

Heather L. Linn
CLERK OF THE COURT

Dept. No. 6th

Case No. C-19-338-224

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

Electronically Filed
May 17 2021 02:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Sean McKendrick

Petitioner/Plaintiff,

vs.

Respondent/Defendant.

NOTICE OF APPEAL

Notice is hereby given that Sean McKendrick, Petitioner/Defendant
above named, hereby appeals to the Court of Appeals for the State of Nevada from the final
judgment / order (Modification of sentence appeal.)

Entered in this action on the 5 day of 4th, 20 21.

Dated this 5 day of May, 20 21.

Sean McKendrick

NDOC # 84624

Appellant - Pro Per

Ely State Prison

P.O. Box 1989

Ely, Nevada 89301-1989

RECEIVED

MAY 11 2021

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAIL

I, Sean McKendrick, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 5 day of 4, 2021, I served a true and correct copy of the above-entitled _____ postage prepaid and addressed as follows:

200 Lewis Ave.
Las Vegas, NV. 89101

Signature Sean McKendrick

Print Name Sean McKendrick

Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

AFFIRMATION PURSUANT TO NRS 239B.030

I, Sean McKendrick, NDOC# 84624,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE
ATTACHED DOCUMENT ENTITLED Sentence Modification
appeal.

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

DATED THIS 5 DAY OF May, 2021.

SIGNATURE: Sean McKendrick

INMATE PRINTED NAME: Sean McKendrick

INMATE NDOC # 84624

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

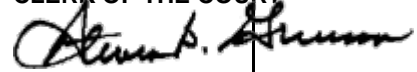
Sean McKendrick 84624
P.O. Box 1989
Ely, NV. 89301



Clerk of the Court
200 Lewis Ave.
Las Vegas, NV. 89101

000005101-830000

ELY STATE PRISON
MAY 06 2021
U5



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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 SEAN MICHAEL MCKENDRICK,

13 Defendant(s),

Case No: C-19-338224-1

Dept No: VI

14
15
16 **CASE APPEAL STATEMENT**

17
18 1. Appellant(s): Sean McKendrick

19 2. Judge: Jacqueline M. Bluth

20 3. Appellant(s): Sean McKendrick

21 Counsel:

22 Sean McKendrick #84624
23 P.O. Box 1989
24 Ely, NV 89301

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: February 20, 2019

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

Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 79372, 82466

12. Child Custody or Visitation: N/A

Dated This 13 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: Sean McKendrick

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-19-338224-1

State of Nevada
vs
Sean McKendrick

§ Location: Department 6
§ Judicial Officer: Bluth, Jacqueline M.
§ Filed on: 02/20/2019
§ Case Number History:
§ Cross-Reference Case Number: C338224
§ Defendant's Scope ID #: 7068215
§ Grand Jury Case Number: 18AGJ225x
§ ITAG Case ID: 2113492
§ Supreme Court No.: 79372
82466

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. BATTERY BY PRISONER	200.481.2f	F	01/29/2019	Case Status:	07/23/2019 Closed
2. BATTERY BY PRISONER	200.481.2f	F	01/29/2019		
3. ATTEMPT MURDER	200.010	F	01/29/2019		
4. ATTEMPT BATTERY WITH SUBSTANTIAL BODILY HARM	200.481.2b	F-GM	01/29/2019		

Related Cases

A-20-823904-W (Writ Related Case)

Statistical Closures

07/23/2019 Guilty Plea with Sentence (before trial) (CR)

Warrants

Bench Warrant - McKendrick, Sean Michael (Judicial Officer: Bluth, Jacqueline M.)
07/01/2019 9:30 AM Returned - Served
Hold Without Bond

Indictment Warrant - McKendrick, Sean Michael (Judicial Officer: Adair, Valerie)

02/27/2019 8:30 AM Returned - Served

Fine: \$0

Bond: \$100,000.00 Any

Bonds

Surety #511418618-4 \$10,000.00

7/29/2019 Exonerated

3/28/2019 Active

Counts: 1, 2, 3, 4

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	C-19-338224-1
Court	Department 6
Date Assigned	04/29/2019
Judicial Officer	Bluth, Jacqueline M.

