

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

Case No: 95C129824
Related Case A-21-827377-W
Docket No: 82942

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT

GARY LEWIS # 47615,
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

ATTORNEY FOR RESPONDENT

STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 240
2	241 - 381

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	02/19/2009	"FIRST AMENDMENT PETITION" WRIT OF HABEAS CORPUS CHAPTER 34 ET SEQ AND * "JUDICIAL NOTICE" FREREVID 201* NEV REV STAT 47.130-47.170	99 - 114
1	03/23/2009	"FIRST AMENDMENT PETITION" WRIT OF HABEAS CORPUS NRS CHAP 34 ET SEQ (AND) "JUDICIAL NOTICE" OF COURT ERROR FREVID 201 NEV REV STAT 47.130 - 47.170 *"EVIDENTIARY HEARING REQUESTED"*	118 - 153
1	05/11/2009	"NOTICE OF APPEAL" TO THE NEVADA SUPREME COURT, DENIAL OF MAY 1, 2009	154 - 158
2	04/24/2014	"NOTICE OF APPEAL, AND ATTACHED STATEMENT OF APPEAL FOR PETITION FOR WRIT OF HABEAS CORPUS."	327 - 327
2	11/29/2011	"PRO SE MOTION TO WITHDRAW THE ALFORD PLEA FOR THE ENTIRE PROCEEDING WAS IN DIRECT VIOLATION OF THE CONSTITUTION."	257 - 264
2	04/24/2014	"PRO SE PETITIONER'S STATEMENT OF APPEAL."	322 - 326
2	09/02/2020	201943813C-ORDR-(LEWIS GARY 08 11 2020)-001	352 - 354
1	06/12/1996	AMENDED INFORMATION	66 - 67
1	05/12/2009	CASE APPEAL STATEMENT	159 - 160
2	03/17/2011	CASE APPEAL STATEMENT	241 - 242
2	04/25/2014	CASE APPEAL STATEMENT	328 - 329
1	02/04/2009	CERTIFICATE OF MAILING	97 - 98
2	06/02/2021	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	08/03/1995	CRIMINAL BINDOVER - CONFIDENTIAL	1 - 13
2	07/09/2012	CRIMINAL ORDER TO STATISTICALLY CLOSE CASE	287 - 287
2	06/02/2021	DISTRICT COURT MINUTES	364 - 381
1	03/01/2011	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	233 - 239
2	03/31/2014	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER	311 - 315

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	06/12/1996	GUILTY PLEA AGREEMENT PURSUANT TO ALFORD DECISION	68 - 73
1	08/15/1995	INFORMATION	14 - 16
1	08/14/1996	JUDGMENT OF CONVICTION (PLEA)	81 - 82
1	09/23/2010	MOTION FOR AN EVIDENTIARY HEARING.	186 - 202
1	02/03/2009	MOTION FOR ORDER OF WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF ALL RECORDS	89 - 96
2	07/13/2020	MOTION FOR PRODUCTION OF ALL DOCUMENTS	348 - 351
2	04/29/2020	MOTION FOR PRODUCTION OF TRANSCRIPTS AT STATE EXPENSE	337 - 342
1	09/23/2010	MOTION TO APPOINT COUNSEL	173 - 185
2	10/05/2020	MOTION: FOR PRODUCTION OF DOCUMENTS PURSUANT TO NRS 7.055, ALSO PURSUANT TO THE AMERICAN INDIGENT ACT	355 - 360
1	12/01/2009	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - AFFIRMED	166 - 172
2	10/19/2011	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - AFFIRMED	251 - 256
2	10/20/2014	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - AFFIRMED	330 - 335
1	03/14/2011	NOTICE OF APPEAL	240 - 240
1	06/02/2009	NOTICE OF ENTRY OF DECISION AND ORDER	163 - 165
2	03/17/2011	NOTICE OF ENTRY OF DECISION AND ORDER	243 - 250
2	04/07/2014	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER	316 - 321
2	01/12/2012	ORDER	285 - 286
2	11/10/2020	ORDER DENYING DEFENDANT'S MOTION FOR PRODUCTION OF DOCUMENTS	361 - 363

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	06/03/2020	ORDER DENYING DEFENDANT'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE	346 - 347
1	05/29/2009	ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS	161 - 162
1	11/06/2010	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	224 - 224
1	10/27/1995	ORDER FOR PRODUCTION OF INMATE	58 - 59
1	12/14/1995	ORDER FOR PRODUCTION OF INMATE	60 - 61
1	02/23/1996	ORDER FOR PRODUCTION OF INMATE	64 - 65
1	03/09/2009	ORDER GRANTING DEFENDANT'S PRO PER MOTION TO WITHDRAW ATTORNEY OF RECORD	116 - 117
2	03/11/2014	ORDER TRANSFERRING ACTION	293 - 296
2	03/11/2014	PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)	297 - 310
1	09/23/2010	PETITION FOR WRIT OF HABEAS CORPUS (POST- CONVICTION)	203 - 223
2	11/29/2011	POSTCONVICTION PETITION REQUESTING A GENETIC MARKER ANALYSIS OF EVIDENCE WITHIN THE POSSESSION OR CUSTODY OF THE STATE OF NEVADA (NRS 176.0918)	265 - 272
1	07/16/1996	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	75 - 80
2	12/14/2011	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA	278 - 284
2	12/14/2011	STATE'S OPPOSITION TO DEFENDANT'S PETITION REQUESTING GENETIC MARKER ANALYSIS OF EVIDENCE WITHIN POSSESSION OR CUSTODY OF THE STATE OF NEVADA	273 - 277
1	12/30/2010	STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND OPPOSITION TO DEFENDANT'S MOTIONS FOR AN EVIDENTIARY HEARING AND FOR	225 - 232

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		APPOINTMENT OF COUNSEL	
2	05/27/2020	STATUS CHECK	343 - 345
1	01/17/1996	SUBPOENA	62 - 62
1	02/08/1996	SUBPOENA	63 - 63
1	06/14/1996	SUBPOENA	74 - 74
1	09/01/1995	TRANSCRIPT OF HEARING HELD ON AUGUST 1, 1995	17 - 57
2	07/16/2013	UNFILED DOCUMENT(S) - "JUDICIAL NOTICE; PETITIONERS NOTICE OR COUNSEL NON-COMMUNICATION."	288 - 292
1	11/18/2008	UNFILED DOCUMENT(S) - DEFAULT REJECTIONS SLIP W/COPY OF UNFILED MOTION TO PROCEED INFORMA PAUPERIS (CONFIDENTIAL)	83 - 88
1	03/03/2009	UNSIGNED DOCUMENT(S) - ORDER	115 - 115
2	04/29/2020	UNSIGNED DOCUMENT(S) - ORDER TO PRODUCE TRANSCRIPTS	336 - 336

THIS SEALED
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U.S. MAIL

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Patricia L. Lawrence

CLERK

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

9 I.A. 8/16/95
10 9:00 a.m.
11 PD

DISTRICT COURT

CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13 Plaintiff,
14 -vs-
15 GARY LYNN LEWIS,
16 #1302110,
17 Defendant.

CASE NO. C129824
DEPT. NO. VII
DOCKET NO. P

I N F O R M A T I O N

18 STATE OF NEVADA)
19) ss:
20 COUNTY OF CLARK)

21 STEWART L. BELL, District Attorney within and for the County
22 of Clark, State of Nevada, in the name and by the authority of the
23 State of Nevada, informs the Court:

24 That GARY LYNN LEWIS, the Defendant, having committed the
25 crime of SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE
26 (FELONY - NRS 200.364, 200.366), on or about the 10th day of July,
27 1995, at and within the County of Clark, State of Nevada, contrary
28 to the form, force and effect of statutes in such cases made and
provided, and against the peace and dignity of the State of Nevada,
did then there wilfully, unlawfully, and feloniously sexually

CMC

CE11

CE31

1 assault and subject LARENZO RICHIE-BORRELL, a male child under
2 sixteen years of age, to sexual penetration, to-wit: anal
3 intercourse, by inserting his penis into the anus of the said
4 LARENZO RICHIE-BORRELL, against his will, or under conditions in
5 which Defendant knew, or should have known, that the said LARENZO
6 RICHIE-BORRELL was mentally or physically incapable of resisting or
7 understanding the nature of Defendant's conduct.

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY Teresa M. Lowry
TERESA M. LOWRY
Deputy District Attorney
Nevada Bar #003901

	<u>NAME</u>	<u>ADDRESS</u>
15		
16	CUSTODIAN OF RECORDS	SUNRISE HOSPITAL
17	GAITOR, CHRISTOPHER	1325 N. 23rd Street Las Vegas, NV 89101
18	ERRICHETTO, LINDA OR DESIGNEE	LVMPD P#1471
19	GAITOR, SEON	1208 Elenor Ave. Las Vegas, NV 89106
20		
21	GAITOR, DORA	1208 Elenor Ave. Las Vegas, NV 89106
22	GAITOR, VANESSA	1325 N. 23rd Street Las Vegas, NV 89101
23		
24	KNUDSEN, AUGUST	LVMPD P#329
25	MILLER, G. LOYAL	LVMPD P#1787
26	MONIOT, TIMOTHY	LVMPD P#4664
27	OLSEN, DR. K.	SUNRISE HOSPITAL
28	PHILLIP, DR. T.	SUNRISE HOSPITAL

1	RICHIE-BORRELL, LARENZO	800 Reed Pl. Las Vegas, NV 89106
2	RICHIE, LADONNA	800 Reed Pl. Las Vegas, NV 89106
3		
4	SCOTT, JON MARK	LVMPD P#4532
5	SIMMONS, CASANDRA	1704 Carey North Las Vegas, NV 89030
6		
7	SKYES, RAYANDO	800 Reed Pl. Las Vegas, NV 89106
8	WYSOCKI, DALE CLIFFORD	LVMPD P#1416
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27	LVMPD DR#9507100130	
28	S/A MINOR UNDER 16 -F (TK3)	

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CASE NO. C 129824

Laetta Luman

IN THE JUSTICE'S COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,
Plaintiff,
vs.
GARY LYNN LEWIS,
Defendant.

CASE NO. 95F06244X

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING
BEFORE THE HONORABLE THOMAS L. LEEN
JUSTICE OF THE PEACE

TUESDAY, AUGUST 1, 1995

APPEARANCES:

For the State: TERESA M. LOWRY, ESQ.
Deputy District Attorney
For the Defendant: ROBERT CARUSO, ESQ.
Deputy Public Defender

Reported by: Robert A. Surowiec, CCR #243, RPR

CSR ASSOCIATES OF NEVADA
LAS VEGAS, NEVADA (702) 382-5015

CE17

W I T N E S S E S

STATE'S	DIRECT	CROSS
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LORENZO RICHIE-BORRELL		
------------------------	--	--

By Ms. Lowry	7	
By Mr. Caruso		14

LADONNA RICHIE		
----------------	--	--

By Ms. Lowry	29	
By Mr. Caruso		35

* * * * *

E X H I B I T S

None.

* * * * *

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1 LAS VEGAS, NEVADA, AUGUST 1, 1995, 9:00 A.M.

2 * * * * *

3
4 THE COURT: Before I call the Gary
5 Lewis case, I am going to ask that the correction
6 officers take the other inmates out of the
7 courtroom.

8 Let the record reflect that the
9 courtroom has been cleared of other inmates at this
10 time.

11 This is the time set for the
12 preliminary hearing in case 95F6244, State versus
13 Gary Lewis.

14 Are you Mr. Gary Lewis, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: The record will reflect the
17 presence of the defendant in custody with his
18 attorney, Mr. Caruso, from the Public Defender's
19 Office, and Miss Lowry for the State, and all
20 officers of the court.

21 Are you ready to proceed,

22 Miss Lowry?

23 MS. LOWRY: Yes.

24 THE COURT: Call your first witness.

25 MS. LOWRY: Your Honor, I would just ask

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1 for a small accommodation. My victim is my first
2 witness. He is seven years old. His mother is also
3 a witness, so I have to ask her, to exclude her from
4 the courtroom.

5 She did tell me that he is afraid
6 to sit up there by himself. Apparently, some adult
7 in the neighborhood has told this child that this
8 man will get out. And all I am basically asking is
9 that one of my advocates be able to sit next to him
10 while he is testifying.

11 THE COURT: Okay. This person is an
12 adult person who is an employee of the District
13 Attorney's Office but is not going to be a witness
14 in this case; is that correct?

15 MS. LOWRY: Correct.

16 THE COURT: And what you are proposing
17 is that this witness will not be communicating with
18 this young person in any way or suggest any answers
19 or anything like that; is that correct?

20 MS. LOWRY: Correct.

21 THE COURT: That is either verbally or
22 nonverbally, correct?

23 MS. LOWRY: Correct.

24 THE COURT: Mr. Caruso, do you have any
25 objection to an adult person who is sort of a

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1 substitute parent or a substitute guardian type
2 person sitting with this young man while he is
3 testifying?

4 MR. CARUSO: No, your Honor. Just for
5 clarification, I appreciate the Court's conditions.
6 Would the Court also agree that the advocate would
7 not be touching the child.

8 THE COURT: Is that all right with you?

9 MS. LOWRY: That's fine.

10 THE COURT: Fine. If during the
11 proceedings either side and especially the defense,
12 if you see anything about any contact or any
13 relationship between the advocate and the witness,
14 anything that is bothering you, please bring that to
15 my attention. We will take it up at that time.
16 Okay?

17 MR. CARUSO: Thank you.

18 THE COURT: With those ground rules in
19 place, let's call the witnesses.

20 MS. LOWRY: The State calls Lorenzo
21 Richie-Borrell.

22 THE COURT: We also ought to have the
23 name of the advocate and the status of that person.

24 MS. LOWRY: That will be Kathy
25 Baldinatto. She is an advocate with the District

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1 Attorney's Victim Witness.

2 THE COURT: We have two chairs side by
3 side over on the witness stand.

4 You are Lorenzo?

5 THE WITNESS: Yes.

6 THE COURT: Come on up here, Lorenzo,
7 and have -- don't sit down just yet. You have to
8 stand up for a minute. I want you to look over here
9 and see this lady over here, she is the clerk.
10 Okay. She is going to swear you in at this time.
11 Pay attention to her right now.

12 THE CLERK: Would you raise your right
13 hand.

14
15 LARENZO RICHIE-BORRELL,
16 having been first duly sworn, was
17 examined and testified as follows:

18
19 THE CLERK: Be seated.

20 THE COURT: Have a seat. And that lady
21 that came into the courtroom with you will sit down
22 beside you. I want you not to pay attention to her,
23 Lorenzo. I want you to pay attention to the lawyers
24 in this case. You got me? Is that yes?

25 THE WITNESS: Yes.

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1 THE CLERK: Can you tell us your name.

2 THE WITNESS: Lorenzo.

3 THE COURT: What is your full name,
4 first and last name.

5 THE WITNESS: Richie.

6 THE CLERK: Richie is your first name.
7 And your last name?

8 THE WITNESS: Sharnell.

9 THE COURT: Do you know how to spell
10 that?

11 THE DEFENDANT: (Witness shakes head.)

12 THE COURT: Let the record reflect that
13 the young man is shaking his head in the negative.

14 Miss Lowry.

15

16 DIRECT EXAMINATION

17 BY MS. LOWRY:

18 Q. Lorenzo, is Lorenzo your name?

19 A. (Witness shakes head.)

20 Q. You have to answer out loud, Lorenzo.

21 A. Yeah.

22 Q. How old are you?

23 A. Seven.

24 Q. You are seven years old?

25 A. (Witness shakes head.)

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- 1 Q. Can you answer out loud?
- 2 A. Seven.
- 3 Q. You are seven years old. What is your
- 4 mama's name?
- 5 A. Donna.
- 6 Q. Do you have any brothers or sisters?
- 7 A. Yeah.
- 8 Q. How many brothers or sisters do you
- 9 have?
- 10 A. Three.
- 11 Q. What are their names?
- 12 A. Ray Ray, Punky, and Tasha.
- 13 Q. What grade are you in?
- 14 A. First.
- 15 Q. What school did you go to in the first
- 16 grade?
- 17 A. Madison.
- 18 Q. You went to Madison school?
- 19 A. (Witness shakes head.)
- 20 Q. Is that a yes?
- 21 A. (Witness shakes head.)
- 22 Q. Lorenzo, I need you to answer out loud.
- 23 A. Yes.
- 24 Q. When you raised up your right hand, you
- 25 promised to tell the truth. Do you understand that?

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1 A. Yeah.

2 Q. Do you know if a lie is a good thing or
3 a bad thing?

4 A. A bad thing.

5 Q. A lie is a bad thing?

6 A. (Witness shakes head.)

7 Q. Is that a yes? Answer out loud.

8 A. Yes.

9 Q. What happens if you tell a lie, Lorenzo?

10 A. You are a liar.

11 Q. Do you get in trouble? Do you get
12 punished?

13 A. Yeah.

14 Q. How do you get punished?

15 A. You told a lie.

16 Q. If you tell a lie, you get punished?

17 A. (Witness shakes head.)

18 Q. Is that a yes?

19 A. Yeah.

20 Q. If I said your name was Fred, would that
21 be true or would that be a lie?

22 A. A lie.

23 Q. If I said my jacket were black, would
24 that be true or would that be a lie?

25 A. A lie.

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1 Q. Why, what color is my jacket?

2 A. (Witness shakes head.)

3 Q. It is kind of a hard color. It's not
4 black, is it?

5 A. (Witness shakes head.)

6 Q. Is that a no? Would you answer out
7 loud?

8 A. No.

9 MS. LOWRY: May the record reflect that
10 my jacket is a tealish, greenish color but is not
11 black.

12 THE COURT: Sort of light greenish
13 color, yes.

14 Also I would like the record to
15 reflect as the questions have been posed so far by
16 Miss Lowry to young Lorenzo, she has prompted him
17 for the answers.

18 Prior to the time she has prompted
19 him for the answers, that he has shaken or nodded
20 his head in the same way as he ultimately answered,
21 either shaking his head in the negative or nodding
22 his head in the affirmative.

23 I would appreciate it if
24 Miss Lowry would continue to try to get from him a
25 verbal response so the record will be clear.

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1 MS. LOWRY: Yes, sir.

2 BY MS. LOWRY:

3 Q. Lorenzo, did you tell the police about
4 something bad that happened to you?

5 A. Yeah.

6 Q. And did something bad happen to you?

7 A. Yeah.

8 Q. Do you see the person who did something
9 bad to you here?

10 A. Yeah.

11 Q. Can you point to that person?

12 A. (Indicating.)

13 Q. Can you say what color shirt that person
14 has on?

15 A. Blue.

16 MS. LOWRY: May the record reflect the
17 identification of the defendant.

18 THE COURT: The record will so reflect.

19 BY MS. LOWRY:

20 Q. Lorenzo, where were you when this bad
21 thing happened?

22 A. At Westwood.

23 Q. And what kind of place is Westwood? Is
24 it a house?

25 A. (Witness shakes head.)

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1 Q. Is that a no?

2 A. Yeah.

3 Q. Tell the judge what bad thing happened
4 to you?

5 A. He put his thing in my butt.

6 Q. When you say he put his thing in your
7 butt, is a thing the same thing as a penis?

8 A. Yeah.

9 Q. And the person that put his penis into
10 your butt, that's this man right here with the blue
11 shirt?

12 A. Yeah.

13 Q. Where were you when this happened?

14 A. At Westwood.

15 Q. And did this man say anything to you
16 when that happened?

17 A. Yeah. He would kill me.

18 Q. What did he say to you?

19 A. He would kill me.

20 Q. He said he would kill you? Is that
21 right?

22 A. Yes.

23 Q. Did he hit you when this happened?

24 A. Yeah.

25 Q. Where did he hit you?

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- 1 A. On my eye.
- 2 Q. On your eye?
- 3 A. Yeah.
- 4 Q. Did he hit you any place else on your
- 5 body?
- 6 A. He threw me.
- 7 Q. He what?
- 8 A. He pushed me.
- 9 Q. He pushed you?
- 10 A. Yeah, and threw me.
- 11 Q. When this man put his penis in your
- 12 butt, did he put it inside of the hole in your butt?
- 13 A. Yeah.
- 14 Q. How did that feel?
- 15 A. Bad.
- 16 Q. After this happened, what did he do,
- 17 Larenzo?
- 18 A. I went to go tell my brother.
- 19 Q. Which brother did you tell?
- 20 A. Ray Ray.
- 21 Q. Where were you when you told Ray Ray?
- 22 A. At Westwood.
- 23 Q. Then who was the next person that you
- 24 told?
- 25 A. My mama.

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1 Q. Where were you when you told your mama?

2 A. At Westwood.

3 Q. Is Westwood here in Las Vegas?

4 A. (Witness shakes head.)

5 Q. Do you know where Westwood is?

6 A. It's by my house.

7 Q. It is by your house. Okay.

8 Did you show the police, did you
9 tell the police that this man hurt you, Lorenzo?

10 A. Yeah.

11 Q. And did you show them which man hurt
12 you? Did you point to him for the police?

13 A. Yes.

14 MS. LOWRY: I pass the witness,
15 your Honor.

16 THE COURT: Cross-examination.

17

18 CROSS-EXAMINATION

19 BY MR. CARUSO:

20 Q. Thank you.

21 Lorenzo, my name is Bob Caruso. I
22 will stand over here and talk to you.

23 Is that okay? Can you hear me all
24 right?

25 A. Yeah.

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1 Q. Now, when you say Westwood, is that near
2 your home where you live?

3 A. It's across the street.

4 Q. Is it a market?

5 A. (Witness shakes head.)

6 Q. That was a no. Say yes or no.

7 A. No.

8 Q. What is Westwood exactly?

9 A. It's a -- it is --

10 Q. Is it an apartment house?

11 A. (Witness shakes head.) It got stairs.

12 Q. There is a Sears there?

13 A. Stairs.

14 MS. LOWRY: I'm sorry. I think he said
15 stairs.

16 MR. CARUSO: Stairs. All right.

17 BY MR. CARUSO:

18 Q. And how did you get to Westwood by the
19 stairs? Did you walk over there by yourself?

20 A. With my brother.

21 Q. Ray Ray?

22 A. He went home.

23 Q. So let me just understand. You are at
24 the stairs with your brother; is that right?

25 A. (Witness shakes head.)

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- 1 Q. He went home?
- 2 A. (Witness shakes head.)
- 3 Q. And then, you know Gary. You know this
- 4 gentleman here is Gary, right?
- 5 A. Yes.
- 6 Q. When did Gary come over to you?
- 7 A. When it got dark.
- 8 Q. When it was getting kind of dark?
- 9 A. Yeah.
- 10 Q. You are by the stairs?
- 11 A. By the house that he pulled me in.
- 12 Q. Okay. He pulled you in a house?
- 13 A. Yeah.
- 14 Q. And this house, do you know where the
- 15 house is?
- 16 A. Yeah.
- 17 Q. Where is the house?
- 18 A. It's down the stairs.
- 19 Q. Down the stairs?
- 20 A. Yeah. It's an empty house.
- 21 Q. It is an empty house down the stairs.
- 22 And did he walk over to you before he pulled you
- 23 down the stairs?
- 24 A. What?
- 25 Q. Did he walk over to you before he went

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LAS VEGAS, NEVADA (702) 382-5015

1 down the stairs?

2 A. (Witness shakes head). Yeah.

3 Q. Where was he before then?

4 A. Up there.

5 Q. Up where?

6 A. Up there (indicating), up the stairs.

7 Q. He was up the stairs. Do you recall if
8 he was with anyone that you know?

9 A. Uh-huh.

10 Q. Do you remember who he was with?

11 A. (Witness shakes head.)

12 Q. Was he with anyone that you saw? You
13 have to say yes or no.

14 A. No.

15 Q. You didn't see him with anyone then?

16 A. No.

17 Q. Did you see him come down the stairs?

18 A. No.

19 Q. Now, think real hard now. You are down
20 the stairs with Gary. And is the sunshine out? Can
21 you see the sun, or is it dark?

22 A. It's dark.

23 Q. Do you have any idea, how long was it
24 before the sun went down? How long ago before the
25 sun went down, do you remember?

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1 A. No.

2 Q. And he pulled you down the stairs?

3 A. When I got right by the house, he pulled
4 me in.

5 Q. Pulled you in the house?

6 A. (Witness shakes head.)

7 Q. And you say he did something to you.

8 Did you have your clothes on when he did something
9 to you?

10 A. What?

11 Q. Did you have your clothing on when he
12 did something?

13 A. My clothes?

14 Q. Yes.

15 A. Yes.

16 Q. You had your clothing on. What did you
17 have on?

18 A. Uh?

19 Q. What did you have on? Did you have a
20 shirt on?

21 A. A shirt and some pants and some shoes
22 and some socks.

23 Q. You had on a shirt and some pants and
24 some shoes and some socks?

25 A. Yeah.

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LAS VEGAS, NEVADA (702) 382-5015

1 Q. Do you remember the color of the shirt?
2 Was it green, was it orange?

3 A. (Witness shakes head.)

4 Q. You don't remember the color?

5 A. No.

6 Q. Were you wearing, what kind of shoes
7 were you wearing, tennis shoes, cowboy boots?

8 A. OP's.

9 Q. OP's? Those are Reeboks, is that what
10 they are?

11 A. No, Shawnees.

12 Q. You had on that pair of shoes?

13 A. Yes.

14 Q. Do you recall --

15 THE COURT: Excuse me, counsel. The
16 record will reflect that the young man Lorenzo is
17 saying, pointing and showing that he has the same
18 shoes on today that he had on during the incident he
19 is testifying about.

20 BY MR. CARUSO:

21 Q. I believe they are Shawnee shoes?

22 A. What?

23 Q. You call them Shawnees?

24 A. No. Shawnee shoes.

25 Q. Do you recall what color pants you had

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LAS VEGAS, NEVADA (702) 382-5015

1 on?

2 A. What?

3 Q. Do you recall what color pants you had
4 on, or did you have on shorts?

5 A. I had some blue jeans on.

6 Q. Blue jeans on. Okay. Now, when you
7 said he did a bad thing to you, you had your blue
8 jeans on?

9 A. Yeah.

10 Q. I have, like I have a belt on. And I
11 have it about my waist. Is that where you had your
12 blue jeans on? Were you wearing a belt?

13 A. No.

14 Q. Were they about on your waist?

15 A. No.

16 Q. Where were they then?

17 A. Down here (indicating).

18 Q. When you say here, can you stand up and
19 point so I can see. I can't see. With your arm.

20 A. Right here (indicating).

21 Q. That's about your hips.

22 A. (Witness shakes head.)

23 Q. You had your pants on about at your
24 hips?

25 A. (Witness shakes head.)

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LAS VEGAS, NEVADA (702) 382-5015

1 Q. When he was doing this bad thing to you?

2 A. Yeah.

3 Q. How many times? Did this happen once he
4 did this bad thing to you? Did he do a bad thing to
5 you one time or two times?

6 A. One.

7 Q. One time?

8 A. (Witness shakes head.)

9 MS. LOWRY: I will lodge an objection
10 and ask for some foundation. As far as the bad
11 thing goes, since he testified to a sexual act and
12 also some physical abuse, clarify which bad thing we
13 are talking about.

14 THE COURT: That is sustained. Why
15 don't you get a little bit more. You realize that
16 you are talking to a child witness. Why don't you
17 try to get a little bit more descriptive, counsel.
18 It is okay if you use euphemisms. Be a little bit
19 more descriptive.

20 MR. CARUSO: I shall.

21 BY MR. CARUSO:

22 Q. Lorenzo, he hit you?

23 A. Yeah.

24 Q. Where did he hit you?

25 A. On my eyes.

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1 Q. In your eye?

2 A. Yeah.

3 Q. When he hit you, then he --

4 A. Pushed me.

5 Q. Pushed you on your shoulders?

6 A. (Witness shakes head.)

7 Q. Is that yes?

8 A. Yes.

9 Q. Into what did he push you?

10 A. What?

11 Q. Did you fall down?

12 A. Yeah.

13 Q. Then you say he stuck his penis up your
14 butt?

15 A. Yeah.

16 Q. Now, when I say a bad thing, when he put
17 his penis up your butt, you said you had your pants
18 on, where is that, by your hips, up around your
19 hips?

20 A. Right here (indicating).

21 Q. Can you stand up. Maybe that is a
22 little bit lower than your hips. You are pointing
23 to about the middle of your?

24 A. Pocket.

25 Q. About where I have my pockets?

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LAS VEGAS, NEVADA (702) 382-5015

1 A. Yes.

2 Q. That's roughly three inches below my
3 hips, would you say.

4 So now, when he put his penis in
5 your butt, you had your pants so that the top of
6 your pants was about where I'm right now, at my
7 fingers right now; is that right?

8 A. Yeah.

9 Q. That's about three inches below your
10 hips; is that right?

11 A. Yeah.

12 MR. CARUSO: Okay. No further
13 questions at this time, your Honor.

14 THE COURT: Redirect?

15 MS. LOWRY: No, your Honor.

16 THE COURT: I have some questions,
17 Larenzo. Did you tell the police what happened?

18 THE WITNESS: Yes.

19 THE COURT: What words did you use when
20 you told the police to say what he did to you?

21 THE WITNESS: He put penis in my butt.

22 THE COURT: Did you use those words or
23 did you use some other words to them?

24 THE WITNESS: I used those words.

25 THE COURT: You used those words?

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1 THE WITNESS: Yeah.

2 THE COURT: Do you have a name that you
3 call your penis, your own? Do you call it penis or
4 do you call it something else?

