpose. Id.  
21 Such claim is belied by the record as Petitioner indicated during his plea canvass with the  
22 Court:

23 THE COURT: Okay. And you had a chance to discuss any defenses that you  
24 would have to these charges?

25 THE DEFENDANT: Yeah.

26 THE COURT: You discussed them with your attorney?

27 THE DEFENDANT: Yeah.

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1 Recorder's Transcript of Hearing: Jury Trial – Day 3, filed July 12, 2019, at 13; Hargrove, 100  
2 Nev. at 502, 686 P.2d at 225. Regardless, Petitioner's claim that counsel did not investigate  
3 Petitioner's medical history and mental health history is belied by Petitioner's own Exhibit to  
4 the instant Petition. Indeed, Petitioner's Appendix, Volume II, pages 314 through 331, reveal  
5 that counsel did in fact obtain medical records on Petitioner's behalf. To the extent Petitioner  
6 complains that counsel should have investigated further, he has not proven what that  
7 investigation would have shown whether the information received would have caused him not  
8 to plead guilty or more importantly provided a better outcome. Molina, 120 Nev. at 192, 87  
9 P.3d at 538. Similarly, Petitioner has not demonstrated what an expert would have said, let  
10 alone whether hiring an expert would have rendered a better outcome. Id. Therefore,  
11 Petitioner's claim is denied.

12 Sixth, Petitioner claims counsel failed to investigate evidence and witnesses for his  
13 case. Petition at 36. Specifically, he claims that counsel failed to investigate "Sexton, Burton,  
14 Cousert, White, Bennett, Hoyer, Cliff, Burkhalter, Portlock, Deann, Perry, and Wong" to assist  
15 in Petitioner's defenses even though counsel had the Affidavit from Portluck. Id. Petitioner's  
16 claim fails as he has not and cannot demonstrate whether these witnesses would have assisted  
17 in his defense and provided a better outcome. Molina, 120 Nev. at 192, 87 P.3d at 538. Thus,  
18 Petitioner's claim is bare and naked and suitable only for summary dismissal. Hargrove, 100  
19 Nev. at 502, 686 P.2d at 225. Moreover, Petitioner concedes that counsel possessed Portluck's  
20 Affidavit, so his claim regarding counsel's investigation of Portluck is also belied by the record  
21 he has provided this Court. Id. Regardless, Petitioner does not allege what further investigation  
22 Petitioner should have conducted in light of this Affidavit. Therefore, Petitioner's claim is  
23 denied.

24 Seventh, Petitioner complains that counsel was ineffective for failing to investigate  
25 facts surrounding Deann's alleged threats and coercion that induced Petitioner's October 19,  
26 2017 later withdrawn guilty plea. Petition at 37. However, this claim fails as Petitioner cannot  
27 demonstrate prejudice because his first plea withdrawal request was granted. As it relates to  
28 his second plea, Petitioner cannot demonstrate how investigating his prior plea would have

1 changed the outcome of his later guilty plea. In other words, regardless of whether counsel  
2 investigated Deann's alleged threats prior to Petitioner's first guilty plea, Petitioner cannot  
3 demonstrate how investigating this prior plea allegation would have caused him not to enter  
4 his second guilty plea and proceed with trial. Hill, 474 U.S. at 59, 106 S.Ct. at 370; see also  
5 Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev. at 190-91, 87 P.3d at 537.  
6 Therefore, Petitioner's claim is denied.

7 Eighth, Petitioner claims counsel was ineffective for failing to pursue a mental health  
8 defense in light of Petitioner's mental health records. Petition at 37. Petitioner's claim fails as  
9 he cannot demonstrate that had counsel pursued such a defense, he would not have pled guilty  
10 and proceeded to trial because he does not know if such defense would have been successful.  
11 Hill, 474 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107;  
12 Molina, 120 Nev. at 190-91, 87 P.3d at 537. Regardless, Petitioner acknowledged during his  
13 plea canvass with the Court that he went over all defenses with counsel and still proceeded to  
14 enter his guilty plea. Recorder's Transcript of Hearing: Jury Trial – Day 3, filed July 12, 2019,  
15 at 13. Therefore, Petitioner's claim is denied.

## 16 2. *Michael Sanft Complaints*

17 First, Petitioner claims counsel was ineffective for failing to pursue the basis for his  
18 pretrial petition for writ of habeas corpus and request a Franks hearing as well as a suppression  
19 hearing regarding allegedly illegally obtained evidence. As discussed *supra* in Section B as well  
20 as the previous section, Petitioner cannot demonstrate that the pursuit of such matter would  
21 have been successful. Thus, counsel cannot be faulted for failing to pursue a futile motion and  
22 Petitioner cannot demonstrate prejudice. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

23 Second, Petitioner again complains that counsel was ineffective for failing to detect and  
24 pursue the Marcum notice violation. As discussed *supra*, Petitioner's claim fails because it  
25 belied by the record which indicates that Petitioner received "reasonable notice" regarding the  
26 grand jury hearing. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

27 Third, Petitioner again complains that counsel was ineffective for failing to investigate  
28 Petitioner's mental health history, medical history, diminished capacity, intoxication, duress,



1 and competency defenses as well as failed to hire an expert to evaluate Petitioner. Petition at  
2 38. This claim fails because, as discussed *supra*, Mr. Gruber obtained some of Petitioner's  
3 medical records. Thus, Mr. Sanft obtaining the same record would have been futile. Moreover,  
4 to the extent Petitioner complains that counsel should have investigated further, he has not  
5 proven what that investigation would have shown whether the information received would  
6 have caused him not to plead guilty or more importantly provided a better outcome. Molina,  
7 120 Nev. at 192, 87 P.3d at 538. Similarly, Petitioner has not demonstrated what an expert  
8 would have said, let alone whether hiring an expert would have rendered a better outcome. Id.  
9 Therefore, Petitioner's claim is denied.

10 Fourth, Petitioner reiterates that counsel was ineffective for failing to investigate the  
11 evidence as well as "Sexton, Burton, Cousert, White, Bennett, Hoyer, Cliff, Burkhalter,  
12 Portlock, Deann, Perry, and Wong" to assist in Petitioner's defenses. Petition at 38. As  
13 discussed *supra*, Petitioner has not and cannot demonstrate whether these witnesses would  
14 have assisted in his defense and provided a better outcome. Molina, 120 Nev. at 192, 87 P.3d  
15 at 538. Thus, Petitioner's claim is bare and naked and suitable only for summary dismissal.  
16 Hargrove, 100 Nev. at 502, 686 P.2d at 225.

17 Fifth, Petitioner repeats that counsel was ineffective for failing to discover the  
18 challenged Brady materials. Petition at 38. As discussed *supra* in Section C as well as the  
19 previous section, Petitioner's claim, that the State failed to provide discovery pursuant to  
20 Brady, is belied by the record. Moreover, he has failed to indicate why he believes the State's  
21 record was false, let alone that he would have received information that would have changed  
22 his decision to end his trial and plead guilty. Thus, it would have been futile for counsel to  
23 pursue this matter and his claim is denied. See Ennis, 122 Nev. at 706, 137 P.3d at 1103.

24 Sixth, Petitioner complains that counsel failed to "adequately cross examine witnesses  
25 and subject the prosecutor's case to rigorous testing." Petition at 38. However, Petitioner  
26 cannot show counsel was ineffective because Petitioner pled guilty during his trial. Thus, any  
27 efforts by counsel was extinguished when Petitioner elected to end his trial early and pled  
28 guilty to his charges. Therefore, Petitioner's claim is denied.

1 Seventh, Petitioner argues that counsel failed to impeach the following State's  
2 witnesses with their criminal histories: Burkhalter, White, Cliff, Burton, Perry, and Cousert.  
3 Petition at 38. As a preliminary matter, out of the aforementioned list only Burkhalter and Cliff  
4 had testified before Petitioner decided to end his trial and plead guilty. Thus, as discussed with  
5 his previous claim, Petitioner can only attempt to demonstrate prejudice as to Burkhalter and  
6 Cliff. Regardless, Petitioner's claim fails because it is a bare and naked claim suitable only for  
7 summary denial. Indeed, Petitioner does not provide the crimes of moral turpitude to which he  
8 is referring and fails to provide any indication that such witnesses were convicted of such  
9 crimes. Hargrove, 100 Nev. at 502, 686 P.2d at 225. It bears noting that the State did question  
10 Cliff about his 2016 conviction for attempt grand larceny and 2017 conviction for using and  
11 possession of identification of another. Regardless, Petitioner cannot demonstrate that had  
12 Burkhalter and Cliff been questioned about the crimes of moral turpitude they allegedly  
13 committed, he would not have pled guilty and permitted his trial to proceed. Hill, 474 U.S. at  
14 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev.  
15 at 190-91, 87 P.3d at 537. Therefore, Petitioner's claim is denied.

16 Eighth, Petitioner complains that counsel was ineffective for failing to call a single  
17 witness at trial. Petition at 38. However, his claim fails because it is a bare and naked claim  
18 suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Indeed,  
19 Petitioner has failed to indicate which witnesses he believes should have been called in  
20 addition to the State's witnesses, let alone whether such witnesses would have been willing to  
21 testify. While it appears that counsel stated he did not anticipate that he would call witnesses  
22 to the stand, but instead would cross-examine the State's witness, it bears noting that counsel  
23 later requested Co-Defendant Marland be transported from the prison as a potential witness  
24 for the defense. Recorder's Transcript of Hearing: Jury Trial – Day 1, filed July 12, 2019, at  
25 7-8, 38-40. Ultimately, however, which witnesses to call is counsel's responsibility and  
26 Petitioner has failed to demonstrate that he would have elected to proceed with trial instead of  
27 pleading guilty had these unnamed witnesses testified. Rhyne, 118 Nev. at 8, 38 P.3d at 167;

28 //

1 Hill, 474 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107;  
2 Molina, 120 Nev. at 190-91, 87 P.3d at 537. Therefore, Petitioner's claim is denied.

3 Ninth, Petitioner complains that counsel based all of Petitioner's defenses on the State's  
4 evidence and witnesses in its case in chief. Petition at 38. This is also a bare and naked claim  
5 suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Petitioner has  
6 failed to indicate how counsel was ineffective in basing Petitioner's defense on the State's  
7 evidence and witnesses and that doing so was "gross error." Turner v. Calderon, 281 F.3d 851,  
8 880 (9th Cir. 2002). Indeed, which defenses to pursue it ultimately a strategic decision and  
9 counsel's responsibility. Rhyne, 118 Nev. at 8, 38 P.3d at 167; Dawson, 108 Nev. at 117, 825  
10 P.2d at 596; see also Ford, 105 Nev. at 853, 784 P.2d at 953. More importantly, he has not  
11 demonstrated that he would have elected to proceed with trial instead of pleading guilty. Hill,  
12 474 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina,  
13 120 Nev. at 190-91, 87 P.3d at 537. Therefore, Petitioner's claim is denied.

14 Tenth, Petitioner claims counsel was ineffective for failing to detect and acknowledge  
15 that he was suffering from mental illness as well as coercion when he entered his plea, failing  
16 to detect Petitioner's alleged June 11, 2018 mental health court specialty court referral, and  
17 not obtaining a mental health expert to evaluate Petitioner. Petition at 38. As discussed *infra*  
18 in Section G, Petitioner's claim that he was suffering from mental illness and coercion at the  
19 time he entered his plea is belied by his own responses to the Court. Hargrove, 100 Nev. at  
20 502, 686 P.2d at 225. Indeed, Petitioner stated multiple times that he was not facing coercion  
21 and was on his medication which did not affect his ability to understand the proceedings.  
22 Accordingly, hiring a mental health expert to evaluate Petitioner would have been futile. See  
23 Ennis, 122 Nev. at 706, 137 P.3d at 1103. Furthermore, the record is silent as to whether  
24 Petitioner had a June 11, 2018 mental health specialty court referral and he has failed to  
25 provide any documentation to support his allegation. Hargrove, 100 Nev. at 502, 686 P.2d at  
26 225. Therefore, Petitioner's claim is denied.

27 Eleventh, Petitioner argues counsel was ineffective for failing to file a Sentencing  
28 Memorandum on Petitioner's behalf for mitigation purposes. Petition at 38. While counsel did

1 not file a Sentencing Memorandum, he did argue on Petitioner's behalf during the sentencing  
2 hearing to mitigate the State's requested sentence. Recorder's Transcript of Hearing:  
3 Sentencing, filed July 10, 2019, at 8-11. Ultimately, Petitioner cannot demonstrate that filing  
4 a Sentencing Memorandum with the specific points he now alleges counsel should have raised,  
5 would have changed the sentencing outcome as he plead guilty to the charges. Hill, 474 U.S.  
6 at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev. at 988, 923 P.2d at 1107; Molina, 120 Nev.  
7 at 190-91, 87 P.3d at 537. Thus, Petitioner's claim is denied.