PARTY INFORMATION

Defendant	McKendrick, Sean Michael	<i>Lead Attorneys</i> Public Defender <i>Retained</i> 702-455-4685(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE
















EVENTS & ORDERS OF THE COURT

INDEX

CASE SUMMARY

CASE NO. C-19-338224-1

EVENTS

02/20/2019	 Indictment
02/20/2019	 Warrant <i>Indictment Warrant; Warrant for Arrest</i>
02/21/2019	Indictment Warrant Return <i>See Redacted Version</i>
02/21/2019	 Redacted Version <i>Indictment Warrant Return (Redacted Version)</i>
03/06/2019	 Transcript of Proceedings <i>Transcript of Hearing Held on February 19, 2019</i>
03/27/2019	 Guilty Plea Agreement
03/28/2019	 Bail Bond
04/23/2019	 PSI <i>Presentence Investigation Report (Unfiled) Confidential</i>
04/26/2019	 PSI - Defendant Statements
04/29/2019	Administrative Reassignment - Judicial Officer Change <i>To Judge Jacqueline M. Bluth</i>
06/10/2019	 Bench Warrant
06/14/2019	 Notice of Intent to Forfeit
06/20/2019	 Notice of Intent Filed By: Plaintiff State of Nevada <i>State's Notice of Intent to Seek Punishment as a Habitual Criminal</i>
06/27/2019	Bench Warrant Return <i>See Redacted Version</i>
06/27/2019	 Bench Warrant Return <i>Bench Warrant Return (Redacted Version)</i>
07/23/2019	 Judgment of Conviction <i>Judgment of Conviction (Plea of Guilty)</i>
08/05/2019	 Notice of Appeal (Criminal) Party: Defendant McKendrick, Sean Michael <i>Notice of Appeal</i>
08/06/2019	 Motion Filed By: Defendant McKendrick, Sean Michael <i>Motion for Additional Credit for Time Served</i>


CASE SUMMARY
CASE NO. C-19-338224-1

08/08/2019	 Case Appeal Statement Filed By: Defendant McKendrick, Sean Michael
08/15/2019	 Notice of Appeal (Criminal) <i>Notice of Appeal</i>
08/15/2019	 Case Appeal Statement Filed By: Defendant McKendrick, Sean Michael
09/04/2019	 Amended Judgment of Conviction <i>Amended Judgment of Conviction (Plea of Guilty)</i>
10/14/2019	 Request <i>Appellant's Request for Certified Transcript of Proceedings</i>
11/08/2019	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on March 27, 2019</i>
11/08/2019	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on July 1, 2019</i>
11/08/2019	 Recorders Transcript of Hearing <i>Transcript of Hearing Held on July 15, 2019</i>
10/27/2020	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed</i>
02/08/2021	 Notice of Appeal (Criminal) <i>Notice of Appeal</i>
02/10/2021	 Case Appeal Statement Filed By: Defendant McKendrick, Sean Michael
02/10/2021	 Notice of Appeal (Criminal) Party: Defendant McKendrick, Sean Michael <i>Notice of Appeal</i>
02/11/2021	 Case Appeal Statement Filed By: Defendant McKendrick, Sean Michael
02/24/2021	 Motion to Modify Sentence Filed By: Defendant McKendrick, Sean Michael <i>Motion for Modification of Sentence</i>
03/05/2021	 Response <i>State's Response to Defendant's Motion for Modification of Sentence</i>
03/05/2021	 Response <i>State's Response to Defendant's Motion for Modification of Sentence</i>
05/12/2021	 Notice of Appeal (Criminal) Party: Defendant McKendrick, Sean Michael

CASE SUMMARY

CASE NO. C-19-338224-1

Notice of Appeal

05/13/2021  Case Appeal Statement
 Filed By: Defendant McKendrick, Sean Michael
Case Appeal Statement

DISPOSITIONS

03/27/2019 **Plea** (Judicial Officer: Bluth, Jacqueline M.)
 1. BATTERY BY PRISONER
 Guilty
 PCN: Sequence:

07/15/2019 **Disposition** (Judicial Officer: Bluth, Jacqueline M.)
 1. BATTERY BY PRISONER
 Guilty
 PCN: Sequence:


07/15/2019 **Adult Adjudication** (Judicial Officer: Bluth, Jacqueline M.)
 1. BATTERY BY PRISONER
 01/29/2019 (F) 200.481.2f (DC50229)
 PCN: Sequence:

Sentenced to Nevada Dept. of Corrections
 Term: Life with the possibility of parole after:10 years Year
 Credit for Time Served: 59 Days
 Comments: Deft. recommended for 184 program

Fee Totals:

Administrative	
Assessment Fee	25.00
\$25	
DNA Analysis Fee	150.00
\$150	
Genetic Marker	
Analysis AA Fee	3.00
\$3	
Indigent Defense	
Civil Assessment	250.00
Fee - ASK	
Fee Totals \$	428.00