5 THE WITNESS: Penis.

6 THE COURT: Is that right?

7 THE WITNESS: Yes.

8 THE COURT: Is that yes?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Let me ask you this.
11 When he did this, were your pants on or were your
12 pants off when he put his penis in your butt?

13 THE WITNESS: Off.

14 THE COURT: How did they get off?

15 THE WITNESS: He made the thing.

16 THE COURT: Can you show me what he did?
17 Can you stand up and show me what he did?

18 THE WITNESS: Put his in my zipper.

19 THE COURT: Did what now?

20 THE WITNESS: He pushed this down and
21 my jeans.

22 THE COURT: He pulled his pants down?

23 THE WITNESS: No.

24 THE COURT: He pulled your pants down?

25 THE WITNESS: Yes, and then right

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1 there.

2 THE COURT: Okay. How far down? Did he
3 pull them down all the way over your butt?

4 THE WITNESS: No, to right there
5 (indicating).

6 THE COURT: Stand up and show me. Right
7 there?

8 THE WITNESS: Right here (indicating).

9 THE COURT: Okay. The record will
10 reflect that -- I want you, counsel, to come up and
11 see this.

12 So show me. Don't get nervous,
13 Lorenzo. Point again how far down did he pull your
14 pants?

15 THE WITNESS: Right there (indicating).

16 THE COURT: He is indicating, the
17 witness is indicating below his knee level.

18 And after he did that, did you put
19 your pants back on, or did he put them back on?

20 THE WITNESS: Me.

21 THE COURT: You pulled them back up?

22 THE WITNESS: Yeah.

23 THE COURT: How about your shirt, when
24 he put his penis in your butt, did you have your
25 shirt on?

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LAS VEGAS, NEVADA (702) 382-5015

1 THE WITNESS: Yeah.

2 THE COURT: You had that on?

3 THE WITNESS: Yeah.

4 THE COURT: Okay. Did you have on
5 underpants?

6 THE WITNESS: What?

7 THE COURT: Were you wearing underpants
8 that day?

9 MS. LOWRY: Judge, if I might. He
10 called them drawers.

11 THE COURT: You were wearing drawers,
12 under drawers?

13 THE WITNESS: It's --

14 THE COURT: You were. Did he pull those
15 down too?

16 THE WITNESS: Yeah.

17 THE COURT: The same with your jeans?

18 THE WITNESS: Yes.

19 THE COURT: I don't know if counsel
20 from either side has any further questions in view
21 of my questions.

22 The reason I asked these questions
23 is because this witness, who is seated up here in
24 the witness stand, during the questioning was
25 pointing to various parts of his legs as far as

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1 where things were, pulled down, and so forth.

2 I couldn't see really well where
3 he was pointing to. I wanted to have the record
4 clarify what he was indicating.

5 If either counsel want to ask more
6 questions based on that.

7 MS. LOWRY: The State does not, Judge.

8 THE COURT: Mr. Caruso?

9 MR. CARUSO: No, not at this time,
10 your Honor.

11 THE COURT: All right. This witness is
12 excused.

13 Miss Baldinatto, I would ask you
14 to take him outside and keep him with you. Be sure
15 he does not discuss anything with anybody.

16 I would also like the record to
17 reflect so that everybody knows -- Mr. Caruso, if I
18 am wrong on this, sir, feel free to disagree --
19 that while this young man was testifying,
20 Miss Baldinatto was seated over two or three feet
21 away to his right. And to my knowledge, she did not
22 speak to him or whisper to him or touch him during
23 his testimony. Is that your recollection?

24 MR. CARUSO: Consistent with my
25 observations as well, your Honor.

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1 THE COURT: Thank you.

2 MS. LOWRY: In fact, I think that there
3 wasn't even any eye contact between the two of them.

4 THE COURT: Right. He was seated
5 approximately three feet in front of Miss Baldinatto
6 so there was no eye contact. I wanted to establish
7 the record.

8 MS. LOWRY: Thank you.

9 THE COURT: Okay. Do you have any more
10 witnesses?

11 MS. LOWRY: One, your Honor, LaDonna
12 Richie.

13 THE COURT: Ma'am, would you come up
14 here and face the clerk. She is going to swear you
15 in. Right up here, ma'am, and she will swear you
16 in. We have some questions for you.

17
18 LaDONNA RICHIE,
19 having been first duly sworn, was
20 examined and testified as follows:

21
22 THE CLERK: Please be seated. State
23 your name and spell your last name, please.

24 THE WITNESS: LaDonna Richie,
25 R-I-C-H-I-E.

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1 THE CLERK: Can you spell your first
2 name.

3 THE WITNESS: L-A-D-O-N-N-A.

4 THE CLERK: Thank you.

5

6 DIRECT EXAMINATION

7 BY MS. LOWRY:

8 Q. Miss Richie, do you have a son named
9 Lorenzo Richie-Borrell?

10 A. Yes.

11 Q. In fact, did he just leave the
12 courtroom?

13 A. Yes.

14 Q. What is your date of birth?

15 A. 2-10-88.

16 Q. And where do you live?

17 A. 800 Reed Place.

18 Q. Is Reed Place here in Clark County, Las
19 Vegas?

20 A. Yes.

21 Q. Are you familiar with an area or a
22 location called Westwood?

23 A. Yes.

24 Q. What is Westwood?

25 A. It's an apartment. Like it has been

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LAS VEGAS, NEVADA (702) 382-5015

1 over there five years. I used to stay over there in
2 Westwood. Five years.

3 Q. Is Westwood an apartment complex?

4 A. Apartment complex, yes. Projects.

5 Q. Project?

6 A. Yeah.

7 Q. Where is it in relation to your home on
8 Reed?

9 A. It's across the street from my back
10 door.

11 Q. Did your son Lorenzo live with you at
12 the Reed address?

13 A. Yes.

14 Q. And were you all living there on July
15 9th of this year?

16 A. Yes.

17 Q. Did there come a point in the later
18 evenings hours about 10:00 on July 9th, that you
19 found out that something had happened to Lorenzo?

20 A. Yes.

21 Q. Where were you when you found out?

22 A. I was on my way to the store. They was
23 coming from over there.

24 Q. When you say they, who are you talking
25 about?

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1 A. I'm talking about Ray Ray, my son, and
2 my little son, Lorenzo.

3 Q. How old is Ray Ray?

4 A. Ray Ray is 12 years old.

5 Q. You said they were coming from where?

6 A. From on Westwood, from Westwood.

7 Q. From that Westwood area?

8 A. Yes.

9 Q. Did you have a conversation with Lorenzo
10 that evening where you found out something bad had
11 happened?

12 A. Yes.

13 Q. Where were you when this conversation
14 took place?

15 A. I was in my front room.

16 Q. And describe Lorenzo's appearance when
17 you had that conversation with him?

18 A. He was scared. He didn't want to tell
19 me what had happened to him because he was really
20 scared. And he was crying because he was hurting.
21 And he was ashamed. He didn't want to tell me
22 because he was so ashamed.

23 Q. You said he was crying?

24 A. Uh-huh.

25 Q. And you said he was hurting. How could

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1 you tell that your child was hurting?

2 A. Because he had this feeling on his face
3 that something was really wrong.

4 Q. Did you notice anything about the way he
5 was walking?

6 A. No, I did not.

7 Q. Did you notice any marks or bruises or
8 anything or cuts on his face or body?

9 A. Yes. His lip was busted. He had a knot
10 on the back of his head.

11 Q. Was there any blood?

12 A. Yes, it was on his shirt.

13 Q. And did you ask your child what had
14 happened to him?

15 A. Yes.

16 Q. What did he tell you?

17 A. He had told me that this man had gave
18 him some sunflower seeds and took him in an
19 abandoned apartment, hit him, slapped him, and hit
20 him with some kind of, I don't know, item in his
21 eye, and stuck his thing in his behind.

22 Q. Were you able to figure out where this
23 abandoned apartment was that Lorenzo was telling you
24 about?

25 A. Yes.

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1 Q. Where was it?

2 A. It was down the street. It was up on
3 the first floor. It's two floors, on the first
4 floor. And the man stayed upstairs. He showed him
5 where he lived.

6 Q. Did Lorenzo show you where this
7 happened?

8 A. Uh-huh.

9 THE COURT: Ma'am, you have to answer
10 yes or no.

11 THE WITNESS: Yes.

12 THE COURT: Because if you say uh-huh,
13 the court reporter -- let me explain. The court
14 reporter is taking everything down. And to some
15 people uh-huh means yes and to some people it means
16 no. If you would just specify, I would appreciate
17 it.

18 BY MS. LOWRY:

19 Q. When Lorenzo told you that this man had
20 put his thing in his behind or in his butt, did you
21 understand him to mean a penis when you were talking
22 about a thing?

23 A. Yes.

24 Q. What did you do after your child told
25 you this?

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1 A. I called the police.

2 Q. Did there come a point later that night
3 where Lorenzo identified or pointed out the person
4 who did this to him?

5 A. Yes.

6 Q. Were you with him when he did this?

7 A. Yes.

8 Q. And did you see the man that Lorenzo
9 pointed out that night?

10 A. Yes.

11 Q. Can you point to him and tell the Judge
12 what color clothes he has got on today?

13 A. Blue, dark blue.

14 MS. LOWRY: May the record reflect the
15 identification of the defendant.

16 THE COURT: The record will reflect that
17 the witness has identified the defendant.

18 MS. LOWRY: Thank you. I will pass the
19 witness.

20 THE COURT: Cross-examination,
21 Mr. Caruso.

22 MR. CARUSO: Yes.

23 / / /

24 / / /

25 / / /

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CROSS-EXAMINATION

BY MR. CARUSO:

Q. Briefly. Miss Richie, do you recall the time of the day that you first saw Lorenzo when he described these incidents to you?

A. I did not look at the time at that time, but I knew it was about that time, it being about 10:00 or 11:00.

Q. 10:00 or 11:00?

A. Yes.

THE COURT: Excuse me, counsel.

You are talking about in the evening, at night?

THE WITNESS: Yes.

BY MR. CARUSO:

Q. Sometime between 10:00 and 11:00 is when you saw Lorenzo and Ray Ray?

A. Yes.

Q. Did Lorenzo tell you about what time these events, these incidents occurred?

A. No, because he cannot tell time.

Q. Did he give you an idea about how long ago it was; five minutes, ten minutes, an hour?

A. No, he couldn't tell me, you know, the time. He cannot tell time.

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1 Q. He didn't tell you how long ago it was,
2 like use words like it just happened?

3 A. It just happened. It was fast. No, no,
4 I don't remember.

5 Q. Based upon what he told you, were you
6 able to, in your mind, get an idea as to when this
7 may have occurred based upon what Lorenzo told you?

8 A. Yes.

9 Q. What time was your impression that it
10 happened?

11 A. It had happened between 10:00 to 11:00,
12 about 15 minutes, because he was missing for 15 or
13 20 minutes.

14 Q. It happened between 10:00 and 11:00?

15 A. Yes.

16 Q. He was missing about 15, 20 minutes?

17 A. Yes.

18 Q. When did you first notice him missing?

19 A. My son, Ray Ray, had came in the house.

20 Q. Do you recall if you were watching
21 television at that time? If so, what you were
22 watching?

23 A. No.

24 Q. Do you recall what time Ray Ray came in
25 the house?

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1 A. He came in the house, and I asked him
2 where is Lorenzo.

3 Q. Do you recall what time it may have
4 been?

5 A. (Witness shakes head.)

6 MS. LOWRY: You need to answer out loud.
7 BY MR. CARUSO:

8 Q. It would have been somewhere between
9 10:00 and 11:00?

10 A. 10:00 or 11:00, yes.

11 Q. Between 10:00 and 11:00 or 10:00 or
12 11:00?

13 A. I will not know because the time that
14 the police got there, the time that I had called,
15 those are the times -- no, I do not. I was upset.
16 No, I did not know nothing about the time.

17 MR. CARUSO: The Court's indulgence,
18 please.

19 Thank you, your Honor. No further
20 questions at this time.

21 THE COURT: Okay. Ma'am, you are
22 excused as a witness. You still have to wait
23 outside the courtroom. Be sure not to discuss your
24 testimony with anybody else. Somebody will be out
25 to contact you very soon and tell you when you can

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1 take off.

2 THE WITNESS: Thank you.

3 THE COURT: Any more witnesses, State?

4 MS. LOWRY: No, your Honor.

5 THE COURT: Defense? Mr. Lewis, you and
6 your attorney at this time have the opportunity to
7 present any evidence that you may have, any
8 witnesses that you may have. And, of course, it's
9 your right to either testify or not testify as you
10 wish. So I will hear from your attorney what you
11 want to do in that regard.

12 MR. CARUSO: We have no witnesses,
13 Honor. Your I would strongly urge Mr. Lewis not to
14 testify.

15 THE DEFENDANT: No.

16 MR. CARUSO: I did request several
17 witnesses to come into today. They did not. I
18 would suggest he does not testify.

19 THE COURT: Are you going to rest?

20 MR. CARUSO: Yes. He will not testify.

21 THE COURT: You rest?

22 MR. CARUSO: Yes.

23 THE COURT: Either side want to argue
24 this?

25 MR. CARUSO: No, we would submit it,

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1 your Honor.

2 MS. LOWRY: Submit it, your Honor.

3 THE COURT: Okay. It appearing to me
4 from the Complaint on file herein and from the
5 evidence adduced at the preliminary hearing that a
6 crime has been committed as alleged, in re: Sexual
7 assault with a minor under 16 years of age; and
8 there being abundant probable cause to believe that
9 the defendant committed said crime, that the
10 defendant is held to answer to said charge in the
11 Eighth Judicial District Court, State of Nevada, in
12 and for the County of Clark.

13 I would like to talk, have counsel
14 talk to me about the matter of bail because I look
15 back in the records here, and it looks like the bail
16 was set at \$10,000 in this case.

17 MS. LOWRY: I wanted to address that
18 matter, your Honor. I would ask for a substantial
19 bail increase. I would ask for at least \$100,000.

20 THE COURT: What kind of record does the
21 defendant have?

22 MS. LOWRY: The defendant was just
23 placed on probation for lewdness with a minor where
24 the facts are that he had anal intercourse with a
25 boy.

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1 THE COURT: Placed on probation in what
2 state?

3 MS. LOWRY: Nevada.

4 THE COURT: In 1995?

5 MS. LOWRY: Department VII, just within
6 the last couple of months. His revocation on that
7 case is pending.

8 Furthermore, now we have got a
9 new law. Sexual assault with a minor carries life
10 without the possibility of a parole.

11 THE COURT: Mr. Caruso, do you want to
12 say anything? Does he have a prior conviction?

13 MR. CARUSO: Yes, your Honor. To my
14 knowledge, he has. And in terms of the scenario of
15 the events, the criminal history is accurate as she
16 described it.

17 However, we submit \$10,000 is an
18 amount that he would have great difficulty finding
19 if at all. I would ask the Court to leave it at
20 \$10,000.

21 THE COURT: Well, the U.S. Supreme Court
22 ruled about a little more than five years ago that
23 the provisions of the Federal Bail Reform Act had as
24 a part of that Act the concept that the court can
25 consider someone's dangerousness or the threat they

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1 might pose to society as a factor in setting bail
2 is significant because that aspect of the Bail
3 Reform Act was held to be constitutional.


4 I note that the Nevada statutory
5 scheme that talks about factors to consider for bail
6 includes a factor that has to do with the likelihood
7 of recidivism and/or threat to the community.

8 I find Mr. Lewis based on his 1995
9 conviction and the facts adduced today is an
10 unbridled, unspeakable threat to the community. And
11 I will at this time set his bail at \$250,000, cash
12 or surety in this case. He is remanded in custody
13 in lieu of bail and is held to answer as previously
14 announced.

15 THE CLERK: August 16, 9:00 a.m.,
16 District Court VII.

17 * * * * *

18 Attest: Full, true, accurate transcript of
19 proceedings.

20 
21 _____
22 Robert A. Surowiec, CCR #243, RPR

23
24
25
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FILED

OCT 27 10 50 AM '95

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9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,)	CASE NO.	C129824
)		
12 Plaintiff,)	DEPT. NO.	VII
)		
13 -vs-)	DOCKET NO.	P
)		
14 GARY LYNN LEWIS,)		
15 #1302110)		
)		
16 Defendant.)		

17 ORDER FOR PRODUCTION OF INMATE

18 DATE OF HEARING: 1-31-96
19 TIME OF HEARING: 9:00 A.M.

20 TO: SHERMAN HATCHER, Warden of the Southern Desert
21 Correctional Center;

22 TO: JERRY KELLER, Sheriff of Clark County, Nevada:

23 Upon the ex-parte Motion of THE STATE OF NEVADA, Plaintiff, by
24 STEWART L. BELL, District Attorney, through TERESA M. LOWRY, Deputy
25 District Attorney, and good cause appearing therefore,

26 IT IS HEREBY ORDERED that SHERMAN HATCHER, Warden of the
27 Southern Desert Correctional Center, shall be, and he is hereby
28 directed to produce GARY LYNN LEWIS, Defendant in Case No. C129824,
on a charge of SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF

CE19


1 AGE (F), wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as
2 the said Defendant is currently incarcerated in the Southern Desert
3 Correctional Center located in Indian Springs, Nevada, and his
4 presence will be required in Las Vegas, Nevada, commencing on the
5 31st day of January, 1996, at the hour of 9:00 o'clock a.m., and
6 continuing until completion of the Prosecution's case against the
7 said Defendant.

8 IT IS FURTHER ORDERED that JERRY KELLER, Sheriff of Clark
9 County, Nevada, shall accept and retain custody of the said
10 Defendant in the Clark County Detention Center, Las Vegas, Nevada,
11 pending completion of said matter in Clark County, or until the
12 further Order of this Court; or in the alternative shall make all
13 arrangements for the transportation of the said Defendant to and
14 from the Nevada State Prison facility which are necessary to insure
15 the Defendant's appearance in Clark County pending completion of
16 said matter, or until further Order of this Court.

17 DATED this 11th day of ~~September~~ ^{October}, 1995.

18 
19 DISTRICT JUDGE

20 STEWART L. BELL
21 District Attorney
22 Nevada Bar #000477

23 BY 
24 TERESA M. LOWRY
25 Deputy District Attorney
26 Nevada Bar #003901

27 /kjh
28

ORIGINAL FILED

DEC 14 8 20 AM '95
33

James H. ...
CLERK

OPI
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GARY LEWIS,
#1302110

Defendant.

Case No. C129824
Dept. No. VII
Docket p

ORDER FOR PRODUCTION OF INMATE

DATE OF HEARING: 1/31/96

TIME OF HEARING: 9:00 A.M.

TO: SHERMAN HATCHER, Warden of the Southern Desert Correctional Center;

TO: JERRY KELLER, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEWART L. BELL,
District Attorney, through TERESA M. LOWRY, Deputy District Attorney, and good cause appearing
therefore,

IT IS HEREBY ORDERED that SHERMAN HATCHER, Warden of the Southern Desert
Correctional Center shall be, and is, hereby directed to produce GARY LEWIS, Defendant in Case No.
C129824, on a charge of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
AGE (Felony - NRS 200.364, 200.366) wherein THE STATE OF NEVADA is the Plaintiff, inasmuch
as the said GARY LEWIS is currently incarcerated in the Southern Desert Correctional Center located
in Indian Springs, Nevada and his presence will be required in Las Vegas, Nevada commencing on

[CCV]

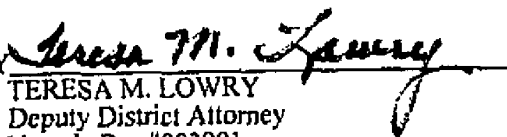
1 January 31, 1996, at the hour of 9:00 o'clock A.M. and continuing until completion of the prosecution's
2 case against the said GARY LEWIS.

3 IT IS FURTHER ORDERED that JERRY KELLER, Sheriff of Clark County, Nevada, shall
4 accept and retain custody of the said GARY LEWIS in the Clark County Detention Center, Las Vegas,
5 Nevada, pending completion of said matter in Clark County, or until the further Order of this Court; or
6 in the alternative shall make all arrangements for the transportation of the said GARY LEWIS to and
7 from the Nevada State Prison facility which are necessary to insure the GARY LEWIS's appearance in
8 Clark County pending completion of said matter, or until further Order of this Court.

9 DATED this 30th day of November, 1995.

10
11 
12 DISTRICT JUDGE

13
14 STEWART L. BELL
15 DISTRICT ATTORNEY
16 Nevada Bar #000477

17 BY 
18 TERESA M. LOWRY
19 Deputy District Attorney
20 Nevada Bar #003901

21
22
23
24
25
26
27
28 /lib

SUBPOENA

FILED

IN THE DISTRICT COURT
OF
THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA

PLAINTIFF

VS

LEWIS, GARY LYNN

DEFENDANT

CASE NUMBER 95129824X
DR NUMBER 9507100130
ARREST DATE 07

THE STATE OF NEVADA SENDS GREETINGS TO:

MILLER, G LOYAL
HP1787 SEXA
METRO POLICE

WK (702) 229-3421

YOU ARE COMMANDED, THAT ALL AND SINGULAR BUSINESS AND EXCUSE BEING LAID ASIDE,
TO ATTEND AND APPEAR BEFORE THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AT THE COURTROOM OF
SAID COURT, AT 200 SOUTH THIRD STREET, IN THE CITY OF LAS VEGAS, SAID COUNTY AND
STATE, ON THE 5TH DAY OF FEBRUARY, A.D. 1996, AT 12:00 O'CLOCK PM, OF SAID DAY,
THEN AND THERE TO TESTIFY AS WITNESS ON BEHALF OF THE STATE OF NEVADA IN A
CRIMINAL ACTION PROSECUTED BY THE STATE OF NEVADA AGAINST:

LEWIS, GARY LYNN

DUCES TECUM: PLEASE BRING ANY AND ALL EVIDENCE UNDER YOUR HAND.

GIVEN UNDER MY HAND AND SEAL OF THE SAID COURT THIS 11TH DAY OF JANUARY, 1996

STEWART L. BELL
DISTRICT ATTORNEY OF CLARK COUNTY

CONFIRM COURT SCHEDULE WITHIN 12 HOURS
PRIOR TO SCHEDULED APPEARANCE BY CALL-
ING 594-3091 DAY OR NIGHT.

BY TERESA M LOWRY
DEPUTY DISTRICT ATTORNEY.

STATE OF NEVADA }
COUNTY OF CLARK } SS

I HEREBY CERTIFY THAT ON 1/16, 1996, I SERVED THE WITHIN SUBPOENA
ON L. MILLER, BEING THE WITNESS NAMED THEREIN IN
CLARK COUNTY, NEVADA, BY SHOWING THE ORIGINAL TO SAID WITNESS PERSONALLY AND INFORMING
SAID WITNESS OF THE CONTENTS THEREOF.

DATED 1/16/96

BY [Signature]
PEACE OFFICER

CHARGES: SEXUAL ASSAULT VICTIM <14--LVMPD

CE31

OFF DUTY _____ PRE-TRIAL CONFERENCE _____
SUPERVISOR _____ D.O.A. _____
TOTAL MILES _____ FROM _____ TO _____

SUBPOENA

IN THE DISTRICT COURT
OF
THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
PLAINTIFF

VS

LEWIS, GARY LYNN

FILED
FEB 8 4 25 PM '96
CASE NUMBER: 95129824X AGENCY NUMBER: 9507100138
DEPARTMENT NUMBER: 07 CLERK

THE STATE OF NEVADA SENDS GREETINGS TO:

MILLER, G LOYAL
MPI787 SEKA
METRO POLICE

WK (702) 229-3421

YOU ARE COMMANDED, THAT ALL AND SINGULAR BUSINESS AND EXCUSE BEING LAID ASIDE, TO ATTEND AND APPEAR BEFORE THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AT THE COURTROOM OF SAID COURT, AT 200 SOUTH THIRD STREET, IN THE CITY OF LAS VEGAS, SAID COUNTY AND STATE, ON THE 22ND DAY OF MARCH, A.D. 1996, AT 12:00 O'CLOCK PM, OF SAID DAY, THEN AND THERE TO TESTIFY AS WITNESS ON BEHALF OF THE STATE OF NEVADA IN A CRIMINAL ACTION PROSECUTED BY THE STATE OF NEVADA AGAINST:
LEWIS, GARY LYNN

YOU ARE REQUIRED ALSO TO BRING WITH YOU THE FOLLOWING:
ANY AND ALL EVIDENCE UNDER YOUR HAND.

CASE NUMBER:
95129824X

* PLEASE CONTACT TERESA M LOWRY *
* ATTORNEY, AT 455-4711 *
* FOR A PRE-TRIAL CONFERENCE *

SUBPOENA NUMBER:

CONFIRM COURT SCHEDULE
WITHIN 12 HOURS PRIOR TO
SCHEDULED APPEARANCE:
CALL: 391-8886

STEWART L. BELL
DISTRICT ATTORNEY OF CLARK COUNTY

BY TERESA M LOWRY
DEPUTY DISTRICT ATTORNEY

STATE OF NEVADA

SS

COUNTY OF CLARK

I HEREBY CERTIFY THAT ON 2/7, 19 96, I (SERVED)
(TELEPHONICALLY CONTACTED) A PERSON WHO IDENTIFIED HIMSELF/HERSELF AS THE ABOVE
LISTED WITNESS BY MEANS OF
I THEREUPON IDENTIFIED MYSELF BY NAME AND OCCUPATION AND INFORMED HIM/HER OF THE
CONTENTS OF THE SUBPOENA. THE WITNESS THEREAFTER (DID) (DID NOT) PROMISE TO APPEAR AT
THE DATE AND TIME INDICATED ON THE SUBPOENA.

DATED 2/7/96

BY: [Signature]

CHARGES: SEXUAL ASSAULT VICTIM <16> - LVMPD

OFF DUTY _____

PRE-TRIAL CONFERENCE _____

SUPERVISOR _____

D.O.A. _____

TOTAL MILES _____

FROM _____

TO _____

ORIGINAL

FILED

FEB 23 11 19 AM '96

CLERK

OPI
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GARY LEWIS,
#1302110

Defendant.

Case No. C129824
Dept. No. VII
Docket P

ORDER FOR PRODUCTION OF INMATE

DATE OF HEARING: 03/20/96

TIME OF HEARING: 9:00 A.M.

TO: SHERMAN HATCHER, Warden of the Southern Desert Correctional Center,

TO: JERRY KELLER, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEWART L. BELL, District Attorney, through TERESA LOWRY, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that SHERMAN HATCHER, Warden of the Southern Desert Correctional Center shall be, and is, hereby directed to produce GARY LEWIS, Defendant in Case No. C129824, on a charge of SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Felony - NRS 200.364, 200.366) wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said Defendant is currently incarcerated in the Southern Desert Correctional Center located in Indian Springs, Nevada and his presence will be required in Las Vegas, Nevada commencing on March

1 20, 1996, at the hour of 9:00 o'clock A.M. and continuing until completion of the prosecution's case
2 against the said Defendant.

3 IT IS FURTHER ORDERED that JERRY KELLER, Sheriff of Clark County, Nevada, shall
4 accept and retain custody of the said Defendant in the Clark County Detention Center, Las Vegas,
5 Nevada, pending completion of said matter in Clark County, or until the further Order of this Court; or
6 in the alternative shall make all arrangements for the transportation of the said Defendant to and from the
7 Nevada State Prison facility which are necessary to insure the Defendant's appearance in Clark County
8 pending completion of said matter, or until further Order of this Court.

9 DATED this 22^d day of February, 1996.

10

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12

13

14

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

15

16

17

BY *Teresa Lowry*
TERESA LOWRY
Deputy District Attorney
Nevada Bar #003901

18

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27

28

/kl

A. Winters
DISTRICT JUDGE

ORIGINAL

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

FILED IN OPEN
JUN 12 1996

DISTRICT COURT
CLARK COUNTY, NEVADA

LORETTA BOWMAN,

By *Lori Brown*
Clerk

9 THE STATE OF NEVADA,
10 Plaintiff,
11 -vs-
12 GARY LYNN LEWIS,
13 #1302110,
14 Defendant.

CASE NO. C129824X
DEPT. NO. VII
DOCKET NO. P

AMENDED
INFORMATION

16 STATE OF NEVADA)
17) ss:
18 COUNTY OF CLARK)

18 STEWART L. BELL, District Attorney within and for the County
19 of Clark, State of Nevada, in the name and by the authority of the
20 State of Nevada, informs the Court:

21 That GARY LYNN LEWIS, the Defendant, having committed the
22 crime of SEXUAL ASSAULT (FELONY - NRS 200.364, 200.366), on or
23 about the 10th day of July, 1995, at and within the County of
24 Clark, State of Nevada, contrary to the form, force and effect of
25 statutes in such cases made and provided, and against the peace and
26 dignity of the State of Nevada, did then and there wilfully,
27 unlawfully, and feloniously sexually assault and subject LARENZO
28 RICHIE-BORRELL, to sexual penetration, to-wit: anal intercourse,

CE19

1 by inserting his penis into the anus of the said LARENZO RICHIE-
2 BORRELL, against his will.

3
4 STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

5
6 BY Teresa M. Lowry
7 TERESA M. LOWRY
Deputy District Attorney
8 Nevada Bar #003901
9
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26 DA#/95-129824X/ajc
27 LVMPD DR#9507100130
28 S/A - F
(TK3)

ORIGINAL

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

—FILED IN OPEN COURT—

JUN 12 1996

LORETTA BOWMAN, CLERK

DISTRICT COURT

By *Lori Brown*

Deputy

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,
11 -vs-
12 GARY LYNN LEWIS,
13 #1302110,
14 Defendant.