8 Twelfth, Petitioner asserts that counsel was ineffective for counsel failing to object to  
9 the Court imposition of restitution. As discussed *infra* in Section I, Petitioner's claim, that the  
10 Court improperly imposed restitution when he was not specifically canvassed on restitution,  
11 is meritless because Petitioner acknowledged he understood the consequences of his plea and  
12 the sentencing decision, including the restitution imposed, was ultimately in the Court's  
13 discretion. Moreover, due to the sentence being in the Court's ultimate discretion, any error  
14 would have been harmless. Thus, any objection by counsel would have been futile. See Ennis,  
15 122 Nev. at 706, 137 P.3d at 1103. Therefore, Petitioner's claim is denied.

### 16 3. Appellate Counsel Complaints

17 Petitioner claims appellate counsel was ineffective for failing to obtain the complete  
18 record on appeal, expanding Petitioner's Faretta claim, and briefing the facts of Ann White's  
19 Affidavit to challenge the involuntariness of Petitioner's guilty plea. Petition at 38-41.  
20 However, his claims are meritless.

21 As for Petitioner's complaint regarding appellate counsel failing to obtain the complete  
22 record on appeal and expanding his Faretta claim, as discussed *supra* in Section A, such claim  
23 is meritless. Although Petitioner asserts that counsel improperly framed the Faretta issue on  
24 direct appeal and failed to obtain more transcripts, he has not and cannot demonstrate that such  
25 claim would have been meritorious as he was making the same request to represent himself.  
26 He has not indicated how the Nevada Court of Appeals' analysis would have changed had  
27 counsel referenced the other hearings in which Petitioner requested to represent himself.  
28 Accordingly, Petitioner cannot demonstrate how obtaining additional transcripts would have

1 changed the futility in appellate counsel framing the issue the way Petitioner now believes was  
2 the correct way to frame the issue. See Ennis, 122 Nev. at 706, 137 P.3d at 1103. For this same  
3 reason, Petitioner cannot demonstrate prejudice.

4 As for Petitioner's claim regarding the Ann White Affidavit, Petitioner's claim also  
5 fails. Motion for Seal, at Exhibit 1, Exhibit A, Exhibit B. Although Petitioner and the author  
6 of such affidavit claim that appellate counsel was sent the affidavit, Petitioner has failed to  
7 provide proof that appellate counsel did in fact receive such document. Regardless, briefing  
8 such document would have been futile as Petitioner failed to pursue a challenge to his guilty  
9 plea prior to the entry of his Judgment of Conviction. See Ennis, 122 Nev. at 706, 137 P.3d at  
10 1103; Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (186), superseded by statute on  
11 other grounds as stated in Hart v. State, 116 Nev. 558, 562 n.3, 1 P.3d 969, 971 n.3 (2000)  
12 (concluding that a defendant may not "challenge the validity of a guilty plea on direct appeal  
13 from the judgment of conviction" in the first instance). Therefore, Petitioner's claim is denied.

#### 14 **E. Ground 5: Petitioner's Plea was Knowingly and Voluntarily Entered**

15 Petitioner argues that his guilty plea should be withdrawn because it was the result of  
16 coercion, intervening psychosis due to not being given his alleged anti-psychotic and seizure  
17 medications, he was not competent to understand the rights he was forfeiting, and his guilty  
18 plea was the result of counsel not advising Petitioner prior to his plea. Petition at 41-45.  
19 Specifically, Petitioner claims that a person named "Deann" threatened Petitioner's family the  
20 week before his trial. Petition at 41-44.

21 As a preliminary matter, Petitioner cannot raise constitutional claims that occurred prior  
22 to his guilty plea. Eighth Judicial District Court, 121 Nev. at 225, 112 P.3d at 1070, n.24; See  
23 Webb, 91 Nev. at 469, 538 P.2d at 164.

24 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be  
25 withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787 P.2d  
26 391, 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid,  
27 and the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v.  
28 State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336,

1 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered  
2 his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

3 To determine whether a guilty plea was voluntarily entered, the Court will review the  
4 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721  
5 P.2d at 367. A proper plea canvass should reflect that:

6 [T]he defendant knowingly waived his privilege against self-incrimination, the  
7 right to trial by jury, and the right to confront his accusers; (2) the plea was  
8 voluntary, was not coerced, and was not the result of a promise of leniency; (3)  
9 the defendant understood the consequences of his plea and the range of  
10 punishments; and (4) the defendant understood the nature of the charge, i.e., the  
11 elements of the crime.

12 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.  
13 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in  
14 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d  
15 107, 107 (1975).

16 This standard requires the court accepting the plea to personally address the defendant  
17 at the time he enters his plea in order to determine whether he understands the nature of the  
18 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not  
19 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.  
20 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a  
21 formal setting, such as that occurring between an official sitting in judgment of an accused at  
22 plea. Id. However, the court need not conduct a ritualistic oral canvass. State v. Freese, 116  
23 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require  
24 the articulation of talismanic phrases,” but only that the record demonstrates a defendant  
25 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,  
26 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.  
27 1463, 1470 (1970).

28 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant  
[is] competently represented by counsel at the time it [is] entered, the subsequent conviction

1 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.  
2 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83  
3 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined  
4 that a defendant lacked standing to challenge the validity of a plea agreement because he had  
5 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.  
6 468, 477, 958 P.2d 91, 96 (1998).

7 Furthermore, the Nevada Supreme Court has explained:

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

12 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411  
13 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all  
14 constitutional claims based on events occurring prior to the entry of the plea[], except those  
15 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,  
16 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only  
17 claims that may be raised thereafter are those involving the voluntariness of the plea itself and  
18 the effectiveness of counsel.”).

19 Here, Petitioner’s claim that his plea was involuntary because he was coerced is belied  
20 by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. During his extensive plea canvass  
21 with the Court, the Court repeatedly ensured that Petitioner was entering his plea freely and  
22 voluntarily:

23 THE COURT: Are you entering into this plea today freely and  
24 voluntarily?

25 THE DEFENDANT: Yeah.

26 THE COURT: Did anyone threaten or coerce you into entering into  
27 this plea? THE DEFENDANT: No.

28 THE COURT: So, you’re entering into this plea today of your own  
free will? THE DEFENDANT: Yeah.

[...]

1 THE COURT: Has anyone made you any promises?

2 THE DEFENDANT: No.

3 [...]

4 THE COURT: Okay. And Mr. White, you are pleading guilty today  
because you are in truth and in fact guilty of these offenses?

5 THE DEFENDANT: Yeah.

6 THE COURT: And you do not want to proceed and go to trial?

7 THE DEFENDANT: No.

8 THE COURT: I mean, we picked a jury, we've gone through several  
witnesses; but you think it's in your best interest to just plead straight  
up to these charges?

9 THE DEFENDANT: Yeah.

10 THE COURT: Okay. And, again, you are doing this freely and  
voluntarily?

11 THE DEFENDANT: Yeah.

12 [...]

13 THE COURT: Okay. And, again, this is what you want to do and  
you're entering into this plea freely and voluntarily?

14 THE DEFENDANT: Yeah.

15 THE COURT: Okay.

16 Recorder's Transcript of Hearing: Jury Trial – Day 3, filed July 12, 2019, at 6-19. In fact, the  
17 State asked the Court to go even further and ensure that no one was coercing Petitioner or his  
18 family:

19 THE COURT: Okay. So, no one has threatened or coerced you into  
entering into this plea, correct?

20 THE DEFENDANT: No.

21 THE COURT: No one in the Clark County Detention Center?

22 THE DEFENDANT: No.

23 THE COURT: No one in the Nevada Department of Corrections?

24 THE DEFENDANT: No.

25 THE COURT: No one on the planet earth?

26 THE DEFENDANT: No.

27 THE COURT: Okay, no one has threatened you, correct?

28 THE DEFENDANT: Yeah.

THE COURT: Including, has – have you spoken to Marland Dean?

THE DEFENDANT: No.

THE COURT: Okay. I know you indicated to me the other day your  
mom had spoken to him.

THE DEFENDANT: Yeah.

THE COURT: Were any threats communicated to you through your  
mom?



1 THE DEFENDANT: No.

2 THE COURT: Okay. And you are satisfied with your representation  
3 of Mr. Sanft?

4 THE DEFENDANT: Yeah.

5 THE COURT: Okay. And you're satisfied with how the trial has gone  
6 so far?

7 THE DEFENDANT: Yeah.

8 THE COURT: I guess with the exception that the victims testified. I  
9 mean I'm --

10 THE DEFENDANT: Yeah.

11 THE COURT: But, again, you think this is in your best interest?

12 THE DEFENDANT: Yeah.

13 THE COURT: And you want me to accept your plea?

14 THE DEFENDANT: Yeah.

15 MR. SCHWARTZER: Thank you, Your Honor.

16 Id. at 19-21.

17 Moreover, Petitioner's claim that he did not have the opportunity to discuss his plea  
18 with counsel and did not understand the rights he was forfeiting is also belied by the record.  
19 Hargrove, 100 Nev. at 502, 686 P.2d at 225. Indeed, Petitioner confirmed with the Court  
20 multiple times that he had spoken to counsel about his decision to plead guilty during his  
21 canvass and he understood the rights he was giving up:

22 THE COURT: And you've had a chance to talk to your attorney? Is that a  
23 yes -- I've got to make sure you're paying attention to me --

24 THE DEFENDANT: Yeah. I am.

25 THE COURT: -- because you've already withdrawn one plea with me. So, I  
26 just want to make sure you're paying attention. So, you let me know when  
27 you are done looking at that document.

28 [...]

THE COURT: Okay. And you had a chance to discuss all this  
with Mr. Sanft?

THE DEFENDANT: Yeah.

THE COURT: And that's what you want to do. Correct?

THE DEFENDANT: Yes, ma'am.

[...]

THE COURT: You also understand you are giving up all your trial rights by  
entering into this plea today?

THE DEFENDANT: Yeah.

1 THE COURT: You understand that you do have a right to a speedy and  
2 public trial; that if the matter went to trial the State would be required to  
3 prove each of the elements as alleged in their charging document by proof  
beyond a reasonable doubt. Do you understand that?

4 THE DEFENDANT: Yeah.

5 THE COURT: And, your attorney did explain to you on each count what the  
State would have to prove. Is that correct?

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay. Do you have any questions about what the State would  
have to prove if this matter went to trial?

8 THE DEFENDANT: No.

9 THE COURT: Okay. And you had a chance to discuss any defenses that you  
would have to these charges?

10 THE DEFENDANT: Yeah.

11 THE COURT: You discussed them with your attorney?

12 THE DEFENDANT: Yeah.

13 THE COURT: You understand at the time of trial you would have the right  
14 to testify, to remain silent, to have others come in and testify for you, to be  
confronted by the witnesses against you and crossexamine them, to appeal  
any conviction and to be represented by counsel throughout all critical stages  
of the proceedings. Do you understand all these trial rights?

15 THE DEFENDANT: Yeah.

16 THE COURT: And you understand that you will be giving them up by  
entering into this plea today?

17 THE DEFENDANT: Yeah.

18 [...]

19 THE COURT: You had a chance to discuss all this with your lawyer and all  
the consequences?

20 THE DEFENDANT: Yeah.

21 Id. at 4-19. In fact, Petitioner even went to far as to answer that he was satisfied with counsel's  
services:

22 THE COURT: Okay. And you are satisfied with your representation of Mr.  
23 Sanft?

24 THE DEFENDANT: Yeah.

25 Id. at 21.

26 Additionally, Petitioner's claim that he was not competent when he entered his plea  
27 because he was not administered his medications is unsupported and suitable only for summary  
28 denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Nevada law requires a court to suspend

1 proceedings “if doubt arises as to the competence of the defendant...until the question of  
2 competence is determined.” NRS 178.405. NRS 178.400 defines an incompetent person who  
3 cannot be tried or adjudged guilty:

4 1. A person may not be tried or adjudged to punishment for a public offense  
5 while incompetent.

6 2. For the purposes of this section, “incompetent” means that the person does  
7 not have the present ability to:

8 (a) Understand the nature of the criminal charges against the person;

9 (b) Understand the nature and purpose of the court proceedings; or

10 (c) Aid and assist the person’s counsel in the defense at any time during the  
11 proceedings with a reasonable degree of rational understanding.