HEARINGS

02/20/2019  **Grand Jury Indictment** (11:00 AM) (Judicial Officer: Adair, Valerie)

MINUTES**Warrant**

Inactive Indictment Warrant

Matter Heard;

Journal Entry Details:




Russell Walker, 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 18AGJ225X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-19-338224-1, Department VI. State requested a warrant, argued bail, and advised Deft is in custody. COURT ORDERED, \$100,000.00 BAIL with High Level Electronic Monitoring; INDICTMENT WARRANT ISSUED, and matter SET for Arraignment. COURT FURTHER ORDERED, Exhibits 1-3 to be lodged with the Clerk of the Court; Las Vegas Justice Court case no. 19F01767X DISMISSED per the State's request. In addition, a Pre-Trial Risk Assessment will be prepared if one was not previously done. I.W. (CUSTODY) 02/27/19 8:30 A.M. INITIAL ARRAIGNMENT (DEPT VI) ;

SCHEDULED HEARINGS

Initial Arraignment (02/27/2019 at 8:30 AM) (Judicial Officer: Bixler, James)

CASE SUMMARY

CASE NO. C-19-338224-1

02/27/2019	<p>Initial Arraignment (8:30 AM) (Judicial Officer: Bixler, James)</p> <p>Matter Heard;</p>
02/27/2019	<p>Indictment Warrant Return (8:30 AM) (Judicial Officer: Bixler, James)</p> <p>Matter Resolved;</p>
02/27/2019	<p> All Pending Motions (8:30 AM) (Judicial Officer: Bixler, James)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>INDICTMENT WARRANT RETURN...INITIAL ARRAIGNMENT. Ms. Simmons noted the background of the case, advising an offer was made by Mr. Albright, she's reached out to the District Attorney and hopes it will be negotiated as it provisionally was. Ms. Clowers advised the Court of the offer. Statement by Defendant requesting a bail reduction. Colloquy regarding negotiations and Defendant's custody status. Ms. Simmons requested a status check on negotiations in 2 weeks and a trial setting. Defendant MCKENDRICK ARRAIGNED, PLED NOT GUILTY AND INVOKED THE SIXTY (60) DAY RULE. COURT ORDERED, matter SET for trial and status check. CUSTODY 3-13-19 8:30 AM STATUS CHECK NEGOTIATIONS 4-22-19 9:30 AM CALENDAR CALL 4-29-19 10:00 AM JURY TRIAL ;</i></p>
03/13/2019	<p> Status Check (8:30 AM) (Judicial Officer: Bixler, James)</p> <p>03/13/2019, 03/27/2019</p> <p><i>Status Check: Negotiations</i></p> <p>Matter Heard;</p> <p>Plea Entered;</p> <p>Journal Entry Details:</p> <p><i>Ms. Simmons stated the District Attorney attached a copy of the indictment on the back of the plea agreement versus an amended information. The Defendant will be pleading to one Count of battery by prisoner and, for efficiency sake, suggested all the Counts be stricken but Count 1. COURT SO NOTED. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. MCKENDRICK ARRAIGNED AND PLED GUILTY TO BATTERY BY PRISONER (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. Ms. Simmons requested the bail be modified to reflect the charge Deft. currently pled to. Opposition by State. Statement by Ms. Simmons regarding criminal history. COURT ORDERED, Bail REDUCED to \$10,000.00. CUSTODY 5/13/19 8:30 AM SENTENCING (COUNT 1);</i></p> <p>Matter Heard;</p> <p>Plea Entered;</p> <p>Journal Entry Details:</p> <p><i>Mr. Peterson advised he's standing in for Ms. Simmons and requested a continuance. Mr. Turner stated there's no need to continue, matters can be re-calendared if negotiated. Mr. Peterson stated Ms. Simmons would like a 2 week continuance for this to get worked out. Defendant stated he would like to plead guilty to battery by prisoner. Court informed the Defendant the Court does not get involved in the negotiations and ORDERED, proceedings CONTINUED. Defendant requested a bail reduction. COURT ORDERED, request DENIED, and directed the Defendant to have counsel file the motion in writing. Defendant stated he's not spoken with counsel once. Mr. Peterson advised he will speak with Ms. Simmons. Court directed counsel to go and see the Defendant. CUSTODY 3-27-19 8:30 AM STATUS CHECK; NEGOTIATIONS 4-22-19 9:30 AM CALENDAR CALL 4-29-19 10:00 AM JURY TRIAL ;</i></p>
04/22/2019	<p>CANCELED Calendar Call (9:30 AM) (Judicial Officer: Bixler, James)</p> <p><i>Vacated</i></p>
04/29/2019	<p>CANCELED Jury Trial (1:00 PM) (Judicial Officer: Vacant, DC 6)</p> <p><i>Vacated</i></p>
06/10/2019	<p>Sentencing (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.)</p> <p>MINUTES</p> <p>Warrant</p> <p>Inactive Bench Warrant</p> <p>See 5/6/19 correspondence from counsel requesting that R/S be moved to a later date</p> <p>Bench Warrant Issued;</p> <p>Journal Entry Details:</p> <p><i>Defendant NOT BEING PRESENT, Upon Court's inquiry, counsel unable to make representation. At the request of the State, COURT ORDERED, BENCH WARRANT WILL ISSUE, NO BAIL. B.W. (BOND);</i></p>
07/01/2019	<p> Bench Warrant Return (9:30 AM) (Judicial Officer: Jones, Tierra)</p> <p>Events: 06/27/2019 Bench Warrant Return</p>

