



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

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Jun 22 2021 08:49 a.m.
Elizabeth A. Brown
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Steven D. Grierson
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Court Division Administrator

June 22, 2021

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. SEAN MICHAEL MCKENDRICK

S.C. CASE: 82920

D.C. CASE: C-19-338224-1

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written order, dated June 9, 2021, enclosed is a certified copy of the Order Denying Defendant's Motion to Modify Sentence filed June 16, 2021 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", is written over a horizontal line.

Heather Ungermann, Deputy Clerk

Heather S. Linn
CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SEAN MCKENDRICK,
#84624

Defendant.

CASE NO: C-19-338224-1

DEPT NO: VI

ORDER DENYING DEFENDANT'S MOTION TO MODIFY SENTENCE

DATE OF HEARING: March 18, 2021
TIME OF HEARING: 3:00 A.M.

THIS MATTER having come on for hearing before the above-entitled Court on the 18th day of March, 2021, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through ROBERT TURNER, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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

8 Here, Defendant claims that the court relied on a materially untrue assumption or
9 mistake of fact when it allegedly based his sentence on a murder conviction which does not
10 exist. However, defendant's claim is belied by the record. While from the record it illustrates
11 that the court misspoke by referring to defendant's attempt murder charge as murder, the Court
12 did not believe that defendant committed murder or that this reason was the primary
13 consideration in imposing Defendant's sentence. The Court indicated that it spent a great deal
14 of time looking at the underlying police reports and reviewing the PSI in defendant's case.
15 (Sentencing Transcript at 20). The Court noted that it believed Defendant had a drug problem
16 and mental health issues, but ultimately had to balance that against the safety of the
17 community. *Id.* The court determined that Defendant's violent history, including his constant
18 attack on police officers, and even violence on people who are lay people warranted a
19 sentence of 10 years to life under the habitual criminal statute. *Id.* The Court also based its
20 determination on the fact that Defendant continued to commit acts of violence while in
21 custody. *Id.* at 21. Clearly the court's decision was not based on a materially untrue
22 assumption or mistake of fact and Defendant's claim fails.

23 Further, the Court specifically noted that it was more heavily weighing the cases
24 contained in the PSI and the JOCs presented in support of habitual criminal status over the
25 other cases mentioned by the state. *Id.* at 4. The court clearly reviewed Defendant's PSI prior
26 to sentencing and could see that Defendant was charged with attempt murder with use of a
27 deadly weapon in 2008 and not murder. (PSI at 4). Additionally, the state specifically noted
28 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.

~~DATED this _____ day of June, 2021.~~ Dated this 16th day of June, 2021


DISTRICT JUDGE

kj

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

FFB 67F 47CB 3ED6
Jacqueline M. Bluth
District Court Judge

BY


ROBERT TURNER
Chief Deputy District Attorney
Nevada Bar #006526

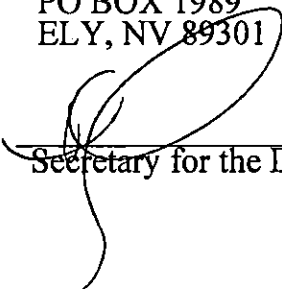
CERTIFICATE OF SERVICE

I certify that on the 14th day of June, 2021, I mailed a copy of the foregoing

Order to:

SEAN MCKENDRICK, BAC #84624
ELY STATE PRISON
PO BOX 1989
ELY, NV 89301

BY


Secretary for the District Attorney's Office

June 22, 2021



CERTIFIED COPY
ELECTRONIC SEAL (NRS 1.190(3))

mah/L3

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-19-338224-1

7 vs

DEPT. NO. Department 6

8 Sean McKendrick
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/16/2021

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