12 Under Dusky, a defendant is competent to stand trial if he “has sufficient present ability  
13 to consult with his lawyer with a reasonable degree of rational understanding” and “he has a  
14 rational as well as factual understanding of the proceedings against him.” Calvin, 147 P.3d at  
15 1100, citing Dusky v. U.S., 362 U.S. 402, 402, 80 S.Ct. 788 (1960). In Calvin, the Nevada  
16 Supreme Court held that Nevada’s statutory competency standard conformed to that of Dusky  
17 and thus satisfied constitutional requirements. Consistent with Dusky, under Nevada statutory  
18 law, a defendant is incompetent to stand trial if he either “is not of sufficient mentality to be  
19 able to understand the nature of the criminal charges against him” or he “is not able to aid and  
20 assist his counsel in the defense interposed upon the trial or against the pronouncement of the  
21 judgment thereafter.” Calvin, 122 Nev. at 1182-83.

22 A formal hearing to determine competency is only required “when there is ‘substantial  
23 evidence’ that the defendant may not be competent to stand trial”—that is, evidence that  
24 “raises a reasonable doubt about the defendant’s competency to stand trial.” Olivares v. State,  
25 124 Nev. 1142, 1148, 195 P.3d 864, 868 (2008).

26 When reviewing whether a defendant was competent to stand trial, the Nevada Supreme  
27 Court will review the record to determine if the defendant has adequately shown that he was  
28 incompetent. Morales v. State, 116 Nev. 19, 22, 992 P.2d 252, 254 (2000); Warden v. Graham,  
93 Nev. 277, 278, 564 P.2d 186, 187 (1977). In Morales, the defendant broke into his  
attorney’s office with a gun in an attempt to retrieve a document. 116 Nev. at 22, 992 P.2d at  
254. The Court concluded that the defendant’s actions did not indicate incompetency, but an

1 attempt to assist his attorney, however illegally. Id. The Court further concluded that “[t]he  
2 record contains no evidence that [the defendant] was unable to remember the events relating  
3 to his drug arrest, communicate with his attorney or otherwise assist in his own defense.” Id.  
4 Similarly, in Graham, the Nevada Supreme Court concluded that based on the psychiatric  
5 evaluations and the defendant’s actions in court, specifically during the guilty plea canvass,  
6 there was no indication that the defendant was incompetent. 93 Nev. at 278, 564 P.2d at 187.  
7 However, in Olivares v. State, 124 Nev. 1142, 1148-49, 195 P.3d 864, 868-69 (2008), the  
8 Court held that the district court erred in finding the defendant competent when doctors  
9 concluded that he was incompetent to stand trial and statements from the defendant indicated  
10 that he believed his attorneys were colluding with the court and the State.

11 To the extent Petitioner claims that counsel was ineffective for allowing him to proceed  
12 with his guilty plea despite his alleged medical ailments, Petitioner provides no evidence that  
13 his counsel was aware Petitioner was suffering from any actual mental health issues. Counsel  
14 cannot be deemed ineffective when she had no information or reason to believe that Petitioner  
15 had “particular psychological conditions or disorders that may have shown prior mental  
16 disturbance or impaired mental state.” Riley v. State, 110 Nev. 638, 650, 878 P.2d 272, 280  
17 (1994), overruled on other grounds by Riley v. McDaniel, 786 F.3d 719 (9th Cir. 2015).

18 Most importantly, Petitioner’s claim that he was not on his prescribed medications is  
19 belied by both his counsel’s representations on the record as an officer of the Court as well as  
20 Petitioner’s responses to the Court during his canvass:

21 MR. SANFT: [...] *I believe that, at this particular point, that Mr. White is*  
22 *not under any type of influence of alcohol or drugs that would impair his*  
23 *thinking here today with regards to his decision to enter into this plea. And*  
24 *I don’t believe as well that, based upon my communication with Mr. White,*  
25 *that there’s been any type of threat made against him. I have not received that*  
26 *as well. I just want to make sure that that’s on the record because I know that*  
27 *was a concern the last time we were in court with regards to that.*

28 THE COURT: Okay. And that’s all true, correct?

THE DEFENDANT: Yeah.

THE COURT: You’re not on any kind of medication?

1 THE DEFENDANT: *Just the medication that I take, my meds, but they're*  
2 *not impacting my decision to plead.*

3 THE COURT: *What kind of medication are you on?*

4 THE DEFENDANT: *Psych meds.*

5 THE COURT: *Okay. And you don't think it's affecting your ability to enter*  
6 *into this plea today?*

7 THE DEFENDANT: *No.*

8 THE COURT: *Okay. And, again, you want to stop the trial and you just want*  
9 *to accept responsibility. Is that correct?*

10 THE DEFENDANT: *Yeah.*

11 THE COURT: *Well, why did you decide to do it today?*

12 THE DEFENDANT: *I just -- I slept on it. After seeing the victims yesterday*  
13 *and then hearing what -- hearing from the victim.*

14 THE COURT: *So, after hearing the victims' testimony you just -- you'd*  
15 *heard enough?*

16 THE DEFENDANT: *Yeah.*

17 Recorder's Transcript of Hearing: Jury Trial – Day 3, filed July 12, 2019, at 22-23 (emphasis  
18 added). Regardless, mental health issues do not provide automatic mitigation at sentencing. In  
19 Ford v. State, the Nevada Supreme Court affirmed the murder convictions and death sentence  
20 for a defendant who drove her car onto a crowded sidewalk in downtown Reno. 102 Nev. 126,  
21 127–28, 717 P.2d 27, 28 (1986). Despite her known significant mental health and competency  
22 issues, the Court held that the defendant's mental health issues did not diminish the imposed  
23 sentence. Id. at 137, 717 P.2d at 35. The facts of this case sufficiently outweigh any mitigating  
24 effect and the sentence would have been the same. Thus, not only did Petitioner enter his plea  
25 knowingly and voluntarily, counsel was not ineffective. Therefore, Petitioner's claims are  
26 denied.

#### 27 **F. Ground 6: Petitioner was not Improperly Adjudicated as a Habitual Offender**

28 Petitioner argues that he was improperly adjudicated a habitual offender because the  
State argued that Petitioner had six (6) felonies instead of the four (4) felonies the State listed  
in its Notice of Intent to Seek Habitual Criminal Treatment filed October 18, 2016, the State  
failed to comply with the habitual criminal statute, and the amendment to the habitual criminal  
statute effective July 1, 2020 should apply to Petitioner. Petition at 45-47. However,  
Petitioner's claim is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Despite

1 being canvassed that the State could intend to argue habitual criminal treatment, Petitioner was  
2 never adjudicated a habitual criminal. Therefore, Petitioner's claim is denied.

3 **G. Ground 7: Petitioner's Claim He was Not Informed of His Restitution Obligation**

4 Petitioner claims that his guilty plea should be withdrawn because the Court failed to  
5 inform Petitioner of his restitution obligation during his plea canvass. Petition at 47-48. As a  
6 preliminary matter, this is a substantive claim that is waived. Evans, 117 Nev. at 646-47, 29  
7 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d at 1059, disapproved on other grounds,  
8 Thomas, 115 Nev. at 148, 979 P.2d at 222. Petitioner failed to challenge the amount of  
9 restitution ordered at his sentencing hearing. District courts "are cautioned to rely on reliable  
10 and accurate evidence in setting restitution." Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d  
11 133, 135 (1999). While defendants are not entitled to a full evidentiary hearing when  
12 challenging the amount of restitution ordered; they are entitled to present their own evidence  
13 in support of their challenge. Id. Moreover, "[a] defendant's obligation to pay restitution to the  
14 victim may not, of course, be reduced because a victim is reimbursed by insurance proceeds."  
15 Id. at 12, 974 P.2d at 135. Petitioner had the opportunity challenge the restitution calculation  
16 at sentencing. His failure to do so waives his ability to challenge it on a post-conviction habeas  
17 matter.

18 Regardless, even though the Court did not specifically canvass Petitioner regarding  
19 restitution, the totality of the circumstances demonstrates that Petitioner understood the  
20 consequences of his guilty plea. McConnell v. State, 125 Nev. 243, 251, 212 P.3d 307, 313  
21 (2009), as corrected (July 24, 2009) (concluding that although a district court did not inform a  
22 defendant that restitution was a consequence of his plea, the totality of the circumstances  
23 demonstrated the defendant understood the consequences of his plea). Indeed, during its  
24 canvass, the Court ensured that Petitioner understood the consequences of his plea and the  
25 sentencing decision was strictly up to the Court prior to accepting it:

26 THE COURT: You had a chance to discuss all this with your lawyer and all  
27 the consequences?

28 THE DEFENDANT: Yeah.

[...]

1 THE COURT: And you understand that sentencing is completely within the  
2 discretion of the Court, that no one can make you any promises regarding  
3 what will happen at the time of sentencing. Do you understand that?

4 THE DEFENDANT: Yeah.

5 Recorder's Transcript of Hearing – Jury Trial Day 3, filed July 12, 2019, at 12, 19. Thus,  
6 because Petitioner acknowledged he understood the consequences of his plea and the  
7 sentencing decision, including the restitution imposed, was ultimately in the Court's  
8 discretion, any error would have been harmless. Therefore, Petitioner's claim is denied.

9 **H. Ground 8: The Court, Trial Counsel, and the State Did Not Have a Conflict of  
10 Interest**

11 Petitioner argues that because he filed a civil action against the Court, counsel Gruber,  
12 and the assigned prosecutor, such individuals had a conflict of interest during the pendency of  
13 Petitioner's case. Petition at 48-49.

14 As an initial matter, Petitioner's claim is waived because it is substantive. NRS  
15 34.724(2)(a); Evans, 117 Nev. at 646–47, 29 P.3d at 523; Franklin, 110 Nev. at 752, 877 P.2d  
16 at 1059, disapproved on other grounds, Thomas, 115 Nev. at 148, 979 P.2d at 222.  
17 Additionally, it is waived because it is an allegation that his rights were deprived prior to  
18 entering his guilty plea. Eighth Judicial District Court, 121 Nev. at 225, 112 P.3d at 1070,  
19 n.24; See Webb, 91 Nev. at 469, 538 P.2d at 164.

20 Additionally, Petitioner's claim is a bare and naked allegation that is suitable only for  
21 summary denial. Indeed, Petitioner has provided no case law to support his claim that because  
22 there is a civil suit pending there is an automatic conflict of interest or bias. Hargrove, 100  
23 Nev. at 502, 686 P.2d at 225. Regardless, his claim is meritless.

24 NRS 1.235 mandates the procedure to be followed when seeking judicial recusal:

- 25 1. Any party to an action or proceeding pending in any court other  
26 than the Supreme Court or the Court of Appeals, who seeks to  
27 disqualify a judge for actual or implied bias or prejudice must file  
28 an affidavit specifying the facts upon which the disqualification is  
sought. The affidavit of a party represented by an attorney must be  
accompanied by a certificate of the attorney of record that the  
affidavit is filed in good faith and not interposed for delay.

[. . .]

4. At the time the affidavit is filed, a copy must be served upon the judge sought to be disqualified.

[. . .]

5. The judge against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter and shall:

(a) Immediately transfer the case to another department of the court . . . or

(b) File a written answer with the clerk of the court . . . admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of the judge's disqualification.

Further, while Towbin Dodge, L.L.C. v. Eighth Judicial Dist., 121 Nev. 251, 260, 112 P.3d 1063, 1069 (2005), contemplated a route to disqualification via the Nevada Code of Judicial Conduct, it set procedural requirements that must be met to make such a motion:

[A] party may file a motion to disqualify based on Canon 3E as soon as possible after becoming aware of the new information. The motion must set forth facts and reasons sufficient to cause a reasonable person to question the judge's impartiality, and the challenged judge may contradict the motion's allegations. . . . [T]he motion must be referred to another judge.

Importantly, a party must comply with NRS 1.235 unless the “grounds for a judge’s disqualification are discovered after the time limits in NRS 1.235(1) have passed.” Id. at 260, 112 P.3d at 1069; accord Lioce v. Cohen, 124 Nev. 1, 25 n.44, 174 P.3d 970, 985 n.44 (2008) (“Lioce argues that, should we decide a new trial is warranted, his case must be remanded to a different district court judge because Judge Bell was biased toward him. We conclude that this argument is without merit, and we also direct Lioce to NRS 1.235(1).”).