CASE SUMMARY**CASE NO. C-19-338224-1**

Matter Heard;

Journal Entry Details:

Ms. Sisolak advised the case is Ms. Simmons who's in Justice Court; the intention is to ask for 2/48 recommended by Parole and Probation with the 184 program; if inclined to follow that the case can be handled, or swapped out. Court noted the intention of the State to file for habitual treatment and at the request of Ms. Sisolak ORDERED, proceedings TRAILED for the presence of Ms. Simmons. MATTER RECALLED: Court noted the intention of the State to seek habitual treatment. Ms. Simmons requested a sentencing date, inquiring as to the date of notice as she did not see it. Court stated it's been filed and seen in Odyssey, the date is unknown and ORDERED, matter SET for sentencing. CUSTODY 7-15-19 9:30 AM SENTENCING;

07/15/2019

**Sentencing (9:30 AM)** (Judicial Officer: Bluth, Jacqueline M.)**MINUTES****Plea** (Judicial Officer: Bluth, Jacqueline M.)

1. BATTERY BY PRISONER

Guilty

PCN: Sequence:

Disposition (Judicial Officer: Bluth, Jacqueline M.)

1. BATTERY BY PRISONER

Guilty

PCN: Sequence:

Adult Adjudication (Judicial Officer: Bluth, Jacqueline M.)

1. BATTERY BY PRISONER

01/29/2019 (F) 200.481.2f (DC50229)

PCN: Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Life with the possibility of parole after:10 years Year

Credit for Time Served: 59 Days

Comments: Deft. recommended for 184 program

Fee Totals:

Administrative Assessment Fee	25.00
\$25 DNA Analysis Fee	150.00
\$150 Genetic Marker Analysis AA Fee	3.00
\$3 Indigent Defense Civil Assessment	250.00
Fee - ASK	
Fee Totals \$	428.00

Defendant Sentenced;

Journal Entry Details:

Argument by Ms. Simmons in regards to her objection to the Court's review of Police Reports for sentencing. Argument in support of Court's review of Police Reports and in support of habitual criminal treatment by Mr. Albright. Court stated all has been read and considered. Argument and exhibits in support of large habitual criminal treatment by Mr. Albright. Exhibits Presented (See Worksheet). Statement by Defendant. Argument in opposition of habitual criminal treatment by Ms. Simmons. Pursuant to Habitual Statute NRS 207.010, Defendant MCKENDRICK ADJUDGED GUILTY OF BATTERY BY PRISONER (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$150.00 DNA Analysis fee including testing to determine genetic markers, \$3.00 DNA Collection fee and \$250.00 Indigent Defense Civil Assessment fee, Defendant SENTENCED TO LIFE in the Nevada Department of Corrections WITH MINIMUM PAROLE ELIGIBILITY AFTER TEN (10) YEARS; FIFTY-NINE (59) DAYS credit for time served. Court recommends the Defendant for the 184 Program. NDC;


08/19/2019

**Hearing on Credit For Time Served (9:30 AM)** (Judicial Officer: Herndon, Douglas W.)*Defendant's Motion for Additional Credit for Time Served*