CASE NO. C129824X

DEPT. NO. VII

DOCKET NO. P

16 GUILTY PLEA AGREEMENT PURSUANT TO ALFORD DECISION

17 I hereby agree to plead guilty, pursuant to North Carolina v.
18 Alford, 400 U.S. 25 (1970), to: SEXUAL ASSAULT (FELONY - 200.364,
19 200.366), as more fully alleged in the charging document attached
20 hereto as Exhibit "1".

21 My decision to plead guilty by way of the Alford decision is
22 based upon the plea agreement in this case which is as follows:

23 The State retains the right to argue at the rendition of
24 sentence. The State will ~~not oppose concurrent~~ time between this
25 case and Case No. C122079X. *RECOMMEND 12PC*
C.L.L. *(12)*

26 CONSEQUENCES OF THE PLEA

27 By pleading guilty pursuant to the Alford decision, it is my
28 desire to avoid the possibility of being convicted of more offenses

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *Lori Brown*, Deputy

JUN 12 1996

CE19

1 or of a greater offense if I were to proceed to trial on the
2 original charge and of also receiving a greater penalty. I
3 understand that my decision to plead guilty by way of the Alford
4 decision does not require me to admit guilt, but is based upon my
5 belief that the State would present sufficient evidence at trial
6 that a jury would return a verdict of guilty of a greater offense
7 or of more offenses than that to which I am pleading guilty to.

8 I understand that the consequences of my plea of guilty by way
9 of the Alford decision are that I will be imprisoned for a period
10 of LIFE, with the possibility of parole; or twenty-five (25) years;
11 with a mandatory minimum of ten (10) years being served before I am
12 eligible for parole. I understand that the law requires me to pay
13 an Administrative Assessment Fee.

14 I understand that, if appropriate, I will be ordered to make
15 restitution to the victim of the offense to which I am pleading
16 guilty and to the victim of any related offense which is being
17 dismissed or not prosecuted pursuant to this agreement. I will
18 also be ordered to reimburse the State of Nevada for any expenses
19 related to my extradition, if any.

20 I understand that I am not eligible for probation for the
21 offense to which I am pleading guilty.

22 I understand that if more than one sentence of imprisonment is
23 imposed and I am eligible to serve the sentences concurrently, the
24 sentencing judge has the discretion to order the sentences served
25 concurrently or consecutively.

26 I also understand that information regarding charges not
27 filed, dismissed charges, or charges to be dismissed pursuant to
28 this agreement may be considered by the judge at sentencing.

1 I have not been promised or guaranteed any particular
2 sentence by anyone. I know that my sentence is to be determined by
3 the Court within the limits prescribed by statute. I understand
4 that if my attorney or the State or both recommend any specific
5 punishment to the Court, the Court is not obligated to accept the
6 recommendation.

7 I also understand that the Division of Parole and Probation
8 will prepare a report for the sentencing judge prior to sentencing.
9 This report will include matters relevant to the issue of
10 sentencing, including my criminal history. This report may contain
11 hearsay information regarding my background and criminal history.
12 My attorney and I will each have the opportunity to comment on the
13 information contained in the report at the time of sentencing.
14 Unless the District Attorney has specifically agreed otherwise,
15 then the District Attorney may also comment on this report.

16 WAIVER OF RIGHTS

17 By entering my plea of guilty pursuant to the Alford decision,
18 I understand that I am waiving and forever giving up the following
19 rights and privileges:

20 1. The constitutional privilege against self-incrimination,
21 including the right to refuse to testify at trial, in which event
22 the prosecution would not be allowed to comment to the jury about
23 my refusal to testify.

24 2. The constitutional right to a speedy and public trial by
25 an impartial jury, free of excessive pretrial publicity prejudicial
26 to the defense, at which trial I would be entitled to the
27 assistance of an attorney, either appointed or retained. At trial
28 the State would bear the burden of proving beyond a reasonable

1 doubt each element of the offense charged.

2 3. The constitutional right to confront and cross-examine any
3 witnesses who would testify against me.

4 4. The constitutional right to subpoena witnesses to testify
5 on my behalf.

6 5. The constitutional right to testify in my own defense.

7 6. The right to appeal the conviction, with the assistance of
8 an attorney, either appointed or retained, unless the appeal is
9 based upon reasonable constitutional jurisdictional or other
10 grounds that challenge the legality of the proceedings and except
11 as otherwise provided in subsection 3 of NRS 174.035.

12 VOLUNTARINESS OF PLEA

13 I have discussed the elements of all of the original charge
14 with my attorney, and I understand the nature of these charge
15 against me.

16 I understand what the State would have to prove each element
17 of the charge against me at trial.

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

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

23 I believe that pleading guilty by way of the Alford decision
24 and accepting this plea bargain is in my best interest, and that a
25 trial would be contrary to my best interest.

26 I am signing this agreement voluntarily, after consultation
27 with my attorney, and I am not acting under duress, coercion, or by
28 virtue of any promises of leniency, except for those set forth in

1 this agreement.

2 I am not now under the influence of any intoxicating liquor,
3 a controlled substance or other drug which would in any manner
4 impair my ability to comprehend or understand this agreement or the
5 proceedings surrounding my entry of this plea.

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

9 DATED this 12 day of ~~August~~, ^{June} 1996, 1995.

10
11 Mary J. Lewis
12 GARY LONN LEWIS
13 Defendant

14 AGREED TO BY:

15
16 Susan M. Loney
17 Deputy District Attorney
18
19
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named
3 herein, as an officer of the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations
5 contained in the charge to which guilty plea are being entered and
6 the entry of a guilty plea pursuant to the Alford decision.

7 2. I have advised the Defendant of the penalties for each
8 charge and the restitution that the Defendant will be ordered to
9 pay.

10 3. All pleas of guilty offered by the Defendant pursuant to
11 this agreement and the Alford decision are consistent with the
12 facts known to me and are made with my advice to the Defendant.

13 4. To the best of my knowledge and belief, the Defendant:

14 a. Is competent and understands the charges and the
15 consequences of pleading guilty as provided in this
16 agreement.

17 b. Executed this agreement and will enter all guilty
18 pleas pursuant hereto voluntarily.

19 c. Was no under the influence of intoxicating liquor, a
20 controlled substance or other drug at the time I
21 consulted with the defendant as certified in paragraphs
22 1 and 2.

23 Dated: This 12 day of June, 1996
24 August, 1995.

25 P. D. Cam
26 ATTORNEY FOR DEFENDANT
27
28

ajc

SUBPOENA

IN THE DISTRICT COURT

THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

FILED

THE STATE OF NEVADA,
PLAINTIFF

CASE NUMBER:

AGENCY NUMBER:

95129824X

9507100130

VS

DEPARTMENT NUMBER:

07

LEWIS, GARY LYNN

CLERK

THE STATE OF NEVADA SENDS GREETINGS TO:

MILLER, G LOYAL
MF1787 SEXA
METRO POLICE

WK (702) 229-3421

YOU ARE COMMANDED, THAT ALL AND SINGULAR BUSINESS AND EXCUSE BEING LAID ASIDE, TO ATTEND AND APPEAR BEFORE THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AT THE COURTROOM OF SAID COURT, AT 200 SOUTH THIRD STREET, IN THE CITY OF LAS VEGAS, SAID COUNTY AND STATE, ON THE 17TH DAY OF JUNE, A.D. 1996, AT 12:00 O'CLOCK P.M. OF SAID DAY, THEN AND THERE TO TESTIFY AS WITNESS ON BEHALF OF THE STATE OF NEVADA IN A CRIMINAL ACTION PROSECUTED BY THE STATE OF NEVADA AGAINST:
LEWIS, GARY LYNN

YOU ARE REQUIRED ALSO TO BRING WITH YOU THE FOLLOWING:
ANY AND ALL EVIDENCE UNDER YOUR HAND.

CASE NUMBER:

95129824X

SUBPOENA NUMBER:

CALL 391-8887
AFTER 6:00 P.M. THE DAY
BEFORE COURT
MONDAY THROUGH FRIDAY

STEWART L. BELL
DISTRICT ATTORNEY OF CLARK COUNTY
BY TERESA M LOWRY
DEPUTY DISTRICT ATTORNEY

STATE OF NEVADA

SS

COUNTY OF CLARK

I HEREBY CERTIFY THAT ON 6/10, 19 96, I (SERVED)
(TELEPHONICALLY CONTACTED) A PERSON WHO IDENTIFIED HIMSELF/HERSELF AS THE ABOVE
LISTED WITNESS BY MEANS OF K. LYNN
I THEREUPON IDENTIFIED MYSELF BY NAME AND OCCUPATION AND INFORMED HIM/HER OF THE
CONTENTS OF THE SUBPOENA. THE WITNESS THEREAFTER DID PROMISE TO APPEAR AT THE DATE
AND TIME INDICATED ON THE SUBPOENA.

6/10/96 BY: [Signature]

DATED

06/06/96

CHARGES: SEXUAL ASSAULT VICTIM <16--LVAPD

CE31

OFF DUTY

PRE-TRIAL CONFERENCE

SUPERVISOR

D.D.A.

TOTAL PILES

FROM

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U.S. MAIL

ORIGINAL

FILED

AUG 14 10 02 AM '96

Forrest L. Thompson
CLERK

1 JOCF
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 GARY LYNN LEWIS,
12 #1302110

13 Defendant.

Case No. C129824
Dept. No. VII
Docket P

14
15 JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 12th day of June, 1996, the Defendant GARY LYNN LEWIS, appeared
17 before the Court herein with his counsel and entered a plea of guilty to the crime of SEXUAL
18 ASSAULT (CATEGORY A FELONY), committed on the 9th day of July, 1996, in violation of NRS
19 200.364, 200.366 and

20 WHEREAS, thereafter on the 2nd day of August, 1996, the Defendant being present in court
21 with his counsel ROBERT D. CARUSO, and WILLIAM D. KEPHART, Deputy District Attorney, also
22 being present; the above entitled Court did adjudge the Defendant guilty thereof by reason of his plea
23 of guilty and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to the
24 Nevada Department of Prisons for a term of LIFE WITH THE POSSIBILITY OF PAROLE, to be
25 served CONCURRENTLY with C122079. Defendant is to receive ZERO days credit for time served.

26 ///

27 ///

CE303 ///

AUG 12 1996

AUG 15 1996

THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judgment of Conviction as part of the record in the above entitled matter.

DATED this 13th day of August, 1996, in the City of Las Vegas, County of Clark, State of Nevada.


DISTRICT JUDGE

DA#95F06244X/lib
LVMPD DR#9507100130
SxAsslt - F
(TK3)

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83 - 88
WILL FOLLOW VIA
U.S. MAIL

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-C- 9

Gary L. Lewis # 47615
Nevada State Prison
P.O. Box 607
Carson City, Nevada 89702

FILED

2009 FEB -31 P 1:40

[Signature]
CLERK OF THE COURT

Gary L. Lewis
Petitioner

Eight Judicial District
Court...
County of Clark..

vs

State of Nevada
Respondant

Case No: C129824
Dept. No: #12

2/17/09

(C1)
MCI

Motion for Order of Withdrawal of
Attorney of Record and transfer
of All Records

RECEIVED
FEB 3 2009
CLERK OF THE COURT

RECEIVED
JAN 29 2009
CLERK OF THE COURT

Please take Note that Petitioner,
Gary L. Lewis, in proper person. Respectfully
request this Honorable Court to issue a
mandamus order that Attorney of Records
Robert D. Caruso, transfer to petitioner all
Records, proper documents, Pleadings and transcripts
that are tangible personal property to
Gary L. Lewis.

This motion made and based on N.R.S. 7.055
the motion is made on the following points and
Authorities, proper, and pleading herein.

(1)

- (1). Petitioner Gary L. Lewis, in a Amended Information, Charging Deft. Gary L. Lewis with Count 2 - Sexual Assault (F) and Guilty Plea Agreement Filed in open Court. "Negotiations": The State retains the right to argue at the time of sentencing, but will recommend that the time is concurrent with the probation violation deft. is presently serving. Lewis was arraigned and pled guilty pursuant to the Afford decision to Sexual Assault. Petitioner has requested all records that Counsel used in the plea agreement negotiations.
- (2). Petitioner motion for withdrawal of Attorney of Records was granted on July 19th, 2007. Mr. Coruso now needs to release all Plea Agreement, Negotiations and any other motions, or papers in his custody.
- (3). Petitioner now is filing his Federal Habeas Corpus 28 USC. 2254 petition and requires these records. Pursuant to N.R.S. Chapter 34, Petitioner has one year to file said petition. Further, Counsel needs to turn over the transcripts and any other motions or papers in this matter.

Rule 23; Appearances. Substitution,
Withdrawal or Change of Attorney's.

(2d part) or until counsel is
discharged by the client in writing.

Gary L. Lewis, has requested
such, and has not received such items.

N.R.S. 7.055 deals with the duty
of a discharged attorney to transfer
to his client, upon his discharge.
The contents of his case file and
states (2d part) N.R.S. 7.055 Duty of
discharged attorney to deliver the
materials to the client, enforcement,
adjudication of claims to materials

(1). An attorney who has been discharged
by his client, he shall upon demand
and payment of fee's due from client,
he shall immediately deliver to the
client all papers, documents, pleadings,
and items tangible personal property
with the order of the court, which belongs
or are prepared for that client.

All the documents are related to
Case Number: C129824, Sexual Assault
with a minor under sixteen years
of age a guilty plea agreement pursuant
to afford decision.

(2). Nevada Supreme Court Rule 166 also
deals with discharged attorney's
obligations to his client upon termination

(3)

to deliver papers and documents to him and States (in part) (4) upon the termination of Representation. A Lawyer shall surrender papers and property to which client is entitled:

Moreover, the United States Supreme Court has consistently held that a defendant is entitled to "full" and complete Record from the lower Courts for purpose of attacking conviction.

See Generally; Griffin v Illinois
351 U.S. 12 76 S.Ct 585 (1956).

- (3) Counsel has no fee's due to him.
- (4) Petitioner has requested records and received "Another Client's" records which was sent back to Mr. Caruso office, address "Return to Sender."
- (5) A Letter was attached requesting his records and has not received the "records due".

Therefore based on the above, petitioner, Gary L. Lewis does request a Court order, such as "Writ of Mandamus" from this Court (A) officially remove counsel and deliver the documents due to him that are his in his name.

Motion filed pursuant to Haines v. Ledyer 404 U.S. 519, 520 (1972). "To be liberally construed."

(4)

Affidavit of Gary L. Lewis

The foregoing petition is true and correct, and the items sent were not from petitioner's case and returned to sender.

Petitioner, Gary L. Lewis, Now request his records, for Habeas Corpus.

The foregoing is true and correct,
N.R.S. 208.105 28 USC 1746

Gary L. Lewis #47615
Gary L. Lewis

Affirmation

The undersigned does hereby affirm that the preceding motion does not contain the social security number of any person pursuant to NRS 239B.030

Gary L. Lewis #47615
Gary L. Lewis

Certificate of Mail Service

I, Gray L. Lewis, hereby Certify
that on this date 1-23-09 January, 2009,
I mailed a true and correct copy
by first class mail, postage
prepaid to the following:

Clerk of Eight Judicial Court
District Court
200 Lewis Avenue 3rd fl
Las Vegas NV. 89155

Attorney

Robert D. Coruso
309 South Third Street
Suite #226
Las Vegas, NV. 89155

~~Gray L. Lewis~~ #47615
Gray L. Lewis

(6).

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NEVADA DEPARTMENT
OF CORRECTIONS

JAN 27 2009

NEVADA STATE PRISON

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CERT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C129824X

DEPT. NO. XII

GARY LYNN LEWIS
#1302110

Defendant.

CERTIFICATE OF MAILING

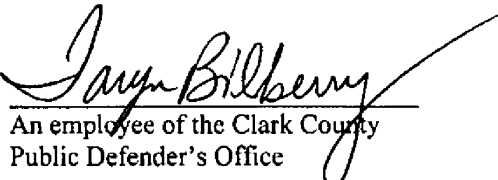
THIS is to certify that on the 4th day of February, 2009 a true and correct copy of the following documents:

1. Temporary Custody Record.
2. Las Vegas Metropolitan Police Department - Officer's Report.
3. Declaration of Arrest.
4. Incident Report.
5. Property Report.
6. Forensic Laboratory Examination Request.
7. Arrest Report.
8. Declaration for the Withdrawal of Whole Blood Sample.
9. Medical Records.
10. Police Reports including statements of Lorenzo Ritchie-Burrell, Raynaldo Sykes, Ladonna Richie, Cassandra Simmons, Gary Lewis, and conversation with Tanya and Sabrina.
11. Reporter's Transcript of Preliminary Hearing.
12. Guilty Plea Agreement Pursuant to Alford Decision.
13. Amended Information.
14. Presentence Investigation Report.
15. Certificate of Mailing - filed with the Court.

were deposited in the United States mail in Las Vegas, Nevada, in a sealed envelope, postage

RECEIVED
FEB 04 2009
CLERK OF THE COURT

Gary Lynn Lewis #47615
Nevada State Prison
P.O. Box 607
Carson City, NV 89702


An employee of the Clark County
Public Defender's Office

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FILED

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA.

GARY LYNN Lewis
Petitioner

CASE# C129824
XII

VS

GREG SMITH WARDEN NSP
State of Nevada et AL
Respondant.

"First Amendment Petition"

Writ of Habeas Corpus

CHAPTER 34 of SED AND

* "JUDICIAL NOTICE" Fed Roid 201 *
Nev Rev Stat 47.130-47.170

Petitioner GARY LYNN Lewis, Pro-se Petitioner files
this "First Amendment Petition" AND "Writ of Habeas Corpus".
Pursuant to Judicial Notice NRS 47.130-47.170, CHAPTER 34 et seq
28 USC 2254 NRS 176.515

This Petition files Pursuant to Haines v Kerner 404 US
519, 520 (1972) "Pro-se litigants entitled to be liberally
Construed".

The Writ is based upon Papers documents, and
affidavit attached hereto, as well as Papers on
file with the Court.

February 8, 2009

Gary L Lewis
Gary L Lewis #47615

Procedural History

Petitioner Gary LYNN Lewis, was charged by way of information, in Clark County Nevada, on August 15, 1995, with Sexual Assault with a minor under sixteen years of age, while serving a Probation Violation in Case number C122079. The initial Arraignment was held Aug. 16, 1995 and Petitioner was represented by Public Defender Robert D CARUSO. #1631. He waived the "60 DAY Rule".

ON JANUARY 31, 1996, at Calender Call, TERESA LOWRY the State's Prosecutor did not bother to show up for the hearing, it was trails. And later recalled, the State was to prepare a transport order, for MARCH 20, 1996 as Petitioner was in NDOC custody. Petitioner represented by PD Robert Caruso at that hearing.

At the March 20, 1996, CALENDER CALL, the Court vacated the MARCH 25, 1996 TRIAL AND RESET issue in ORDINARY COURSE, STATING that previously "waived 60 DAY Rule". MR CARUSO, then requested transfer of custody to Clark County Detention Center.

The Calender Call, Hearing before Judge A William Murphy on 6/12/1996. The State files a "Amended Information" that charged Defendant Lewis with 1 Count, "Sexual Assault" (A Felony). A Violation of NRS 200.364, 200.366 in Case number C-129824X. The State Presented a Plea Agreement, devoid of any details except the Amended Information number C129824. The Court had Defendant sign the Plea Agreement, and ordered him transferred back to Jean Prison to serve his Probation Violation in Case # C122079. The Judge Agrees and ORDERED it so.

AT Sentencing, hearing JULY 24, 1996, the defense Counsel Robert D Caruso, told the Court that the Defendant

was in fact illiterate, and just transported from Jean Nevada Prison, and needed time to Read PSI Report to him. Court orders matter Continued. Defendant Remanded to Clark County Detention Center Pending Sentencing. So ordered, matter Continued to July 31, 1996.

Public defender Stephen M Immerman, Represents the defendant, at the July 31, 1996 hearing as Mr Coruso, was not available and Continued matter to August 2, 1996.

At Sentencing hearing August 2, 1996, the Judge ADJUDGED defendant GUILTY of Sexual Assault, in addition to \$1500 Administrative Fee, defendant Sentenced to Nevada Department of Corrections for a term of Life with the Possibility of Parole to be Served "Concurrently" with Case # C122679. He Receives 0 DAYS Credit for time Served, and Remanded to Jean Nevada NDOP.

(A) Judicial Notice

Petitioner Files this Judicial Notice Pursuant To Nevada Revised Statute 47.130-47.170, Fed R. Civ. 201

Fed R. Civ. 201, NRS 47.130(2)(b) Scope of the Rule, Kinds of facts

A JUDICIALLY NOTICED fact must be one not subject to reasonable dispute in that it is either "Generally Known within the territorial Jurisdiction of the Trial Court or (2) Capable of Accurate and Ready determination by resort to sources whose Accuracy cannot reasonably be questioned.

Fed R. Civ. 201(d) NRS 47.150(2)(b) "When Mandatory"

A Court shall take Judicial notice, if requested by a Party, and SUPPLIED with the Necessary information.

Fed R. Civ. 201(e) Nev. Rev. Stat. 47.160 "Opportunity to be heard"

A Party is entitled to be heard as to the propriety of taking judicial notice and the tenor of matter to be noticed (in relevant part)

Fed R. Civ. 201(f) NRS 47.170 "Time for taking Notice"

Judicial notice may be taken at any stage of proceedings

The Court will take Notice that: Case # 95FO6244X

(1) Defendant was charged in the Clark County Justice Court with a Felony Sexual Assault, a violation of Nev. Rev. Stat. 200.364, 200.366 by Criminal Complaint "and held illegally on this offense Complaint until August 15, 1995, for which it has no jurisdiction.

(2) The ORIGINAL Information was filed August 15, 1995 in a untimely fashion. Per NRS 174.511, 18 USC 316(a) 18 USC 316(b) Any information or indictment charging an individual with the commission of an offense, shall be filed within 30 DAYS from the date on which such individual was arrested or served a summons in connection with those charges. "Nevada's law is more restricted"

Under Speedy Trial Act of 1974, 18 USC 3162(a)(1) states:

if in the case of any individual against whom a Complaint is filed charging such individual with an offense no indictment or information is filed within the time limit of 18 USC 316(b) 30 DAYS (or) extended by 18 USC 316(h) (which doesn't apply here) of this CHAPTER, such charge against that individual, contained in the Complaint shall be dismissed or otherwise dropped (in relevant part)

(3) The "Amended information" filed on June 12, 1996 was barred by the Statute of Limitations as it has inherited the clock of the ORIGINAL information, and even then.

(4) There was a "fatal Variance" between the Conviction Information on the Judgment. (And) the Criminal Information Listed on the "Criminal Complaint"; the "Criminal Information" (August 15 1995) or the "Amended CRIMINAL Information" (June 12, 1996)

(5) The Judgment of Conviction, States that:
whereas: on the 12th DAY of June 1996 the Defendant GARY LYNN Lewis APPEARED before the Court herein with his Counsel and entered a Plea of Guilty to the Crime of Sexual Assault (Category A Felony) Committed on the (9th day of July 1996) in Violation of ND 200364, 200366 (in Relevant Part)

Query How Can You enter a Plea, to something you were never charged with because it was not going to happen for another month?
on a different date and year?

(B) Jurisdiction of the Court

Under Federal Rules of Civil Procedure 60(b) the Court MAY Relieve A Party from the Final Judgment, Order, or Proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, excusable Neglect
- (2) Newly discovered evidence
- * (3) "Fraud" whether (intrinsic or extrinsic) misrepresentation or misconduct by the opposing party ("Emphasis Added")
- * (4) "The Judgment is Void" ("Emphasis Added")

Petitioner now Requests Declaratory Judgment as explained hereafter 28 USC 2201, 2202 (28 USC 2254)

(C)(1) Petitioner was Denied his Constitutional Right to effective assistance of Counsel at the entry of Plea, and Sentencing, in Violation of his 5, 6, 8, 14 Amendments of the Constitution of the United States, As well as the Nevada Constitution.

Petitioner Gary Lynn Lewis, Avers his Counsel, in this matter, Appointed by Clark County Nevada, Robert D CARUSO, was denied his Civil Rights under 16102 of Authority, (18 USC 241, 242) (in conjunction with the Clark County District Attorney's office, represented by William D Kephart, # 3649, Teresa Lowey # 3901, Jennifer TobLiatti # 5152 Melanie A Tobiasson # 4515) as explained hereafter.

The Question of whether a defendant has received ineffective assistance of Counsel at trial in Violation of the Sixth and Fourteenth Amendments of US Constitution is a mixed Question of Law and Fact. And is thus Subject to independent review State v Love 109 Nev 1136, 1138, 865 P2D 322, 323 (1993) The Court should review a Claim of ineffective Assistance of Counsel under the reasonably effective Assistance Standards enunciated by the US Supreme Court in Strickland v Washington And adopted by the Nevada Court's in Ward v Lyons 100 Nev 430, 683 P2D 504, 510 (1984) See also Dawson v State 108 Nev 112, 115, 825 P2D 593, 595 (1992) Under this two Prong test, a defendant who challenges the adequacy of his or her's Counsel's representation must show (1) that Counsel's Performance was deficient and (2) that the defendant was Prejudiced by this deficiency Strickland v Washington 466 US 687 (1984)

(C)(2) Counsel, was ineffective, in failing to seek a Ruling of Jurisdiction, in the Justice Court on a Felony Complaint, of which the Court Cannot rule.

The Prosecutor in this matter filed a Criminal Felony Complaint, with the Justice Court in Clark County Township, Alleging Sexual Assault, A Violation of NRS 200.364, 200.366. CASE # 95FO6244X

The Jurisdiction of the Justice Court's is limited to Misdemeanor offenses, and even if it had Jurisdiction, it Cannot Proceed by a Criminal Complaint, by Nevada Law, it must be by Information or indictment See NRS 170.015, 173.015, 173.025.

In 1978, the Legislature, AFFIXED the Jurisdictions AND Amended the Nevada Constitution Art 6 § 6, Art 6 § 8. while the District Court has Jurisdiction, it WAS lost, when the Prosecutor Proceeded by "Criminal Complaint" in the District Court (See index Statement)

The "Criminal Complaint" was Valid, in the District Court until August 15th 1995, AND Petitioner WAS LEGALLY CHARGED UNDER that COMPLAINT From July 10 1995 until August 15, 1995. The Court Did not have Jurisdiction, Cf. § 4.370 of New Rev Statute

Petitioner was denied Due Process, EQUAL Protection, right to Fundamental Fairness at trial, and ineffective Assistance of Counsel, in Violation of his 5th 6th 8th 14th Amendments of US Constitution the Justice Court never had Jurisdiction to Proceed in this matter.

(C)(3)

APPOINTED Counsel WAS ineffective, for failing to Raise the JURISDICTIONAL Limits of Court had been exceeded in this matter. Denying Due Process, Due Process, EQUAL Protection, RIGHT to Redress Government for Grievances, AND allowing without objection, Court to Violate Separation of Powers. Denying Fundamental Fairness at trial, in Violation of US Constitutional Amendments 1, 4, 5, 6, 8, 9, 14

The Court, Allowed the Prosecutor, to file a Criminal COMPLAINT ALLEGING A felony charge, Counsel should have known that the Prosecutor was exceeding his Statutory Jurisdiction.

The Nevada Law, States in NRS 172.015, 173.015 NRS 173.015 States Generally "ALL CHARGES ARE to be by "Information or indictment."

IF the Counsel in this matter had investigated the Nevada Revised Statutes he was hired to defend, he would have discovered, that the "Statutory Provisions" Cited above did have different Factual Contexts.

"To Hold otherwise, would render every Statute A Chameleon" the meaning of the words in a Statute cannot Change, with the Statutes Application See: CLARK V MARTINEZ 543 US 371, 125 SCT 716 (2005)

ADDITIONALLY the "CRIMINAL COMPLAINT", the First information, AND the Second Amended, ALL list the Crime, AS CHARGED AS BEING JULY 10, 1995, Yet

The Petitioner was Convicted of a Crime on July 9th 1996. "There was No Charge on this Date" AND it, Constitutes A Violation of due Process. to take the Liberty for a offense without Notice, AND a MEANINGFUL OPPORTUNITY to defend" Jackson v Virginia 443 US 307, 314, 99 Sct 2781 (1979) CF: Strone v United States 361 US 212, 217 80 Sct 270 (1960) (noting that A Court Cannot Permit a defendant to be tried on charges not made in a indictment Against him) Cole v Arkansas 333 US 196, 201, 68 Sct 514 (1948) holding that SPECIFIC notice of a Charge, AND Chance to be heard in a trial of issues by that Charge, if desired Are Among the Constitutional RIGHTS of every Accused in a Criminal Proceeding in ALL Courts State or Federal. CF JACKSON v Gibson 169 F3D 1239, 1252 (10 Cir 1999) "A Charging instrument MAY Violate the Sixth Amendment by failing to provide a defendant with Adequate notice of the Nature and Cause of the Accusations filed Against him. See also Jones v Smith 231 F3D 1227, 1233 (9 Cir 2001) "noting the difference between a Constructive Amendment and a Mere Variance"

Additionally Because the Judge entered a Judgment in this Case, it operates AS ACQUITTAL of the Charges offense, AND Can operate AS Actual Collateral estoppel Covered within the Double Jeopardy Clause of the 5th, 14th Amendments, of US Constitution.