Considering the standards established by the Nevada Supreme Court, the Nevada Legislature, and the Code of Judicial Conduct, disqualification was unwarranted. “A judge has an obligation not to recuse himself where there is no occasion to do so. . . . A judge's decision not to recuse himself voluntarily is given ‘substantial weight’ and will be affirmed absent an abuse of discretion.” Kirksey v. State, 112 Nev. 980, 1005-06, 923 P.2d 1102, 1118 (1996) (citations omitted). A judge must “‘preside to the conclusion of all proceedings, in the absence



1 of some statute, rule of court, ethical standard, or other compelling reason to the contrary.”  
2 City of Las Vegas v. Eighth Judicial Dist. Ct., 116 Nev. 640, 643, 5 P.3d 1059, 1061 (2000)  
3 (quoting Ham v. Dist. Ct., 93 Nev. 409, 415, 566 P.2d 420, 424 (1977)); accord CJC 2.7 (“A  
4 judge shall hear and decide all matters assigned to the judge except when disqualification is  
5 required by Rule 2.11 or other law.”).

6 It was Petitioner’s burden to establish that the Court “displays ‘a deep-seated favoritism  
7 or antagonism that would make fair judgment impossible[,]” Walker v. State, 113 Nev. 853,  
8 864, 944 P.2d 762, 769 (1997) (quoting Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct.  
9 1147, 1157 (1994)), cert. denied, 525 U.S. 950, 119 S. Ct. 377 (1998), and must set “forth  
10 facts and reasons sufficient to cause a reasonable person to question the judge’s impartiality.”  
11 Towbin Dodge, 121 Nev. at 260, 112 P.3d at 1069. A reviewing court should look for actual  
12 manifestations of bias on the part of the judicial officer. A Minor v. State, 86 Nev. 691, 695,  
13 476 P.2d 11, 12 (1970). “Disqualification must be based on facts, rather than mere  
14 speculation.” Rippo v. State, 113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (1997) (citing PETA  
15 v. Bobby Berosini, 111 Nev. 431, 437, 894 P.2d 337, 341 (1995)).

16 “[R]ulings and actions of a judge during the course of official judicial proceedings do  
17 not establish legally cognizable grounds for disqualification.” In re Petition to Recall  
18 Dunleavy, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). To do otherwise “would nullify  
19 the court’s authority and permit manipulation of justice, as well as the court.” Id.

20 In this case, it is clear that Petitioner did not follow the mandated procedures for judicial  
21 recusal. Moreover, Petitioner has failed to demonstrate how the Court, counsel Guber, or the  
22 State acted in a manner that demonstrated a conflict of interest. Hargrove, 100 Nev. at 502,  
23 686 P.2d at 225; Jefferson v. State, 133 Nev. 874, 879, 410 P.3d 1000, 1004 (Nev. App. 2017)  
24 (internal citations omitted) (“a criminal defendant’s decision to file such an action against  
25 appointed counsel does not require disqualification unless the circumstances demonstrate an  
26 actual conflict of interest.”). Also, Petitioner has not demonstrated that had another Court,  
27 other counsel, or another district attorney handled his case he would not have pled guilty and  
28 decided to proceed with trial. Hill, 474 U.S. at 59, 106 S.Ct. at 370; see also Kirksey, 112 Nev.

1 at 988, 923 P.2d at 1107; Molina, 120 Nev. at 190-91, 87 P.3d at 537. Therefore, Petitioner's  
2 claim is denied.

## 3 **II. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

4 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

5 1. The judge or justice, upon review of the return, answer and all supporting  
6 documents which are filed, shall determine whether an evidentiary hearing is  
7 required. A petitioner must not be discharged or committed to the custody of a  
8 person other than the respondent *unless an evidentiary hearing is held*.

9 2. If the judge or justice determines that the petitioner is not entitled to relief  
10 and an evidentiary hearing is not required, he shall dismiss the petition without  
11 a hearing.

12 3. If the judge or justice determines that an evidentiary hearing is required, he  
13 shall grant the writ and shall set a date for the hearing.

14 The Nevada Supreme Court has held that if a petition can be resolved without  
15 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.  
16 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A  
17 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
18 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled  
19 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100  
20 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that "[a] defendant seeking post-conviction  
21 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the  
22 record"). "A claim is 'belied' when it is contradicted or proven to be false by the record as it  
23 existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is  
24 improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth  
25 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court  
26 considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as  
27 complete a record as possible.' This is an incorrect basis for an evidentiary hearing.").

28 Further, the United States Supreme Court has held that an evidentiary hearing is not  
required simply because counsel's actions are challenged as being unreasonable strategic  
decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge

1 post hoc rationalization for counsel's decision making that contradicts the available evidence  
2 of counsel's actions, neither may they insist counsel confirm every aspect of the strategic basis  
3 for his or her actions. Id. There is a "strong presumption" that counsel's attention to certain  
4 issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Id. (citing  
5 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the  
6 *objective* reasonableness of counsel's performance, not counsel's *subjective* state of mind. 466  
7 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

8 Petitioner's Petition does not require an evidentiary hearing. An expansion of the record  
9 is unnecessary because Petitioner has failed to assert any meritorious claims and the Petition  
10 can be disposed of with the existing record. Marshall, 110 Nev. at 1331, 885 P.2d at 605;  
11 Mann, 118 Nev. at 356, 46 P.3d at 1231.

12 **ORDER**

13 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
14 and Request for an Evidentiary Hearing shall be, and are, hereby denied.

15 DATED this \_\_\_\_ day of April, 2021.

Dated this 8th day of April, 2021

16 

17 \_\_\_\_\_  
DISTRICT JUDGE

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

A7A 653 C606 A19E  
Michelle Leavitt  
District Court Judge

20  
21 BY /s/ ALEXANDER CHEN

22 ALEXANDER CHEN  
23 Chief Deputy District Attorney  
Nevada Bar #010539

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing was made this \_\_\_\_ day of  
3 April, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4 TONEY WHITE, BAC #1214172  
5 HIGH DESERT STATE PRISON  
6 22010 COLD CREEK ROAD  
7 P.O. BOX 650  
8 INDIAN SPRINGS, NEVADA 89070

9 BY /s/ L.M.  
10 Secretary for the District Attorney's Office  
11  
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28 16FH0191B/AC/bg/lm/GU

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Toney White, Plaintiff(s)

CASE NO: A-20-824261-W

7 vs.

DEPT. NO. Department 12

8 Calvin Johnson, Warden,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 4/8/2021

16 Dept 12 Law Clerk

dept12lc@clarkcountycourts.us

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 09, 2016**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**March 09, 2016      11:45 AM      Grand Jury Indictment**

**HEARD BY:** Barker, David      **COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Louisa Garcia

**RECORDER:** Cynthia Georgilas

**REPORTER:**

**PARTIES**

**PRESENT:**      Schwartzer, Michael J.      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Ann Kling, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 15AGJ129B to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C313216-2, Department 12. Mr. Schwartzer requested a warrant and argued bail. COURT ORDERED, WARRANT TO BE ISSUED, \$195,000.00 BAIL and matter SET for initial arraignment. Exhibits 1-35 lodged with Clerk of District Court.

I.W. (CUSTODY)

3/17/16 8:30 AM INITIAL ARRAIGNMENT (DEPT 12)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 17, 2016**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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**March 17, 2016      8:30 AM      All Pending Motions**

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

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- INITIAL ARRAIGNMENT...INDICTMENT WARRANT RETURN

DEFT. WHITE ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter SET for trial.

CUSTODY

10/25/16 8:30 A.M. CALENDAR CALL

11/01/16 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 09, 2016**

C-16-313216-2      State of Nevada  
vs  
Toney White

**June 09, 2016      8:30 AM      Motion**

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

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	O'Halloran, Rachel	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Court advised Deft. it read his Motion, he did not provide a legal basis for Court to grant his Motion, it appears he is well aware of the facts, and it was made clear in the Motion that he read the discovery and knows the facts of the case. COURT ORDERED, Deft's Motion to dismiss counsel DENIED. Court further advised Deft. he cannot assert other people's constitutional rights, as he does not get the benefit of this; and it appears he wants his attorney in conjunction with another person to somehow suppress evidence, because someone else's constitutional rights were violated. Court further advised Deft. this was probably why his attorney did not file the motion, and his attorney is not permitted to file frivolous motions or motions that have no basis in law. Deft. acknowledged. COURT ORDERED, Motion DENIED.

**CUSTODY**

10/25/16 8:30 A.M. CALENDAR CALL

11/01/16 1:30 P.M. TRIAL BY JURY

PRINT DATE: 05/14/2021

Page 3 of 54

Minutes Date: March 09, 2016





**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 07, 2016**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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**July 07, 2016      8:30 AM      Motion**

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

**COURT CLERK:** Tia Everett

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	O'Halloran, Rachel	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- COURT ORDERED, motion OFF CALENDAR as previously denied.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 25, 2016**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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**October 25, 2016      8:30 AM      Calendar Call**

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

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Debbie Winn

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	Schwartz, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Based on representations made in Cases C-16-313216-3 & 4, and there being no objection by State, COURT ORDERED, Deft's motion to continue trial date GRANTED; trial date VACATED AND RESET.

CUSTODY

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

3/20/17 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****December 13, 2016**

C-16-313216-2      State of Nevada  
vs  
Toney White

<b>December 13, 2016</b>	<b>8:30 AM</b>	<b>Motion to Withdraw as Counsel</b>	<b>Harvey Gruber's, Esq, Motion to Withdraw as Counsel of Record</b>
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**HEARD BY:** Leavitt, Michelle**COURTROOM:** RJC Courtroom 14D**COURT CLERK:** Carole D'Aloia**RECORDER:** Kristine Santi**REPORTER:****PARTIES**

<b>PRESENT:</b>	Demonte, Noreen C.	Attorney
	Gruber, Harvey	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Mr. Gruber stated that his relationship with Defendant has become adversarial; that he has been unable to communicate with his client and will not be able to represent him to the best of his ability. Submitted by the State. Court stated if it were to allow counsel to withdraw that this happened it, there would be no attorneys. COURT ORDERED, Motion DENIED.

**CUSTODY**

**CLERK'S NOTE:** The minutes for this hearing have been prepared by a review of the JAVS recording. (tmj:12/22/16)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 19, 2017**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**January 19, 2017      8:30 AM      Motion**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Deft. stated he will withdraw the motion, as Mr. Gruber and himself have been talking. Upon Court's inquiry, Mr. Gruber advised it is what it is. COURT ORDERED, Matter OFF CALENDAR.

**CUSTODY**

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

3/20/17 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****March 14, 2017**

C-16-313216-2      State of Nevada  
vs  
Toney White

**March 14, 2017      8:00 AM      Calendar Call**

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

<b>PRESENT:</b>	Clowers, Shanon	Attorney
	Gruber, Harvey	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Court TRAILED and RECALLED matter for Mr. Schwartzter and Co-Deft's attorney Mr. Shetler to appear. State announced ready for trial. Mr. Gruber advised he and Co-Deft's counsel are announcing not ready for different reasons, his client was trying to remove him from the case the past two months, a bar complaint was filed, to which defense had stopped working on the case, however, his investigator met with Deft; therefore, defense needs more time for trial, and Mr. Shetler also needs more time. Additionally, an offer was made to Deft, and defense will be requesting a status check hearing be set on possible negotiations; and for trial to be vacated. State objected to trial continuance; and argued it has been over a year and a half, both Defts. are filing motions to dismiss their counsels to purposely manipulate the system and not go to trial, and no real motions were done. Court stated if the case is not Overflow eligible, the Court has to continue this case. Mr. Schwartzter added State wants a firm trial setting, and he does not mind a status check hearing set in two weeks. Mr. Schwartzter added he just made an offer to Mr. Shelter's client, and if the offers are not accepted by both Defts. during these two weeks, State will revoke all offers and not make any more offers. Due to Court's schedule, COURT ORDERED, trial date VACATED; and status check is SET in two weeks.

Court noted it is in a capital case, and its schedule will not allow this trial to go forward next week. Court reminded Deft. if he chooses not to accept the offer, State will revoke the offers and no longer make any more offers; further noting the status check will be set, including the new trial date. Deft. acknowledged.

CUSTODY

3/30/17 8:30 A.M. STATUS CHECK: NEGOTIATIONS

6/06/17 8:30 A.M. CALENDAR CALL

6/13/17 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 30, 2017**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**March 30, 2017      8:30 AM      Status Check:  
   Negotiations/Trial Setting**

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

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney
	Gruber, Harvey	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Mr. Gruber advised Deft. made the decision not to take State's offer, and he acknowledged this to defense. Court canvassed Deft. on his decision, and Deft. confirmed he rejected the offer. Mr. Schwartzter advised there will be no further offers, all current offers are revoked for both Deft. and Co-Deft, and State will be ready for trial. COURT ORDERED, trial date STANDS.