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-19-338224-1

	<p>Granted; Journal Entry Details: <i>Defendant not present. Argument in support of motion by Ms. Sisolak requesting 108 days credit for time served. Argument by Mr. Albright stating it was believed an additional 23 days were sought. Colloquy regarding credit for time served. Court stated findings and ORDERED, Defendant's Motion For Additional Credit For Time Served GRANTED; Amended Judgment of Conviction to reflect NINETY-EIGHT (98) DAYS credit for time served as of July 15, 2019 NDC;</i></p>
09/16/2019	<p>CANCELED Further Proceedings (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated - On in Error</i></p>
09/16/2019	<p> Appointment of Counsel (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Appellate Counsel</i> Matter Heard; Journal Entry Details: <i>Defendant not present. Mr. Brooks CONFIRMED the Public Defender as counsel. COURT SO ORDERED. NDC;</i></p>
01/07/2020	<p>CANCELED Show Cause Hearing (9:00 AM) (Judicial Officer: Bell, Linda Marie) <i>Vacated - Moot</i></p>
03/18/2021	<p> Minute Order (3:00 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Minute Order Re: Defendant's Motion to Modify Sentence</i> Minute Order - No Hearing Held; Journal Entry Details: <i>Defendant's Motion to Modify Sentence IS DENIED. In general, a district court lacks jurisdiction to modify a sentence once the defendant has started serving it. Passainisi v. State, 108 Nev. 318, 322 (1992). However, a district court does have inherent authority to correct, vacate, or modify a sentence where the defendant can demonstrate the sentence violates Due Process because it is based on a materially untrue assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards v. State, 112 Nev. 704, 707 (1996). Here, Defendant claims that the court relied on a materially untrue assumption or mistake of fact when it allegedly based his sentence on a murder conviction which does not exist. However, defendant's claim is belied by the record. While from the record it illustrates that the court misspoke by referring to defendant's attempt murder charge as murder, the Court did not believe that defendant committed murder or that this reason was the primary consideration in imposing Defendant's sentence. The Court indicated that it spent a great deal of time looking at the underlying police reports and reviewing the PSI in defendant's case. (Sentencing Transcript at 20). The Court noted that it believed Defendant had a drug problem and mental health issues, but ultimately had to balance that against the safety of the community. Id. The court determined that Defendant's violent history, including his constant attack on police officers, and even violence on people who are lay people warranted a sentence of 10 years to life under the habitual criminal statute. Id. The Court also based its determination on the fact that Defendant continued to commit acts of violence while in custody. Id. at 21. Clearly the court's decision was not based on a materially untrue assumption or mistake of fact and Defendant's claim fails. Further, the Court specifically noted that it was more heavily weighing the cases contained in the PSI and the JOCs presented in support of habitual criminal status over the other cases mentioned by the state. Id. at 4. The court clearly reviewed Defendant's PSI prior to sentencing and could see that Defendant was charged with attempt murder with use of a deadly weapon in 2008 and not murder. (PSI at 4). Additionally, the state specifically noted in its argument that the Defendant had been charged with attempt murder. (Sentencing Transcript at 6). The court did not base its decision on a materially untrue assumption or mistake of fact and therefore defendant's motion IS DENIED. State to prepare an order consistent with this ruling. ;</i></p>
03/22/2021	<p> Motion to Modify Sentence (11:00 AM) (Judicial Officer: Bixler, James) <i>Motion for Modification of Sentence</i> Denied; Journal Entry Details: <i>Defendant not present; incarcerated in the Nevada Department of Corrections (NDC). COURT NOTED this matter was a Pro-Se Motion for Modification of Sentence and was handled by the way of a Minute Order on March 18, 2021 in which the Motion was denied. NDC;</i></p>

DATE

FINANCIAL INFORMATION

Defendant McKendrick, Sean Michael
Total Charges
Total Payments and Credits
Balance Due as of 5/13/2021

431.50
3.50
428.00

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 20, 2019

C-19-338224-1 State of Nevada
vs
Sean McKendrick

February 20, 2019 11:00 AM Grand Jury Indictment

HEARD BY: Adair, Valerie; Jones, Tierra **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Kimberly Estala

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Dickerson, Michael Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- Russell Walker, 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 18AGJ225X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C-19-338224-1, Department VI.

State requested a warrant, argued bail, and advised Deft is in custody. COURT ORDERED, \$100,000.00 BAIL with High Level Electronic Monitoring; INDICTMENT WARRANT ISSUED, and matter SET for Arraignment.

COURT FURTHER ORDERED, Exhibits 1-3 to be lodged with the Clerk of the Court; Las Vegas Justice Court case no. 19F01767X DISMISSED per the State's request. In addition, a Pre-Trial Risk Assessment will be prepared if one was not previously done.