The Court's finding operated AS Resolution Corrector of the Charges offense AND Acquittals by Judge Can be GUARDED by the Same STANDARDS AS A JURY Smalis v Pennsylvania

476 US 140, 145, 106 SCT 1745 (1986) See also Smith v Massachusetts 543 US 462, 125 SCT 1133, 1134 (2005) Cf: Fong Foo v United States 369 US 141, 143 82 SCT 671 (1962)

OUR SYSTEM Mandates that to be found Guilty of a Crime, a defendant must be charged AND Convicted ACCORDING TO PROPER LEGAL PROCEDURES AND STANDARDS, Wilson v US 250 F2d 312, 324 (9C1258) The Defendant in this Present Case, was denied that RIGHT. He was "Acquitted" by the JUDGE of the "information charged", yet Convicted of something He was never charged with.

The Sixth Amendment Provides that: (in relevant part) that in Criminal Prosecutions the Accused shall enjoy the RIGHT to be informed of the nature and Cause of the Accusation (USCA 6.14) In this regard, the Due Process Clause, and the Sixth Amendment Provide essentially the Same Protection to defendants Fowcett v Bablitch 962 F2d 617, 618 (7C1292)

Petitioner was denied effective Assistance of Counsel, in failing to Review the Judgment of Conviction, and make the Court Aware that it was not legal AND Binding, AND in Violation of the Law. See ABA STANDARDS for Criminal Justice, The defense function STANDARD 3.1.1(b) (Role of the defense Counsel) 3.2 (Interviewing the Client) AND (4.1) Duty to investigate.

The Petitioner was Denied effective Assistance of Counsel at trial, Denied Due Process, EQUAL Protection RIGHT to Fundamental Fairness, Cruel and Unusual Punishment, Slavery AND involuntary Servitude, AND Loss of Liberty without lawful Due Process in Violation of 1, 4, 5, 6, 8, 9, 13, 14 Amendments of US Constitution

(C)(4) Counsel was ineffective, in failing to have a mental evaluation performed on his Client in that his Client has a Low IQ, and Cannot Read or Write

In this Matter, there was whole Sale Violation of Petitioners RIGHTS UNDER Color of Law, in Violation of due Process.

The Attorney before Sheparding his Client, Should have had a mental evaluation performed, as his Client is of Low IQ, Illiterate to the Point he Cannot Read or Write, and Counsel kept it Quiet until the PSI Report was Prepared See Court minutes

Counsel also had a fundamental Duty to advise him of Weaknesses in the States Case, and failure to do this Renders his Plea involuntary. Marshall v State 540 So2d 921 (FLA App 1989)

Defense Counsel was ineffective for failing to investigate Petitioners backgrounds, or Present ANY mitigating evidence whatsoever in this Case at Sentencing. See Wiggins v Smith 539 US 510, 522, 123 SCT 2527 (2003) CF: Clark v Mitchell 425 F3D 270, 284 (6, 2005)

Counsel, was ineffective in this regard, as his Client could not defend himself, and had no ability to Understand the Plea Agreements Presented, in Violation of Due Process, Equal Protection, RIGHT to Conflict free Counsel. That Amounts to Conspiracy with State to Convict a mentally Challenged individual, with Charges, he was Never Charged with on the Date Alleged which Violates..

his 1, 3, 4, 5, 6, 8, 9, 13, 14 US Constitutional Amendments

(D) Because the State is entitled to one and only one opportunity to require an ACCUSED to stand trial, and the charges, (where a information was filed are then subject to Statute of Limitations) the Conviction of a Second Uncharged offense Violates Double Jeopardy, Due Process equal Protection and Fundamental Fairness at trial, Due to Cumulative Errors, Gross Misconduct by the Prosecutor and the systematic deprivation of Petitioners right to effective Assistance of Counsel. in Violation of his 1, 3, 4, 5, 6, 8, 9, 13, 14 US Constitutional Amendments (18 USC 241, 242)

The Original Charges, once the Statute of Limitations has Run, and Conviction of a Second Uncharged offense, Amounts to Denial of Right to Redress Government for Grievances, Government intrusion in his Personal Life (USCA 3) Unlawful Seizure, (USCA 4) Violation of Due Process, equal Protection Life and Liberty, without due Process of Law, (USCA 5) Counsel was ineffective for failing to Appeal the Judgment, when, it was ILLEGAL facially, (to the defense) Amounting to Cruel and Unusual Punishment, (USCA 8) by Powers not within the Governments Lawful Jurisdiction, (USCA 9) Amounting to Slavery and involuntary Servitude after the expiration of time to Prosecute July 10th 1995 Crime Charges (USCA 13) made Applicable to the States, by.

The 14 Amendment Due Process Clause of the Federal Constitution.

Here the Proper Procedure, leading to a Conviction were not followed. The Purpose of the Nevada Revised Statutes, is to deter State Actors from using their Badge of Authority to deprive individuals of their Federally Guaranteed Rights. And to Provide relief in the Federal forum, when the State deterrence fails Wyatt v Cole 504 US 158 112 SCT 1827, 1830 (1992)

There was no Information filed as to the July 9th 1996, Conviction, nor was there a trial yet he was convicted. This amounts to Slavery and Involuntary Servitude, and Government intrusion into his Personal Life without Due Process of Law. in Violation of his 1st, 3rd, 4th, 5th, 6th, 8th, 13, 14 Amendments of the US Constitution

Here Cumulative Errors Warrant Reversal.

To Show Prejudice the Claimant must Show a reasonable Probability that but for Counsel's errors the result of the trial would have been different Kirksey v State 112 NEV 980, 987 (N8) 923 P2D 1102, 1107 (1996) citing Strickland v Washington 466 US 668, 687 104 SCT 2052 (1984)

On the issue of the Judgment alone there is a reasonable Probability that the result of the trial would be different, the Cumulative impact of the trial Counsel's deficiencies Prejudices Petitioner Coppen v Fitzharris 586 F2D 1325, 1333 (9CIR78) (en banc) Court denied 440 US

974.(1979) MAK v BLODGETT 970 F2D 614.(9C1292)(1993)
HARRIS BY AND THROUGH RAMSEYER v WOOD 64F3D 1432
(9C1295)

Petitioner is entitled to Immediate Release.
AND/or evidentiary Hearing. Under NRS 34.770, A
Post Conviction habeas Petitioner is entitled to a
evidentiary hearing, only if he supports his Claims with
specific factual allegations that if true would entitle
him to relief. Means v State 120 Nev ADV REP 101, 103 P3D
25(2004) Where a defendant makes A Colorable Claim of
Ineffective assistance, And where there has not been a
State or Federal hearing on this Claim, the Court of Appeals
must remand to the District Court for a evidentiary
Hearing. Smith v McCormick 914 F2D 1153 (1990)

Petitioner is entitled to be Released AND for a
evidentiary hearing

Conclusion

Taken as a whole, Petitioner was denied his
RIGHT to effective Assistance of Counsel, Fundamental
Fairness AND due Process, In the instant matter
reversal is warranted.

Dated February 8 2009

Gary L Lewis
GARY L. LEWIS
47615

Certificate of Service

I GARY L Lewis. Do Swear Pursuant to the Nevada Rules of Civil Proc 5(b) I PLACED A true and Correct COPY of First Amendment Petition Postage PAID First Class US mail Addressed to.

EIGHTH JUDICIAL DIST COURT
DAVID ROGER DIST ATTY
200 E Lewis Ave.
Las Vegas Nevada 89155

District Attorney Catherine Masto
100 N Carson Carson City Nevada
89701

The undersigned Affirms Pursuant to NRS 239.130
This document Contains No Social Security Numbers
FRCP 49.1

February 9, 09

Gary L Lewis
#47615

Affidavit of GARY L Lewis

Carson County
Carson City Nevada: Being Duly sworn and deposed Says:

I am the Petitioner, and believe ALL matters are true and Correct, and in order to Comply with Judicial notice, Attach true and Correct, Unredacted Copies of Court Documents. Fed Ruled 201 NRS 47.130-47.170

Under Penalty of Perjury NRS 208.165 28USC1746
Dated

February 9, 2008

Gary L Lewis
#47615
Prepared by Steve Brownstein #64697 GARY L Lewis.
#47615

Copy news #47615 (U6)
PO Box 607 ~~REDACTED~~ S-B-16
Carson City Nev 89702

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DISTRICT COURT
CLARK COUNTY, NEVADA

GARY Lynn Lewis
Plaintiff,
vs.
State of Nevada et al
Greg Smith Warden et al
Defendant,

Case No. C129824
Dept. No. _____
Docket _____

ORDER

Upon reading the motion of defendant, GARY Lynn Lewis, requesting
Requesting Appointment of Counsel, AS he
is illiterate and mentally Challenged.

DATED and DONE this ____ day of _____, 20__.

DISTRICT COURT JUDGE

3/3/09

RECEIVED

FEB 26 2009

DEPT. 12

ORIGINAL

MAR 9 2 16 PM '09

E. J. Smith
CLERK OF THE COURT

ORDR

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
KRISTEN KRAMER
Deputy District Attorney
Nevada Bar #0010112
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-

GARY L. LEWIS,
#1302110

Defendant.

Case No. C129824
Dept No. XII

**ORDER GRANTING DEFENDANT'S PRO PER MOTION TO
WITHDRAW ATTORNEY OF RECORD**

DATE OF HEARING: FEBRUARY 17, 2009
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 17TH day of February, 2009, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by DAVID ROGER, District Attorney, through KRISTEN KRAMER, Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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CLERK OF THE COURT

DATED this 4 day of ~~February~~, 2009.

DISTRICT JUDGE

KRISTEN KRAMER
Deputy District Attorney
Nevada Bar #0010112

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3 GARY LYNN Lewis
PO Box 607 # 47615
CARSON CITY NEVADA
89702

FILED 9

2009 MAR 23 | A 11:42

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA.

GARY LYNN Lewis
Petitioner

CASE# C129824
Dept# 12

VS

Greg Smith Warden NSP:etal
State of Nevada.
Respondant

"First Amendment Petition"
Writ of Habeas Corpus
NRS CHAP 34 et seq (AND)
"JUDICIAL Notice" of Court
error FREED 201 Nev Rev Stat
47.130-47.170

"Evidentiary Hearing Requested"

Petitioner GARY LYNN Lewis in Pro-se files this "first amendment Petition, Writ of Habeas Corpus Pursuant to "Judicial notice" NRS 47.130-47.170 ("CLAIM of Court Jurisdictional error in the Judgment of Conviction")

This Petition filed Pursuant to Haines v Kerner 404 US 519, 520 (1972) "Pro-se Litigant's Are entitled to be liberally Construed"

Court Previously denied Petition February 26, 2009, based on Lack of Jurisdiction, which is administrative Error and Now Seeks to Clarify the Courts Jurisdiction and to Have Judgment Corrected.

This Petition based on PAPERS documents, files within this matter Supported BY AFFIDAVIT, AND documents to Comply with Judicial notice.

Dated March 4 2009

CLERK OF THE COURT
MAR 13 2009
(1) RECEIVED

GARY L Lewis
GARY LYNN Lewis
#47615

Procedural History

Petitioner GARY LYNN Lewis, was charged by way of information, in Clark County Nevada, on August 15, 1995, with Sexual Assault with a minor under sixteen years of age, while serving a Probation Violation in Case number C122079. The initial Arraignment was held Aug. 16, 1995 and Petitioner was represented by Public Defender Robert D CARUSO. #1631. He waived the "60 DAY Rule".

ON JANUARY 31, 1996, at Calendar Call, Tereasa Lowry the State's Prosecutor did not bother to show up for the hearing, it was trailed. And later recalled, the State was to prepare a transport order, for March 20, 1996 as Petitioner was in NDOC custody. Petitioner represented by PD Robert Caruso at that hearing.

At the March 20, 1996, Calendar Call, the Court vacated the March 25, 1996 trial and reset issue in ordinary course, stating that previously "waived 60 DAY Rule". MR Caruso, then requested transfer of custody to Clark County Detention Center.

The Calendar Call Hearing before Judge A William Moupin on 6/12/1996. The State files a "Amended Information" that charged Defendant Lewis with 1 Count, "Sexual Assault" (A Felony). A Violation of NRS 200.364, 200.366 in Case number C-129824X. The State presented a Plea Agreement, devoid of any details except the Amended Information number C129824. The Court had Defendant sign the Plea Agreement, and ordered him transferred back to Jean Prison to serve his Probation Violation in Case # C122079. The Judge Agreed and ORDERED it so.

At Sentencing, hearing July 24, 1996, the defense Counsel Robert D Caruso, told the Court that the Defendant

(2)

(2)

was in fact illiterate, and just transported from Jean Nevada Prison, and needed time to Read PSI Report to him. Court orders matter continued. Defendant Remanded to Clark County Detention Center Pending Sentencing. So ordered, matter continues to July 31, 1996.

Public defender Stephen M Innerman, Represents the defendant, at the July 31, 1996 hearing as Mr Caruso, was not available and continued matter to August 2, 1996.

At Sentencing hearing August 2, 1996, the Judge ADJUDGED defendant GUILTY of Sexual Assault, in addition to \$2500 Administrative Fee, defendant Sentenced to Nevada Department of Corrections for a term of life with the Possibility of Parole to be served "Concurrently" with Case # C122079. He Receives 0 DAYS Credit for time served, and Remanded to Jean Nevada NDOC.

(A) Judicial Notice

Petitioner files this Judicial Notice Pursuant To Nevada Revised Statute 47.130-47.170, Fed R. Civ. 201

Fed R. Civ. 201, NRS 47.130(2)(b) Scope of the Rule, Kinds of facts

A JUDICIALLY NOTICE fact must be one not subject to reasonable dispute in that it is either (1) Generally known within the territorial Jurisdiction of the trial Court or (2) Capable of Accurate and Ready determination by resort to sources whose Accuracy cannot reasonably be questioned.

Fed R. Civ. 201(d) NRS 47.150(2)(b) "when Mandatory"

A Court shall take Judicial notice, if requested by a Party, and SUPPLIED with the Necessary information.

(3)

(3)

Fes Revid 201(e) Nev Rev Stat 47.160 Opportunity to be heard.

A Party is entitled to be heard as to the Propriety of taking JUDICIAL notice and the tenor of the matter to be noticed (in relevant Part)

Fes Revid 201(f) Nev Rev Stat 47.170 "Time for taking notice"

JUDICIAL notice may be taken at ANY stage of the Proceedings:

* (B) The Court is being Asked to Notice that the Actual *
JUDGMENT of Conviction, does not COMPLY with
NRS 176.105, which States under subsection(d) that:
(1) the exact Amount of Credit Granted for time
Spent in Confinement before Conviction.

The JUDGMENT Shows the Sentence is to Run Concurrent
with C122079, but does not State "the exact Amount"

(2) While the Petitioner was Present on August 2, 1996,
at a hearing to hear the Judge A William MAUPIN,
ORALLY Pronounce his Sentence. The Actual ORDER
itself was not Signed until Several days Later. August
13, 1996. even then the Sentence was not final until
AUGUST 14th 1996, when it was filed by the Clerk.

(A) this Violates the defendant's due Process RIGHT to
be Sentenced by the Judge, with His defense Counsel Present
as well as himself, (FRCP 43) NRS 178.388 NRS 178.397 The
RIGHT IS BASED on the due Process RIGHT to be Present at
Sentencing. See Brewer v. Raines 670 F2D 117, 118, 119 (9 CIR 82) See
also Forrest v. California 422 US 806, 819, 95 SCT 2525, 2533 (WIS) (1975)

It is well Accepted that the defendant has the RIGHT
to be Present at Sentencing, where his absence must Frustrate
the Fairness of the Proceedings. (USCA 5, 14) As well as the
6th and 14th Amendment, RIGHT to effective Assistance of Counsel

(4)

(4)

at Sentencing. See e.g. Memph v Rhay 389 US 128, 133, 88
SCT 254256 (1967) Compare US v Green 680 F2D 183, 188 (DC Cir 82)
Cert denied 459 US 1210 (1983)

Here the Petitioner was Actually Sentenced by the Clerk of
the Court, because although the Judge Signed the document
on August 13, 1996 only when Siled by the Court Clerk
on August 14th 1996 did the Judgment of Conviction become
final. NRS 176.105 Miller v Hayes 95 Nev 927, 929 604 P2D 117, 118
(1979) See also State of NM v Watchman 111 NM 727, 730, 809
P2D 641, 644 (CT APP 1991)

The Petitioner was Sentenced "in Absentia" without a
knowingly and intelligently made Waiver US v Cochran
770 F2D 850, 851 (9C1285) Farrow v US 580 F2D 1339, 1355 (9C1278)
See also Johnson v Zerbst 304 US 458, 464, 58 SCT 1019, 1023
(1938)

(B) Had Defense Counsel been Present, with a
Judge, as well as the Prosecutor, it stands to reason
someone would have realized that the Judgment Signed
Convicted Mr Lewis of a Crime, on a Date that
was never charged in the information thus Violating
his US Constitutional Rights, to be Sentenced by
a Judge, in a Courtroom, with his defense Counsel Present,
as well Petitioner, And to Address the Government as to
that defective Judgment. US Constitutional Amends 1, 3
4, 5, 6, 8, 14. See NRS 34, 726 (1A)

The Petitioner is entitled to have his Judgment Corrected
as to the Date of the Crime he was Convicted of, and the
Correct Prosentence Confinement Credits. Johnson v State 120 NV 296

(C) Pursuant to NRS 176.033 the Judgment does not contain
a "minimum Sentence" as required by Statute. (176.033 (1A))
CF NRS 34, 500 (1-6)

(5)

(c)(1) Petitioner was Denied his Constitutional Right to effective assistance of Counsel at the entry of Plea, and Sentencing, in Violation of his 5, 6, 8, 14 Amendments of the Constitution of the United States, As well as the Nevada Constitution.

Petitioner Gary Lynn Lewis, Avers his Counsel, in this matter, Appointed by Clark County Nevada, Robert D CARUSO, was denied his Civil Rights under 18 USC 241, 242 (in Conjunction with the Clark County District Attorney's office, represented by William D Kephart, # 3649, Teresa Lowery # 3901, Jennifer TobLiatti # 5152 Melanie A Tobiaasson # 4515) as explained hereafter.

The Question of whether a defendant has received ineffective assistance of Counsel at trial in Violation of the Sixth and Fourteenth Amendments of US Constitution is a mixed Question of Law and fact. and is thus Subject to independent review State v Love 109 Nev 1136, 1138, 865 P2D 322, 323 (1993) The Court should review a Claim of ineffective Assistance of Counsel under the reasonably effective Assistance Standards enunciated by the US Supreme Court in Strickland v Washington and adopted by the Nevada Court's in Warren v Lyons 100 Nev 430, 683 P2D 504, 510 (1984) See also Dawson v State 108 Nev 112, 115, 825 P2D 593, 595 (1992) Under this two Prong test, a defendant who challenges the advocacy of his or her's Counsel's representation must show (1) that Counsel's Performance was deficient and (2) that the defendant was Prejudiced by this deficiency Strickland v Washington 466 US 687 (1984)

(6)

(C)(2) Counsel, was ineffective, in failing to seek a Ruling of Jurisdiction, in the Justice Court on a Felony Complaint, of which the Court Cannot rule.

(A) THE Prosecutor in this matter filed a Criminal Felony Complaint, with the Justice Court in Clark County Township, Alleging Sexual Assault, A Violation of NRS 200.364, 200.366.

The Jurisdiction of the Justice Court's is Limited to Misdemeanor offenses, AND even if it has Jurisdiction, it Cannot Proceed by a Criminal Complaint, by Nevada Law, it must be by "Information or indictment" See NRS 170.015, 173.015, 173.025.

In 1978, the Legislature, AFFIXED the Jurisdictions AND Amended the Nevada Constitution Art 6 § 6, Art 6 § 8. while the District Court had Jurisdiction, it WAS lost, when the Prosecutor Proceeded by "Criminal Complaint" in the District Court (See index Statement)

The "Criminal Complaint" WAS VALID, in the District Court until August 15th 1995, AND Petitioner WAS LEGALLY CHARGED under that Complaint From July 10 1995 until August, 15, 1995. The Court Did not have Jurisdiction, Cf. 4.370 of New Rev Statute

Petitioner was denied Due Process, EQUAL Protection, right to Fundamental Fairness at trial, AND ineffective Assistance of Counsel, in Violation of his 5th 6th 8th 14th Amendments of US Constitution the Justice Court never had Jurisdiction to Proceed in this matter.

(7)

(B) the ORIGINAL INFORMATION was filed AUGUST 15, 1995 in a untimely manner See NRS 173.035(3) NRS 174.511, NRS 178.556 AND 18 USC 3161(b) Under NEVADA LAW, A INDIVIDUAL must be CHARGED by Information or indictment within 15 days of arrest. The Federal Statute listed above is a bit more relaxed.

Any Information or indictment charging an individual with Commission of an offense shall be filed within 30 DAYS from the date on which such individual was arrested or served a summons in connection with those charges.

Under the Speedy Trial Act of 1974, 18 USC 3162(a)(1) it states:

if in the case of any individual against whom a Complaint is filed charging such individual with an offense, No Indictment or Information is filed within the time limit of 18 USC 3161(b) or as extended by 18 USC 3161(b) (which doesn't apply here) of this Chapter, Such Charge Against that individual contained in the Complaint shall be dismissed or otherwise dropped (in relevant part)

(C) The Amended information filed June 12, 1996 was barred by the Statute of Limitations as it had inherited the clock of the ORIGINAL information AND even then.

There was a fatal Variance between the Conviction Judgment of Conviction, and the information listed within the Criminal Complaints and the subsequent CRIMINAL Information ultimately filed AUGUST 15, 1995 AND the Amended Criminal Information filed on June 12, 1996.

(D) The Judgment of Conviction states that:
Wherein on the 12th DAY of June 1996. The defendant GARY Lynn Lewis, APPEARED before the Court herein

(8)

with his Counsel, AND entered A Plea of Guilty to the Crime of Sexual Assault "Category A" Felony Committed on the 9th DAY of JULY 1996, in Violation of NRS 200.364, AND NRS 200.366. (in relevant Part)

This is Complete Fraud, AND there is no Such Plea Agreement filed in this matter.

Under Federal Rules of Civil Procedure 60(b) the Court may relieve A Party from the final Judgment order, or Proceeding for the following reasons:

FRCIVP 60(b)(3) "Fraud" whether "intrinsic or extrinsic" misrepresentation or misconduct by the opposing Party.
"emPHASIS Added"

Petitioner moves this Court for a Writ of Habeas Corpus, Pursuant to 28 USC 2254 NRS 34, et seq AND/OR Declaratory Judgment 28 USC 2201, 2202.

(9)

(C)(3)

Appointed Counsel was ineffective, for failing to raise the Jurisdictional Limits of Court had been exceeded in this matter. Denying Due Process, Equal Protection, Right to Redress Government for Grievances, And allowing without objection, Court to Violate Separation of Powers. Denying Fundamental Fairness at trial, in Violation of US Constitutional Amendments 1, 4, 5, 6, 8, 9, 14

The Court, Allowed the Prosecutor to file a Criminal Complaint alleging a felony charge, Counsel should have known that the Prosecutor was exceeding his Statutory Jurisdiction.

The Nevada Law, States in NRS 172.015, 173.015 NRS 173.015 States Generally "ALL Charges are to be by "Information or indictment."

IF the Counsel in this matter had investigated the Nevada Revised Statutes he was hired to defend, he would have discovered, that the "Statutory Provisions" Cited above did have different factual Contexts.

"To Hold otherwise, would render every Statute A Chameleon" The meaning of the words in a Statute cannot Change with the Statutes Application See: Clark v Martinez 543 US 371, 125 Sct 716 (2005)

ADDITIONALLY the "Criminal Complaint", the First information, And the Second Amended, ALL list the Crime, AS CHARGED AS being July 10, 1995, Yet

(10)

The Petitioner was Convicted of a Crime on July 9th 1996. There was "No Charge on this Date" AND it constitutes a Violation of due Process. to take the Liberty for a offense without Notice, and a MEANINGFUL OPPORTUNITY to defend" Jackson v Virginia 443 US 307, 314, 99 SCT 2781 (1979) CF: Stroone v United States 361 US 212, 217 80 SCT 270 (1960) (noting that a Court Cannot Permit a defendant to be tried on charges not made in a indictment Against him) Cole v Arkansas 333 US 196, 201, 68 SCT 514 (1948) holding that SPECIFIC notice of a Charge, and chance to be heard in a trial of issues by that Charge, if desired Are Among the Constitutional RIGHTS of every Accused in a Criminal Proceeding in ALL Courts State or Federal. CF JACKSON v Gibson 169 F3D 1239, 1252 (10 CIR 99) "A CHARGING instrument MAY Violate the Sixth Amendment by failing to Provide a defendant with Adequate notice of the Nature and Cause of the Accusations filed Against him. See also Jones v Smith 231 F3D 1227, 1233 (9 CIR 2001) "noting the difference between a Constructive Amendment and a Mere Variance"

ADDITIONALLY Because the Judge entered a Judgment in this Case, it operates AS ACQUITTAL of the CHARGES offense, AND Can operate AS Actual Collateral estoppel Covered within the Double Jeopardy Clause of the 5th 14th Amendments, of US Constitution.

The Court's finding operated AS Resolution Corrector not of the CHARGES offense AND Acquittals by Judge Can be GUARDED by the Same STANDARDS AS A JURY Smalis v PENNSYLVANIA

(11)

476 US 140, 145, 106 S.Ct. 1745 (1986) See also Smith v Massachusetts 543 US 462, 125 S.Ct. 1133, 1134 (2005) Cf: Fong Foo v United States 369 US 141, 143 82 S.Ct. 671 (1962)

Our SYSTEM Mandates that to be found Guilty of a Crime, a defendant must be charged AND Convicted ACCORDING TO PROPER LEGAL PROCEDURES AND STANDARDS, Wilson v US 250 F.2d 312, 324 (9 Cir 58) The Defendant in this Present Case, was denied that RIGHT. He was "Acquitted" by the Judge of the "information charged", yet convicted of something He was never charged with.

The Sixth Amendment Provides that: (in relevant part) that in Criminal Prosecutions the Accused shall enjoy the RIGHT to be informed of the nature AND Cause of the Accusation (USCA 6.14) In this regard, the Due Process Clause, and the Sixth Amendment Provide essentially the same Protection to defendants Fowett v. Bablitch 962 F.2d 617, 618 (7 Cir 92)

Petitioner was denied effective Assistance of Counsel, in failing to Review the Judgment of Conviction, and make the Court Aware that it was not legal AND Binding, AND in Violation of the Law. See ABA STANDARDS for Criminal Justice, the defense function STANDARD 3.1.1(b) (Role of the defense Counsel) 3.2 (Interviewing the Client) AND (4.1) Duty to investigate.

The Petitioner was Denied effective Assistance of Counsel at trial, Denied Due Process, EQUAL Protection RIGHT to Fundamental Fairness, Cruel and Unusual Punishment, SLAVERY AND involuntary Servitude, AND Loss of Liberty without lawful Due Process in Violation of 1, 4, 5, 6, 8, 9, 13, 14 Amendments of US Constitution

(12)

(C)(4) Counsel was ineffective, in failing to have a mental evaluation performed on his Client in that his Client has a low IQ, and cannot read or write

In this Matter, there was whole Sale Violation of Petitioners RIGHTS UNDER Color of Law, in Violation of due Process.

The Attorney before Sheparding his Client, Should have had a mental evaluation performed, as his Client is of Low IQ, Illiterate to the point he cannot read or write, and Counsel kept it quiet until the PSI Report was prepared See Court minutes

Counsel also had a fundamental Duty to advise him of Weaknesses in the States Case, and failure to do this Renders his Plea involuntary. Marshall v State 540 So2d 921 (FLA APP 1989)

Defense Counsel was ineffective for failing to investigate Petitioners background, or Present any mitigating evidence whatsoever in this Case at Sentencing. See Wiggins v Smith 539 US 510, 522, 123 Sct 2527 (2003) CF: Clark v Mitchell 425 F3d 270, 284 (6, 2005)

Counsel, was ineffective in this regard, as his Client could not defend himself, and had no ability to Understand the Plea Agreements Presented, in Violation of Due Process, Equal Protection, Right to Conflict free Counsel that Amounted to Conspiracy with State to Convict a mentally Challenged individual, with Charges, he was Never Charged with on the Date Alleged which Violated..

(13)

his 1, 3, 4, 5, 6, 8, 9, 13, 14 US Constitutional Amendments

(D) Because the State is entitled to one and only one opportunity to require an ACCUSED to stand trial, and the charges, (where a information was filed are then subject to Statute of Limitations) the Conviction of a Second Uncharged offense Violates Double Jeopardy, Due Process equal Protection and Fundamental Fairness at trial, Due to Cumulative Errors, Gross Misconduct by the Prosecutor and the systematic deprivation of Petitioners right to effective Assistance of Counsel. in Violation of his 1, 3, 4, 5, 6, 8, 9, 13, 14 US Constitutional Amendments (18 USC 241, 242)

The Original Charges, once the Statute of Limitations has Run, and Conviction of a Second Uncharged offense, Amounts to Denial of Right to Redress Government for Grievances, Government intrusion in his Personal Life (USCA 3) Unlawful Seizure, (USCA 4) Violation of Due Process, equal Protection Life and Liberty, without due Process of Law, (USCA 5) Counsel was ineffective for failing to Appeal the Judgment, when it was ILLEGAL facially, (to the defense) Amounting to Cruel and Unusual Punishment, (USCA 8) by Powers not within the Governments Lawful Jurisdiction, (USCA 9) Amounting to SLAVERY AND involuntary Servitude after the expiration of time to Prosecute JULY 10th 1995 Crime CHARGES (USCA 13) MADE APPLICABLE to the States, by

(14)

the 14 Amendment Due Process Clause of the Federal Constitution.