**CUSTODY**

6/06/17 8:30 A.M. CALENDAR CALL

6/13/17 1:30 P.M. TRIAL BY JURY



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 18, 2017**

C-16-313216-2      State of Nevada  
vs  
Toney White

**April 18, 2017      8:30 AM      Motion**

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

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Court advised Deft. it read his pro per motion, and Court does not believe there is any legal basis. Court further advised Deft. this was discussed, about him filing these motions, his attorney cannot raise somebody else's Fourth Amendment right, and he cannot raise that issue. Deft. stated that is not right. Court advised Deft. that does not matter, he has no standing, and his attorney cannot raise issues that are frivolous. Deft. stated it is more than just the motion, he has been incarcerated for over a year, and he does not have all the discovery. Court asked Deft. what discovery does he think his attorney is not giving him. Mr. Schwartzter noted for the record State turned over everything to defense counsel. Mr. Gruber advised he went through the file with Deft, and had also forwarded items to Deft. Deft. stated all evidence from Grand Jury was not provided to him. Mr. Schwartzter confirmed the Marcum notice was served. Deft. stated there are 24 pictures not in his possession. Mr. Gruber advised he will re-check his file for the third time. Deft. stated there is a recorded statement to police, he is not sure what is going on, he has transcripts of the victims and Co-Defts, but not his transcripts. Mr. Gruber advised the case file is four inches thick, and he will endeavor and give the information to him again. Court advised Deft. even if his attorney had provided it, Mr. Gruber will provide the information to him. Court asked Deft. if there was anything else. Deft.

stated he has no copies of reports. Court advised Deft. he has to be more specific than that. Deft. stated there are reports from 7 officers, which are missing from his report. Court stated generally, there is one report, and not separate ones. Court advised Deft. it does not know, however, just because he thinks there are reports, does not mean there are. Mr. Schwartzer confirmed there are a lot of reports in the case, including one from the Crime Scene Analyst. Deft. stated he is concerned about the officer's report. Court advised Deft. multiple reports for one report are unusual, however, the Court will read the report, and if 7 reports exist, he is entitled to them. Court reminded Deft. just because the reports are not available, does not mean the reports exist. COURT ORDERED, Motion DENIED.

Mr. Gruber advised he will send his Investigator over to Deft. again, to see what is missing, and make sure Deft. gets the stuff in two weeks. Deft. stated he asked his attorney to get all the material and the file. Court advised Deft. his attorney is not required to do that, and the District Attorney has the obligation to turn information over without a request. Deft. stated he asked why evidence is not turned over, and he was told there is only evidence that is going to be used against him at trial. Court told Deft. that is true, however, State is required to turn over any exculpatory evidence; and his argument that he wants to build his defense on State's evidence is unusual. Deft. stated he does not know the strengths and weaknesses of the case. Court advised Deft. his attorney will know. Deft. argued there has been no communication with his attorney. Mr. Gruber noted for the record he spoke with Deft. on the phone after the bar Complaint was filed, and Deft. has spoken with his staff about the case.

CUSTODY

6/06/17 8:30 A.M. CALENDAR CALL

6/13/17 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 06, 2017**

C-16-313216-2      State of Nevada  
vs  
Toney White

**June 06, 2017      8:30 AM      Calendar Call**

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

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Mr. Gruber advised he sent copies of reports to Deft, Deft. is saying he is missing some, further noting defense also mailed 400 pictures, and Deft. still has not received them. Additionally, the investigator met with Deft, and defense is not ready to go to trial next week due to further investigation needed. Mr. Schwartzner objected. Discussions as to Deft. and Mr. Gruber having had a contentious relationship previously, and there having been difficulties with communication. Mr. Gruber stated he does not know why the information was provided yesterday at the meeting, but defense needs to look into it further. Mr. Schwartzner argued State is ready, Deft. had discovery all this time, and trial has been continued a few times. **COURT ORDERED, Deft's Motion GRANTED; trial date VACATED AND RESET.** Court noted parties need to be ready to go on the next trial date.

**CUSTODY**

10/31/17 8:30 A.M. CALENDAR CALL

11/07/17 1:30 P.M. TRIAL BY JURY

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 19, 2017**

---

C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**October 19, 2017      8:30 AM      Request**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Phyllis Irby

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- AMENDED INDICTMENT FILED IN OPEN COURT. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. WHITE ARRAIGNED AND PLED GUILTY TO COUNT 1- CONSPIRACY TO COMMIT ROBBERY (F) and COUNT 2 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. FURTHER ORDERED, TRIAL VACATED.

**CUSTODY**

12-14-17 8:30 AM SENTENCING (DEPT. XII)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 14, 2017**

---

C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**December 14, 2017      8:30 AM      Sentencing**

**HEARD BY:**   Leavitt, Michelle

**COURTROOM:**   RJC Courtroom 14D

**COURT CLERK:**   Susan Botzenhart

**RECORDER:**   Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Mendoza, Erika	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Deft. not present; refused to be transported. Mr. Gruber not present. At request of defense counsel, which was made to Chambers prior to today's hearing, COURT ORDERED, matter CONTINUED.

CUSTODY

1/18/18 8:30 A.M. SENTENCING

CLERK'S NOTE: After Court, Clerk notified Mr. Gruber and State regarding continuance date, as Court had granted Co-Deft's attorney's request for sentencing to be heard on or after January 18, 2018, due to scheduling conflicts.    ///   sb

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 18, 2018**

---

C-16-313216-2      State of Nevada  
vs  
Toney White

---

**January 18, 2018      8:30 AM      Sentencing**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Deft. not present; refused to appear. CONFERENCE AT BENCH. COURT ORDERED, sentencing CONTINUED, and hearing on Deft's pro per motion for withdrawal of guilty plea STANDS.

CUSTODY

1/30/18 8:30 A.M. DEFT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 30, 2018**

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C-16-313216-2      State of Nevada  
   vs  
   Toney White

---

**January 30, 2018      8:30 AM      All Pending Motions**

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

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Derjavina, Ekaterina	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...DEFENDANT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...SENTENCING

Mr. Gruber not present. COURT ORDERED, matters CONTINUED.

CUSTODY

2/06/18 8:30 A.M. DEFENDANT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...DEFENDANT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...SENTENCING

CLERK'S NOTE: Mr. Gruber appeared after Court recessed, and was informed by Clerk regarding

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continuance date. /// sb



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

C-16-313216-2      State of Nevada  
vs  
Toney White

**February 06, 2018      8:30 AM      All Pending Motions**

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

<b>PRESENT:</b>	Gruber, Harvey	Attorney
	Schwartz, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant
	Zadrowski, Bernard B.	Attorney

**JOURNAL ENTRIES**

- DEFT'S MOTION FOR WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...DEFT'S MOTION TO WITHDRAWAL OF GUILTY PLEA AND FOR APPOINTMENT OF NEW COUNSEL, OR ALTERNATIVELY, TO PROCEED IN PRO PER...SENTENCING

Court advised Deft. it received all of his letters and Motions after his entry of plea. Upon Court's inquiry, Deft. confirmed he wants to move to withdraw his plea. Court noted based on allegations that were made by Deft, the Court will appoint independent counsel to review the case. COURT ORDERED, Attorney Michael Sanft, Esq., APPOINTED as counsel for limited purpose of reviewing the record and making a determination as to whether or not there is a legal basis for Deft. to withdraw his plea. FURTHER, matter SET for confirmation of independent counsel. Mr. Gruber to provide a copy of the case file to Deft. Mr. Gruber noted the case file is rather large. Court advised Deft. if his independent attorney thinks there is a legal basis, the attorney will file a motion; and if there is no legal basis found, Mr. Gruber will remain on the case to handle sentencing, and Deft. can

file an appeal or anything else deemed appropriate. Discussion between Court and Deft. regarding his hand and arm being bandaged.

CASE RECALLED. Mr. Schwartzer is not present. Mr. Sanft is now present in Court. Court informed Mr. Sanft regarding the appointment and this case being continued to February 15, 2018 for him to confirm. Court added Mr. Gruber is going to provide him the file, and Mr. Gruber had indicated the case file is quite large. Court inquired to Mr. Sanft if he needs more time to review the case. Mr. Sanft stated no; and advised this Court did the plea canvass, and he would request a copy of the JAVS recording of this plea canvass, or the transcript. Court advised Mr. Sanft Deft. had written few documents since the plea canvass, that does not appear to be the issue, and he contends there were outside forces. Mr. Sanft stated he understands there may have been some other party that had forced Deft. into taking the negotiation, and maybe the pauses in the canvass would help to determine whether Deft. actually had a problem. Court stated Deft. had told Court nobody had coerced him into entering his plea, during the plea canvass. Court offered to provide a transcript of the plea canvass and the JAVS recording. Mr. Sanft requested only the JAVS CD, and one week to review the record. COURT SO ORDERED. Court advised Mr. Sanft it is warning him that the file is voluminous. COURT ORDERED, sentencing CONTINUED; matter SET for status check. Mr. Sanft advised he thinks the issue is whether or not Deft. enters the plea knowingly and voluntarily, without the issue of coercion, he does not believe reading the entire file is going to be the issue, as that is a fact pattern that goes to something else, and he is only focusing on Deft's entry of plea.

Court thanked Mr. Sanft for taking this case; and advised Mr. Sanft to let the Court know if he needs more time.

CUSTODY

2/15/18 8:30 A.M. STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA /  
CONFIRMATION OF APPOINTED COUNSEL MICHAEL SANFT...SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 15, 2018**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**February 15, 2018      8:30 AM      All Pending Motions**

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

**COURT CLERK:** Susan Botzenhart  
                                 Kimberly Estala

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Demonte, Noreen C.	Attorney
	Gruber, Harvey	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- STATUS CHECK: DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA/ CONFIRMATION OF COUNSEL MICHAEL SANFT... SENTENCING

Mr. Sanft CONFIRMED as Counsel and requested a briefing schedule be set. COURT ORDERED Deft's Supplemental Brief DUE 03/01/18, State's Response DUE 03/15/18, Deft's Reply DUE 03/22/18, Status Check date SET.

CUSTODY

03/29/18 8:30 A.M. STATUS CHECK: DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA... SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 29, 2018**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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**March 29, 2018      8:30 AM      All Pending Motions**

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

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Osman, Adam B.	Attorney
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

Mr. Sanft appeared for limited purpose regarding Deft's motion to withdraw guilty plea; and informed Court he is seeking more time, he reviewed Deft's issues as to why he wants to file the motion, there is a basis, and a requirement is also getting an affidavit from a person in custody. Deft. provided the name of the person in custody to Mr. Sanft, in open Court. Mr. Sanft stated he needs this person to sign an affidavit, he does not know where the person is housed at, documents were sent to the person, and no response was received. At request of counsel, COURT ORDERED, matters CONTINUED one week for Mr. Sanft to try to locate the person again.

CUSTODY

4/05/18 8:30 A.M. STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**April 05, 2018**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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**April 05, 2018      8:30 AM      All Pending Motions**

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

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Clowers, Shanon	Attorney
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

Mr. Sanft informed Court the person was located, he drafted the affidavit for the person, however, he needs permission from the person's Public Defender first, who is out on vacation. At request of defense counsel, COURT ORDERED, matters CONTINUED two weeks.

CUSTODY

4/24/18 8:30 A.M. STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****April 24, 2018**

C-16-313216-2      State of Nevada  
vs  
Toney White

**April 24, 2018      8:30 AM      All Pending Motions**

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

<b>PRESENT:</b>	Derjavina, Ekaterina	Attorney
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

Mr. Sanft informed Court he was granted one week to get the affidavit signed by the witness, however, the witness is refusing to sign it, the affidavit was reviewed by the witness, and the witness is afraid to be labeled as a snitch. Additionally, Deft's sister is in custody, and defense is having the investigator come sit down with Deft's sister to get more information about the alleged threat. Mr. Sanft requested one more continuance. Court asked if defense was going to file the motion to withdraw guilty plea. Mr. Sanft advised he has evidence from Deft, however, he wanted an affidavit and declaration signed, further noting Deft's sister may know about the alleged threat, and defense wants to verify it. Ms. Derjavina advised State is fine with the continuance, she does not have the file, and this is Mr. Schwartz's case. COURT ORDERED, matters CONTINUED.

CUSTODY

5/10/18 8:30 A.M. STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY

PRINT DATE: 05/14/2021

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PLEA...SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**May 10, 2018**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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**May 10, 2018      8:30 AM      All Pending Motions**

**HEARD BY:** Bixler, James      **COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- STATUS CHECK: DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

Mr. Sanft requested another continuance of two weeks. Court stated a copy of the plea canvass or transcript will need to be provided to defense counsel. Mr. Sanft requested thirty days for the transcript to be provided. COURT SO ORDERED; matters CONTINUED.