I.W. (CUSTODY)

02/27/19 8:30 A.M. INITIAL ARRAIGNMENT (DEPT VI)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 27, 2019

C-19-338224-1 State of Nevada
 vs
 Sean McKendrick

February 27, 2019 8:30 AM All Pending Motions

HEARD BY: Bixler, James **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:	Clowers, Shanon	Attorney
	McKendrick, Sean Michael	Defendant
	Simmons, Kara M.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- INDICTMENT WARRANT RETURN...INITIAL ARRAIGNMENT.

Ms. Simmons noted the background of the case, advising an offer was made by Mr. Albright, she's reached out to the District Attorney and hopes it will be negotiated as it provisionally was. Ms. Clowers advised the Court of the offer. Statement by Defendant requesting a bail reduction. Colloquy regarding negotiations and Defendant's custody status. Ms. Simmons requested a status check on negotiations in 2 weeks and a trial setting. Defendant MCKENDRICK ARRAIGNED, PLED NOT GUILTY AND INVOKED THE SIXTY(60) DAY RULE. COURT ORDERED, matter SET for trial and status check.

CUSTODY

3-13-19 8:30 AM STATUS CHECK NEGOTIATIONS

4-22-19 9:30 AM CALENDAR CALL

PRINT DATE: 05/13/2021

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Minutes Date: February 20, 2019

C-19-338224-1

4-29-19 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 13, 2019**

C-19-338224-1 State of Nevada
vs
Sean McKendrick

March 13, 2019 8:30 AM Status Check

HEARD BY: Bonaventure, Joseph T. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:	McKendrick, Sean Michael	Defendant
	Peterson, Christopher	Attorney
	State of Nevada	Plaintiff
	Turner, Robert B.	Attorney

JOURNAL ENTRIES

- Mr. Peterson advised he's standing in for Ms. Simmons and requested a continuance. Mr. Turner stated there's no need to continue, matters can be re-calendared if negotiated. Mr. Peterson stated Ms. Simmons would like a 2 week continuance for this to get worked out. Defendant stated he would like to plead guilty to battery by prisoner. Court informed the Defendant the Court does not get involved in the negotiations and ORDERED, proceedings CONTINUED. Defendant requested a bail reduction. COURT ORDERED, request DENIED, and directed the Defendant to have counsel file the motion in writing. Defendant stated he's not spoken with counsel once. Mr. Peterson advised he will speak with Ms. Simmons. Court directed counsel to go and see the Defendant.

CUSTODY

3-27-19 8:30 AM STATUS CHECK; NEGOTIATIONS

4-22-19 9:30 AM CALENDAR CALL

PRINT DATE: 05/13/2021

Page 4 of 15

Minutes Date: February 20, 2019

C-19-338224-1

4-29-19 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 27, 2019**

C-19-338224-1 State of Nevada
vs
Sean McKendrick

March 27, 2019 8:30 AM Status Check

HEARD BY: Bixler, James**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Louisa Garcia**RECORDER:** De'Awna Takas**REPORTER:****PARTIES**

PRESENT:	McKendrick, Sean Michael	Defendant
	Simmons, Kara M.	Attorney
	Stanton, David L.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Simmons stated the District Attorney attached a copy of the indictment on the back of the plea agreement versus an amended information. The Defendant will be pleading to one Count of battery by prisoner and, for efficiency sake, suggested all the Counts be stricken but Count 1. COURT SO NOTED.

NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. MCKENDRICK ARRAIGNED AND PLED GUILTY TO BATTERY BY PRISONER (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. Ms. Simmons requested the bail be modified to reflect the charge Deft. currently pled to. Opposition by State. Statement by Ms. Simmons regarding criminal history. COURT ORDERED, Bail REDUCED to \$10,000.00.

CUSTODY

5/13/19 8:30 AM SENTENCING (COUNT 1)

PRINT DATE: 05/13/2021

Page 6 of 15

Minutes Date: February 20, 2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 10, 2019

C-19-338224-1 State of Nevada
 vs
 Sean McKendrick

June 10, 2019 9:30 AM Sentencing

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Alan Castle

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:	Public Defender	Attorney
	Simmons, Kara M.	Attorney
	State of Nevada	Plaintiff
	Wolfson, Steven B	Attorney

JOURNAL ENTRIES

- Defendant NOT BEING PRESENT, Upon Court's inquiry, counsel unable to make representation.
At the request of the State, COURT ORDERED, BENCH WARRANT WILL ISSUE, NO BAIL.