Here the Proper Procedure, leading to a Conviction were not followed, the Purpose of the Nevada Revised Statutes, is to deter State Actors from using their Badge of Authority to deprive individuals of their Federally Guaranteed RIGHTS. AND to Provide relief in the Federal forum, when the State deterrence fails. Wyatt v Cole 504 US 158 112 SCT 1827, 1830 (1992)

There was no Information filed as to the July 9th 1996. Conviction, nor was there a trial yet he was convicted. This amounts to Slavery and Involuntary Servitude, and Government intrusion into his Personal Life without Due Process of Law. in Violation of his 1st, 3rd, 4th, 5th, 6th, 8th, 13, 14 Amendments of the US Constitution

Here Cumulative Errors Warrant Reversal.

To Show Prejudice the Claimant must show a reasonable Probability that but for Counsel's errors the result of the trial would have been different Kirksey v State 112 NEV 980, 987 (N8) 923 P2D 1102, 1107 (1996) citing Strickland v Washington 466 US 668, 687 104 SCT 2052 (1984)

On the issue of the Judgment alone there is a reasonable Probability that the result of the trial would be different, the Cumulative impact of the trial Counsel's deficiencies Prejudiced Petitioner Cooper v Fitzharris 586 F2D 1325, 1333 (9CIR78) (en banc) Court denied 440 US

(15)

974, (1979) MAK v BLODGETT. 970 F2D 614 (9C1292) See also
WARRIS by and through RAMSMEYER v. WOOD 64 F3D 1432 (9C1295)

Petitioner Gary Lewis is entitled to Release.

The Petitioner is entitled to issuance of the Writ of Habeas Corpus, and on evidentiary hearing, wherein the State claims it does not have Jurisdiction in the Habeas Corpus Petition, that cannot be farther from the truth (See attached minutes 2-25-2009.)

The entire Point of the habeas Corpus Petition that challenges a State Conviction is to re-litigate issues that were or were not raised in the State Case and resolves Against the Petitioner WAINWRIGHT (v) SYKES 433 US 72, 87, 97 S Ct 2497 (1977) @ (61) obviously then Res Judicata, in the traditional sense, has no application in the Habeas Corpus Arena.

This Petitioner raises the issues under the First Amendment NRS 34,185 Supported by Judicial notice, that by NRS Statute can be heard at any stage of the Proceeding NRS 42,130-42,170 et seq. in fact, under the exhaustion requirement the Habeas Petition must afford the State a full and fair opportunity to address and resolve the Claim on the merits. Keeney v. Lamayo-Reyes 504 US 1, 10 112 S Ct 1715 (1992)

The Petitioner has made factual Allegations, and is entitled to an evidentiary hearing under NRS 34,770 Means v State 120 Nev Adv Rep 101, 103 P3D 25 (2004) Where a defendant makes a colorable Claim of ineffective Assistance of Counsel and there has not been an evidentiary Hearing on the Claims, the Court of Appeals must remand to the district Court for a evidentiary hearing. Smith v McCormick 914 F2D 1153 (1990)

The Writ of Habeas Corpus should be Granted and or an evidentiary Hearing held in this matter.

(16)

Conclusion

taken as a whole Petitioner was denied his RIGHT to effective Assistance of Counsel at Sentencing, to be Present with a Judge, and Sentences by the Judge on the DAY of his Appearance. AS well as the RIGHT to be Present, the Court denied Fundamental Fairness, Due Process and EQUAL Protection.

"In the Instant Matter Reversal is Warranted"

Dated March 4, 2009

Gary Lynn Lewis
#47615

* AFFIDAVIT of GARY LYNN LEWIS *

Carson City Nevada

Carson County.

Being Duly Sworn and Deposed Says:

That I am Petitioner, I am Aware of ALL the issues. AND have attached true and Unrescinded Copies of documents to comply with Judicial notice requirements

Under Penalty of Perjury NRS 208.165 28 USC 1746

Dated March 4, 2009

Gary Lynn Lewis
#47615

(17)

Certificate of Service

I Gary Lynn Lewis do swear Pursuant to NRCMP 5(b)
I Place a true and Correct Copy of "First Amendment
Petition" into institutional mail, for delivery to the US
Postal System Postage Paid First Class, Address to the
following:

- (1) EIGHTH JUDICIAL DIST COURT OH: DIST COURT CLERK
200 E LEWIS AVE LAS VEGAS NEVADA 89155
- (2) DISTRICT ATTORNEY DAVID ROGER
(Same as above)

The Undersigned Affirms Pursuant to NRS 239B.030 this
Document Contains No Social Security Numbers

March 4, 2009

Gary L Lewis
#47615

ORIGINAL

FILED

AUG 14 10 02 AM '96

Loetta Johnson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GARY LYNN LEWIS,
#1302110

Defendant.

Case No. C129824
Dept. No. VII
Docket P

JUDGMENT OF CONVICTION (PLEA)

WHEREAS, on the 12th day of June, 1996, the Defendant GARY LYNN LEWIS, appeared before the Court herein with his counsel and entered a plea of guilty to the crime of SEXUAL ASSAULT (CATEGORY A FELONY), committed on the 9th day of July, 1996, in violation of NRS 200.364, 200.366 and

WHEREAS, thereafter on the 2nd day of August, 1996, the Defendant being present in court with his counsel ROBERT D. CARUSO, and WILLIAM D. KEPHART, Deputy District Attorney, also being present; the above entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to the Nevada Department of Prisons for a term of LIFE WITH THE POSSIBILITY OF PAROLE, to be served CONCURRENTLY with C122079. Defendant is to receive ZERO days credit for time served.

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AUG 12 1996

CE 303

AUG 15 1996

THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judgment of Conviction as part of the record in the above entitled matter.

DATED this 13th day of August, 1996, in the City of Las Vegas, County of Clark, State of Nevada.

Charles Merri
DISTRICT JUDGE

DA#95F06244X/lib
LVMPD DR#9507100130
SxAsslt - F
(TK3)

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TRUE AND CORRECT COPY
OF THE DOCUMENT ON FILE
2007 OCT -4 P 2-13

-2-
CLERK OF THE COURT

FILED

Aug 15 10 04 AM '95

Letitia Dawson
CLERK

1 STEWART L. BELL
DISTRICT ATTORNEY
2 Nevada Bar #000477
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA

5
6 I.A. 8/16/95
9:00 a.m.
7 PD

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,
12 -vs-
13 GARY LYNN LEWIS,
#1302110,
14
15 Defendant.

CASE NO. C129824
DEPT. NO. VII
DOCKET NO. P

INFORMATION

17 STATE OF NEVADA)
18) ss:
COUNTY OF CLARK)

19 STEWART L. BELL, District Attorney within and for the County
20 of Clark, State of Nevada, in the name and by the authority of the
21 State of Nevada, informs the Court:

22 That GARY LYNN LEWIS, the Defendant, having committed the
23 crime of SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE
24 (FELONY - NRS 200.364, 200.366), on or about the 10th day of July,
25 1995, at and within the County of Clark, State of Nevada, contrary
26 to the form, force and effect of statutes in such cases made and
27 provided, and against the peace and dignity of the State of Nevada,
28 did then there wilfully, unlawfully, and feloniously sexually

CE11

CE31

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

—FILED IN OPEN

JUN 12 1996

LORETTA BOWMAN

DISTRICT COURT

CLARK COUNTY, NEVADA

By *Lori Brown*

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 GARY LYNN LEWIS,
13 #1302110,

14 Defendant.
15

CASE NO. C129824X

DEPT. NO. VII

DOCKET NO. P

AMENDED
INFORMATION

16 STATE OF NEVADA)
17) ss:
18 COUNTY OF CLARK)

18 STEWART L. BELL, District Attorney within and for the County
19 of Clark, State of Nevada, in the name and by the authority of the
20 State of Nevada, informs the Court:

21 That GARY LYNN LEWIS, the Defendant, having committed the
22 crime of SEXUAL ASSAULT (FELONY - NRS 200.364, 200.366), on or
23 about the 10th day of July, 1995, at and within the County of
24 Clark, State of Nevada, contrary to the form, force and effect of
25 statutes in such cases made and provided, and against the peace and
26 dignity of the State of Nevada, did then and there wilfully,
27 unlawfully, and feloniously sexually assault and subject LARENZO
28 RICHIE-BORRELL, to sexual penetration, to-wit: anal intercourse,

CE19

1 by inserting his penis into the anus of the said LARENZO RICHIE-
2 BORRELL, against his will.

3
4 STEWART L. BELL
DISTRICT ATTORNEY
5 Nevada Bar #000477

6
7 BY *Teresa M. Lowry*
8 TERESA M. LOWRY
Deputy District Attorney
9 Nevada Bar #003901
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26 2007 OCT -4 P 2:12

27 *Chaf*
CLERK OF THE COURT
28

DA#95-129824X/ajc
LVMPD DR#9507100130
S/A - F
(TK3)

ORIGINAL

1 STEWART L. BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #000477
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

—FILED IN OPEN COURT—
JUN 1 2 1996 19

LORETTA BOWMAN, CLERK

DISTRICT COURT

By *Lori Brown* Deputy

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

CASE NO. C129824X

10 Plaintiff,

DEPT. NO. VII

11 -vs-

DOCKET NO. P

12 GARY LYNN LEWIS,
13 #1302110,

14 Defendant.

15
16 GUILTY PLEA AGREEMENT PURSUANT TO ALFORD DECISION

17 I hereby agree to plead guilty, pursuant to North Carolina v.
18 Alford, 400 U.S. 25 (1970), to: SEXUAL ASSAULT (FELONY - 200.364,
19 200.366), as more fully alleged in the charging document attached
20 hereto as Exhibit "1".

21 My decision to plead guilty by way of the Alford decision is
22 based upon the plea agreement in this case which is as follows:

23 The State retains the right to argue at the rendition of
24 sentence. The State will not oppose concurrent time between this
25 case and Case No. C122079X. *RECOMMEND 12PC*
C.L.L. *TL*

26 CONSEQUENCES OF THE PLEA

27 By pleading guilty pursuant to the Alford decision, it is my
28 desire to avoid the possibility of being convicted of more offenses

AMENDED BY ORDER OF THE COURT
LORETTA BOWMAN, CLERK
BY *Lori Brown*, Deputy
JUN 1 2 1996

CE19

1 or of a greater offense if I were to proceed to trial on the
2 original charge and of also receiving a greater penalty. I
3 understand that my decision to plead guilty by way of the Alford
4 decision does not require me to admit guilt, but is based upon my
5 belief that the State would present sufficient evidence at trial
6 that a jury would return a verdict of guilty of a greater offense
7 or of more offenses than that to which I am pleading guilty to.

8 I understand that the consequences of my plea of guilty by way
9 of the Alford decision are that I will be imprisoned for a period
10 of LIFE, with the possibility of parole; or twenty-five (25) years;
11 with a mandatory minimum of ten (10) years being served before I am
12 eligible for parole. I understand that the law requires me to pay
13 an Administrative Assessment Fee.

14 I understand that, if appropriate, I will be ordered to make
15 restitution to the victim of the offense to which I am pleading
16 guilty and to the victim of any related offense which is being
17 dismissed or not prosecuted pursuant to this agreement. I will
18 also be ordered to reimburse the State of Nevada for any expenses
19 related to my extradition, if any.

20 I understand that I am not eligible for probation for the
21 offense to which I am pleading guilty.

22 I understand that if more than one sentence of imprisonment is
23 imposed and I am eligible to serve the sentences concurrently, the
24 sentencing judge has the discretion to order the sentences served
25 concurrently or consecutively.

26 I also understand that information regarding charges not
27 filed, dismissed charges, or charges to be dismissed pursuant to
28 this agreement may be considered by the judge at sentencing.

1 I have not been promised or guaranteed any particular
2 sentence by anyone. I know that my sentence is to be determined by
3 the Court within the limits prescribed by statute. I understand
4 that if my attorney or the State or both recommend any specific
5 punishment to the Court, the Court is not obligated to accept the
6 recommendation.

7 I also understand that the Division of Parole and Probation
8 will prepare a report for the sentencing judge prior to sentencing.
9 This report will include matters relevant to the issue of
10 sentencing, including my criminal history. This report may contain
11 hearsay information regarding my background and criminal history.
12 My attorney and I will each have the opportunity to comment on the
13 information contained in the report at the time of sentencing.
14 Unless the District Attorney has specifically agreed otherwise,
15 then the District Attorney may also comment on this report.

16 WAIVER OF RIGHTS

17 By entering my plea of guilty pursuant to the Alford decision,
18 I understand that I am waiving and forever giving up the following
19 rights and privileges:

20 1. The constitutional privilege against self-incrimination,
21 including the right to refuse to testify at trial, in which event
22 the prosecution would not be allowed to comment to the jury about
23 my refusal to testify.

24 2. The constitutional right to a speedy and public trial by
25 an impartial jury, free of excessive pretrial publicity prejudicial
26 to the defense, at which trial I would be entitled to the
27 assistance of an attorney, either appointed or retained. At trial
28 the State would bear the burden of proving beyond a reasonable

1 doubt each element of the offense charged.

2 3. The constitutional right to confront and cross-examine any
3 witnesses who would testify against me.

4 4. The constitutional right to subpoena witnesses to testify
5 on my behalf.

6 5. The constitutional right to testify in my own defense.

7 6. The right to appeal the conviction, with the assistance of
8 an attorney, either appointed or retained, unless the appeal is
9 based upon reasonable constitutional jurisdictional or other
10 grounds that challenge the legality of the proceedings and except
11 as otherwise provided in subsection 3 of NRS 174.035.

12 VOLUNTARINESS OF PLEA

13 I have discussed the elements of all of the original charge
14 with my attorney, and I understand the nature of these charge
15 against me.

16 I understand what the State would have to prove each element
17 of the charge against me at trial.

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

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

23 I believe that pleading guilty by way of the Alford decision
24 and accepting this plea bargain is in my best interest, and that a
25 trial would be contrary to my best interest.

26 I am signing this agreement voluntarily, after consultation
27 with my attorney, and I am not acting under duress, coercion, or by
28 virtue of any promises of leniency, except for those set forth in

1 this agreement.

2 I am not now under the influence of any intoxicating liquor,
3 a controlled substance or other drug which would in any manner
4 impair my ability to comprehend or understand this agreement or the
5 proceedings surrounding my entry of this plea.

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

9 DATED this _____ day of August, 1995.

10

11

GARY LYNN LEWIS
Defendant

12

13

14 AGREED TO BY:

15

16

Jessie M. Lamy
Deputy District Attorney

17

18

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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named
3 herein, as an officer of the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations
5 contained in the charge to which guilty plea are being entered and
6 the entry of a guilty plea pursuant to the Alford decision.

7 2. I have advised the Defendant of the penalties for each
8 charge and the restitution that the Defendant will be ordered to
9 pay.

10 3. All pleas of guilty offered by the Defendant pursuant to
11 this agreement and the Alford decision are consistent with the
12 facts known to me and are made with my advice to the Defendant.

13 4. To the best of my knowledge and belief, the Defendant:

14 a. Is competent and understands the charges and the
15 consequences of pleading guilty as provided in this
16 agreement.

17 b. Executed this agreement and will enter all guilty
18 pleas pursuant hereto voluntarily.

19 c. Was no under the influence of intoxicating liquor, a
20 controlled substance or other drug at the time I
21 consulted with the defendant as certified in paragraphs
22 1 and 2.

23 Dated: This _____ day of August, 1995.

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ATTORNEY FOR DEFENDANT

28 ajc

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA vs Lewis, Gary L

08/16/95 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004515 Tobiasson, Melanie A.	Y
	0001 D1 Lewis, Gary L	Y
	PUBDEF Public Defender	Y
	001631 Caruso, Robert D.	Y

DEFT. LEWIS ARRAIGNED, PLED NOT GUILTY to SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (F), AND WAIVED THE 60 DAY RULE. COURT ORDERED, this matter SET for trial.

CUSTODY

1-3-96 9:00 A.M. CALENDAR CALL

2-5-96 10:00 A.M. JURY TRIAL

01/31/96 09:00 AM 00 CALENDAR CALL

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005152 Togliatti, Jennifer	Y
	0001 D1 Lewis, Gary L	N
	PUBDEF Public Defender	Y
	001631 Caruso, Robert D.	Y

Mr. Caruso requested a continuance and stated he does not believe Ms. Lowry will have any opposition. COURT ORDERED, matter TRAILED for Ms. Lowry to appear.

LATER: Matter recalled with all present as before. Ms. Lowry not present. COURT ORDERED, trial date VACATED AND RESET; State to prepare an order to transport for March 20.

CUSTODY (COC-NDP)

3-20-96 9:00 AM CALENDAR CALL

CONTINUED ON PAGE: 002

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 001

3-25-96 10:00 AM JURY TRIAL

03/20/96 09:00 AM 00 CALENDAR CALL

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA

003901 Lowry, Teresa

0001 D1 Lewis, Gary L

PUBDEF Public Defender

001631 Caruso, Robert D.

Y

Y

Y

Y

Y

Per stipulation of counsel, COURT ORDERED, trial date of 3-25-96 VACATED and RESET in the ordinary course, as deft. has previously waived his 60 day rights. Mr. Caruso requested that deft. be REMANDED to the custody of the Clark County Detention Center, as there is difficulty contacting the deft. while in the Nevada Department of Prisons. COURT SO ORDERED.

CUSTODY

6-12-96 9:00 A.M. CALENDAR CALL

6-17-96 10:00 A.M. JURY TRIAL

06/12/96 09:00 AM 00 CALENDAR CALL

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA

003901 Lowry, Teresa

0001 D1 Lewis, Gary L

PUBDEF Public Defender

001631 Caruso, Robert D.

Y

Y

Y

Y

Y

AMENDED INFORMATION, charging Deft. Lewis with COUNT I - SEXUAL ASSAULT (F), and GUILTY PLEA AGREEMENT FILED IN OPEN COURT. NEGOTIATIONS: The State retains the right to argue at the time of sentencing, but will recommend that time is concurrent with the probation violation deft. is presently serving. DEFT. LEWIS ARRAIGNED and PLED GUILTY PURSUANT TO THE ALFORD DECISION to SEXUAL ASSAULT (F). Penalty stated. Ms. Lowry recited the

CONTINUED ON PAGE: 003

PRINT DATE: 10/04/07

PAGE: 002

MINUTES DATE: 06/12/96

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 002

facts which the State would rely upon for conviction. Court accepted plea, referred matter to P & P and ORDERED set for sentencing. At the request of Mr. Caruso, COURT ORDERED, Deft. to be transported back to Jean, where he is in custody on other charges. FURTHER, trial date VACATED.

CUSTODY

7-24-96 9:00 A.M. SENTENCING

CLERK'S NOTE: Guilty Plea Agreement Amended by Interlineation on page 1, line 24, changing "not oppose concurrent" to "recommend."

07/24/96 09:00 AM 00 SENTENCING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA

003901 Lowry, Teresa

0001 D1 Lewis, Gary L

PUBDEF Public Defender

001631 Caruso, Robert D.

Y

Y

Y

Y

Y

Tom Tatten of the Division of Parole & Probation present. Upon inquiry of the Court, Mr. Caruso advised he is not ready to proceed this date, as deft. is illiterate and was just transported from Jean this morning. Therefore, additional time is needed in order for the PSI Report to be read to him. COURT ORDERED, matter CONTINUED. FURTHER, Deft. Lewis REMANDED TO the CLARK COUNTY DETENTION CENTER pending sentencing to enable Mr. Caruso to review the PSI Report with him.

CUSTODY

CONTINUED TO: 07/31/96 09:00 AM 01

CONTINUED ON PAGE: 004

PRINT DATE: 10/04/07

PAGE: 003

MINUTES DATE: 07/24/96

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 003

07/31/96 09:00 AM 01 SENTENCING

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: TINA HURD, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	003649 Kephart, William D.	Y
	0001 D1 Lewis, Gary L	Y
	PUBDEF Public Defender	Y
	003447 Immerman, Stephen M.	Y

Roy Evans of the Division of Parole & Probation present. Mr. Immerman agreed to a continuance to Friday. COURT ORDERED, CONTINUED.

CUSTODY

CONTINUED TO: 08/02/96 09:00 AM 02

08/02/96 09:00 AM 02 SENTENCING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	003649 Kephart, William D.	Y
	0001 D1 Lewis, Gary L	Y
	PUBDEF Public Defender	Y
	001631 Caruso, Robert D.	Y

Michael R.P. Leoni of the Division of Parole & Probation present. Conference at the bench between Court and counsel. DEFT. LEWIS ADJUDGED GUILTY of SEXUAL ASSAULT (F). Matter submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment Fee,, Deft. SENTENCED to Nevada Department of Prisons for a term of LIFE WITH THE POSSIBILITY OF PAROLE, to be served CONCURRENTLY with C122079; and is to receive ZERO Days Credit for Time Served. At the request of Mr. Caruso, Deft. REMANDED to the prison in Jean.

CONTINUED ON PAGE: 005

PRINT DATE: 10/04/07

PAGE: 004

MINUTES DATE: 08/02/96

DATE: 12/29/08
CASE NO. 95-C-129824-C

I N D E X

TIME 7:52 AM
JUDGE:Leavitt, Michelle

STATE OF NEVADA

[] vs Lewis, Gary L

[]

0001 D1 Gary L Lewis

?????? ## UNKNOWN ##

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	08/03/95	CBO /CRIMINAL BINDOVER Fee \$0.00				
0002	08/04/95	ARRN/INITIAL ARRAIGNMENT	0001		08/16/95	
0003	08/15/95	INFO/INFORMATION	0001		08/15/95	
0004	08/16/95	CALC/CALENDAR CALL	0001		01/31/96	
0005	08/16/95	JURY/TRIAL BY JURY (VJ 1-31-96)	0001	VC	02/05/96	
0006	09/01/95	TRAN/REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING	0001		08/01/95	
0007	10/27/95	ORDR/ORDER FOR PRODUCTION OF INMATE	0001			
0008	12/14/95	ORDR/ORDER FOR PRODUCTION OF INMATE	0001			
0009	01/17/96	SUBP/SUBPOENA	0001	SC	02/05/96	
			0001	SV	01/16/96	
0010	01/31/96	CALC/CALENDAR CALL	0001		03/20/96	
0011	01/31/96	JURY/TRIAL BY JURY (VJ 3-20-96)	0001	VC	03/25/96	
0012	02/08/96	SUBP/SUBPOENA	0001	SC	03/25/96	
			0001	SV	02/07/96	
0013	02/23/96	ORDR/ORDER FOR PRODUCTION OF INMATE	0001			
0014	03/20/96	CALC/CALENDAR CALL	0001		06/12/96	
0015	03/20/96	JURY/TRIAL BY JURY (VJ 6-12-96)	0001	VC	06/17/96	
0016	06/12/96	SENT/SENTENCING	0001	GR	08/02/96	
0017	06/12/96	INFO/AMENDED INFORMATION	0001		06/12/96	
0018	06/12/96	MEMO/GUILTY PLEA AGREEMENT PURSUANT TO ALFORD DECISION	0001			
0019	06/12/96	INFO/AMENDED INFORMATION	0001		06/12/96	
0020	06/14/96	SUBP/SUBPOENA	0001	SC	06/17/96	
			0001	SV	06/10/96	
0021	08/14/96	JUDG/JUDGMENT OF CONVICTION - PLEA	0001			
0022	08/14/96	JMNT/ADMINISTRATION/ASSESSMENT FEE	0001		08/15/96	
0023	07/13/07	CASO/CASE (RE)OPENED			07/13/07	
0024	07/13/07	ASSG/REASSIGNMENT OF JUDGE Maupin TO JUDGE Leavitt				
0025	07/13/07	HEAR/DEFT'S REQUEST TO WDRAW PD AS ATTORNEY	0001	GR	07/19/07	
0026	07/19/07	CSCL/CASE CLOSED	0001		07/19/07	

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 005

02/26/09 09:00 AM 00 MINUTE ORDER RE: DENYING DEFT'S PETITION
FOR WRIT OF HABEAS CORPUS

HEARD BY: Michelle Leavitt, Judge; Dept. 12

OFFICERS: April Watkins, Court Clerk

PARTIES: NO PARTIES PRESENT

The Court is without jurisdiction to hear this petition because it is time barred. NRS 34.726 provides that: "Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within one year after entry of the judgment or conviction, or if an appeal has been taken from the judgment, within 1 year after entry the Supreme Court issues its remittitur." Judgment was entered and petitioner was sentenced on August 2, 1996. Thus, he has failed to meet the one year period of limitation for filing a habeas petition challenging his confinement.

A time barred petition may be permitted where good cause is shown. Good cause exists where (1) delay is not the fault of the petitioner, and (2) dismissal of the petition as untimely would be unduly prejudicial to the petitioner. NRS 34.726(1)(a)-(b). Petitioner has made no attempt to demonstrate good cause as required by NRS 34.726(1)(a)-(b).

CLERK'S NOTE: The above minute order has been distributed to: David Roger, District Attorney and Deft. Gary Lynn Lewis #47615, P.O. Box 607, Carson City, NV 89702. aw

Long L Lewis
#47615
PO Box 607
Carson City Nevada
89702

B/S 969124
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25 GARY LYNN Lewis

PO Box 607 # 47615

CARSON CITY NEVADA 89702

FILED

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MAY 11 2009

E. M. F. J.
CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA

GARY LYNN Lewis
Petitioner

CASE# C129824

VS-

GREG W SMITH WARDEN MSP
State of Nevada : et al
Respondent

"Notice of APPEAL" to
the NEVADA SUPREME COURT,
Denial of MAY. 1, 2009

Now Comes GARY LYNN Lewis, in Pro se to file
this Notice of Appeal, of Denial of Habeas Corpus
Petition by JUDGE Michelle Lewitt in Department 12
on MAY. 1, 2009. CLARK COUNTY NEVADA.

The Defendant was Never charged with Crime that
is on Judgment of Conviction, JULY 9th 1996, AND
Now APPEALS to the NEVADA SUPREME COURT of this
Case. (See Attached minute order).

Dated MAY. 4, 2009

GARY LYNN Lewis
GARY LYNN Lewis

RECEIVED

MAY 08 2009

CLERK OF THE COURT

Certificate of Service

I GARY L Lewis. Pursuant to NRCIVP 5th Places a true and correct copy of Notice of Appeal. Postage PAID First Class Addressed to.

8TH JUDICIAL DISTRICT COURT
ATT: Court Clerk
200 E Lewis Ave Las Vegas NV 89155

Clark Co Dist Atty David Roger.
200 E Lewis Ave LV NV 89155

Dated MAY 4th 2009

GARY L Lewis

Pursuant to NRS 239 B. D30. This document contains No Social Security Numbers.

GARY L Lewis

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 005

02/26/09 09:00 AM 00 MINUTE ORDER RE: DENYING DEFT'S PETITION
FOR WRIT OF HABEAS CORPUS

HEARD BY: Michelle Leavitt, Judge; Dept. 12

OFFICERS: April Watkins, Court Clerk

PARTIES: NO PARTIES PRESENT

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A time barred petition may be permitted where good cause is shown. Good cause exists where (1) delay is not the fault of the petitioner, and (2) dismissal of the petition as untimely would be unduly prejudicial to the petitioner. NRS 34.726(1)(a)-(b). Petitioner has made no attempt to demonstrate good cause as required by NRS 34.726(1)(a)-(b).

CLERK'S NOTE: The above minute order has been distributed to: David Roger, District Attorney and Deft. Gary Lynn Lewis #47615, P.O. Box 607, Carson City, NV 89702. aw

05/01/09 09:00 AM 00 MINUTE ORDER RE: DENYING FIRST AMENDMENT
PETITION

HEARD BY: Michelle Leavitt, Judge; Dept. 12

OFFICERS: April Watkins, Court Clerk

PARTIES: NO PARTIES PRESENT

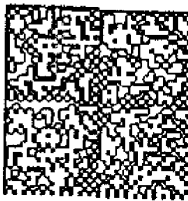
The Court is without jurisdiction to consider the pleading styled Petitioner's "First Amendment Petition Writ of Habeas Corpus" filed on March 23, 2009. This pleading appears intended to amend and supplement a petition that was denied by minute order on February 26, 2009. There is no basis under the statute for this Court to consider an amendment or supplement to a previously denied petition for habeas corpus. Petitioner is referred to the February 26, 2009, minute order denying his petition for habeas corpus.

CLERK'S NOTE: The above minute order has been distributed to: Gary Lynn Lewis #47615; P.O. Box 607, Carson City, NV 89702. aw

Ernest Lewis
P.O. Box 1007 # 47615
Garrison City New 89702

ATTN: Book
Dept Clerk

FIRST CLASS AUTO

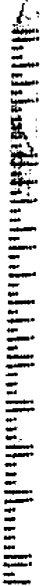


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ELIZABETH JUD DIST CT
ATTN: Dist Court Clerk
200 E Lewis Ave
Las Vegas NV
89155

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2009 MAY 12 P 1:25

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4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

Ed Smith
CLERK OF THE COURT

6
7 STATE OF NEVADA,

8 Plaintiff(s),

9 vs.

10 GARY L. LEWIS,

11 Defendant(s),

)
) Case No: C129824
) Dept No: XII
)
)
)
)
)
)

12
13
14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): GARY L. LEWIS

16 2. Judge: MICHELLE LEAVITT

17 3. All Parties, District Court:

18 Plaintiff, THE STATE OF NEVADA

19 Defendant(s), GARY L. LEWIS

20 4. All Parties, Appeal:

21 Appellant(s), GARY L. LEWIS

22 Respondent, THE STATE OF NEVADA

23 5. Appellate Counsel:

24 *Appellant/Proper Person*
25 Gary Lewis # 47615
26 P.O. Box 607
27 Carson City, NV 89702

Respondent
David Roger, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

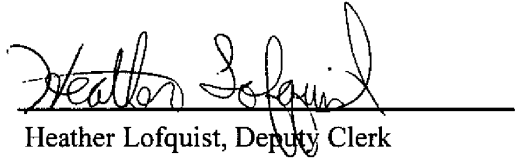
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- 6. District Court Attorney, Appointed
- 7. Attorney On Appeal, N/A
- 8. Forma Pauperis, N/A
- 9. Date Commenced in District Court: August 3, 1995

Dated This 12 day of May 2009.

Edward A. Friedland, Clerk of the Court

By:



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

ORDR

ORIGINAL**FILED**

2009 MAY 29 A 11:15

EIGHTH JUDICIAL DISTRICT COURT**CLARK COUNTY, NEVADA***E. J. Smith*
CLERK OF THE COURT

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

CASE NO.: C129824

GARY LYNN LEWIS,)

DEPT. NO.: XII

Defendant.)

**ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF
HABEAS CORPUS**

IT IS HEREBY ORDERED, the Court is without jurisdiction to hear this petition because it is time barred. NRS 34.726 provides that: "Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within one year after entry of the judgment or conviction, or if an appeal has been taken from the judgment, within one year after entry the Supreme Court issues its remittitur." Judgment was entered and petitioner was sentenced on August 2, 1996. Thus, he has failed to meet the one year period of limitation for filing a habeas petition challenging his confinement.

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CLERK OF THE COURT

MAY 29 2009

RECEIVED

MICHELLE LEAVITT
DISTRICT JUDGEDEPARTMENT TWELVE
LAS VEGAS NV 89155

1 A time barred petition may be permitted where good cause is shown. Good
2 cause exists where (1) delay is not the fault of the petitioner, and (2) dismissal of the
3 petition as untimely would be unduly prejudicial to petitioner. NRS 34.726(1)(a)-(b).
4
5 Petitioner has made no attempt to demonstrate good cause as required by the statute.
6 NRS 34.726(1)(a)-(b).
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MICHELLE LEAVITT
DISTRICT COURT JUDGE
DEPARTMENT XII

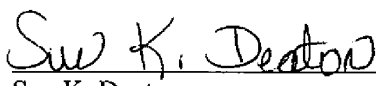
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12 **CERTIFICATE OF SERVICE**

13
14 I hereby certify that on the date filed, I mailed a copy of this Order Denying
15 Defendant's Petition for Writ of Habeas Corpus via U.S. Mail, postage-prepaid to the
16 following:

16 **Gary Lynn Lewis, #47615**
17 **P.O. Box 607**
18 **Carson City, NV 89702**

19 I hereby certify that on the date filed, I placed a copy of this Order Denying
20 Defendant's Petition for Writ of Habeas Corpus in District Attorney, David Roger's
21 mail folder on the third floor, Regional Justice Center, County Clerk's Office.

22 
23 Sue K. Deaton
24 Judicial Executive Assistant, Dept. XII

25 C129824
26
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28

MICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS NV 89155

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DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

JUN - 2 2009

E. A. Friedland
CLERK OF COURT

GARY LYNN LEWIS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C129824

Dept No: XII

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on May 29, 2009, 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 June 2, 2009.

EDWARD A. FRIEDLAND, CLERK OF THE COURT

By: *Brandi J. Wendel*

Brandi J. Wendel, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 2 day of June 2009, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the District Court Clerk of:
Clark County District Attorney's Office
Attorney General's Office - Appellate Division

- ☒ The United States mail addressed as follows:
Gary Lynn Lewis # 47615
P.O. Box 607
Carson City, NV 89702

Brandi J. Wendel
Brandi J. Wendel, Deputy Clerk

FILED

2009 MAY 29 A 11:15

[Signature]
CLERK OF THE COURT

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ORDR

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
 Plaintiff,)
)
 vs.)
)
 GARY LYNN LEWIS,)
)
 Defendant.)

CASE NO.: C129824

DEPT. NO.: XII

ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF
HABEAS CORPUS

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CLERK OF THE COURT
MAY 29 2009

RECEIVED

MICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS NV 89155

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5 Petitioner has made no attempt to demonstrate good cause as required by the statute.
6 NRS 34.726(1)(a)-(b).
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10 
11 MICHELLE LEAVITT
12 DISTRICT COURT JUDGE
13 DEPARTMENT XII
14
15 5/19/81

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on the date filed, I mailed a copy of this Order Denying
18 Defendant's Petition for Writ of Habeas Corpus via U.S. Mail, postage-prepaid to the
19 following:

20 Gary Lynn Lewis, #47615
21 P.O. Box 607
22 Carson City, NV 89702

23 I hereby certify that on the date filed, I placed a copy of this Order Denying
24 Defendant's Petition for Writ of Habeas Corpus in District Attorney, David Roger's
25 mail folder on the third floor, Regional Justice Center, County Clerk's Office.

26 
27 Sue K. Deaton
28 Judicial Executive Assistant, Dept. XII

C129824

MICHELLE LEAVITT
DISTRICT JUDGE
DEPARTMENT TWELVE
LAS VEGAS NV 89155

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

DEC 01 2009

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 53779

Tracie Lindeman
CLERK OF COURT

District Court Case No. C129824

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 28th day of October, 2009.

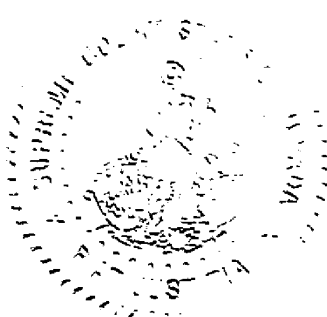
IN WITNESS WHEREOF, I have subscribed my name and affixed
the seal of the Supreme Court at my Office in Carson City,
Nevada, this 24th day of November, 2009.

Tracie Lindeman, Supreme Court Clerk

By: _____

Deputy Clerk

A. Ingerson



RECEIVED

NOV 30 2009

CLERK OF THE COURT

09-26341

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53779

FILED

OCT 28 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On August 14, 1996, the district court convicted appellant, by a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), of one count of sexual assault. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On February 19, 2009, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 26, 2009, the district court orally denied the petition, and on

SUPREME COURT
OF
NEVADA

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CLERK OF THE COURT

09-26341

May 29, 2009, the district court entered a written order denying the petition. This appeal followed.¹

In his petition appellant claimed: (1) the criminal complaint was defective because the justice court has no jurisdiction over a felony criminal complaint; (2) the information was untimely and defective because it arose from the defective criminal complaint; (3) the judgment of conviction set forth the incorrect date for the offense and this meant he was actually acquitted of committing a crime on the date set forth in the criminal complaint and the information; (4) his trial counsel was ineffective for failing to raise a jurisdictional argument based upon the allegedly defective criminal complaint and information; (5) his trial counsel was ineffective for failing to have him evaluated for competency; (6) his trial counsel was ineffective for failing to advise him of the weaknesses in the State's case; and (7) his trial counsel was ineffective for failing to investigate his background and present mitigating evidence.

Appellant filed his petition more than thirteen years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id.

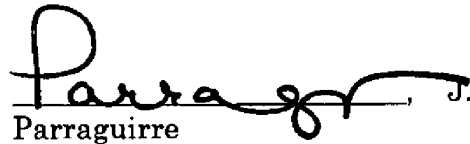
¹On March 23, 2009, appellant submitted an amended or supplemental petition. On May 1, 2009, the district court determined that the petition was not a proper amendment or supplement as the original petition had already been orally denied by the court. We conclude that the district court did not abuse its discretion in declining to permit the original petition to be amended or supplemented after it was denied. See NRS 34.750(5).

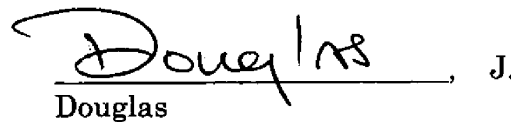
Appellant did not attempt to demonstrate good cause for the delay in filing his petition, although he appeared to argue that claims one and two presented jurisdictional issues that could be raised any time. Claims one and two are patently without merit and do not implicate the jurisdiction of the district court; thus, claims one and two do not overcome the procedural time bar. Nev. Const. art. 6, § 8 (setting forth that the Legislature shall determine the limits of the criminal jurisdiction of the justices of the peace); NRS 4.370(3) (providing that the justice courts have jurisdiction over "all misdemeanors and no other criminal offenses except as otherwise provided by specific statute"); NRS 171.196 (providing for a preliminary examination in the justice court); NRS 171.202 (providing that when the offense involves a felony or gross misdemeanor, the district attorney of the proper county shall be present and conduct the preliminary examination); NRS 171.206 (providing that the magistrate shall bind a defendant over to the district court if from the evidence presented there is probable cause to believe that an offense has been committed and the defendant has committed it); NRS 173.035(1), (3) (providing for the filing of an information in the district court when a defendant has been bound over after a preliminary examination before a justice of the peace and the information is filed within 15 days after the holding of the preliminary examination). The judgment of conviction contained a clerical error regarding the date of the offense.² Therefore, we affirm the order of the district court denying the petition as procedurally barred.

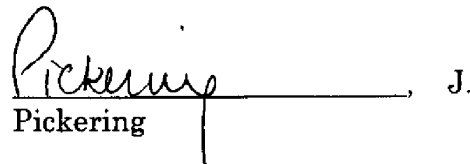
²A clerical error may be corrected pursuant to NRS 176.565.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Michelle Leavitt, District Judge
Gary Lynn Lewis
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk



2. . .

CERTIFICATE

Document is a true and correct copy of the original on file and on record in the offices

DATE: November 24, 2009
Supreme Court Clerk, State of Nevada
By A. Ingersoll Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LYNN LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 53779

District Court Case No. C129824

REMITTITUR

TO: Steven D. Grierson, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: November 24, 2009

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

cc (without enclosures):

Hon. Michelle Leavitt, District Judge
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Gary Lynn Lewis

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on DEC 01 2009.

HEATHER LOFQUIST
Deputy District Court Clerk

RECEIVED

NOV 30 2009

CLERK OF THE COURT

09-28340

PPW

Gary Lynn Lewis #47615
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

95C129824
MOT
Motion
946801



FILED
SEP 23 2010
Clerk of Court

IN THE _____ JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF CLARK

THE STATE OF NEVADA,
Plaintiff,

vs.

GARY LYNN LEWIS,
Defendant.

Case No. 0129824X

Dept. No. 41

Docket 2

MOTION TO APPOINT COUNSEL

DATE OF HEARING: _____

TIME OF HEARING: _____

COMES NOW the Defendant GARY LYNN LEWIS, in proper persona and moves
this court for an Order granting him counsel in the proceeding action.

This motion is made and based upon all papers and pleadings on file herein and attached
points and authorities.

Dated this 13 day of September, 2010.

Respectfully Submitted,

Gary Lynn Lewis

RECEIVED
SEP 23 2010
CLERK OF THE COURT

1
2 **POINTS AND AUTHORITIES**

3 NRS 34.750 Appointment of Counsel for indigents; pleading supplemental to petition;
4 response to dismiss.

5 "If the Court is satisfied that the allegation of indigency is true and the petition is not
6 dismissed summarily, the Court may appoint counsel to represent the petitioner."

7 NRS 171.188 Procedure for appointment of attorney for indigent defendant.

8 "Any defendant charged with a public offense who is an indigent may, be oral statement to ti
9 District Judge, justice of peace, municipal judge or master, request the appointment of an attorney to
10 represent him."

11 NRS 178.397 Assignment of counsel.

12 "Every defendant accused of a gross misdemeanor or felony who is financially unable
13 to obtain counsel is entitled to have counsel assigned to represent him at every stage of the
14 proceedings from his initial appearance before a magistrate or the court through appeal, unless he
15 waives such appointment."

16 WHEREFORE, petitioner prays the Court will grant his motion for appointment of counsel to
17 allow him the assistance that is needed to insure that justice is served.

18
19 Dated this 13 day of September, 2010.

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21 Respectfully submitted,

22 Gay Lynn Lewis
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Points and Authorities

Statement of facts

On or about August 16, 1995, Petitioner went before the Honorable Judge William Mangin, in Dept #7 in the Eighth Judicial District Court for his initial arraignment on the charge of Sexual Assault (Felony- 200.364, 200.366).

Petitioner brings to this court's attention critical facts that can not be hindsighted or over-looked. Petitioner is a mental Health Patient that has been on psychiatric medications in the Nevada Department of Prison for over fifteen years. Also, Petitioner cannot read or write, a fact he made known to his counsel. Robert Caruso of the Clark County Public defender's office, the day he first met Robert Caruso (Hereinafter Caruso),

Moreover, Petitioner explained to Caruso it was impossible for him to read any documents pertain to this case, therefore, Petitioner explained to Caruso due to his illiterate status he had to put totally all of his trust, that Caruso would tell him exactly what the documents pertaining to this case stated, and that he would fully explain the wording in the documents to him.

Therefore, due to petitioner being illiterate, he is being assisted by a Jail house lawyer who is only able to assist petitioner to present his claims to the court. It is without question, petitioner was deprived of his Sixth Amendment right to counsel, from the inception of Caruso being assigned to his case.

Caruso never explained the full consequences of his plea (Guilty plea Agreement) in which Caruso in a last

minute rush, approached petitioner with a Guilty Plea Agreement in open court, at his calendar call on or about June 12, 1996.

Caruso never explained the full consequences of the guilty plea agreement, instead Caruso misrepresented the facts of the full consequences indicated in the guilty plea agreement.

- Caruso informed Petitioner that the state offered him a plea negotiation of a maximum of (10) years, if Petitioner did not accept the terms of the negotiation, the state would seek a life sentence.

- However, Caruso misinformed petitioner as to the exact terms of the negotiations within the guilty plea agreement. The guilty plea agreement explicitly indicated petitioner would receive a life sentence, or a twenty-five (25) year sentence. (See Exhibit "A" Guilty Plea Agreement, pg. 1).

- Moreover, Caruso never told petitioner he had a right to challenge the DNA the District Attorney had as evidence, and that state had the burden of proving that in fact petitioner's DNA matter that in alleged victim.

Argument I.

Appointment of Counsel is Warranted

- From the inception of this case petitioner was deprived of his Sixth Amendment right to counsel. Thus, due to his illiterate status, an evidentiary hearing is warranted to bolster his claims. However, due to the fact petitioner is illiterate, a appointment of counsel is warranted to argue the law and to prevent a further miscarriage of justice.

- It is without question petitioner has been denied effective assistance of counsel, and any rights that petitioner held, was abandoned by

Coruso's deficient performance and/or representation fell below an objective standard of reasonableness, and such deficient performance = prejudice defense...

At this juncture Counsel is needed in the interest of Justice and in the interest of Judicial efficiency. In a criminal prosecution where a defendant is illiterate, it would constitute a manifest injustice and a miscarriage of Justice not to appoint counsel in a criminal action.

Sixth Amendment to Federal Constitution providing that in all criminal prosecutions the accused shall enjoy right to assistance of counsel for his defense is made obligatory on the states by the Fourteenth Amendment, and indigent defendant in criminal prosecution in state court has right to have counsel appointed for him. BeHs v. Brady, 316 U.S. 455, 62 S.Ct. 1252,

Petitioner is indigent and has no family or other means to procure counsel for Petitioner. Moreover, this court should consider the fact petitioner has been incarcerated over (15) years, and has lost any means of income, nor has petitioner of any nature secured a job to establish income because of his mental health status.

The assistance of counsel is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty *** The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, Justice will not still be done." Johnson v. Zerbst, 304 U.S. 458, 462, 58 S.Ct. 1019, 1022, 82 L.Ed. 1461 (1938); Avery v. Alabama, 308 U.S. 444, 60 S.Ct. 321, 84 L.Ed. 377 (1940), Idem v. Nainwright, 372 U.S. 235, 83 S.Ct. 792 (U.S. Fla. 1963).

(Furthermore, as the court held in Mideon v. Wainwright, 372 U.S. 489, 502, quoting Powell v. Alabama, the Powell court held: "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." Powell v. Alabama, 287 U.S. 454, at 487-69, 53 S.Ct. at 64, 77 L.Ed. 158.

Summary

It is undisputed considering Petitioner's status, counsel is warranted in this matter to properly present petitioner's claim and to argue the law. Moreover, this court should take into consideration as a constitutional issue, petitioner has a severe mental health condition making it imperative appointment of counsel is warranted. Petitioner relies on his need for appointment of counsel, based on Dr. Marvin, the senior psychiatrist at S.E.C.C. who recently wrote

as to petitioner's medication and its effects on petitioner which states in pertinent part:

"... Mr. Lewis came into prison system in 1995, and has been on Singuan since. It is an anti-depressant with the side effects of drowsiness, confusion, and disorientation. Prior to prison, he was at CCOE where Thureine was prescribed which can cause drowsiness. He has been on resperidone since July 2009, which can cause sleepiness. His diagnoses are schizophrenia, a psychotic disorder and depression." (See Exhibit "B" Progress notes Dr. Marvin).

Conclusion.

Wherefore, based upon the facts herein, petitioner prays that the Honorable Court grant his Motion to Appoint Counsel, dated this 13 day of September, 2010,

Respectfully Submitted

Gary Lynn Lewis

Gary Lynn Lewis - Petitioner / Pro per.

Certificate of Mailing

This is to certify that a true copy of petitioner's aforementioned Motion for Appointment of Counsel was served via U.S. mail at S.D.C.C. on the 13 day of September, 2010 to the following addresses:

David Rogers

Clark County District Attorney

200 Lewis Ave.

Las Vegas, Nv. 89155

Catherine Cortez, Martin Lugo

Attorney Gen.

100 N. Carson Street

Carson City, Nv. 89701-4747

Affidavit of Gary Lynn Lewis

State of Nevada)

ss:

County of Clark)

I Gary Lynn Lewis, being first duly sworn, depose and say:

1. That I can not read or write except for my name, and I made that fact known to Caruso the first time I met him.

2. That I am a mental Health Patient and been on psychotropic medication since 1995, because of my mental health condition.

3. That I am being assisted by a Jail house lawyer to bring this claim / Petitioner before the court because I can not read or write.

4. Caruso never read the Guilty plea agreement to me prior to signing it in open court, nor did he explain to me the terms of the plea agreement indicated a sentence of life or twenty-five years.

5. That I make this Affidavit freely and voluntarily, and no one has forced me or incourage to make any statements in this affidavit to harass, hinder or annoy anyone that's a party in any way to this case. I further make this affidavit to meet the ends of Justice.

6. That I am unable to prepare any document on my own, for the exception of reading my name I need the assistance of someone to help me to read or understand anything in writing.

7. That I've tried over fifteen years to get someone to really take time and get my case back before this court using legal authority or law to support my claims.

8. That I request a evidentiary hearing to have the court to determine if I have sufficient claiming ineffective assistance of counsel and to personally speak to the court with the assistance of counsel.

Dated this 13 day of September, 2010.

Respectfully Submitted

Affiant Sayoth Naught,

Gary Lynn Lewis

Gary Lynn Lewis - Affiant

Dated this 13 day of September, 2010, I, Gary Lynn Lewis, do solemnly swear, under the penalty of perjury, that the above affidavit is correct, accurate, and true to the best of my knowledge. NRS. 171.102 and NRS. 208.165

Respectfully Submitted,

Gary Lynn Lewis

Gary Lynn Lewis - Affiant / Pro per

1 STEWART L. BELL
 2 DISTRICT ATTORNEY
 3 Nevada Bar #000477
 4 200 S. Third Street
 5 Las Vegas, Nevada 89155
 6 (702) 455-4711
 7 Attorney for Plaintiff
 8 THE STATE OF NEVADA

—FILED IN OPEN COURT—

JUN 12 1996

19

LORETTA BOWMAN, CLERK

DISTRICT COURT

By

Lori Brown

Deputy

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

CASE NO. C129824X

10 Plaintiff,

DEPT. NO. VII

11 -vs-

DOCKET NO. P

12 GARY LYNN LEWIS,
13 #1302110,

14 Defendant.

16 GUILTY PLEA AGREEMENT PURSUANT TO ALFORD DECISION

17 I hereby agree to plead guilty, pursuant to North Carolina v.
 18 Alford, 400 U.S. 25 (1970), to: SEXUAL ASSAULT (FELONY - 200.364,
 19 200.366), as more fully alleged in the charging document attached
 20 hereto as Exhibit "1".

21 My decision to plead guilty by way of the Alford decision is
 22 based upon the plea agreement in this case which is as follows:

23 The State retains the right to argue at the rendition of
 24 sentence. The State will ~~not oppose concurrent time between this~~
 25 case and Case No. C122079X. *RECOMMEND 12PC*
C.L.L. *(TL)*

26 CONSEQUENCES OF THE PLEA

27 By pleading guilty pursuant to the Alford decision, it is my
 28 desire to avoid the possibility of being convicted of more offenses

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY *Lori Brown*, Deputy

JUN 12 1996

CE19

1 or of a greater offense if I were to proceed to trial on the
2 original charge and of also receiving a greater penalty. I
3 understand that my decision to plead guilty by way of the Alford
4 decision does not require me to admit guilt, but is based upon my
5 belief that the State would present sufficient evidence at trial
6 that a jury would return a verdict of guilty of a greater offense
7 or of more offenses than that to which I am pleading guilty to.

8 I understand that the consequences of my plea of guilty by way
9 of the Alford decision are that I will be imprisoned for a period
10 of LIFE, with the possibility of parole; or twenty-five (25) years;
11 with a mandatory minimum of ten (10) years being served before I am
12 eligible for parole. I understand that the law requires me to pay
13 an Administrative Assessment Fee.

14 I understand that, if appropriate, I will be ordered to make
15 restitution to the victim of the offense to which I am pleading
16 guilty and to the victim of any related offense which is being
17 dismissed or not prosecuted pursuant to this agreement. I will
18 also be ordered to reimburse the State of Nevada for any expenses
19 related to my extradition, if any.

20 I understand that I am not eligible for probation for the
21 offense to which I am pleading guilty.

22 I understand that if more than one sentence of imprisonment is
23 imposed and I am eligible to serve the sentences concurrently, the
24 sentencing judge has the discretion to order the sentences served
25 concurrently or consecutively.

26 I also understand that information regarding charges not
27 filed, dismissed charges, or charges to be dismissed pursuant to
28 this agreement may be considered by the judge at sentencing.

DATE & TIME	PROB	DISCIP	PROGRESS NOTES
5/5/10		MD	Psychiatry:
			To whom it may concern:
			Mr. Lewis came into prison system in 1995 and has been on Seroquel since. IT is an anti-depressant with the side effects of drowsiness, confusion and disorientation.
			Prior to prison, he was at CDC where Thorazine was prescribed which can cause drowsiness.
			He has been on risperidone since July 2009 which can cause sleepiness.
			His diagnoses are Schizophrenia, a psychotic disorder and depression.
			Jonathan Marnen MD Senior Psychiatrist SDCL

NEVADA DEPARTMENT OF CORRECTIONS

PROGRESS NOTES

NAME Lewis, Gary
LAST FIRST MI
 DOC # 47615

DOC 2519 (REV. 7/01)

91
Dorothy Ann Lewis #97615
S.D.C.
P.O. Box 208
Indian Springs, Nevada 89070



Pro
Gary Lynn Lewis #47615
S.D.C.C.
P.O. BOX 208
Indian Springs, Nv 89070

Petitoiner-Pro per

95C129824
MOT
Motion
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3
FILED
SEP 23 2010
John H. [Signature]
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

GARY LYNN LEWIS,

Petitioner,

CASE NO. C129824X

vs.

DEPT. NO. XII

THE STATE OF NEVADA,

DOCKET NO. P

Respondent.

MOTION FOR AN EVIDENTIARY HEARING

Comes Now Gary Lynn Lewis, Petitioner in proper person, and moves this Honorable Court in a Motion for an Evidentiary Hearing pursuant to NRS 34.770.

This MOTion is based on all facts, pleadings, papers and the attached Points and Authorities.

Dated this 13 day of September, 2010.

Respectfully Submitted,

Gary Lynn Lewis

Gary Lynn Lewis-Petitoiner/ Pro per

RECEIVED
SEP 23 2010
CLERK OF THE COURT

NOTICE OF MOTION

YOU AND ALL OF YOU WILL PLEASE TAKE NOTICE, that Gary Lynn Lewis
Petitoiner in a Motion For an Evidentiary Hearing in the above-entitled
action Motion this court for a hearing before this Honorable Court
on the 13 day of September, 2010, at a.m. of said day, or
as soon as thereafter this court dceems appropriate, to decide the merits
of the above-entitled motio.

Dated this 13 day of September, 2010.

BY: Gary Lynn Lewis

Gary Lynn Lewis-Petitioner/ Pro per

Points and Authorities

Statement of facts

On the instant matter, petitioner is a mental Health patient, and is presently taking the psychotropic medication "Sinequan" and has been on that med and other psychotropic medications since 1995, when petitioner came into the Nevada Department of Prisons. Prior to coming into the prison system for the aforementioned offense, petitioner while housed in the Clark County Detention center, petitioner was prescribed the psychotropic medication "Thorazine". for his mental Health condition.

Thereafter, approximately August 16, 1995, Petitioner appeared before the Honorable William Maupin, in Dept #7 in the Eighth Judicial District Court for his initial arraignment for the aforementioned charge. However, petitioner's counsel of the Clark County Public Defender's Office Robert D. Caruso, (Hereinafter, Caruso) failed to appear the court at that time petitioner was illiterate and presently on psychotropic medication prescribed by the Nevada Department of Prisons medical department.

It is noted to note at this juncture, due to petitioner's illiterate status, and that he is on psychotropic medication, petitioner is being assisted in this litigation by a "jailhouse" lawyer, who only assisting petitioner to get his case back before the court. Thereafter, it will be impossible for petitioner to be assisted by this "Jailhouse lawyer".

Throughout the entire time Caruso was assigned to this case, Caruso never discussed the case with petitioner or any possible defense, nor did Caruso inquire with petitioner whether or not he had any witnesses in his behalf he wished to call.

Moreover, Caruso never explained to petitioner the evidence state had against him, or his right to challenge the evidence,

Moreover, Caruso never advised Petitioner of his right to have an independent lab conduct a test on the D.N.I. evidence taken from Petitioner and the alleged victim. Therefore, DNA test for match is needed.

Moreover, Caruso was ineffective for misrepresenting the full range and consequences of the plea negotiations. Petitioner was under the assumption the terms of the plea were to be, petitioner would receive no more than a ten (10) year maximum prison term. However, the actual terms indicated in the Guilty Plea Agreement contradicted counsel. Pursuant to the plain wording of the Guilty Plea Agreement explicitly indicated, a prison term of life or twenty-five (25) years.

Therefore, under the circumstances aforementioned an Evidentiary Hearing is warranted to determine and/or address petitioner's claim counsel failed to inform petitioner of the full range and consequences of the plea negotiations, and to determine if Caruso failed to provide Petitioner effective assistance of counsel.

Counsel Was Ineffective Because

of Affirmative Misrepresentation of

Consequence of Plea Negotiations

An affirmative misrepresentation by counsel as to the "full range consequences of a guilty plea," might well constitute "ineffective assistance." Such a misrepresentation meets the first prong of the [ineffective assistance of counsel] test. "Whereby, such a misrepresentation is 'objectively unreasonable.'"

Thus, the United States Court of Appeals ruling in Couto, is applicable in the instant case. ... In Couto, the court held because an "affirmative misrepresentation by counsel as to the deportation consequences of a guilty plea is today objectively unreasonable," the court held that "such a misrepresentation meets the first prong of the

[ineffective assistance of counsel] test, United States v. Couto, 311 F.3d at 188 (2d Cir. 2002).

Moreover, the court found that Couto's behavior indicated that she wanted to avoid deportation and that "there can be no doubt that the likelihood of a guilty would have greatly diminished had counsel not misled her, United State v. Couto, 311 F.3d at 188 n. 9. (2d Cir. 2002).

On the instant case according to the information provided to petitioner by caruso, it is undisputed petitioner entered into the plea negotiation to avoid receiving a life sentence.

Thus, in support of petitioner's claim the district court records in this matter is sufficient to determine, the facts surrounding petitioner's guilty plea, substantiates his claims for relief.

It is not belied by district court records, approximately June 12, 1996, petitioner appeared before the Honorable Maupin for his scheduled calendar call, Caruso approached petitioner with a copy of state's guilty plea agreement, counsel without explaining to petitioner his rights to trial or the full consequences of what the guilty plea agreement entailed, Caruso told petitioner state is offering a ten (10) year deal. Thus, counsel informed petitioner if he did not accept States offer, State would seek a life sentence against petitioner.

Whereby, petitioner acted in avoiding a "life sentence" accepted the plea negotiation, thereby, signing the guilty plea agreement, which the court accepted Petitioner's plea and filed the guilty plea agreement in open court. (See, Exhibit "A" Guilty Plea Agreement.).

Shockinglly, to petitioner's disbelief, on or about August 2, 1996

the date of petitioner's sentencing, the court sentenced petitioner as stated from the record by the court in relevant part:

"... in addition to the \$25,00 administrative assessment fee, Deft. sentenced to Nevada Department of Prison for a term of life with the possibility of parole, to be served concurrently with C122079, and is to receive zero days credit for time served..." (See Exhibit "B" Dist. Court Min. pg. 4)

Furthermore, the court in Couto held, the court reasoned that "[I]t follows that if the defendant can establish there is a reasonable probability that, but for counsel's errors, [S]he would not have pleaded guilty and would have insisted on going to trial, then, the guilty plea is invalid, United States v. Couto, 311 F.3d. 179, 187, (2d Cir. 2002).. (quoting U.S. v. Hernandez, 242 F.3d. 110, 112 (2d Cir. 2001).

On support of petitioner's claim, if petitioner would have been able to read and write and not on psychotropic meds, he would have read the plea agreement realizing it indicated a life or twenty-five year sentence, instead of the 10 year Caruso said the state offered.

Furthermore in support of petitioner's claim, he relies on district court minutes that articulately indicate, Caruso did not apprise the court petitioner was illiterate until his sentence which indicates in pertinent part:

"... Mr. Caruso advised he is not ready to proceed this date, as deff. is illiterate and was just transported from Jean this morning. Therefore, additional time is needed in order for the P.S.I. report to be read to him..." (See Exhibit "B"

Dist. Court Min. Pg. 2).

It is crucial to note at this juncture, in further support of petitioner's claim, Petitioner points out Caruso never requested the court for a continuance to review with petitioner's State's proposed plea offer, to ensure that petitioner understands the full range of the consequences of his plea; instead Caruso merely requested a continuance to read the P.S.I. report to petitioner, which is insignificant compared to misrepresentation of the consequences that the plea agreement entailed.

Moreover, it is without question that Caruso misrepresented the full consequences of the Guilty Plea agreement. The district court in this matter was completely unaware that petitioner was illiterate or that petitioner was under psychotropic meds because of his mental health condition at the time the court accepted petitioner's plea.

Furthermore, district court minutes articulately indicate the court never inquired with petitioner to determine if he fully understood the terms of the plea negotiations, nor did the record indicate that the court inquired with petitioner, to determine if petitioner had any questions as to the terms of the plea, and if in fact, counsel explained the full consequences of the plea.

Instead the district court minutes reflect in relevant part:

"... Penalty stated, Ms. Lowry¹ recited the facts which the State would rely upon for conviction. Court accepted plea."
(See, Exhibit " " Dist. Court minutes Pg. 2).

1. Lori Brown is the prosecutor in the instant cases. Pg. 2.

Petitioner has established undisputed evidence Caruso abandon his Sixth Amendment right to counsel, and that it was impossible Caruso explained the full consequence of the Guilty Plea Agreement to Petitioner.

On support of Petitioner's claim, he contends it is not belied by district court records, the district court never inquired with petitioner if he understood the terms of the Guilty Plea Agreement, or if counsel explained to petitioner the consequences and/or the terms of the Guilty Plea Agreement.

Instead, the record articulately reflects the court merely allowed prosecution to state for the record what state could prove if petitioner went to trial, then accepted petitioner's guilty plea.

As this court stated in Mann v. State, "[a] claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made. Mann v. State, 46 P.3d 1228, 1230, 118 Nev. 351, 354 (2002).

Moreover, it is not belied by the record petitioner's claim that their existed a conflict of interest the court should have made an inquiry to determine if it infringed upon petitioner's fundamental Sixth Amendment right to counsel. Thus, petitioner's relies on the district court records, that the conflict of interest existed and State nor Caruso can allege Caruso's actions or decision fall within the narrow bounds of counsel strategy decisions.

First, no reasonable attorney would have in their client's best interest as in the instant case waited until petitioner had entered into a plea agreement and court accepts his plea, to apprise the court at Petitioner's scheduled sentencing date. Petitioner is illiterate, and it is in petitioner's interest for a

continuance to read the P.S.I. to him, instead of asking the court for a continuance to explain the full consequences of the plea agreement, especially considering Petitioner is illiterate and on psychotropic medications. Such actions prejudice his right to counsel.

The Sixth Amendment right to counsel includes a correlative right to representation free from conflict of interest. *Lewis v. Magle*, 391 F.3d 939, 995 (9th Cir. 2004).

In *Cronic*, the court described the type of situation from which prejudice is presumed. When counsel is totally absent, is prevented from assessing accused at critical stage of the proceeding, or when counsel entirely fails to subject the prosecution's case to a meaningful adversarial testing, we will presume prejudice. *Cronic*, 466 U.S. at 659.

Evidentiary Hearing is Warranted

It is Petitioner's claim that his guilty is invalid, because he did not receive effective assistance of counsel. First, counsel failed to apprise Petitioner of the consequences of the plea. Further, Caruso misrepresented the actual consequences of the Guilty Plea Agreement which led to Petitioner's guilty plea and conviction. A hearing (Evidentiary Hearing) is warranted to call Petitioner's former counsel Public Defender Robert Caruso of the Clark County Public Defender's Office, to testify to what he did and did not apprise Petitioner prior to the entry of his guilty plea.

NRS 34.770(1) provides that, in post-conviction habeas corpus proceedings, the Judge shall determine whether an evidentiary hearing is required. Under NRS 34.770(3), "[I]f the judge determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing." Such a writ does not entitle a prisoner to be discharged from the custody or

restraint under which he is held, ... [but] requires only that the production of the petitioner to determine the legality of his custody or restraint."

Thus, the claim's petitioner raised in his post-conviction is not belied by the by the record. Therefore, an evidentiary is warranted to question Caruso regarding the claims asserted in petitioner's post-conviction Petition.

Furthermore, in the Gebers this court held, it is clear from the record that the district court determined that an evidentiary hearing was warranted wherein, Gebers' former counsel would be questioned and would testify regarding the claims asserted in Gebers' petition. Once the district court decided to conduct that evidentiary hearing, it was required by statute to grant the writ, to order Gebers' to be produced for the hearing, and to permit her an opportunity to deny, controvert, or present evidence to demonstrate that her imprisonment was unlawful. Gebers v. State, 50 P.3d 1092, 118 Nev. 500 (Nev. 2002).

As the court held in Mann, the record did not belie habeas petitioner's claim that attorney ignored request for appeal, and thus, the petitioner was entitled to an evidentiary hearing on her claim alleging ineffective assistance of counsel. Mann v. State, 46 P.3d 1228, 118 Nev. 351.

Furthermore, an evidentiary hearing is warranted to allow petitioner through assistance of counsel, the opportunity to demonstrate error asserting because of his illiteracy, and the fact petitioner was on psychotropic medication because of his mental health condition, he was incompetent to nevertheless understand the proceedings, but to understand the full range of the consequences of the Guilty plea agreement.

Thus, it is not belied by the record that a psychiatric evaluation was never completed, so that the court could make a reasonable and legal determination as to whether petitioner was entering the plea negotiation knowingly and intelligently. Moreover, an evidentiary hearing is warranted to determine whether Caruso actually complained to the court of petitioner's mental health issues, as well as to determine if Caruso actually explained to petitioner the full consequences of the guilty plea agreement and if, in fact petitioner understood the terms of the negotiation.

Whereby, under the circumstances aforementioned herein, these assertions are sufficient to warrant an evidentiary hearing on the issues whether petitioner demonstrated good cause for his failure to comply with the procedural rules of filing and whether application of the procedural rules here would cause a fundamental miscarriage of justice.

Thus, the Nevada Supreme Court has held, it may excuse the failure to show good cause where the prejudice from a failure to consider the claim amounts to a "fundamental miscarriage of justice." *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d. 920, 922 (1996). *Abgen v. State*, 109 Nev. at 959, 860 P.2d. at 715-16,

It is without question petitioner was prejudiced of his constitutional rights to due process of law because of his illiteracy and his being on psychotropic medications, coupled with the deprivation of his Sixth Amendment right to counsel, when Caruso abandoned petitioner's Sixth Amendment right to counsel.

On Support of Petitioner's claim, he relies on the report by Dr. Marvin senior psychiatrist at Southern Desert Correction Center which states in pertinent part:

"... Mr. Lewis came into prison system in 1995, and has been in Sonoran since. It is an anti-depressant with the side effects of drowsiness, confusion, and disorientation. Prior to prison, he was at C.C.P.C. where thiorazine was prescribed which can cause drowsiness. He has been on resperidone since July 2009, which can cause sleepiness. His diagnosis are schizophrenia, a psychotic disorder and depression. (See, Exhibit "C" Progress notes Dr. Marvin).

Furthermore, an evidentiary hearing is warranted to determine if Caruso was ineffective for failing to call witnesses on behalf of petitioner, which petitioner requested.

On Powell, the Nevada Supreme Court approximately August 2003, reversed the district court's grant of a new penalty hearing and remand for evidentiary hearing on counsel's failure to call Powell's family members to testify. State v. Powell, 138 P.3d, 453, (Nev. 2006).

Conclusion

Wherefore, based on the facts and information herein, petitioner prays that this Honorable Court will grant petitioner's Motion.

Dated this 13 day of September, 2010.

Respectfully Submitted
Blay Lynn Lewis

Affidavit of Gary Lynn Lewis

State of Nevada)

County of Clark) ss:

I, Gary Lynn Lewis, being first duly sworn, depose and says:

1. That I am being assisted in this matter by a jail house lawyer because I can not read or write.

2. That from the day I met Caruso as my attorney I explained to him that I can not read or write, and that I was on psychotropic medications.

3. That Mr. Caruso approached me in court on the day of my scheduled calendar call, he told me state had a plea offer of ten (10) years, and that, if I did not accept the offer the court would seek a life sentence. However, Caruso never read the guilty plea agreement to me, or explain the full consequences of the guilty plea agreement.

4. That because I could not read or write, I trusted the offer Caruso told me the state was making, was stated in the guilty plea agreement. I signed the guilty plea agreement based on the 10 year plea agreement he said state offered. However at sentencing, I was given a "life" sentence, a sentence I tried to avoid by accepting and signing the plea agreement.

5. That the court never explained the terms of the plea agreement to me, nor did the court ask me if Caruso explained to me the terms stated in the plea agreement, or inquire if Caruso read the guilty plea agreement to me.

6. That I always told Caruso I'm not guilty.

7. That I make this affidavit knowingly and voluntarily,
and to meet the ends of Justice. Furthermore, this affidavit is
not made to annoy or harass anyone involved in this instant
matter.

Dated this 13 day of September, 2010.

Respectfully Submitted,

Affiant Sayeth Naught

Gary Lynn Lewis

Gary Lynn Lewis - Affiant / pro per.

Dated this 13 day of September, 2010.

I, Gary Lynn Lewis, do solemnly swear, under the penalty of
perjury, that the above Affidavit is accurate, correct, and true
to the best of my knowledge. NRS 171.102 and NRS 208.165.

Respectfully Submitted,

Gary Lynn Lewis

Gary Lynn Lewis - Affiant / pro per

Certificate of Mailing

This is to certify that a true copy of the foregoing Motion for an Exigent hearing was served via U.S. mail at S.D.C.C. on the 13 day of September, 2010, to the following addresses:

Davis - Rogers
Clark County Dist. Attorney.
200 Lewis Ave
Las Vegas, NV. 89155.

Catherine Cortez Mastro Esq.
Attorney General.
100 N. Carson Street.
Carson City, Nev. 89701-4747

BY: Gary Lynn Lewis
Gary Lynn Lewis - Petitioner / Pro per.

PRE-SENTENCE REPORT
GARY LYNN LEWIS
CC# C129824

PAGE 3

ADULT PROBATION ADJUSTMENT: On February 10, 1995, the defendant was sentenced to a period of community supervision following his conviction for the felony offense of Lewdness With a Minor. The defendant was only on probation for five months before he was arrested for the instant offense. At that time, a probation hold was placed and the defendant's probation was subsequently revoked.

OFFENSE REPORT: Records of the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On July 10, 1995, a detective with the Las Vegas Metropolitan Police Department was requested to meet with uniformed officers in reference to a sexual abuse of a minor with the apparent suspect being in custody at that location. Upon arrival the uniformed officers indicated that they had the defendant, Gary Lynn Lewis, in custody for the sexual assault of a seven year old male juvenile. The mother of the victim was contacted, who indicated that she had a conversation with her son because of his actions and he stated that he had been raped. The victim indicated that he had been playing at a local address at 10:00 p.m. on the ninth of July and that he returned home about 11:10 p.m. The victim then told his mother that the defendant offered him some sunflower seeds if he would go into the vacant downstairs apartment and lay on the mattress. The victim went into the vacant apartment and upon entry, the defendant began kissing the victim on the lips. The defendant then told the victim to take all of his clothes off and due to the fact that the victim was scared he complied. The victim indicated that the defendant took his penis and put it into his anus. According to the victim the defendant then "humped" him. The defendant then got dressed and told the victim "don't tell anyone or I'll kill you". The victim then left the vacant apartment and returned home. At this time the victim's mother was informed of the incident and she called 911. The defendant was located, identified by the victim and transported to the Clark County Detention Center where he was charged with Sexual Assault and Lewdness With a Minor.

DEFENDANT STATEMENT: The defendant was interviewed telephonically from the Southern Nevada Correctional Center on July 16, 1996. The defendant related that he pled guilty per the Alford decision and denies committing the instant offense.

VICTIM INFORMATION: Information received from the victim's mother on June 22, 1996, reveal that the victim has problems sleeping and has nightmares. Additionally, he has problems in school. She further indicated that the victim goes to counseling and is required to take prescription drugs because he is depressed. Apparently the whole family is in counseling and the instant offense has been extremely traumatic for not only the victim but his family as well. They are not requesting any restitution.

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 003

07/31/96 09:00 AM 01 SENTENCING

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: TINA HURD, Court Clerk
TOM MERCER, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
003649	Kephart, William D.	Y
0001 D1	Lewis, Gary L	Y
PUBDEF	Public Defender	Y
003447	Immerman, Stephen M.	Y

Roy Evans of the Division of Parole & Probation present. Mr. Immerman agreed to a continuance to Friday. COURT ORDERED, CONTINUED.

CUSTODY

CONTINUED TO: 08/02/96 09:00 AM 02

08/02/96 09:00 AM 02 SENTENCING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
003649	Kephart, William D.	Y
0001 D1	Lewis, Gary L	Y
PUBDEF	Public Defender	Y
001631	Caruso, Robert D.	Y

Michael R.P. Leoni of the Division of Parole & Probation present. Conference at the bench between Court and counsel. DEFT. LEWIS ADJUDGED GUILTY of SEXUAL ASSAULT (F). Matter submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment Fee,, Deft. SENTENCED to Nevada Department of Prisons for a term of LIFE WITH THE POSSIBILITY OF PAROLE, to be served CONCURRENTLY with C122079; and is to receive ZERO Days Credit for Time Served. At the request of Mr. Caruso, Deft. REMANDED to the prison in Jean.

CONTINUED ON PAGE: 005

PRINT DATE: 10/04/07

PAGE: 004

MINUTES DATE: 08/02/96

1 Garv Lynn Lewis
2 Petitioner/In Propria Personam
3 Post Office Box 208 S.D.C.C.]
4 Indian Springs, Nevada .89070.

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

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FILED
SEP 23 2010
[Signature]
CLERK OF COURT

8 Garv Lynn Lewis

9 **Petitioner,**

10 **vs.**
11 **THE STATE OF NEVADA**
12 **SOUTHERN DESERT CORRECTION**
13 **CENTER - WARDEN BRIAN,**
14 **WILLIAMS.**

15 **Respondent(s).**

95C129824
PWHC
Petition for Writ of Habeas Corpus
946668



Case No. C129824

Dept. No. XII

Docket P

15 **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

16 **INSTRUCTIONS:**

- 17 (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- 18 (2) Additional pages are not permitted except where noted or with respect to the facts which you
- 19 rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs
- 20 or arguments are submitted, they should be submitted in the form of a separate memorandum.
- 21 (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to
- 22 Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the
- 23 certificate as to the amount of money and securities on deposit to your credit in any account in the
- 24 institution.
- 25 (4) You must name as respondent the person by whom you are confined or restrained. If you are
- 26 in a specific institution of the department of corrections, name the warden or head of the institution.
- 27 If you are not in a specific institution of the department within its custody, name the director of the
- 28 department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

RECEIVED
SEP 28 2010
CLERK OF THE COURT

1 Failure to raise all grounds I this petition may preclude you from filing future petitions
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one
9 copy must be filed with the clerk of the district court for the county in which the conviction
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the
12 attorney general's office, and one copy to the district attorney of the county in which you were
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.
14 Copies must conform in all particulars to the original submitted for filing.

15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you
17 are presently restrained of your liberty: Southern Desert Correction Center.

18 2. Name the location of court which entered the judgment of conviction under attack: _____
19 EIGHTH JUDICIAL DISTRICT COURT (Las Vegas, Nv 200 Lewis Ave)

20 3. Date of judgment of conviction: Approximately July 9, 1996

21 4. Case number: C129824

22 5. (a) Length of sentence: Life with Possiblity of Parole

23 (b) If sentence is death, state any date upon which execution is scheduled: xx

24 6. Are you presently serving a sentence for a conviction other than the conviction under attack in
25 this motion:

26 Yes ____ No ____ If "Yes", list crime, case number and sentence being served at this time: _____

27 7. Nature of offense involved in conviction being challenged: _____

28 Sexual Assault

- 1 8. What was your plea? (Check one)
- 2 (a) Not guilty _____
- 3 (b) Guilty _____
- 4 (c) Nolo contendere ☒
- 5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
- 6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: _____
- 7 Counsel informed me the plea agreement was for (10) year maximum.
- 8 However, I was sentence to a life sentence with possibility of Parole.
- 9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)
- 10 (a) Jury _____
- 11 (b) Judge without a jury ☒
- 12 11. Did you testify at trial? Yes _____ No ☒
- 13 12. Did you appeal from the judgment of conviction?
- 14 Yes ☒ No _____
- 15 13. If you did appeal, answer the following:
- 16 (a) Name of court: Eighth Judicial Dist. Court
- 17 (b) Case number or citation: C129824
- 18 (c) Result: Denied
- 19 (d) Date of appeal: 2009
- 20 (Attach copy of order or decision, if available).
- 21 14.) If you did not appeal, explain briefly why you did not: N/A
- 22 _____
- 23 _____
- 24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
- 25 filed any petitions, applications or motions with respect to this judgment in any court, state or
- 26 federal? Yes ☒ No _____
- 27
- 28

1 16. If your answer to No 15 was "Yes", give the following information:

2 (a) (1) Name of court: Eighth Judicial Dist. Court.

3 (2) Nature of proceedings: Habeas Corpus.

4
5 (3) Grounds raised: Petitioner was never charged with the
6 crime indicated in the July 9, 1996 Judgment of Conviction

7
8 (4) Did you receive an evidentiary hearing on your petition, application or motion?

9 Yes ___ No X

10 (5) Result: N/A

11 (6) Date of result: N/A

12 (7) If known, citations of any written opinion or date of orders entered pursuant to each
13 result: N/A

14 (b) As to any second petition, application or motion, give the same information:

15 (1) Name of Court: N/A

16 (2) Nature of proceeding: N/A

17 (3) Grounds raised: N/A

18 (4) Did you receive an evidentiary hearing on your petition, application or motion?

19 Yes ___ No X

20 (5) Result: N/A

21 (6) Date of result: N/A

22 (7) If known, citations or any written opinion or date of orders entered pursuant to each
23 result: N/A

24 (c) As to any third or subsequent additional application or motions, give the same
25 information as above, list them on a separate sheet and attach.

26

27

28

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes X No

5 Citation or date of decision: May 15, 2009

6 (2) Second petition, application or motion?

7 Yes No X

8 Citation or date of decision: N/A

9 (e) If you did not appeal from the adverse action on any petition, application or motion,
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your
11 response may be included on paper which is 8 ½ x 11 inches attached to the petition. Your response
12 may not exceed five handwritten or typewritten pages in length). See attach Memorandum.

13
14
15 17. Has any ground being raised in this petition been previously presented to this or any other
16 court by way of petition for habeas corpus, motion or application or any other post-conviction
17 proceeding? If so, identify: No

18 (a) Which of the grounds is the same: N/A

19
20 (b) The proceedings in which these grounds were raised: N/A

21
22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts
23 in response to this question. Your response may be included on paper which is 8 ½ x 11 inches
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in
25 length). N/A

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages
2 you have attached, were not previously presented in any other court, state or federal, list briefly what
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
6 pages in length). See attach Memorandum

7
8 19. Are you filing this petition more than one (1) year following the filing of the judgment of
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.
10 (You must relate specific facts in response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five
12 handwritten or typewritten pages in length). (See Memorandum)

13
14
15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the
16 judgment under attack?

17 Yes ___ No X

18 If "Yes", state what court and the case number: _____

19
20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: Robert Caruso (Clark County Public
22 Defender)

23
24 22. Do you have any future sentences to serve after you complete the sentence imposed by the
25 judgment under attack?

26 Yes ___ No X If "Yes", specify where and when it is to be served, if you know: _____

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating
2 additional grounds and facts supporting same.

3 23. (a) GROUND ONE: Good Cause Exist for Delay in Filing
4 Habeas Corpus.
5 (See Memorandum)
6

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): _____

8 (See attached) memorandum.
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23. (b) GROUND TWO: Counsel was ineffective for misrepresenting
the full consequence of the Shelby plan Agreement

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
(See, Attach Memorandum),

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23. (c) GROUND THREE: Counsel was ineffective for failing
to call witnesses in behalf of Petitioner.

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
(See attached Memorandum).

1 **WHEREFORE,** Petitioner, prays that the court grant Post-conviction
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at SNCC P.O. Box 208, Indian Springs, Nev. 89070
4 on the 13 day of Sept, 2010.

5
6 *Harry Lynn Lewis*
7 Signature of Petitioner

8 **VERIFICATION**

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is
11 true and correct of his own personal knowledge, except as to those matters based on information and
12 belief, and to those matters, he believes them to be true.

13
14 *Harry Lynn Lewis*
15 Signature of Petitioner

16
17 *Petitioner / pro per*
18 Attorney for Petitioner

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CERTIFICATE OF SERVICE BY MAILING

I, Gary Lynn Lewis, hereby certify, pursuant to NRCP 5(b), that on this _____ day of _____, 2010, I mailed a true and correct copy of the foregoing, "Writ of Habeas Corpus (Post-Conviction)," by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clark County Dist. Attorney
David Rogers
200 Lewis Ave
Las Vegas, NV. 89155

Catherine Cortez Mastro, Esq.
Attorney Gen.
100 N. Carson St.
Carson City, NV. 89701-4747

Warden Brian Williams
Southern Desert Correctional Cent.
P.O. Box 208
Indian Springs, NV. 89070

CC:FILE

DATED: this 13 day of Sept, 2010.

Gary Lynn Lewis #47615
Gary Lynn Lewis #
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Memorandum of Points and Authorities

On or about August 16, 1995, petitioner appeared before the Honorable Judge William Maupin, in Dept #7 in the Eighth Judicial District Court for his initial arraignment on the charge of Sexual Assault (felony - 200.364, 200.366).

Hereafter, on or about June 12, 1996, at the continued calendar call, Caruso approached petitioner and presented him in open court with a guilty plea agreement, a promising petitioner that state offered if a plea negotiation of ten (10) years, and further a promised petitioner he did not accept the offer, state would seek a life sentence.

Thus, petitioner being illiterate and on psychotropic medications because of his mental health condition, trusted counsel and signed the guilty plea agreement, only after continuing to inform his public Defender Robert Caruso (Hereinafter, Caruso) that he was not guilty and that he had a witness and/or witnesses who could prove his innocence. However, Caruso ignored petitioner's claims and led him into the plea ... negotiation, stating prosecution will give life sentence. It is crucial to note, Caruso never read the guilty plea agreement prior to convincing petitioner to sign the guilty plea agreement, nor did Caruso apprise the court of petitioner's mental health condition, or the fact that he was presently on psychotropic medication.

Moreover, Caruso waited until petitioner's scheduled sentence date, and appraised the court petitioner is illiterate. The court merely continued the sentence date to allow Caruso to read the P.S.I. report to petitioner.

Moreover, Caruso never discussed any possible defense, nor did Caruso challenge the DNA evidence, or apprise petitioner

g his right to challenge DNA taken as evidence to determine if it in fact match that in victim. Therefore, an evidentiary hearing is warranted for DNA comparisons.

It is crucial to note, prior to petitioner filing the instant motion, he was assisted by a inmate at Northern Nevada State Prison, with desire to have a Habeas Corpus (Post-conviction) filed on ineffective assistance of counsel. Instead that inmate file Habeas on the grounds petitioner was convicted on a charge not indicated in the July 9, 1994 Judgment of conviction.

Whereby, under the circumstances of this case, petitioner could not read or write, and is a mental health patient that has been on psychiatric medicine since his conviction in the Nevada Department of prison for over (15) years.

Due to Carson completely abandoning petitioner's Sixth Amendment right to counsel, and the fact the circumstances of this case establish petitioner's plea was not knowingly and intentionally made, which render petitioner's plea invalid and establish sufficient grounds for late filing of the Habeas Corpus (Post-conviction) in this instant matter.

Good Cause Exist to Excuse Delay in Filing Late Habeas Corpus Post-Conviction.

As the court held in Hathaway, a claim of ineffective assistance of counsel may also excuse a procedural default if counsel was so ineffective as to violate the sixth amendment. Hathaway v. State, 70 P.3d 503, 119 Nev. 248 (Nev. 2003) (citing Edwards v. Carpenter, 529 U.S. 466, 451, 120 S.Ct. 1587, 146 L.Ed.2d 518 (2000)).

Thus, a petitioner must demonstrate cause for raising the ineffective assistance of counsel claim in an untimely fashion. In terms of a procedural time-bar, an adequate allegation of good cause would sufficiently

explains why a petition was filed beyond the statutory time period.

Mathaway v. State, 71 P.3d. 503, 119 Nev. 248, (Nev. 2003).

In the instant matter petitioner apprised Caruso the first day he met him, that he could not read or write, and that he was on psychiatric medication because of his mental health condition. Petitioner further explained to Caruso that he was not guilty, a fact petitioner maintained throughout the case. This fact is reflected in the P.S.I. report in relevant parts:

"... The Defendant was interviewed telephonically from the Southern Nevada Corrections Center on July 16, 1996. The

Defendant related that he plead guilty per Alford Decision and denies committing the instant offense..." (See Exhibit "A"

P.S.I. Report pp. 3).

It is without question a conflict of interest existed from the time Caruso was appointed to represent Petitioner. At Petitioner's first meeting with Caruso, he informed him he had witnesses on his behalf that could prove his innocence. However, Caruso ignored Petitioner's claim, and persisted on taking a plea negotiation. Nevertheless, Caruso never discussed the case with Petitioner or any possible defense.

The Sixth Amendment right to counsel includes a correlative right to representation free from conflict of interest. Lewis v. Mayle, 391 F.3d. 939, 995 (9th Cir. 2004).

Moreover, DNA was taken from petitioner and the alleged victim, Caruso never informed Petitioner whether a lab test had been performed on the DNA test, or if it had, what the result was. Caruso failed to inform Petitioner state had the burden of proof to prove that Petitioner's DNA matched that found in

the victim.

- On Cromie, the court described the type of situation from which prejudice is presumed. When counsel is totally absent, is prevented from accessing accused at critical stage of the proceeding, or when counsel entirely fails to subject prosecution's case to a meaningful adversarial testing, we will presume prejudice. Cromie, 466 U.S. 659,

Moreover, Caruso failed to inform petitioner he had a right to have an independent lab test conducted on the DNA to determine if it was undisputed petitioner's DNA matched.

Argument II

Caruso was ineffective for Denying

Petitioner Counsel at his Sentencing

Thus, at Petitioner's scheduled calendar call, Caruso approached Petitioner with an offer by the state. Caruso knew petitioner was illiterate, and failed to read the guilty plea agreement to Petitioner, before having him sign the plea agreement. Whereby, the morning on June 12, 1996, Caruso misrepresented the terms of the plea negotiation. Caruso informed Petitioner state offered a ten (10) year minimum, and if Petitioner did not accept the offer state would seek a life sentence. Petitioner, then signed the guilty plea agreement in open court.

Strangely, at Petitioner's July 24, 1996 scheduled sentencing, Caruso informed the court in relevant part:

"... Mr. Caruso advised he is not ready to proceed.

This date, as defendant is illiterate and was just

transported from lean this morning. Therefore, additional time is needed in order for the PSI to be read to him."

(See Exhibit "B" District Court / Vol. 1, p. 2).

It is crucial to note, Caruso did not request a continuance to obtain Pettinore's mental health records, or to call witnesses in his behalf, or otherwise put on a defense. The consequences of the guilty plea agreement.

Two things occurred at Pettinore's scheduled July 24, 1996, it was undisputed at that juncture, the court was completely unaware of his to accepting petitioner's guilty plea, and the court cannot establish a claim the court knew in fact, that Pettinore had entered his guilty plea knowingly and intelligently.

The Supreme Court's Sixth Amendment jurisprudence has long recognized that a criminal defendant's right to counsel is a fundamental component of our justice system. Furthermore, the Supreme Court noted, "Whenever a defendant is denied counsel during sentencing, the Supreme Court has uniformly found constitutional error without any showing of prejudice." Alberici v. McDaniel, 458 F.3d 860, (C.A.9 (Nev. 2006)). (citing United States v. Cronin, 466 U.S. 648, 659, 104 S.Ct. 2039, p. 80 L.Ed.2d 657 (1984)).

Argument III.

A. Manifest Injustice Has Occurred

Due to Ineffective Assistance of Counsel

As Pettinore's established established in his Motion for an evidentiary hearing about his past involvement in the events of Pettinore's Motion for Evidentiary Hearing and Habeas Corpus Post-Conviction it is undisputed a manifest injustice and a miscarriage of justice has occurred and/or further occur.

Moreover, the circumstances surrounding the manner in which Caruso went about convincing petitioner to enter into the plea negotiation nevertheless, Caruso withheld critical facts that had the court known, say, never have accepted petitioner's plea especially considering Caruso allowed Petitioner to sign the plea agreement about a year. The court petitioner was illiterate and on psychotropic medications because of his mental health condition.

It is undisputed from the plea wording, the writer of the P.B.L. report, petitioner maintained his innocence even after he had plea guilty. Such facts would cause concern even if a reasonable mind individual had enter a plea under such circumstances.

As the Court Held in Rubio and is applicable in the instant case. A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest through ineffective assistance of counsel. Rubio v. State, 194 P.3d, 1224, (Nov. 2005). Citing United States v. Signer, 844 F.2d. 635, 638 (9th Cir. 1988).

In support of petitioner's claim that a fundamental miscarriage of justice will occur if the court fails to consider the claims in Petitioner's Habeas Petition and Motion for Evidentiary Hearing. Petitioner relies on the notes written by Dr. Marvin G. Southern, Director, Correction Center, the head psychiatrist, which establish Petitioner's state of mind throughout the proceeding in this case and at the time he entered into the plea negotiation and

signed the plea agreement. Thus, Dr. Marvin's notes states in - pertinent part.

"... Mr. Lewis entered the prison system in 1995, and has been on Sinequan since, this medication is an antidepressant with the side effects of drowsiness, confusion and disorientation. Prior to prison, he was confined at CDC, where thiorazine was prescribed which cause drowsiness, He has been on Trisperdone. Since July 2009 which can cause sleepiness, His diagnosis are schizophrenia, a psychotic disorder and depression.. (See, Exhibit "C" Dr. Marvin notes).

Conclusion.

Whereby, based on the facts mention herein, petitioner prays this Honorable Court will grant his petition and order the clerk to make an order for an Evidentiary Hearing, and the court to determine of defendant's motion for appointment of counsel should be granted.

Dated this 13 day of Sept 2010.

Respectfully Submitted,

Gary Lynn Lewis
Gary Lynn Lewis - Petitioner
Pro-Se

Certificate of Mailing

This is to certify that a true copy of the foregoing Petition for Writ of Habeas Corpus (Post-Conviction) was served via U.S. mail at S.D.C.C. on the 13 day of September, 2010 to the following addresses:

Clark County Dist. Attorney	Catherine Carter Mastros, Esq.
David Rogers	Attorney Gen.
200 Lewis Ave	100 N. Carson Street
Las Vegas, Nev. 89155	Carson City, Nev. 89701-4747

Warden Brian Williams
Southern Desert Correctional Cent.
P.O. Box 208
Indian Springs, Nv. 89070

DATED THIS 13 day of Sept, 2010.

I, Gary Lynn Lewis, do

solemnly swear, under the penalty of perjury, that

the above Petition is accurate,

correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,

Gary Lynn Lewis

Gary Lynn Lewis / Petitioner / Pro per

Defendant

PRE-SENTENCE REPORT
GARY LYNN LEWIS
CC# C129824

PAGE 3

ADULT PROBATION ADJUSTMENT: On February 10, 1995, the defendant was sentenced to a period of community supervision following his conviction for the felony offense of Lewdness With a Minor. The defendant was only on probation for five months before he was arrested for the instant offense. At that time, a probation hold was placed and the defendant's probation was subsequently revoked.

OFFENSE REPORT: Records of the Las Vegas Metropolitan Police Department and the Clark County District Attorney's Office reflect that the instant offense occurred substantially as follows:

On July 10, 1995, a detective with the Las Vegas Metropolitan Police Department was requested to meet with uniformed officers in reference to a sexual abuse of a minor with the apparent suspect being in custody at that location. Upon arrival the uniformed officers indicated that they had the defendant, Gary Lynn Lewis, in custody for the sexual assault of a seven year old male juvenile. The mother of the victim was contacted, who indicated that she had a conversation with her son because of his actions and he stated that he had been raped. The victim indicated that he had been playing at a local address at 10:00 p.m. on the ninth of July and that he returned home about 11:10 p.m. The victim then told his mother that the defendant offered him some sunflower seeds if he would go into the vacant downstairs apartment and lay on the mattress. The victim went into the vacant apartment and upon entry, the defendant began kissing the victim on the lips. The defendant then told the victim to take all of his clothes off and due to the fact that the victim was scared he complied. The victim indicated that the defendant took his penis and put it into his anus. According to the victim the defendant then "humped" him. The defendant then got dressed and told the victim "don't tell anyone or I'll kill you". The victim then left the vacant apartment and returned home. At this time the victim's mother was informed of the incident and she called 911. The defendant was located, identified by the victim and transported to the Clark County Detention Center where he was charged with Sexual Assault and Lewdness With a Minor.

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VICTIM INFORMATION: Information received from the victim's mother on June 22, 1996, reveal that the victim has problems sleeping and has nightmares. Additionally, he has problems in school. She further indicated that the victim goes to counseling and is required to take prescription drugs because he is depressed. Apparently the whole family is in counseling and the instant offense has been extremely traumatic for not only the victim but his family as well. They are not requesting any restitution.

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 003

07/31/96 09:00 AM 01 SENTENCING

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: TINA HURD, Court Clerk
TOM MERCER, Reporter/RecorderPARTIES: STATE OF NEVADA
003649 Kephart, William D.

0001 D1 Lewis, Gary L
PUBDEF Public Defender
003447 Immerman, Stephen M.Y
Y

Y
Y
Y

Roy Evans of the Division of Parole & Probation present. Mr. Immerman agreed to a continuance to Friday. COURT ORDERED, CONTINUED.

CUSTODY

CONTINUED TO: 08/02/96 09:00 AM 02

08/02/96 09:00 AM 02 SENTENCING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA
003649 Kephart, William D.

0001 D1 Lewis, Gary L
PUBDEF Public Defender
001631 Caruso, Robert D.Y
Y

Y
Y
Y

Michael R.P. Leoni of the Division of Parole & Probation present. Conference at the bench between Court and counsel. DEFT. LEWIS ADJUDGED GUILTY of SEXUAL ASSAULT (F). Matter submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment Fee,, Deft. SENTENCED to Nevada Department of Prisons for a term of LIFE WITH THE POSSIBILITY OF PAROLE, to be served CONCURRENTLY with C122079; and is to receive ZERO Days Credit for Time Served. At the request of Mr. Caruso, Deft. REMANDED to the prison in Jean.

CONTINUED ON PAGE: 005

PRINT DATE: 10/04/07

PAGE: 004

MINUTES DATE: 08/02/96

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FILED

NOV 06 2010

John J. Blum
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PPOW

DISTRICT COURT
CLARK COUNTY, NEVADA

GARY LYNN LEWIS,
Petitioner,

vs.

THE STATE OF NEVADA
SOUTHERN DESERT CORRECTION
CENTER: WARDEN BRIAN WILLIAMS.,
Respondent,

Case Ng: C129824
Dept Ng: 12

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on September 23, 2010. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,


IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

MCF

Calendar on the 27th day of January, 2011, at the hour of 8:30 A.M. o'clock for further proceedings.

95C129824
OPWH
Order for Petition for Writ of Habeas Corpus
1037977



SDA

Jack B. Amos
District Court Judge
MICHELLE LEAVITT

11-4-10

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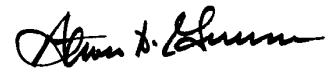
SEP 24 2010

DEPARTMENT 12

FILE WITH
MASTER CALENDAR

-1-

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CLERK OF COURT



CLERK OF THE COURT

1 **RSPN**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 GARY L. LEWIS,
14 #1302110)

15 Defendant.)

CASE NO: **C129824**

DEPT NO: **XII**

16 **STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION**
17 **FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND OPPOSITION**
18 **TO DEFENDANT'S MOTIONS FOR AN EVIDENTIARY HEARING**
19 **AND FOR APPOINTMENT OF COUNSEL**

20 DATE OF HEARING: JANUARY 27, 2011
21 TIME OF HEARING: 8:30 AM

22 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
23 JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby submits the attached
24 Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus (Post-
25 Conviction) and Motions for an Evidentiary Hearing and Appointment of Counsel.

26 This response and motion to dismiss is made and based upon all the papers and
27 pleadings on file herein, the attached points and authorities in support hereof, and oral
28 argument at the time of hearing, if deemed necessary by this Honorable Court.

//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On August 15, 1995, Gary Lewis (hereinafter “Defendant”) was charged by way of
4 Information with one (1) count of Sexual Assault with a Minor Under Sixteen Years of Age
5 (Felony – NRS 200.364, 200.366). Thereafter, Defendant entered into negotiations with the
6 State and on June 12, 1996, the State filed an Amended Information charging Defendant
7 with one (1) count of Sexual Assault.

8 Defendant entered into a Guilty Plea Agreement with the State on June 12, 1996,
9 whereby he agreed to plead guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970),
10 to the charge as alleged in the Amended Information. In exchange for Defendant’s *Alford*
11 plea, the State agreed to recommend concurrent time between this case and Defendant’s
12 other case, C122079. The State retained the right to argue at the rendition of sentence.
13 Defendant was present in court with counsel on August 2, 1996, and sentenced to LIFE with
14 the possibility of parole to be served concurrently with C122079. Defendant received no
15 credit for time served. The Judgment of Conviction was filed on August 14, 1996.
16 Defendant did not file a direct appeal.

17 Defendant filed a “First Amendment Petition” Writ of Habeas Corpus on February
18 19, 2009. The district court held a hearing on Defendant’s petition on February 26, 2009.
19 The Court ultimately concluded that Defendant’s petition was time-barred and that
20 Defendant made no attempt to demonstrate good cause. The Order denying Defendant’s
21 petition was filed on May 29, 2009.¹ Defendant filed a Notice of Appeal on May 11, 2009.
22 The Nevada Supreme Court affirmed the denial of Defendant’s petition on October 28, 2009.
23 Lewis v. Nevada, Docket No. 53779 (Order of Affirmance, Oct. 28, 2009). Remittitur
24 issued on November 24, 2009.

25 //

26
27

¹ Defendant filed an additional petition on March 23, 2009. On May 1, 2009, the district court determined that this petition was not a proper
28 amendment or supplement as the original petition had been denied by the court. The Nevada Supreme Court determined that the district court did not
abuse its discretion in declining to permit the original petition to be amended or supplemented after it was denied. Lewis v. Nevada, Docket No. 53779
(Order of Affirmance, Oct. 28, 2009).

1 Defendant filed the instant petition and motions for an evidentiary hearing and
2 appointment of counsel on September 23, 2010. The State's response and motion to dismiss
3 is as follows.

4 **ARGUMENT**

5 **I. DEFENDANT'S PETITION IS TIME BARRED**

6 Defendant's petition is time-barred. The mandatory provisions of NRS 34.726 state:

7 1. Unless there is good cause shown for delay, a petition that
8 challenges the validity of a judgment or sentence must be filed
9 within 1 year after entry of the judgment of conviction or, if an
10 appeal has been taken from the judgment, ***within 1 year after
the supreme court issues its remittitur.*** For the purposes of this
subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

11 (a) That the delay is not the fault of the petitioner; and

12 (b) That dismissal of the petition as untimely will unduly
13 prejudice the petitioner. . .

14 NRS 34.726(1) (emphasis added).

15 The one-year time bar is strictly construed. In Gonzales v. State, 118 Nev. 590, 593,
16 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was
17 filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS
18 34.726(1). Gonzales reiterated the importance of filing the petition with the district court
19 within the one year mandate, absent a showing of "good cause" for the delay in filing.
20 Gonzales, 118 Nev. at 593, 590 P.3d at 902.

21 Here, Defendant's Judgment of Conviction was filed on August 14, 1996. Defendant
22 did not file a direct appeal. Thus, Defendant had until Thursday, August 14, 1997, to file his
23 post-conviction habeas petition.

24 Defendant filed his first Petition for Writ of Habeas Corpus (Post-Conviction) on
25 February 19, 2009. This petition was denied as time-barred with no good cause shown on
26 May 29, 2009. The Nevada Supreme Court subsequently affirmed the district court's denial
27 of Defendant's petition as time-barred on October 28, 2009. Lewis v. Nevada, Docket No.
28 53779 (Order of Affirmance, Oct. 28, 2009). Remittitur issued on November 24, 2009.

1 Defendant filed the instant petition on September 23, 2010, more than fourteen (14)
2 years after the one-year time limitation had passed. Therefore, Defendant's petition is
3 untimely and must be dismissed. Gonzales, 118 Nev. at 593, 590 P.3d at 902.

4 II. APPLICATION OF PROCEDURAL BARS IS MANDATORY

5 The Nevada Supreme Court has specifically held that the district court has a duty to
6 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
7 disregard them. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070
8 (2005), the Nevada Supreme Court held as follows:

9 Given the untimely and successive nature of [defendant's]
10 petition, the district court ***had a duty imposed by law*** to consider
11 whether any or all of [defendant's] claims were barred under
12 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case
... [and] the court's failure to make this determination here
constituted an arbitrary and unreasonable exercise of discretion.

13 121 Nev. at 234 (emphasis added); see also State v. Haberstroh, 119 Nev. 173, 180-
14 81, 69 P.3d 676, 681-82 (2003) (wherein the Nevada Supreme Court held that parties cannot
15 stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they
16 empower a court to disregard them). Defendant is required to show good cause to overcome
17 the procedural bars before his petition may be considered on the merits. Thus, a Defendant's
18 petition will not be considered on the merits if it is subject to the procedural bars and no
19 good cause is shown. Id.

20 III. DEFENDANT HAS NOT DEMONSTRATED GOOD CAUSE OR 21 ACTUAL PREJUDICE SUFFICIENT TO OVERCOME THE ONE- 22 YEAR TIME BAR

23 "In order to demonstrate good cause, a petitioner must show that an impediment
24 external to the defense prevented him or her from complying with the state procedural
25 default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); citing
26 Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110
27 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d
28 72, 41 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997);
Phelps v. Director, 104 Nev. 656, 764 P.2d 1303 (1988). Such an external impediment could

1 be “that the factual or legal basis for a claim was not reasonably available to counsel, or that
2 ‘some interference by officials’ made compliance impracticable.” Hathaway, 119 Nev. at
3 252, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645
4 (1986)). Clearly, any delay in filing of the petition must not be the fault of the petitioner.
5 NRS 34.726(1)(a).

6 Defendant does explain, as good cause, why it took him over thirteen (13) years to
7 file the instant petition. Rather, as good cause Defendant raises additional claims of
8 ineffective assistance of counsel. Since Defendant does not offer an explanation as to why
9 he could not comply with the procedural rules, he does not demonstrate good cause for his
10 delay in filing his petition. Pellegrini, 117 Nev. at 886-87, 34 P.3d at 537. Defendant’s
11 petition should be dismissed.

12 **IV. DEFENDANT’S MOTION IS PRECLUDED BY LACHES AS PER NRS**
13 **34.800**

14 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
15 exceeding five years between the filing of a judgment of conviction, an order imposing a
16 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
17 filing of a petition challenging the validity of a judgment of conviction....” The statute also
18 requires that the State plead laches in its motion to dismiss the petition. NRS 34.800. The
19 State pleads laches in the instant case.

20 Defendant’s Judgment of Conviction was filed on August 14, 1996, and he did not
21 file a direct appeal. Since over five (5) years have elapsed between the filing of the
22 Judgment of Conviction and the filing of the instant petition, NRS 34.800 directly applies in
23 this case. NRS 34.800 was enacted to protect the State from having to go back years later to
24 re-prove matters that have become ancient history. There is a rebuttable presumption of
25 prejudice for this very reason and the doctrine of laches must be applied in the instant matter.
26 If courts required evidentiary hearings for long delayed petitions such as in the instant
27 matter, the State would have to call and find long lost witnesses whose once vivid
28 recollections have faded and re-gather evidence that in many cases has been lost or destroyed

1 because of the lengthy passage of time. Based on the State's arguments above, this Court
2 should summarily deny the instant petition according to the doctrine of laches pursuant to
3 NRS 34.800, as the delay of more than fourteen (14) years in filing is unexcused.

4 **V. DEFENDANT IS NOT ENTITLED TO APPOINTMENT OF AN**
5 **ATTORNEY**

6 In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court
7 ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings.
8 In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court
9 similarly observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in
10 post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel
11 provision as being coextensive with the Sixth Amendment to the United States
12 Constitution."

13 NRS 34.750 provides, in pertinent part:

14 "[a] petition may allege that the Defendant is unable to pay the
15 costs of the proceedings or employ counsel. If the court is
16 satisfied that the allegation of indigency is true and the petition *is*
17 *not dismissed summarily*, the court may appoint counsel at the
time the court orders the filing of an answer and a return. In
making its determination, the court may consider whether:

- 18 (a) The issues are difficult;
19 (b) The Defendant is unable to comprehend the proceedings; or
20 (c) Counsel is necessary to proceed with discovery."
21 (emphasis added).

22 Under NRS 34.750, it is clear that the court has discretion in determining whether to
23 appoint counsel. McKague specifically held that with the exception of NRS 34.820(1)(a)
24 [entitling appointed counsel when petition is under a sentence of death], one does not have
25 "[a]ny constitutional or statutory right to counsel at all" in post-conviction proceedings. Id.
26 at 164.

27 //

28 //

1 The Nevada Supreme Court has observed that a defendant “must show that the
2 requested review is not frivolous before he may have an attorney appointed.” Peterson v.
3 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
4 177.345(2)). Defendant has failed to make this requisite showing since his petition is time-
5 barred and should be dismissed summarily. Therefore, Defendant’s request for appointment
6 of counsel should be denied.

7 **VI. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

8 A defendant is entitled to an evidentiary hearing if his petition is supported by
9 specific factual allegations, which, if true, would entitle him to relief unless the factual
10 allegations are repelled by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603,
11 605 (1994). “The judge or justice, upon review of the return, answer and all supporting
12 documents which are filed, shall determine whether an evidentiary hearing is required.” NRS
13 34.770(1). However, “[a] defendant seeking post-conviction relief is not entitled to an
14 evidentiary hearing on factual allegations belied or repelled by the record.” Hargrove, 100
15 Nev. at 503, 686 P.2d at 225 (1984); citing Grondin v. State, 97 Nev. 454, 634 P.2d 456
16 (1981). Defendant’s petition is time-barred and Defendant does not present any claims that
17 would entitle him to an evidentiary hearing. Therefore, Defendant’s motion for an
18 evidentiary hearing should be denied.

19 **CONCLUSION**

20 Based on the foregoing arguments, the State respectfully requests that Defendant's
21 petition be dismissed.

22 DATED this 30th day of December, 2010.

23 Respectfully submitted,

24 DAVID ROGER
25 Clark County District Attorney
26 Nevada Bar #002781

27 BY /s/ JAMES R. SWEETIN
28 JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 30th day of December, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

GARY LEWIS, BAC#47615
S.D.C.C.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

/s/ HOWARD CONRAD
Secretary for the District Attorney's Office

hjc/SVU

ORIGINAL

25

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

Mar 1 2 41 PM '11

Ann L. Robinson
CLERK OF THE COURT

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

05C129824
FFCO
Findings of Fact, Conclusions of Law and (C)
1266303



10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 GARY L. LEWIS,
14 #1302110

15 Defendant.

CASE NO: C129824

DEPT NO: XII

16
17 **FINDINGS OF FACT, CONCLUSIONS OF**

18 **LAW AND ORDER**

19 DATE OF HEARING: 01/27/2011
20 TIME OF HEARING: 8:30 A.M.

21 THIS CAUSE having come on for hearing before the Honorable MICHELLE
22 LEAVITT, District Judge, on the 27th day of January, 2011, the Petitioner not being present,
23 proceeding IN FORMA PAUPERIS, the Respondent being represented by DAVID ROGER,
24 District Attorney, by and through FRANK M. PONTICELLO, Chief Deputy District
25 Attorney, and the Court having considered the matter, including briefs, transcripts, no
26 arguments of counsel, and documents on file herein, now therefore, the Court makes the
27 following findings of fact and conclusions of law:
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DEPARTMENT 12 CLERK OF THE COURT

1 **FINDINGS OF FACT**

2 1. On August 15, 1995, Gary Lewis (hereinafter "Defendant") was charged by
3 way of Information with one (1) count of Sexual Assault with a Minor Under Sixteen Years
4 of Age (Felony – NRS 200.364, 200.366). Thereafter, Defendant entered into negotiations
5 with the State and on June 12, 1996, the State filed an Amended Information charging
6 Defendant with one (1) count of Sexual Assault.

7 2. Defendant entered into a Guilty Plea Agreement with the State on June 12,
8 1996, whereby he agreed to plead guilty pursuant to North Carolina v. Alford, 400 U.S. 25
9 (1970), to the charge as alleged in the Amended Information. In exchange for Defendant's
10 *Alford* plea, the State agreed to recommend concurrent time between this case and
11 Defendant's other case, C122079. The State retained the right to argue at the rendition of
12 sentence. Defendant was present in court with counsel on August 2, 1996, and sentenced to
13 LIFE with the possibility of parole to be served concurrently with C122079. Defendant
14 received no credit for time served. The Judgment of Conviction was filed on August 14,
15 1996. Defendant did not file a direct appeal.

16 3. Defendant filed a "First Amendment Petition" Writ of Habeas Corpus on
17 February 19, 2009. The district court held a hearing on Defendant's petition on February 26,
18 2009. The Court ultimately concluded that Defendant's petition was time-barred and that
19 Defendant made no attempt to demonstrate good cause. The Order denying Defendant's
20 petition was filed on May 29, 2009.¹ Defendant filed a Notice of Appeal on May 11, 2009.
21 The Nevada Supreme Court affirmed the denial of Defendant's petition on October 28, 2009.
22 Lewis v. Nevada, Docket No. 53779 (Order of Affirmance, Oct. 28, 2009). Remittitur
23 issued on November 24, 2009.

24 4. Defendant filed the instant petition and motions for an evidentiary hearing and
25 appointment of counsel on September 23, 2010. The State filed its response and motion to
26 dismiss on December 30, 2010.

27
28 ¹ Defendant filed an additional petition on March 23, 2009. On May 1, 2009, the district court determined that this petition was not a proper amendment or supplement as the original petition had been denied by the court. The Nevada Supreme Court determined that the district court did not abuse its discretion in declining to permit the original petition to be amended or supplemented after it was denied. Lewis v. Nevada, Docket No. 53779 (Order of Affirmance, Oct. 28, 2009).

1 5. This Court held a hearing on Defendant's petition on January 27, 2011.
2 Defendant was not present and the Court entertained no argument by the State.

3 6. Since Defendant's Judgment of Conviction was filed on August 14, 1996, and
4 Defendant did not file a direct appeal, Defendant had until Thursday, August 14, 1997, to
5 file his post-conviction habeas petition.

6 7. Defendant filed the instant petition on September 23, 2010, more than thirteen
7 (13) years after the one-year time limitation had passed.

8 8. Defendant's petition is time barred as outside the one-year time limitation.

9 9. A petition subject to procedural bars may be considered on its merits if good
10 cause is shown.

11 10. Defendant fails to demonstrate to the satisfaction of the court that good cause
12 for delay exists sufficient to overcome the one-year time bar.

13 11. Furthermore, the State specifically pled laches in its response and motion to
14 dismiss Defendant's petition.

15 12. Defendant failed to overcome the presumption that his delay of over fourteen
16 (14) years in filing the instant petition has prejudiced the State.

17 13. Since Defendant's petition is time-barred with no good cause shown, he is not
18 entitled to the appointment of an attorney or an evidentiary hearing on his claims.

19 CONCLUSIONS OF LAW

20 1. The mandatory provisions of NRS 34.726 read:

21 1. Unless there is good cause shown for delay, a petition that
22 challenges the validity of a judgment or sentence must be filed
23 *within 1 year after entry of the judgment of conviction or*, if an
24 appeal has been taken from the judgment, *within 1 year after the*
25 *supreme court issues its remittitur*. For the purposes of this
26 subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 25 (a) That the delay is not the fault of the petitioner; and
26 (b) That dismissal of the petition as untimely will unduly
prejudice the petitioner.

27 (Emphasis added).

27 //

28 //

1 2. In Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902 (2002), the Nevada
2 Supreme Court rejected a habeas petition that was filed two days late, pursuant to the “clear
3 and unambiguous” mandatory provisions of NRS 34.726(1). Gonzales reiterated the
4 importance of filing the petition with the district court within the one year mandate, absent a
5 showing of “good cause” for the delay in filing. Id. at 593, 590 P.3d at 902. The one-year
6 time bar is therefore strictly construed.

7 3. The Nevada Supreme Court has found that “application of the statutory
8 procedural default rules to post-conviction habeas petitions is mandatory.” State v. Eighth
9 Judicial Dist. Court ex rel. County of Clark (Riker), 121 Nev. 225, 231, 112 P.3d 1070,
10 1074 (2005) (citing State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003)).
11 “Habeas corpus petitions that are filed many years after conviction are an unreasonable
12 burden on the criminal justice system. The necessity for a workable system dictates that
13 there must exist a time when a criminal conviction is final.” Riker, 121 Nev. at 231, 112 P.3d
14 at 1074 (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984).

15 4. “In order to demonstrate good cause, a petitioner must show that an
16 impediment external to the defense prevented him or her from complying with the state
17 procedural default rules.” Hathaway v. State, 119 Nev. 30, 71 P.3d 503, 506 (2003); citing
18 Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110
19 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 769 P.2d 72
20 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v.
21 Director, 104 Nev. 656, 764 P.2d 1303 (1988).

22 5. Such an external impediment could be “that the factual or legal basis for a
23 claim was not reasonably available to counsel, or that ‘some interference by officials’ made
24 compliance impracticable.” Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S.
25 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904;
26 citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998). Clearly, any
27 delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

28 //

1 6. In addition, to find good cause there must be a "substantial reason; one that
2 affords a legal excuse." Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235,
3 236, 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.
4 1981). The lack of the assistance of counsel when preparing a petition, and even the failure
5 of trial counsel to forward a copy of the file to a petitioner, have been found to be non-
6 substantial, not constituting good cause. See Phelps v. Director Nevada Department of
7 Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d
8 797 (1995).

9 7. NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a]
10 period exceeding five years between the filing of a judgment of conviction, an order
11 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
12 conviction and the filing of a petition challenging the validity of a judgment of
13 conviction...." The statute also requires that the State plead laches in its motion to dismiss
14 the petition. NRS 34.800.

15 8. In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme
16 Court ruled that the Sixth Amendment provides no right to counsel in post-conviction
17 proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada
18 Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a
19 right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's
20 right to counsel provision as being coextensive with the Sixth Amendment to the United
21 States Constitution."

22 9. NRS 34.750 provides, in pertinent part:

23 "[a] petition may allege that the Defendant is unable to pay the
24 costs of the proceedings or employ counsel. If the court is
25 satisfied that the allegation of indigency is true and the petition *is*
26 *not dismissed summarily*, the court may appoint counsel at the
27 time the court orders the filing of an answer and a return. In
28 making its determination, the court may consider whether:

(a) The issues are difficult;

(b) The Defendant is unable to comprehend the proceedings; or

1 (c) Counsel is necessary to proceed with discovery.”
2 (emphasis added).

3 10. Under NRS 34.750, it is clear that the court has discretion in determining
4 whether to appoint counsel. McKague specifically held that with the exception of NRS
5 34.820(1)(a) [entitling appointed counsel when petition is under a sentence of death], one
6 does not have “[a]ny constitutional or statutory right to counsel at all” in post-conviction
7 proceedings. Id. at 164.

8 11. The Nevada Supreme Court has observed that a defendant “must show that the
9 requested review is not frivolous before he may have an attorney appointed.” Peterson v.
10 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
11 177.345(2)).

12 12. A defendant is entitled to an evidentiary hearing if his petition is supported by
13 specific factual allegations, which, if true, would entitle him to relief, unless the factual
14 allegations are repelled by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603,
15 605 (1994), Hargrove, 100 Nev. at 503, 686 P.2d at 225. “The judge or justice, upon review
16 of the return, answer and all supporting documents which are filed, shall determine whether
17 an evidentiary hearing is required.” NRS 34.770(1). Defendant’s claims were all resolved
18 based on the record without the need to take further evidence so he is not entitled to an
19 evidentiary hearing.

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ORDER

THEREFORE, **IT IS HEREBY ORDERED** that the Petition for Post-Conviction Relief shall be, and it is, denied.

DATED this 24 day of February, 2011.


DISTRICT JUDGE

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY  for
FRANK M. PONTICELLO
Chief Deputy District Attorney
Nevada Bar #000370

hjc/SVU

1 Gary L. Lewis #47615
2 In Propria Personam
3 Post Office Box 208, S.D.C.C.
4 Indian Springs, Nevada 89018

FILED

MAR 14 2011

John A. Williams
CLERK OF COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 State of Nevada

9 Plaintiff,

10 vs.

11 Gary L. Lewis

12 Defendant.

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95C129824
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Notice of Appeal (criminal)
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Case No. 95C129824

Dept. No. 140 XII

Docket _____

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,
Gary L. Lewis, in and through his proper person, hereby
appeals to the Supreme Court of Nevada from the ORDER denying and/or
dismissing the Petition For writ OF Habeas Corpus, Motion
to Appoint Counsel, Motion For Evidentiary Hearing

ruled on the 27 day of January, 2001.

Dated this 4th day of March, 20011.

Respectfully Submitted,

x Gary Lewis
Gary L. Lewis

CLERK OF THE COURT

MAR 14 2011

RECEIVED