CUSTODY

6/05/18 8:30 A.M. STATUS CHECK: DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 05, 2018**

C-16-313216-2      State of Nevada  
vs  
Toney White

**June 05, 2018      8:30 AM      All Pending Motions**

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

<b>PRESENT:</b>	Kern, Samuel R.	Attorney
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

Mr. Sanft informed Court he provided a copy of the plea canvass and transcript to Deft, his basis before was basis of coercion, the attorney for the individual said no on signing an affidavit, as the individual does not want to sign an affidavit anymore. Mr. Sanft requested an evidentiary hearing to have a witness come in and provide testimony; and argued in support of relief requested. Court told Mr. Sanft he can file a motion on the issue, the Court would give him an opportunity to bring the witness in, and with everything he is telling the Court, the Court would be inclined to grant an evidentiary hearing. Discussions. Mr. Sanft anticipated the evidentiary hearing will be short. Mr. Kern requested Court to trail the matter for Mr. Schwartzer to appear. Further discussion. COURT ORDERED, status check CONTINUED; matter SET for evidentiary hearing; and briefing schedule is SET as follows: Deft's brief due June 14, 2018, and State's response is due June 21, 2018.

**CUSTODY**

6/28/18 10:30 A.M. EVIDENTIARY HEARING...STATUS CHECK: DEFT'S MOTION TO  
WITHDRAW GUILTY PLEA

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****June 28, 2018**

C-16-313216-2      State of Nevada  
vs  
Toney White

**June 28, 2018      10:30 AM      All Pending Motions**

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

<b>PRESENT:</b>	Dickerson, Michael	Attorney
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- EVIDENTIARY HEARING...STATUS CHECK: DEFT'S MOTION TO WITHDRAW GUILTY PLEA

Mr. Sanft informed Court a briefing schedule was set at the last hearing, and he had received a written letter by the Clerk, two days after the last hearing, to which the letter was from Deft, which caused him concern about filing any type of motion in regards to a motion to withdraw guilty plea. Thereafter, Mr. Sanft provided Deft's written letter, which was reviewed by Court. Discussions regarding Deft's handwriting in the letter being exceptionally gifted, clear, and to the point, plus what Deft. wrote in the letter. Mr. Sanft stated the person who allegedly overheard the threats made to Deft, refused to cooperate. Further discussions regarding defense counsel's reasonings of not filing the motion, and defense counsel believing there is a legal basis to file a motion on Deft's behalf. Court reminded defense counsel Deft. does not direct what the strategy is. Mr. Sanft stated the concern was about what Deft. wrote in the letter, Deft's basis was well founded, what he laid out in the letter may set the record for something else, defense wanted to let the Court know what was going on and what Deft's position was, before defense moves forward; and he did not want this to be an issue later on post conviction relief. Court advised Deft. it will make the letter a part of the

record, Mr. Sanft is going to continue to represent him, he needs to discuss everything with Mr. Sanft, Mr. Sanft gets to determine what the legal strategy is, he cannot keep stalling the case from going forward, by claiming every attorney Court gives him does not do what he thinks they are supposed to do, the Court has a Guilty Plea Agreement in front of the Court, if he wants to move to withdraw his plea, that is fine, and he can talk to Mr. Sanft about it, however, he does not get to direct legal strategy, Mr. Sanft directs the strategy and is the lawyer, and he is not. Deft. made statements to Court regarding names of witnesses having been given to the investigator. Mr. Sanft stated the investigator followed up with the main person involved, being a witness regarding the alleged threat, and based upon the letter, defense can follow up with the individuals in the letter, if Court wants him to do so. Court stated it is not going to direct Mr. Sanft either, that is not appropriate for Court to do, the Court has faith in him, and he is a competent attorney. Further discussions. Court reminded Deft. again the legal strategy is Mr. Sanft's decision and he needs to speak with Mr. Sanft about the case. At request of Mr. Sanft, COURT ORDERED, CASE CONTINUED; briefing schedule SET as follows: Deft's Motion to withdraw guilty plea due July 19, 2018; State's response due August 9, 2018; and Deft's reply is due August 23, 2018. Hearing SET. Court's Exhibit ADMITTED (See Worksheets.). Mr. Sanft stated the motion is already done, and he held off on filing it, due to Deft's letter.

CUSTODY

9/06/18 10:30 A.M. EVIDENTIARY HEARING...DEFT'S MOTION TO WITHDRAW GUILTY PLEA

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 06, 2018**

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C-16-313216-2      State of Nevada  
   vs  
   Toney White

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**September 06, 2018      10:30 AM      All Pending Motions**

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

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Sanft, Michael W.	Attorney
	Schwartz, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- EVIDENTIARY HEARING...DEFT'S MOTION TO WITHDRAW PLEA

Case called during the 8:30 A.M. criminal calendar. Discussions as to Mr. Sanft having filed the written motion yesterday afternoon, being September 5, 2018. At request of State, COURT ORDERED, State to file written response by October 25, 2018. FURTHER, matters CONTINUED.

CUSTODY

10/30/18 10:30 A.M. EVIDENTIARY HEARING...DEFT'S MOTION TO WITHDRAW PLEA

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**December 20, 2018**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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**December 20, 2018      10:30 AM      All Pending Motions**

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

**COURT CLERK:** Susan Botzenhart

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney
	Nadig, Benjamin J.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Court TRAILED and RECALLED matter for Deft. and counsel to appear. Deft. is present in custody. Mr. Nadig appeared for Mr. Sanft; on behalf of Deft.

**EVIDENTIARY HEARING...DEFT'S MOTION TO WITHDRAW GUILTY PLEA**

There being no objection by State, COURT ORDERED, Motion GRANTED; Deft's guilty plea WITHDRAWN. FURTHER, the original charges in the original Indictment filed March 9, 2016 are REINSTATED; Amended Indictment filed on October 19, 2017 is STRICKEN. Mr. Nadig requested Court to set the trial date on a date as soon as possible. COURT ADDITIONALLY ORDERED, trial date SET.

**CUSTODY**

2/12/19 8:30 A.M. CALENDAR CALL

PRINT DATE: 05/14/2021

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Minutes Date: March 09, 2016

2/19/19 1:30 P.M. TRIAL BY JURY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 12, 2019**

---

C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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**February 12, 2019      8:30 AM      Calendar Call**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Michaela Tapia

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Moskal, Thomas J.	Attorney
	Osman, Adam B.	Attorney
	Sanft, Michael W.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Mr. Sanft advised ready for trial. State indicated 18 - 20 witnesses, 5 - 6 days, and two out of state witnesses. TRIAL DATE STANDS.

CUSTODY

2/19/19 10:30 AM JURY TRIAL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 19, 2019**

---

C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**February 19, 2019      10:30 AM      Jury Trial**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Teri Berkshire  
                         Haly Pannullo

**RECORDER:** Trisha Garcia

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Luong, Vivian	Attorney
	Sanft, Michael W.	Attorney
	Schwartz, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- PROSPECTIVE JURORS PRESENT:

Voir Dire.

OUTSIDE THE PRESENCE OF THE JURY:

Mr. Sanft requested the Co-Defendant, Marlan Dean, be transported as a potential witness for the Defense. COURT ORDERED, Co-Defendant, Marlan Dean, is to be transported on 02/25/19; State to prepare the Transport Order.

PROSPECTIVE JURORS PRESENT:

Voir Dire.

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Court Clerk, Teri Berkshire, now present.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY:continued Voir Dire.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY Inquiry regarding named Juror as to whether or not he is a felon.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY Court noted named juror is not a felon. Continued Voir Dire. Following Voir dire, 12 Jurors selected. Court thanked and excused the remaining prospective panel.

INSIDE THE PRESENCE OF THE JURY: Court admonished the Jury and instructed them to return tomorrow at the given time.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Sanft advised he did not see a reason to not waive the challenges as noted. Court so noted. Court adjourned for the evening.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 20, 2019**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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**February 20, 2019      10:30 AM      Jury Trial**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:**

Haly Pannullo

**RECORDER:** Trisha Garcia

**REPORTER:**

**PARTIES**

**PRESENT:**

Luong, Vivian	Attorney
Sanft, Michael W.	Attorney
Schwartz, Michael J.	Attorney
State of Nevada	Plaintiff
White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY:

Amended Indictment FILED IN OPEN COURT.

Mr. Schwartz advised they attempted to transport the Co-Defendant, Marland Dean, and the prison stated they cannot do so until 03/01/19. Mr. Sanft confirmed they are still requesting he be transported. Court stated the Department will contact the prison for transport.

Parties stipulated to exhibits #1-233

**JURY PRESENT:**

Jury sworn.

PRINT DATE: 05/14/2021

Page 38 of 54

Minutes Date: March 09, 2016

Clerk read the Amended Indictment.

Testimony and exhibits presented. (See worksheets)

OUTSIDE THE PRESENCE OF THE JURY:

Pursuant to NRS 50.215 and NRS 50.215(4)(b), COURT STATED the Court is not permitted to Order the Co-Defendant be transported from the prison.

JURY PRESENT:

Testimony and exhibits presented. (See worksheets)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 21, 2019**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**February 21, 2019      10:30 AM      Jury Trial**

**HEARD BY:**   Leavitt, Michelle

**COURTROOM:**   RJC Courtroom 14D

**COURT CLERK:**

Haly Pannullo

**RECORDER:**   Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Luong, Vivian	Attorney
	Sanft, Michael W.	Attorney
	Schwartz, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY:

DEFT. WHITE ARRAIGNED AND PLED GUILTY TO COUNT 1 - CONSPIRACY TO COMMIT ROBBERY (F), COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (F), COUNTS 3-4 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (F), COUNTS 5-6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (F) COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (F) and COUNT 8 - IMPERSONATION OF AN OFFICER (GM). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing.

JURY PRESENT:

Court thanked and excused the jury.

PRINT DATE:    05/14/2021

Page 40 of 54

Minutes Date:    March 09, 2016

**C-16-313216-2**

CUSTODY

03/14/19 8:30 AM SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 14, 2019**

---

C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**March 14, 2019      8:30 AM      Sentencing**

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

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Sanft, Michael W.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- COURT ORDERED, matter CONTINUED. Pre-Sentence Investigation Report provide to Mr. Sanft in open court.

CUSTODY

CONTINUED TO: 03/19/19 8:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****March 19, 2019**

C-16-313216-2      State of Nevada  
vs  
Toney White

**March 19, 2019      8:30 AM      Sentencing**

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

<b>PRESENT:</b>	Sanft, Michael W.	Attorney
	Schwartzner, Michael J.	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- DEFT WHITE ADJUDGED GUILTY of COUNT 1 - CONSPIRACY TO COMMIT ROBBERY (F), COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (F), COUNTS 3-4 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (F), COUNTS 5-6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (F), COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (F) and COUNT 8 - IMPERSONATION OF AN OFFICER (GM). Statement by Defendant. Arguments by counsel. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$8,831.62 restitution to be paid jointly and severally with Co-Defendant, \$150.00 DNA Analysis fee including testing to determine genetic markers and \$3.00 DNA Collection fee, Deft. SENTENCED as follows:

on COUNT 1 - to a MAXIMUM of SEVENTY- TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS in the Nevada Department of Corrections (NDC);

on COUNT 2 - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY-SIX (66) MONTHS, CONCURRENT with COUNT 1 in the NDC;

PRINT DATE: 05/14/2021

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Minutes Date: March 09, 2016



on COUNT 3 - to LIFE with a MINIMUM Parole Eligibility of FIVE (5) YEARS plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM with a parole eligibility of FIVE (5) YEARS for the Use of a Deadly Weapon, CONCURRENT TO COUNT 2 in the NDC;

on COUNT 4 - to LIFE with a MINIMUM Parole Eligibility of FIVE (5) YEARS plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM with a parole eligibility of FIVE (5) YEARS for the Use of a Deadly Weapon, CONSECUTIVE with COUNT 3 in the NDC;

COUNT 5 - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 4 in the NDC;

COUNT 6 - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS plus a CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 5 in the NDC;

COUNT 7 - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of SIXTY-SIX (66) MONTHS, CONCURRENT with COUNT 6 in the NDC;

and COUNT 8 - to THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC), CONCURRENT with COUNT 7 for and AGGREGATE TOTAL of LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS with ONE THOUSAND ONE HUNDRED THIRTY-FOUR (1,134) DAYS credit for time served.

BOND, if any, EXONERATED.

