



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

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
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Jul 22 2021 08:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

July 22, 2021

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

RE: STATE OF NEVADA vs. ROY DANIELS MORAGA
S.C. CASE: 83179
D.C. CASE: 89C092174

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmisson of Written Order, dated July 14, 2021, enclosed is a certified copy of the Order Denying Defendant's Writ of Prohibition Double Jeopardy Claim filed July 21, 2021 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", with a long horizontal flourish extending to the right.

Heather Ungermann, Deputy Clerk

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391
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-

**ROY MORAGA,
#0938554**

Defendant.

CASE NO: **89C092174**

DEPT NO: **VI**

**ORDER DENYING DEFENDANT'S WRIT OF
PROHIBITION DOUBLE JEOPARDY CLAIM**

DATE OF HEARING: **JUNE 22, 2021**
TIME OF HEARING: **CHAMBERS**

WHEREAS the above-referenced matter having been scheduled before the above entitled Court on the 22nd day of MARCH, 2021 with regard to Defendant's Writ of Prohibition Double Jeopardy Claim, and pursuant to N.R.Cr.P. 8(2), this matter may be decided with or without oral argument, therefore this Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this minute order issues:

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1 1) Defendant requests that this court issue a writ of prohibition altering the
2 sentence imposed, however, a writ of prohibition is the incorrect remedy for such a request.
3 Further, Defendant's sentence does not violate the prohibition against double jeopardy.

4 2) A writ of prohibition may be used by a court to order a judicial body to refrain
5 from doing an act in excess of its jurisdiction. NRS 34.320. The writ of prohibition may be
6 issued only by the supreme court, the court of appeals, or a district court to an inferior tribunal,
7 or to a corporation, board or person, in all cases where there is not a plain, speedy, and
8 adequate remedy in the ordinary course of law. NRS 34.330. Here, the department of
9 corrections is not a judicial body. It is an agency within the executive branch of Nevada's
10 state government. Accordingly, a writ of prohibition may not be used to order it to refrain
11 from engaging in certain activities.

12 3) Even if Defendant had raised his claims in a pleading that the court could
13 consider, his claim that he was improperly adjudicated as a habitual criminal is barred from
14 consideration under the law of the case. Defendant raised this claim on direct appeal of the
15 Amended Judgment of Conviction, and the Nevada Supreme Court rejected it. *Moraga v.*
16 *State*, No. 22901 (Order Dismissing Appeal, Oct. 4, 1995).

17 4) Defendant also claims that his sentence violates double jeopardy because he is
18 serving a habitual sentence in addition to his other sentences. The prohibition against double
19 jeopardy protects against 3 distinct abuses:

20 (1) a second prosecution for the same offense after acquittal,

21 (2) a second prosecution for the same offense after conviction, and

22 (3) multiple punishments for the same offense. *Peck v. State*, 116 Nev. 840
23 (2000).

24 Here, the facts of Defendant's case do not fit within any of those 3 categories.

25 5) Defendant received sentences within the statutory limits for Counts 1-4. See
26 NRS 205.060, 200.366. Moreover, Defendant was appropriately adjudicated as a habitual
27 criminal for Count 4 pursuant to NRS 207.010. Defendant's claim that he is serving his
28 habitual sentence in addition to the primary offense is belied by the record because he received

1 a habitual sentence in lieu of the punishment contemplated by NRS 200.366. Therefore,
2 Defendant s sentence does not violate double jeopardy; therefore

3 **THE COURT HEREBY ORDERS** that Defendant's Writ of Prohibition Double
4 Jeopardy Claim is hereby DENIED.

5 Additionally, **THE COURT HEREBY ORDERS** that the hearing scheduled for July
6 23, 2021, is VACATED.

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8 Dated this 21st day of July, 2021

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kj

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

1E9 727 8AAB D6EA
Jacqueline M. Bluth
District Court Judge

13
14 BY


15 STACEY KOLLINS
16 Chief Deputy District Attorney
Nevada Bar #005391

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18
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20
21
22 July 22, 2021



CERTIFIED COPY
ELECTRONIC SEAL (NRS 1.190(3))

hjc/SVU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 The State of Nevada vs Roy D
Moraga

CASE NO: 89C092174

7 DEPT. NO. Department 6

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 7/21/2021

14 Steven Wolfson

motions@clarkcountyda.com

15 dept law clerk

dept06lawclerk@clarkcountycourts.us