B.W. (BOND)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 01, 2019

C-19-338224-1 State of Nevada
vs
Sean McKendrick

July 01, 2019 9:30 AM Bench Warrant Return

HEARD BY: Jones, Tierra **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: Patti Slattery

REPORTER:

PARTIES

PRESENT:	McKendrick, Sean Michael	Defendant
	Simmons, Kara M.	Attorney
	Sisolak, Ashley L.	Attorney
	Stanton, David L.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Sisolak advised the case is Ms. Simmons who's in Justice Court; the intention is to ask for 2/48 recommended by Parole and Probation with the 184 program; if inclined to follow that the case can be handled, or swapped out. Court noted the intention of the State to file for habitual treatment and at the request of Ms. Sisolak ORDERED, proceedings TRAILED for the presence of Ms. Simmons.

MATTER RECALLED:

Court noted the intention of the State to seek habitual treatment. Ms. Simmons requested a sentencing date, inquiring as to the date of notice as she did not see it. Court stated it's been filed and seen in Odyssey, the date is unknown and ORDERED, matter SET for sentencing.

CUSTODY

7-15-19 9:30 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 15, 2019**

C-19-338224-1 State of Nevada
vs
Sean McKendrick

July 15, 2019 9:30 AM Sentencing

HEARD BY: Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:** De'Awna Takas**REPORTER:****PARTIES**

PRESENT:	Albright, Brandon B.	Attorney
	McKendrick, Sean Michael	Defendant
	Simmons, Kara M.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Argument by Ms. Simmons in regards to her objection to the Court's review of Police Reports for sentencing. Argument in support of Court's review of Police Reports and in support of habitual criminal treatment by Mr. Albright. Court stated all has been read and considered. Argument and exhibits in support of large habitual criminal treatment by Mr. Albright. Exhibits Presented (See Worksheet). Statement by Defendant. Argument in opposition of habitual criminal treatment by Ms. Simmons. Pursuant to Habitual Statute NRS 207.010, Defendant MCKENDRICK ADJUDGED GUILTY OF BATTERY BY PRISONER (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$150.00 DNA Analysis fee including testing to determine genetic markers, \$3.00 DNA Collection fee and \$250.00 Indigent Defense Civil Assessment fee, Defendant SENTENCED TO LIFE in the Nevada Department of Corrections WITH MINIMUM PAROLE ELIGIBILITY AFTER TEN (10) YEARS; FIFTY-NINE (59) DAYS credit for time served. Court recommends the Defendant for the 184 Program.

NDC

PRINT DATE: 05/13/2021

Page 10 of 15

Minutes Date: February 20, 2019

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 19, 2019

C-19-338224-1 State of Nevada
 vs
 Sean McKendrick

**August 19, 2019 9:30 AM Hearing on Credit For Time
Served**

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:	Albright, Brandon B.	Attorney
	Sisolak, Ashley L.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Defendant not present.

Argument in support of motion by Ms. Sisolak requesting 108 days credit for time served. Argument by Mr. Albright stating it was believed an additional 23 days were sought. Colloquy regarding credit for time served. Court stated findings and ORDERED, Defendant's Motion For Additional Credit For Time Served GRANTED; Amended Judgment of Conviction to reflect NINETY-EIGHT (98) DAYS credit for time served as of July 15, 2019

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 16, 2019

C-19-338224-1 State of Nevada
 vs
 Sean McKendrick

September 16, 2019 9:30 AM Appointment of Counsel

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed
 Shannon Reid

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:	Albright, Brandon B.	Attorney
	Brooks, Howard S.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Defendant not present.

Mr. Brooks CONFIRMED the Public Defender as counsel. COURT SO ORDERED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 18, 2021**

C-19-338224-1 State of Nevada
vs
Sean McKendrick

March 18, 2021 3:00 AM Minute Order

HEARD BY: Bluth, Jacqueline M.**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Keith Reed**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Defendant's Motion to Modify Sentence IS DENIED. In general, a district court lacks jurisdiction to modify a sentence once the defendant has started serving it. *Passainisi v. State*, 108 Nev. 318, 322 (1992). However, a district court does have inherent authority to correct, vacate, or modify a sentence where the defendant can demonstrate the sentence violates Due Process because it is based on a materially untrue assumption or mistake of fact that has worked to the defendant's extreme detriment. *Edwards v. State*, 112 Nev. 704, 707 (1996).

Here, Defendant claims that the court relied on a materially untrue assumption or mistake of fact when it allegedly based his sentence on a murder conviction which does not exist. However, defendant's claim is belied by the record. While from the record it illustrates that the court misspoke by referring to defendant's attempt murder charge as murder, the Court did not believe that defendant committed murder or that this reason was the primary consideration in imposing Defendant's sentence. The Court indicated that it spent a great deal of time looking at the underlying police reports and reviewing the PSI in defendant's case. (Sentencing Transcript at 20). The Court noted that it believed Defendant had a drug problem and mental health issues, but ultimately had to balance that against the safety of the community. *Id.* The court determined that Defendant's violent history, including his constant attack on police officers, and even violence on people who are lay people warranted a sentence of 10 years to life under the habitual criminal statute. *Id.* The Court also based its determination on the fact that Defendant continued to commit acts of violence while in

custody. Id. at 21. Clearly the court's decision was not based on a materially untrue assumption or mistake of fact and Defendant's claim fails.

Further, the Court specifically noted that it was more heavily weighing the cases contained in the PSI and the JOCs presented in support of habitual criminal status over the other cases mentioned by the state. Id. at 4. The court clearly reviewed Defendant's PSI prior to sentencing and could see that Defendant was charged with attempt murder with use of a deadly weapon in 2008 and not murder. (PSI at 4). Additionally, the state specifically noted in its argument that the Defendant had been charged with attempt murder. (Sentencing Transcript at 6). The court did not base its decision on a materially untrue assumption or mistake of fact and therefore defendant's motion IS DENIED.

State to prepare an order consistent with this ruling.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 22, 2021

C-19-338224-1 State of Nevada
 vs
 Sean McKendrick

March 22, 2021 11:00 AM Motion to Modify Sentence

HEARD BY: Bixler, James **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Natalie Ortega

RECORDER: Toshiana Pierson

REPORTER:

PARTIES

PRESENT: Gullo, Robert J. Attorney
 Overly, Sarah Attorney

JOURNAL ENTRIES

- Defendant not present; incarcerated in the Nevada Department of Corrections (NDC). COURT NOTED this matter was a Pro-Se Motion for Modification of Sentence and was handled by the way of a Minute Order on March 18, 2021 in which the Motion was denied.

NDC

CASE NO. C-19-338224-1
DEPT. NO. VI
DDA BRANDON ALBRIGHT (L3)

Defendant(s): SEAN MICHAEL MCKENDRICK, #7068215

Case No(s): 18AGJ225X (RANDOMLY TRACKS TO DC VI & XVII)

Charge(s): (2) CTS - BATTERY BY PRISONER (Category B Felony - NRS 200.481(2)(F) - NOC 50229);
(1) CT - ATTEMPT MURDER (Category B Felony - NRS 200.010, 200.030, 193.330 - NOC 50029);
(1) CT - ATTEMPT BATTERY WITH SUBSTANTIAL BODILY HARM (Category D Felony/Gross Misdemeanor - NRS 200.481, 193.330 - NOC 50244/50245)

Def. Counsel(s): PUBLIC DEFENDER

2/27 @ 8³⁰

WARRANT (1 WEEK) - \$100,000 w/ high level monitoring
DEFT IN CUSTODY @ CCDC (19F01767X - PH 2/28 IN JC 7)

LVJC CASE TO BE DSM'D 19F01767X

Exhibits:

- wa 1. Proposed Indictment
- wa 2. Jury Instructions
- wa 3. Photo

Exhibits 1 - 3 to be lodged with the Clerk of the Court.

Case No.: C 338224

July 15, 2019

Judge: JACQUELINE M. BLUTH

Court Clerk: KEITH REED

Recorder: DE'AWNA TAKAS

Counsel for Plaintiff: _____

vs.
Defendant: SEAN MICHAEL MCKENDRICK

BRANDON ALBRIGHT

Counsel for Defendant:

STATE'S EXHIBITS

Printed February 28, 2019



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

SEAN MCKENDRICK #84624
P.O. BOX 1989
ELY, NV 89301

DATE: May 13, 2021
CASE: C-19-338224-1

RE CASE: STATE OF NEVADA vs. SEAN MICHAEL MCKENDRICK

NOTICE OF APPEAL FILED: May 12, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☐

Case Appeal Statement

- NRAP 3 (a)(1), Form 2

☒

Order

☒

Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

STATE OF NEVADA,

Plaintiff(s),

vs.

SEAN MICHAEL MCKENDRICK,

Defendant(s).

Case No: C-19-338224-1

Dept No: VI

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 13 day of May 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