NDC

CLERK'S NOTE: Subsequent to Court, COURT ORDERED, COUNT 3 CONCURRENT TO COUNT 2.  
hvp/3/22/19



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 04, 2019**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

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<b>June 04, 2019</b>	<b>8:30 AM</b>	<b>Motion to Reduce</b>	<b>Defendant / Petitioner's Motion to Reduce and/or Quash Restitution</b>
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**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Beverly, Leah C	Attorney
	State of Nevada	Plaintiff
	White, Toney Anthony	Defendant

**JOURNAL ENTRIES**

- Court noted the Defendant is represented by counsel and directed the Defendant to give his motions to his attorney. COURT STATED Defendant's Motion is a fugitive document and ORDERED, matter OFF CALENDAR.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 29, 2019**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**August 29, 2019      8:30 AM      Motion to Withdraw Plea**

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

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Jackson, Terrence Michael	Attorney
	State of Nevada	Plaintiff
	Zadrowski, Bernard B.	Attorney

**JOURNAL ENTRIES**

- Defendant not present. Mr. Jackson requested this matter be continued for the Defendant's presence. State requested 45 days to respond. COURT ORDERED, State's Response due 10/10/19; matter SET for Hearing; State to prepare a Transport Order.

NDC

10/17/19 8:30 AM HEARING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 24, 2019**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**September 24, 2019    8:30 AM      Motion**

**HEARD BY:**    Leavitt, Michelle

**COURTROOM:**    RJC Courtroom 14D

**COURT CLERK:**    Haly Pannullo

**RECORDER:**    Kristine Santi

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Jackson, Terrence   Michael	Attorney
	Marland, Melanie H.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Defendant not present. Mr. Jackson requested this matter be continued as the State needs to file a response. COURT STATED this matter is on Appeal and this Court has no jurisdiction; therefore, ORDERED, all matter MOOT and OFF CALENDAR.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 17, 2019**

---

C-16-313216-2      State of Nevada  
   vs  
   Toney White

---

**October 17, 2019      8:30 AM      Evidentiary Hearing**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Defendant not present. COURT ORDERED, matter OFF CALENDAR.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

### Felony/Gross Misdemeanor

# COURT MINUTES

June 23, 2020

C-16-313216-2	State of Nevada vs Toney White
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**June 23, 2020**

**12:00 AM**

## Motion to Withdraw as Counsel

## Motion to Withdraw as Counsel

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Sara Richardson

**REPORTER:**

## PARTIES

**PRESENT:** Jackson, Terrence Michael  
State of Nevada  
Zadrowski, Bernard B.

Plaintiff  
Attorney

## JOURNAL ENTRIES

- Defendant not present. COURT ORDERED, Motion GRANTED; Mr. Jackson to prepare the Order;  
07/14/20 hearing VACATED.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 21, 2020**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**July 21, 2020      12:00 AM      Motion for Order**

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

**COURT CLERK:** Haly Pannullo

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

**PRESENT:**      Dunn, Ann Marie      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Defendant not present. COURT STATED the Defendant has indicated that his family will pay for the transcripts; therefore, ORDERED, once the family pays the Court, the transcripts will be prepared; Pre-Sentence Investigation Report (PSI) is to be mailed to the Defendant; 07/28/20 hearing VACATED.

NDC

CLERK'S NOTE: The above minute order and PSI has been distributed to:

Toney White  
NDOC No. 1214172  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89070



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 11, 2020**

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C-16-313216-2      State of Nevada  
                                 vs  
                                 Toney White

---

**August 11, 2020      12:00 AM      Motion for Order**

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

**COURT CLERK:** Haly Pannullo

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

**PRESENT:**      Demonte, Noreen C.      Attorney  
                                 State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Defendant not present. Court noted the history of the case. Court stated the Defendant is now seeking the transcripts at the State's expense and the Defendant has failed to meet his burden; therefore, ORDERED, Motion DENIED; State to prepare the Order.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

### Felony/Gross Misdemeanor

# COURT MINUTES

September 10, 2020

C-16-313216-2	State of Nevada vs Toney White
---------------	--------------------------------------

**September 10, 2020      12:00 AM      Motion for Appointment of Attorney**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- Pursuant to NRS 34.750, COURT ORDERED, Motion DENIED WITHOUT PREJUDICE as there is no Petition pending and this Court cannot make a determination as to whether the issues are difficult due to the Defendant not putting forth anything; it is clear that the Defendant understand the proceedings and the Defendant has not met his burden; State to prepare the Order.

NDC

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 06, 2020**

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C-16-313216-2      State of Nevada  
   vs  
   Toney White

---

**October 06, 2020      12:00 AM      Motion for Order**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Haly Pannullo

**RECORDER:** Sara Richardson

**REPORTER:**

**PARTIES**

**PRESENT:**      Beaumont, Austin C.      Attorney  
   State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Defendant not present. Court stated this is about the third time that the Defendant has filed this Motion. Further, COURT STATED the Defendant has not met his burden pursuant to the Peterson case; the Defendant does not have any type of Petition pending; the Defendant needs to demonstrate to the Court that the points he would raise have merit and that the merit in those points raised would be supported by a review of the record. COURT STATED the Defendant has not done any of that; the Defendant has simply asked for a bunch of transcripts for which he is not entitled to pursuant to Peterson vs Ward 87 Nevada 134; therefore, ORDERED, Motion DENIED; State to prepare the Order.

NDC

CLERK'S NOTE: The above minute order has been distributed to:

Toney White

NDOC No. 1214172

P.O. BOX 650

INDIAN SPRINGS, NEVADA 89070

hvp/10/27/20

CASE NO. C-16-313216-1,-2,-3,-4  
DEPT. NO. XII  
CDDA MICHAEL SCHWARTZER (GANG)

Defendant(s): KEVIN KEKOA WONG, JR., #5410495  
TONEY ANTHONY WHITE, #8270790  
AMANDA SEXTON, #8270791  
MARLAND DEAN, aka, Marland Neal Dean, #7024742

Case No(s): 15AGJ129A-D (RANDOMLY TRACKS TO DC XII & XIX)

Charge(s): (1) CT - CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147);  
(1) CT - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060 - NOC 50426);  
(2) CTS - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.310, 200.320, 193.165 - NOC 50055);  
(2) CTS - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145);  
(1) CT - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481 - NOC 50226) and  
(1) CT - IMPERSONATION OF AN OFFICER (Gross Misdemeanor - NRS 199.430 - NOC 53013)

Def. Counsel(s): WONG - EDWARD HUGHES, ESQ.  
WHITE - HARVEY GRUBER, ESQ.  
SEXTON - MICHAEL PRINTY, ESQ.  
DEAN - TRAVIS SHETLER, ESQ.

WARRANTS (1 WEEK):

WONG -

WHITE -

SEXTON -

DEAN -

> 19SK 3/17 830 Dur

DEFT'S ARE IN CUSTODY @ CCDC (16FH0191A-D - PH 4/12 IN HJC 2)

Exhibits:

1. Proposed Indictment
2. Jury Instructions
3. Photo
4. Photo
5. Photo
6. Photo
7. Photo
8. Photo
9. Photo
10. Photo

11. Photo
12. Photo
13. Photo
14. Photo
15. Photo
16. Photo
17. Photo
18. Photo
19. Photo
20. Photo

21. Photo  
22. Photo  
23. Photo  
24. Photo  
25. Photo  
26. Photo  
27. Photo  
28. Fake SW

29. U.S. Marshal Field input  
30. Federal SW  
31. Diagram  
32. Photo  
33. Photo  
34. Photo  
35. Photo

Exhibit 1 – 35 to be lodged with the Clerk of the Court.

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**EXHIBIT(S) LIST**

Case No.:	<u>C-16-313216-2</u>	Date:	<u>6/28/18 status check</u>
Dept. No.:	<u>XII</u>	Judge:	<u>Michelle Cleavitt</u>
Plaintiff:	<u>State of Nevada</u>	Court Clerk:	<u>Susan Botzenhart</u>
	<u>vs.</u>	Recorder:	<u>Kristine Santi</u>
Defendant:	<u>Toney White</u>	Counsel for Plaintiff:	<u>Michael Schwartz</u>
		Counsel for Defendant:	<u>Michael Dickerson</u>

☐ status check HEARING BEFORE THE COURT

Court's EXHIBIT

[illegible]

## STATE'S EXHIBIT LIST

TRIAL DATES: February 19, 2019

Case No. C-16-313216-2	Clerk: <i>Haly Bonnullo</i>
Dept. XII Judge: Leavitt	Recorder: <i>Kristine Santi</i>
State of Nevada vs. Toney Anthony White	
State: Michael Schwartz & Vivian Luong	
Defense: Michael Sanft	

Exhibit No.	Description	Date Offered	Obj.	Adm.	Date Admitted
<i>WA</i> 1	Aerial Map – Horizons at Seven Hills Complex Numbers	<i>2-20-19</i>	<i>Shp</i>	<input checked="" type="checkbox"/>	<i>2-20-19</i>
<i>WA</i> 2	Aerial Map – St. Rose to Sunridge Heights				
<i>WA</i> 3	Aerial Map – Horizon Ridge to Sunridge Heights				
<i>WA</i> 4	Aerial Map – Horizons at Seven Hills				
<i>WA</i> 5	Aerial Map – Horizons at Seven Hills UNIT 2511				
<i>WA</i> 6	Aerial Map – Horizons at Seven Hills UNIT 2211				
<i>WA</i> 7	Aerial Map – Horizons at Seven Hills UNIT 1511				
<i>WA</i> 8	Scene 1 – Building 25				
<i>WA</i> 9	Scene 1 – Building 25 North End				
<i>WA</i> 10	Scene 1 – Unit 2511 Outside				
<i>WA</i> 11	Scene 1 – Bloody Shirt				
<i>WA</i> 12	Scene 1 – Bloody Shirt Close up				
<i>WA</i> 13	Scene 1 – Bloody Shirt Opened Up				
<i>WA</i> 14	Scene 1 – Sign 2511				
<i>WA</i> 15	Scene 1 – Patio				
<i>WA</i> 16	Scene 1 – Master Bedroom Window Outside				
<i>WA</i> 17	Scene 1 – Master Bedroom Window Outside North End				
<i>WA</i> 18	Scene 1 – North/West End of Building				
<i>WA</i> 19	Scene 1 – Walkway on West End of Building				
<i>WA</i> 20	Scene 1 – Fence on West End of Building				
<i>WA</i> 21	Scene 1 – Baton by Fence				
<i>WA</i> 22	Scene 1 – Gloves on Walkway				
<i>WA</i> 23	Scene 1 – Gloves on Walkway Close up	<i>✓</i>	<i>✓</i>	<i>✓</i>	<i>✓</i>
<i>WA</i> 24	Scene 1 – Gloves on Walkway Close up x 2	<i>2-20-19</i>	<i>Shp</i>	<input checked="" type="checkbox"/>	<i>2-20-19</i>

		offered	obj.	adm.	date admitted.	
WA	25	Scene 1 – Baton Close up	2-20-19	Strip	✓	2-20-19
WA	26	Scene 1 – Front of 2511 with Shirt				
WA	27	Scene 1 – Front Doorway				
WA	28	Scene 1 – View from Patio towards Dining room				
WA	29	Scene 1 – View from Dining room to Front door				
WA	30	Scene 1 – View from Couch to Front door				
WA	31	Scene 1 – View of Couch				
WA	32	Scene 1 – View from Patio towards Kitchen				
WA	33	Scene 1 – View form Dining room to Kitchen				
WA	34	Scene 1 – Two sets of Handcuffs on TV Stand				
WA	35	Scene 1 – First set of handcuffs				
WA	36	Scene 1 – Second set of handcuffs				
WA	37	Scene 1 – Blood on TV Stand				
WA	38	Scene 1 – Blood on Floor by Speaker and TV stand				
WA	39	Scene 1 – Blood on TV Stand – Close up				
WA	40	Scene 1 – Blood on Floor by Speaker				
WA	41	Scene 1 – Blood on Floor by Speaker Bottom				
WA	42	Scene 1 – Blood on Floor by Speaker Top				
WA	43	Scene 1 – Coffee Table				
WA	44	Scene 1 – Folding Table and Lamp				
WA	45	Scene 1 – Flashlight and Gloves by Folding Table				
WA	46	Scene 1 – Magazine on Rug				
WA	47	Scene 1 – Dining Table				
WA	48	Scene 1 – Office				
WA	49	Scene 1 – Office Desk				
WA	50	Scene 1 – Gun on office chair				
WA	51	Scene 1 – Master Bedroom Window				
WA	52	Scene 1 – Master Bedroom Wall blood smear				
WA	53	Scene 1 – Screen on bed				
WA	54	Scene 1 – Evidence collected – Baton				
WA	55	Scene 1 – Evidence collected – Baton close up				
WA	56	Scene 1 – Evidence collected – Baton close up x2				
WS	57	Scene 1 – Evidence collected – Partial Gloves Inside				
WA	58	Scene 1 – Evidence collected – Partial Gloves Outside				
WS	59	Scene 1 – Evidence collected – Handcuffs 1	2-20-19	Strip	✓	2-20-19



		offered	obj	adm.	date admitted
WA 60	Scene 1 – Evidence collected – Handcuffs 1 Close up	2-20-19	Ship	✓	2-20-19
WA 61	Scene 1 – Evidence collected – Handcuffs 2				
WA 62	Scene 1 – Evidence collected – Streetwise Flashlight				
WA 63	Scene 1 – Evidence collected – Energizer Flashlight				
WA 64	Scene 1 – Evidence collected – Full Glove				
WA 65	Scene 1 – Evidence collected – Black Glock .40 magazine				
WA 66	Scene 1 – Evidence collected – Black Glock .40 magazine side				
WA 67	Scene 1 – Evidence collected – Pellet rifle				
WA 68	Scene 2 – Jason Full				
WA 69	Scene 2 – Head				
WA 70	Scene 2 – Mouth close up				
WA 71	Scene 2 – Missing Teeth				
WA 72	Scene 2 – Forehead				
WA 73	Scene 2 – Right Wrist				
WA 74	Scene 2 – Right Wrist close up				
WA 75	Scene 2 – Left Wrist				
WA 76	Scene 2 – Left side of Head				
WA 77	Scene 2 – Stitches close up				
WA 78	Scene 2 – Right shoulder				
WA 79	Scene 2 – Left side of back				
WA 80	Scene 2 – Upper Back Injury close up				
WA 81	Scene 2 – Lower Back Injury Close Up				
WA 82	Scene 2 – Backside of Left Arm				
WA 83	Scene 3 – Horizons Sign and Driveway				
WA 84	Scene 3 – Horizons Sign with Police tape				
WA 85	Scene 3 – Horizons Sign on North End				
WA 86	Scene 3 – Police Tape and Bushes				
WA 87	Scene 3 – Items in Bushes				
WA 88	Scene 3 – Items Laid Out				
WA 89	Scene 3 – Uniden Radio				
WA 90	Scene 3 – Blue and Black Cap				
WA 91	Scene 3 – US Marshall ID Front				
WA 92	Scene 3 – US Marshall ID Back				
WA 93	Scene 3 – US Marshall ID only				
WA 94	Scene 3 – Black Gun in Holster	2-20-19	Ship	✓	2-20-19

		offered	obj	adm.	date admitted	
WA	95	Scene 3 – Bottom of black gun	2-20-19	Stip	✓	2-20-19
WA	96	Scene 3 – Black Gun				
WA	97	Scene 3 – BB Gun Magazine				
WA	98	Scene 3 – Black Shirt with Blue USA Patch				
WA	99	Scene 3 – Black Shirt Back with Marshal				
WA	100	Scene 3 – Tactical Vest				
WA	101	Scene 3 – Silver Gun in Belt				
WA	102	Scene 3 – Silver Smith & Wesson Gun				
WA	103	Scene 3 – Silver Smith & Wesson Gun Close Up with Blood				
WA	104	Scene 3 – Silver Smith & Wesson Gun with No Serial Number				
WA	105	Scene 3 – Black Duty Belt				
WA	106	Scene 3 – Handcuffs in Belt				
WA	107	Scene 3 – Evidence Collected – Duty Belt				
WA	108	Scene 3 – Evidence Collected – handcuffs				
WA	109	Scene 3 – Evidence Collected – Plastic Gun Holster				
WA	110	Scene 3 – Evidence Collected – Smith & Wesson				
WA	111	Scene 3 – Evidence Collected – Smith & Wesson with No Serial Number				
WA	112	Scene 3 – Evidence Collected – Handcuffs				
WA	113	Scene 3 – Evidence Collected – Handcuffs close up with print				
WA	114	Scene 3 – Evidence Collected – Holster				
WA	115	Scene 3 – Evidence Collected – Black Gun				
WA	116	Scene 3 – Evidence Collected – Uniden Radio				
WA	117	Scene 3 – Evidence Collected – US Marshal Badge				
WA	118	Scene 3 – Evidence Collected – Black Cap				
WA	119	Scene 3 – Evidence Collected – Key				
WA	120	Scene 4 – Building 11 Sign				
WA	121	Scene 4 – Building 11				
WA	122	Scene 4 – Building Apt 2085				
WA	123	Scene 4 – Building 11 Backside				
WA	124	Scene 4 – Stairs to Apt 2085				
WA	125	Scene 4 – Balcony of Apt 2085				
WA	126	Scene 4 – Chair in Balcony				
WA	127	Scene 4 – Broken Window				
WA	128	Scene 4 – Door of 2085				
WA	129	Scene 4 – Master Bedroom	2-20-19	Stip	✓	2-20-19

		offered	obj.	adm.	dated admitted	
WA	130	Scene 4 – Master Bedroom with Binders	2-20-19	Tip	✓	2-20-19
WA	131	Scene 4 – Master Bedroom Suitcase				
WA	132	Scene 4 – US Marshal Michael Alvarado				
WA	133	Scene 4 – Suitcase				
WA	134	Scene 4 – US Marshall ID Dan Kessier				
WA	135	Scene 4 – US Marshall ID Alexis Sanchez				
WA	136	Scene 4 – NV ID Mary Hartshorn				
WA	137	Scene 4 – NV ID Ashley McDade				
WA	138	Scene 4 – Black Drawer				
WA	139	Scene 4 – Bullets in Drawer				
WA	140	Scene 4 – Bullets Close Up				
WA	141	Scene 4 – Master Bedroom Closet and Bed				
WA	142	Scene 4 – Master Bedroom Closet				
WA	143	Scene 4 – Gloves and Baton in Closet				
WA	144	Scene 4 – Gloves Close Up				
WA	145	Scene 4 – Pill bottle				
WA	146	Scene 4 – Second Bedroom Bed				
WA	147	Scene 4 – Second Bedroom TV				
WA	148	Scene 4 – Second Bedroom Closet				
WA	149	Scene 4 – Third Bedroom Bed				
WA	150	Scene 4 – Third Bedroom Closet				
WA	151	Scene 4 – Blue USA Patch				
WA	152	Scene 4 – Holster and pouches				
WA	153	Scene 5 – Building 15 Sign				
WA	154	Scene 5 – Building 15 West End				
WA	155	Scene 5 – Building 15 East End				
WA	156	Scene 5 – Fence Opening				
WA	157	Scene 5 – Unit 1511 Door and Patio				
WA	158	Scene 5 – Unit 1511 Sign				
WA	159	Scene 5 – Unit 1511 Doorway				
WA	160	Scene 5 – Vest Behind Pillar				
WA	161	Scene 5 – Vest on Ground as is				
WA	162	Scene 5 – Vest Laid Out				
WA	163	Scene 5 – Back of Vest				
WA	164	Scene 5 – Vest with USA Blue Patch	2-20-19	Tip	✓	2-20-19

		offered	obj.	adm.	date admitted	
WA	165	Scene 5 – Gun Holster by Bush	2-20-19	Ship	✓	2-20-19
WA	166	Scene 5 – Gun Holster Laid out				
WA	167	Scene 5 – Evidence Collected – Vest				
WA	168	Scene 5 – Evidence Collected – Back of Vest				
WA	169	Scene 5 Plus – Horizons Sign				
WA	170	Scene 5 Plus –Front Corner Overview				
WA	<del>171</del> 171	Scene 5 Plus – Fence Overview				
WA	172	Scene 5 Plus – Rocks and Corner				
WA	173	Scene 5 Plus – Headphones				
WA	174	Scene 5 Plus – Black Shirt in Fence				
WA	175	Scene 5 Plus – Black Shirt in Fence Close Up				
WA	176	Scene 5 Plus – Fence with Tree				
WA	177	Scene 5 Plus – Fence with Tree Close Up				
WA	178	Scene 5 Plus – Midland Radio in Rocks				
WA	179	Scene 5 Plus – Midland Radio Laid Out				
WA	180	Scene 5 Plus – Black Shirt Laid Out				
WA	181	Finger Print – On Handcuff				
WA	182	Finger Print – On Handcuff Close Up				
WA	183	Finger Print – Comparison				
WA	184	Finger Print – Comparison Color				
WA	185	Floral Suitcase – Overview				
WA	186	Floral Suitcase – Rental Agreement				
WA	187	Floral Suitcase – Rental Agreement Signed				
WA	188	Floral Suitcase – Map of Tahiti				
WA	189	Apartment Suitcase – Southwest Gas Bill				
WA	190	Apartment Suitcase – Amanda Letter				
WA	191	Apartment Suitcase – Horizons Note				
WA	192	Apartment Suitcase – Victims Names Note				
WA	193	Photo of Marland Dean				
WA	194	Photo of Kristin Burton				
WA	195	Magazine by Patio Door				
WA	196	Magazine and 9mm Luger Bullets				
WA	197	Map to Glen				
WA	198	Vehicle – Jeep Front	↓	↓	↓	↓
WA	199	Vehicle – Jeep Back	2-20-19	Ship	✓	2-20-19

		offered	obj.	adm.	date admitted	
UA	200	Vehicle – Jeep License Plate	2-20-19	Shp	✓	2-20-19
UA	201	Vehicle – Jeep Antenna				
UA	202	Vehicle – Jeep Front Windshield				
UA	203	Vehicle – Jeep Spotlight				
UA	204	Vehicle – Jeep Driver side interior				
UA	205	Vehicle – Jeep Dashboard				
UA	206	Vehicle – Jeep Dashboard Longview				
UA	207	Vehicle – Jeep Glove Compartment				
UA	208	Vehicle – Jeep Center Console				
UA	209	Vehicle – Jeep Under the Hood				
UA	210	Vehicle – Jeep Speaker				
UA	211	Vehicle – Jeep Speaker Close Up				
UA	212	Vehicle – Mustang Front				
UA	213	Vehicle – Mustang Back				
UA	214	Vehicle – Mustang Prints 1, 2, and 3				
UA	215	Vehicle – Mustang Prints 6, 7, 8, 9				
UA	216	Vehicle – Mustang Prints 6, 7, 8 close up				
UA	217	Vehicle – Mustang Prints 10				
UA	218	Vehicle – Mustang Passenger Door				
UA	219	Vehicle – Mustang Front Passenger View				
UA	220	Vehicle – Mustang Back Passenger View				
UA	221	Vehicle – Mustang Radio Center Console				
UA	222	Vehicle – Mustang Trunk				
UA	223	Vehicle – Evidence Collected Jeep – Paper, Rewards, Credit Card				
UA	224	Vehicle – Evidence Collected Jeep – Charleston Letter				
UA	225	Vehicle – Evidence Collected Jeep – Radio, Phones, ID				
UA	226	Vehicle – Evidence Collected Jeep – Toney White ID				
UA	227	Vehicle – Evidence Collected Jeep – Toney White SS Card				
UA	228	Vehicle – Evidence Collected Jeep – Lights and Speaker				
UA	229	Vehicle – Evidence Collected Mustang – 2 Radios and Pouch				
UA	230	Suspect Photo – Toney White				
UA	231	Suspect Photo – Marland Dean				
UA	232	Suspect Photo – Amanda Sexton				
UA	233	Suspect Photo – Kevin Wong	2-20-19	Shp	✓	2-20-19
UA	234	Disk - Body Camera				

WA

Offered OD. adm. date  
admitted

235	photo - defendant	2-20-19	Strip	✓	2-20-19
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## EXHIBIT(S) LIST

**Case No.: C313216**

Hearing / Trial Date: 2/19/19

**Dept. No.: 12**

**Judge: LEAVITT**

**Plaintiff: STATE OF NEVADA**

**Court Clerk: HALLY PANNULLO**

**Recorder / Reporter: KRISTINE SANTI**

**Counsel for Plaintiff:**

**VS.**

**Defendant: TONEY WHITE**

**Counsel for Defendant:**

## HEARING / TRIAL BEFORE THE COURT

**COURT'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):

PETITIONER'S SECOND NOTICE OF APPEAL; AND REQUEST FOR APPOINTMENT OF COUNSEL ON APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; 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.

TONEY ANTHONY WHITE,

Defendant(s).

Case No: C-16-313216-2

Dept No: XII

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 14 day of May 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk