IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER E. PIGEON,	)	
#90582,	)	
Appellant,	)	CASE NO.: **83232**
v.	)	**E-FILE**
STATE OF NEVADA,	)	D.C. Case No.: C-13-290261-1
Respondent.	)	Dept.: **IX**
	)	

APPELLANT'S APPENDIX VOLUMES 1 - 2

Appeal from the denial of Motion to Modify Sentence and Supplemental Points and Authorities Challenging the Wrongful Imposition of an Habitual Criminal Sentence of Life without Parole Eighth Judicial District Court, Clark County

TERRENCE M. JACKSON, ESQ.
Nevada Bar No. 000854
Law Office of Terrence M. Jackson
624 South 9th Street
Las Vegas, Nevada 89101
(702) 386-0001
Terry.jackson.esq@gmail.com

. . .

Counsel for Appellant

STEVEN B. WOLFSON
Nevada Bar No. 001565
Clark County District Attorney
200 E. Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750
Steven.Wolfson@clarkcountyda.com

AARON D. FORD
Nevada Bar No. 007704
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

Counsel for Respondent

MASTER INDEX

Case No.: 83232

Transcripts to **F**ollow: (file stamp date in parenthesis)

[report and/or hearing date in brackets]

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Transcripts Continued: (file stamp date in parenthesis)

[report and/or hearing date in brackets]

End Transcripts

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CERTIFICATE OF SERVICE

I certify I am an assistant to Terrence M. Jackson, Esquire; a person competent to serve papers, not a party to the above-entitled action and on the 19th day of October, 2021, I served a copy of the foregoing: Appellant Christopher E. Pigeon's Opening Brief and the Appendix and Index, Volumes **1** through **2**, as follows:

[X] Via Electronic Service to the Nevada Supreme Court, to the Eighth Judicial District Court, and by U. S. mail with first class postage affixed to the Nevada Attorney General and the Petitioner/Appellant as follows:

STEVEN B. WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountyda.com

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

ALEXANDER G. CHEN
Chief Deputy D. A. - Criminal
alexander.chen@clarkcountyda.com

CHRISTOPHER E. PIGEON
ID#90582
High Desert State Prison - P.O. Box 650
Indian Springs, NV 89070-0650

By: */s/ Ila C. Wills*
Assistant to Terrence M. Jackson, Esq.

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CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144
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-

CHRISTOPHER PIGEON,
#1694872

Defendant.

CASE NO: **C-13-290261-1**

DEPT NO: **VIII**

ORDER DENYING DEFENDANT'S MOTIONS OF APRIL 25, 2016

DATE OF HEARING: APRIL 25, 2016
TIME OF HEARING: 8:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 25TH day of APRIL, 2016, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through TIERRA JONES, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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IT IS HEREBY ORDERED that DEFENDANT'S MOTION TO WITHDRAW COUNSEL AND TO REQUEST RE - ORDERING OF TRANSCRIPTS FOR THE SAKE OF CLARIFYING THIS CASE AND WRIT and DEFENDANT'S MOTION TO PROCEED IN FORMA PAUPERIS, shall be, and are, DENIED.

DATED this 4 day of ~~April,~~ 2016.

DISTRICT JUDGE

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

BY _____ for
TIERRA JONES
Deputy District Attorney
Nevada Bar #010094

hjc/SVU

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER E. PIGEON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67083

FILED

DEC 01 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of open or gross lewdness, aggravated stalking, luring a child with the intent to engage in sexual conduct, attempted first-degree kidnapping, burglary, unlawful contact with a child, and two counts of prohibited acts by a sex offender. Eighth Judicial District Court, Clark County; Douglas Smith, Judge. We affirm the judgment as to the convictions for unlawful contact with a child and one count of prohibited acts by a sex offender, but we reverse as to the remaining convictions and remand for a new sentencing hearing.

Competency to stand trial

Appellant Christopher Pigeon argues that the district court erred in finding him competent to stand trial. Pigeon asserts that he was not competent to stand trial because he suffers from chronic paranoid schizophrenia with narcissistic personality with delusions of grandeur and was not taking antipsychotic medication. To be competent to stand trial, a person must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as factual understanding of the proceedings against him." *Dusky v. United*

17-41371

States, 362 U.S. 402, 402 (1960) (internal quotation marks omitted); *see Drope v. Missouri*, 420 U.S. 162, 171 (1975) ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial."); NRS 178.400 (setting forth Nevada's competency standard); *Calvin v. State*, 122 Nev. 1178, 1182, 147 P.3d 1097, 1099-1100 (2006) (holding that Nevada's competency standard conforms to the standard announced in *Dusky*). The district court's competency findings will not be disturbed on appeal if they are supported by substantial evidence. *Calvin*, 122 Nev. at 1182, 147 P.3d at 1099.

Shortly after he was indicted on the criminal charges in this case, Pigeon was referred to Lake's Crossing for a competency evaluation. There, he was evaluated by Dr. Bradley, a psychiatrist, as well as two other doctors, all of whom found him to be competent to stand trial. Upon Pigeon's return from Lake's Crossing, the district court held a competency hearing, at which Dr. Bradley testified that Pigeon was not exhibiting any delusions, though he had been diagnosed with chronic schizophrenia paranoid type with a personality disorder and was not currently taking medication for the mental illness. Dr. Bradley further testified that he discussed with Pigeon the nature of the charges, the specific allegations against him, and his understanding of the legal process and court system, and that Pigeon understood the charges and legal process. Dr. Harder, a defense expert, also testified at the competency hearing and opined that Pigeon's delusions interfered with his ability to adequately consult with counsel. Although Dr. Harder's opinion arguably conflicted with Dr. Bradley's, it was within the district court's province to assign greater weight to Dr. Bradley's opinion,

particularly given that Dr. Bradley spent more time with Pigeon and his opinion of competency was supported by two other doctors from Lake's Crossing. *See United States v. Hoskie*, 950 F.2d 1388, 1394 (9th Cir. 1991) (discussing when a district court may credit findings of a government expert over those of a defense expert). Therefore, we conclude that substantial evidence supports the district court's competency decision. Moreover, Pigeon has failed to provide us with the other evidence available to the district court, including the evaluations by two other doctors who found Pigeon competent, and thus cannot demonstrate that the decision should be overturned.[1]

Competency to waive the right to counsel and represent self at trial

Pigeon contends that he was incompetent to waive his right to counsel and represent himself at trial, given that he suffered from paranoid schizophrenia with delusions of grandeur, he was not taking antipsychotic medication, and he was facing serious charges and a sentence of life without the possibility of parole.

The Sixth Amendment to the United States Constitution grants a criminal defendant the right to represent himself and conduct his own defense at trial. *Faretta v. California*, 422 U.S. 806, 807 (1975). To exercise

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[1]Pigeon also complains that the district court judge failed to enter any specific written findings regarding the competency determination. Pigeon cites no authority requiring the district court to enter written findings of fact, and the competency statutes do not expressly require specific findings. *See, e.g.*, NRS 178.460(3) (requiring only that the judge "make and enter a finding of competence or incompetence" within 10 days after the competency hearing). Furthermore, he does not argue that the district court failed to apply the correct legal test for competency, nor does he explain how he was prejudiced by the court's failure to expressly state the rationale for its competency decision.

this right, the defendant must knowingly and intelligently waive his right to counsel and assume the risks of self-representation. *Id.* at 835. Thus, when a criminal defendant insists on representing himself at trial, the trial court must "apprise the defendant fully of the risks of self-representation and of the nature of the charged crime so that the defendant's decision is made with a clear comprehension of the attendant risks." *Hymon v. State*, 121 Nev. 200, 212, 111 P.3d 1092, 1101 (2005) (internal quotation marks omitted); *see Faretta*, 422 U.S. at 835. A waiver of counsel will be valid when "it is apparent from the record that the defendant was aware of the dangers and disadvantages of self-representation." *Hymon*, 121 Nev. at 213, 111 P.3d at 1101 (internal quotation marks omitted).

Here, the district court held a *Faretta* canvass and apprised Pigeon of the risks of self-representation and the nature of the charged offenses. Pigeon does not contend that he was unaware of the dangers and disadvantages of self-representation. Rather, he contends that the district court should have required him to proceed with counsel because he was mentally ill and his delusions prevented him from being able to present a viable defense. For this, he relies on *Indiana v. Edwards*, 554 U.S. 164, 174 (2008). In *Edwards*, the Supreme Court held that the United States Constitution allows, but does not require, a State to deny self-representation to a defendant who is severely mentally ill but deemed competent to stand trial. *Id.* at 167.

Under our existing case law, a defendant has an "*unqualified* right to represent himself at trial so long as his waiver of counsel is intelligent and voluntary." *Tanksley v. State*, 113 Nev. 997, 1000, 946 P.2d 148, 150 (1997) (emphasis added and internal quotation marks omitted). We have not adopted the discretionary option offered by *Edwards* and the

parties do not frame a test or offer sufficient guidance for evaluating whether the district court properly exercised its discretion under *Edwards*. Because the district court correctly canvassed Pigeon under current Nevada law, and the record reflects that Pigeon was competent and that his waiver was knowing, intelligent, and voluntary, we conclude the district court did not abuse its discretion in granting Pigeon's request to represent himself and waive his right to counsel. *See Hooks v. State*, 124 Nev. 48, 55, 176 P.3d 1081, 1085 (2008) (explaining that this court considers the record as a whole and gives deference to the district court's decision regarding self-representation).

Sufficiency of the evidence

Pigeon next argues that insufficient evidence supports his convictions for open or gross lewdness, aggravated stalking, luring a child with the intent to engage in sexual conduct, attempted first-degree kidnapping, and burglary. In evaluating the sufficiency of the evidence, we view the evidence in the light most favorable to the State to determine whether sufficient evidence was presented to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). As explained below, we agree that insufficient evidence supports these convictions and we therefore reverse these convictions.

Lewdness

Pigeon contends that there was insufficient evidence that he committed open and gross lewdness because the surveillance video allegedly depicting him masturbating was not shown to the jury and the detective's testimony about what he saw on the surveillance video did not

prove lewdness. We agree that the State did not present sufficient evidence of this charge.

The evidence supporting the lewdness offense consisted almost entirely of the detective's description of what he recalled having seen on the surveillance video from the mini-mart. The State presented no other witnesses and no physical evidence. The detective testified that he watched Pigeon on video "place his hands in his pockets and pull at his genitals and his groin area while he was staring in the direction of [C.C.]." The detective testified that this lasted for "a few seconds at least," and opined that Pigeon was masturbating rather than adjusting himself. We conclude that this testimony alone was insufficient for a rational juror to reasonably infer that Pigeon engaged in a lewd act in public. *See* NRS 201.210; *Berry v. State*, 125 Nev. 265, 281-82, 212 P.3d 1085, 1096 (2009) (explaining meaning of lewdness), *abrogated on other grounds by State v. Castaneda*, 126 Nev. 478, 245 P.3d 550 (2010). Accordingly, we reverse the conviction for open or gross lewdness (count 5) for insufficient evidence.

Aggravated Stalking

Pigeon contends that there was no evidence presented at trial that he ever threatened C.C. in any way, which is an essential element of the offense of aggravated stalking. We agree.

NRS 200.575(1) provides that a person commits the crime of stalking when he "willfully or maliciously engages in a course of conduct that would cause a reasonable person," and "actually causes" the victim, "to feel terrorized, frightened, intimidated, [or] harassed." Aggravated stalking consists of the crime of stalking, plus "threaten[ing] the person with the intent to cause the person to be placed in reasonable fear of death or substantial bodily harm." NRS 200.575(2).

The evidence showed that Pigeon followed C.C. on the bus to the mini-mart and to school three days in a row. On the second day, he stepped into her path, touched her arm, and told her she was pretty. When she told him to leave her alone and walked away from him, Pigeon nevertheless followed her and then followed her again the next day. Although this evidence was sufficient for a rational juror to find that Pigeon committed stalking—i.e., his course of conduct would cause a reasonable person to feel frightened or harassed, and in fact, as C.C. testified to, actually caused her to feel frightened—it was insufficient to support the jury's finding that Pigeon committed *aggravated* stalking. The State presented no evidence that Pigeon threatened C.C. "with the intent to cause [her] to be placed in reasonable fear of death or substantial bodily harm." NRS 200.575(2). Accordingly, we reverse the conviction for aggravated stalking (count 2) for insufficient evidence.[2]

Luring a child with intent to engage in sexual conduct

Pigeon contends that there was insufficient evidence to support the conviction for luring a child with the intent to engage in sexual conduct, because he never lured or attempted to lure C.C. anywhere and there was no evidence that he intended to have sex with her when he approached her and talked to her. We agree.

> A person commits the felony offense of "luring a child" if:
>
> the person knowingly contacts or communicates with or attempts to contact or communicate with:

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[2]The State has not asked us to reduce the offense to stalking through the "direct remand rule." *See generally Shields v. State*, 722 So. 2d 584, 585-86 (Miss. 1998). We decline to employ that rule sua sponte, particularly as this court has not explicitly addressed it in a published decision.

> (b) Another person whom he or she believes to be a child . . ., regardless of the actual age of that other person, with the intent to solicit, persuade or lure the person to engage in sexual conduct.

NRS 201.560(1), (5).

The State alleged that Pigeon committed the crime of luring a child with the intent to engage in sexual conduct in the following manner: "by Defendant following said [minor] to her school and/or a convenient store and interacting with said minor on multiple occasions, Defendant possessing the intent to engage in sexual conduct with the child or to cause the child to engage in sexual conduct." Although Pigeon admitted to being sexually interested in the victim, there was no evidence from which a rational juror could reasonably infer that his contact and communication with the victim was made with the intent to engage in sex at that time. His comments to her were not of an overtly sexual nature and he did not attempt to lure her anywhere. Therefore, we conclude that there was insufficient evidence to support the conviction for luring a child. Accordingly, we reverse this conviction (count 3).

Attempted first-degree kidnapping

Pigeon argues that there was insufficient evidence to support the charge of attempted first-degree kidnapping because there was no evidence that he had the intent to kidnap C.C. or that he took any step toward accomplishing the act. We agree.

NRS 200.310(1), first-degree kidnapping, makes it a crime for a person to "lead[ ], take[ ], entice[ ], or carr[y] away or detain[ ] any minor with the intent to keep, imprison, or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act." NRS 193.330(1) defines

"attempt" as an "act done with the intent to commit a crime, and tending but failing to accomplish it."

The evidence shows that Pigeon went onto the school grounds on Friday afternoon around the time that the students were dismissed for the day. Pigeon admitted that he went to the school to see C.C. Although the State argued that Pigeon intended to take her away from the school and have sex with her, there is no evidence from which a rational juror could reasonably infer that intent. Pigeon did not have any restraining materials or means of transportation, and his mere presence at the victim's school on a Friday afternoon did not evidence an intent to kidnap her. *See Darnell v. State*, 92 Nev. 680, 682, 558 P.2d 624, 625-26 (1976) (holding that an attempt requires that the defendant have an intent to commit the crime and "take a direct but ineffectual act toward the commission of the crime"). Thus, we reverse the conviction for attempted first-degree kidnapping (count 1) for insufficient evidence.

Burglary

Pigeon contends that the burglary charge, which was alleged in the indictment as his entering the mini-mart with the intent to commit battery and/or kidnapping and/or luring a minor, is not supported by any evidence. He asserts that the evidence only shows that he entered the store to watch C.C. and at one point he told her that she looked nice, but there was no physical contact with her or any attempt to kidnap or lure the victim. *See* NRS 205.060(1). As discussed above, there is insufficient evidence of attempted kidnapping and luring a minor. As for the theory that Pigeon entered the store to commit battery, the State points only to evidence showing that he had touched C.C. outside of the store. Although the State contends that he therefore likely intended to touch her again inside the

store, this is pure speculation given that he did not immediately approach her when he entered the store and he left the store without touching her. Thus, the evidence does not demonstrate that he entered the store with that intent. Accordingly, we reverse the conviction for burglary (count 4) for insufficient evidence.

Redundant convictions

Pigeon argues that his two convictions for prohibited acts by a sex offender are redundant and violate double jeopardy principles because he committed a single continuous crime—failing to update his address as a sex offender from January 7, 2013 (48 hours after he moved from his registered address and became homeless), through May 17, 2013 (the date of his arrest). He contends that, because he was homeless during that entire period of time and had no new fixed address, his conduct of failing to notify the authorities that he was homeless and no longer living at his registered address constituted only one violation of NRS 179D.470. The State contends that the convictions encompassed two separate offenses: Pigeon's failure to update his address and information within 48 hours after moving from his registered address in January 2013, and his failure to update his address for the period between April 22 and May 17, 2013, when he was staying at St. Vincent's shelter or his storage unit. The State argues that NRS 179D.470 allows a conviction for each time a sex offender fails to update his information upon a change of address or location, and thus Pigeon's convictions are not redundant.

The issue raised here is whether Pigeon's failure to update his address constitutes a single violation of NRS 179D.470 for the entire period in which he was not in compliance with the statute, or multiple violations for each time he changed his address without properly informing the

appropriate agency. This presents a question of the allowable "unit of prosecution" under the criminal statute—an issue that this court analyzes in the context of redundancy, not double jeopardy. *See Washington v. State*, 132 Nev., Adv. Op. 65, 376 P.3d 802, 806 (2016); *Castaneda v. State*, 132 Nev., Adv. Op. 44, 373 P.3d 108, 110 (2016). Determining the appropriate unit of prosecution allowed under a criminal statute involves statutory interpretation. *Washington*, 132 Nev., Adv. Op. 65, 376 P.3d at 806; *see Wilson v. State*, 121 Nev. 345, 355, 114 P.3d 285, 292 (2005) (explaining that "a claim that convictions are redundant stems from the legislation itself"). Statutory interpretation focuses on the plain language of the statutory text. *Blackburn v. State*, 129 Nev. 92, 95, 294 P.3d 422, 425 (2013). Statutes are to be "construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." *Id.* at 97, 294 P.3d at 426 (internal quotation marks omitted).

The record indicates that Pigeon was convicted twice under subsection 1 of NRS 179D.470. The plain language of subsection 1 requires a sex offender to notify law enforcement of his "change in status" within 48 hours after he changes the "address at which he or she resides." As Pigeon readily concedes, he violated this statutory provision on January 7 by moving out of his 200 South 8th Street address and failing to notify law enforcement within 48 hours after the move. The question for us to decide is whether Pigeon violated this statutory provision again by failing to notify law enforcement when he was staying at St. Vincent's or his storage unit. The answer turns on the meaning of subsection 1's language, "the address at which he or she resides." The term "address" is not defined in the sex offender registry statutes, and the statutory definition of "resides" ("the place where an offender resides," NRS 179D.090) is not helpful. However,

when read in tandem with subsection 3, it is clear that the "address at which he or she resides" in subsection 1 means "fixed residence." *See* NRS 179D.470(3) (requiring a sex offender without a "fixed residence" to update law enforcement every 30 days of the location where he habitually sleeps or takes shelter). Thus, if a sex offender has a fixed residence and then moves from it, he violates subsection 1 if he does not report the move within 48 hours. If the offender becomes homeless and does not have a new fixed residence, he is no longer subject to the 48-hour requirement under subsection 1 but instead must comply with subsection 3's 30-day requirement if he changes the location where he sleeps. Here, Pigeon violated subsection 1 when he moved from his fixed address without notifying law enforcement within 48 hours of the move. The State provides no specific argument on appeal about how Pigeon violated subsection 1 a second time during the charged period of April and May 2013, nor does the record indicate that he committed a second violation of subsection 1 when he remained homeless during that period.[3] Accordingly, we reverse the conviction on count 8.

Prosecutorial misconduct

Pigeon argues that the prosecutor committed misconduct during closing argument by telling the jury that it "would have been illegal for Christopher Pigeon, a 50 year old man, to marry [C.C.], a 12 year old little girl." Pigeon claims that this statement was false because NRS 122.025 allows for such a marriage with the consent of the minor's legal guardian and the district court. A review of the closing arguments shows that the State's comment, although incomplete, was accurate when

[3]The State does not specifically argue and the record does not demonstrate that the second conviction was for a violation of subsection 3.

considered in the context of the evidence presented at trial. C.C.'s legal guardian testified that she had never talked to Pigeon, and it was reasonable to infer that she would never consent to a marriage between the girl and a 50-year-old stranger. Further, the jury was properly instructed as to the circumstances under which a 12-year-old child could marry and also was instructed that the State's arguments during closing were not evidence. Thus, to the extent the State's comment was misleading, it was harmless.

Sentencing

Pigeon argues that the habitual criminal adjudication was an abuse of discretion. First, relying on *Barrett v. State*, 105 Nev. 361, 775 P.2d 1276 (1989), he contends that because two of his prior convictions were originally misdemeanors that were enhanced to felonies, "it was error to apply the habitual statute, itself an enhancement provision, to these already enhanced misdemeanors." Pigeon's reliance on *Barrett* is unavailing, as the district court did not impose consecutive enhancements to the primary offenses here. *See id.* at 365, 775 P.2d at 1278 ("The sentencing court may enhance each *primary offense* pursuant to one enhancement statute." (emphasis added)).

Second, he challenges the habitual criminal adjudication on the basis that the prior convictions were non-violent and remote in time and thus did not show that he posed a serious threat to public safety. The fact that his three prior convictions were non-violent and/or remote in time did not render the adjudication erroneous. *See Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (explaining that the habitual criminal statute "makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the discretion of the

district court"); *see also* NRS 207.010. In deciding that habitual criminal adjudication was necessary, the district court not only considered Pigeon's three prior felony convictions, two of which were for lewdness, but also considered Pigeon's instant offenses, the psychosexual evaluation deeming Pigeon a high risk to sexually reoffend, Pigeon's statements indicating that he did not believe his conduct was very serious and he was still interested in marrying C.C., and his attempt to contact her even after she testified against him. *See LaChance v. State*, 130 Nev., Adv. Op. 29, 321 P.3d 919, 929 (2014) (explaining that a sentencing court has broad discretion in adjudicating a defendant as a habitual criminal and "may consider facts such as a defendant's criminal history, mitigation evidence, victim impact statements and the like" (internal quotation marks omitted)). Given the broad discretion afforded the district court in deciding whether to adjudicate a defendant a habitual criminal, we conclude the district court did not abuse its discretion in deciding to do so here.

Nevertheless, we are concerned that the district court, in imposing the most severe sentence available in this case under Nevada law, may have ascribed greater criminal intent to Pigeon than was actually demonstrated at trial. As discussed above, there was insufficient evidence at trial to support all but two of Pigeon's convictions, leaving him with only a single felony conviction (failure to update his address) and a single misdemeanor conviction (unlawful contact with a child). Because the convictions that we are reversing may have adversely influenced the sentences imposed on the remaining convictions, we remand for the district court to reconsider the sentences imposed on the two remaining convictions (counts 6 and 7). And, because we remand for resentencing, we do not

address Pigeon's claim that his sentences constitute cruel and unusual punishment.

For the foregoing reasons, we

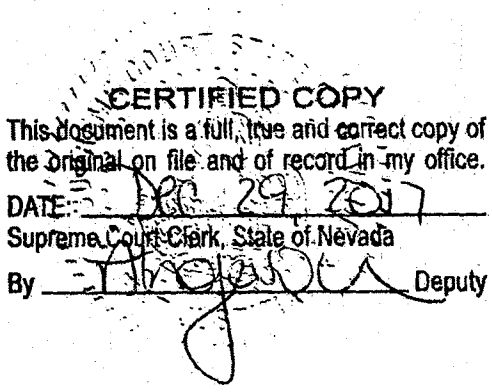
ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Douglas Smith, District Judge
Sandra L. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk


CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATE: DEC 29 2017
Supreme Court Clerk, State of Nevada
By Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER E. PIGEON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67083
District Court Case No. C290261

FILED
JAN 04 2018
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, 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 conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 1st day of December, 2017.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this December 29, 2017.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

C-13-290261-1
CCJAR
NV Supreme Court Clerks Certificate/Judgn
4709561

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER E. PIGEON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 67083
District Court Case No. C290261

REMITTITUR

TO: Steven D. Grierson, Eighth 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: December 29, 2017

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Douglas Smith, District Judge
Sandra L. Stewart
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on JAN 04 2018.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
JAN 03 2018
CLERK OF THE COURT

17-44914

253

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **April 11, 2018**

C-13-290261-1 State of Nevada
vs
Christopher Pigeon

April 11, 2018 **8:00 AM** **Sentencing**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Liz Mercer, Chf Dep DA, present on behalf of the State; Deft. Pigeon present on his own behalf.

This is the time set for Sentencing. Court inquired as to whether the Deft. had had an opportunity to review the Sentencing Memorandum filed by the State on March 29, 2018. Deft. CONCURRED but requested clarification on the habitual criminal treatment; if the Court is not going to grant the Deft. credit for time served today, he would request an Evidentiary Hearing to challenge the habitual criminal aspect of the State's request.

Colloquy; Court noted that it was considering habitual criminal because at the trial of this matter, the Deft. was adjudged an habitual criminal and based on the totality of the circumstances; i.e., the Deft.'s background and hearing the evidence during the trial of this case, the Court believes he is a pedophile and a threat to society. Since the Deft. is not prepared for Sentencing today, COURT ORDERED, matter CONTINUED for thirty (30) days.

NDC

CONTINUED TO: 05/09/18 8:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **May 09, 2018**

C-13-290261-1 State of Nevada
vs
Christopher Pigeon

May 09, 2018 **8:00 AM** **All Pending Motions**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- SENTENCING . . . DEFT.'S MOTION TO ENTER FAVORABLE SUPREME COURT APPEAL ORDER IN JUSTICE COURT . . . DEFT.'S MOTION TO SCHEDULE A DISTRICT COURT HEARING . . . DEFT.'S MOTION TO PRODUCE TRANSCRIPT . . . DEFT.'S MOTION TO WITHDRAW AS COUNSEL

Liz Mercer, Chf Dep DA, present on behalf of the State; Deft. Pigeon present pro se.

This is the time set for Sentencing as well as hearing on the above-named Motions, which the Deft. filed pro se. Colloquy; COURT ORDERED, the Motions are DENIED. The Court will now proceed with Sentencing. For the record, the Deft. appealed his Judgment of Conviction from a Jury Trial; there were 8 Counts. Pursuant to the Supreme Court Order, which was filed January 4, 2018, the Supreme AFFIRMED as to Counts 6 and 7 ONLY, REVERSED on the remaining Counts, and REMANDED the matter for a new sentencing hearing.

Upon Court's inquiry, the Deft. stated that he would like to argue the State's original Notice of Intent to Seek Punishment as a Habitual Criminal and, with regard to the State's Sentencing Memorandum, he is still in the process of writing an opposing motion but is not finished yet.

DEFT. PIGEON ADJUDGED GUILTY of COUNT 6 - UNLAWFUL CONTACT WITH A CHILD (GM) and COUNT 7 - PROHIBITED ACTS BY A SEX OFFENDER (F). Ms. Mercer advised that the Deft. is to be treated as an habitual offender. The Deft.'s three (3) prior Felony convictions were previously marked as State's Exhibits and admitted at his initial sentencing date on December 10, 2014; i.e., C216699, C269318, and 980D04426 out of El Paso County, Texas. Ms. Mercer discussed the underlying facts of the instant case, which are detailed in her Sentencing Memorandum; she believes the Deft. is a danger to the community, he has had three prior failures to register; in one of those cases he made a statement to the officer that he was protesting the registration requirement. For the reasons stated on the record, the State is requesting that the Court re-adjudicate the Deft. as Large Habitual Offender and give him a life tail.

The Deft. stated that he did not want to be sentenced today because he is ready; he stated that he has not finished his motion and he orally requested a continuance. Ms. Mercer indicated that the Deft. was given thirty (30) days to file whatever he wanted to but, to date, has failed filed anything. COURT ORDERED, request DENIED.

COURT ORDERED, pursuant to the Habitual Criminal Offender Statute, Deft. shall be adjudicated as a LARGE HABITUAL CRIMINAL OFFENDER; all FEES are WAIVED, as to COUNT 6 Deft. SENTENCED to CREDIT FOR TIME SERVED, and as to COUNT 7, Deft. SENTENCED to LIFE in the Nevada Department of Corrections (NDC) WITHOUT the possibility of parole. Deft. has ONE THOUSAND EIGHT HUNDRED NINETEEN (1,819) DAYS credit for time served.

NDC

ORDR

Judge Douglas E. Smith
Eighth Judicial District Court
Department VIII
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
(702)671-4338

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

-vs-

CHRISTOPHER PIGEON,

Defendant.

CASE NO: C-13-290261-1

DEPT NO: VIII

SPECIAL FINDINGS

Based upon the totality of the circumstances, all pleadings in Mr. Pigeon's case, NRS 207.010, Eighth Amendment to the Constitution of the United States, Defendant's PSI, past Nevada State cases, many arrests and convictions of Mr. Pigeon:

1. Defendant was in his late 40s when this crime was committed.

2. Defendant illegally moved from an apartment to a storage unit of which a photo of the storage unit was set up as a bedroom.

3. Defendant said, "I don't often talk to young girls, but I find this particular girl [12 years of age] very nice, bright, interesting. I thought she was a 'nice specimen.' I just sort of fell in the first stages of love with her and was trying to get to know her over the summer. There were only two weeks before school was out so I was really trying to get to -- get her to let me meet her mom or dad."

4. Pigeon further said, "My intention was to marry her ... I mean, obviously I was somewhat sexually attracted to her."

5. Pigeon said on May 17, 2013, he was at the park across from C.C.'s school because he "was going to look in the hallway briefly to see if [C.C.] might not be there."

6. Figueroa admitted that he never met her family but he did want to marry and have sex with C.C. with parental permission.

7. Figueroa testified he found C.C. sexually attractive.

8. At trial, Figueroa testified that he still loved C.C., he was happy to see her again in court, he would like to see her again, he would like to have a relationship with her.

9. At the time of sentencing, the Court determined Defendant was a large habitual criminal under NRS 207.010.

10. The Court reviewed the 1997 conviction, 970D06614 and 970D06615, Defendant was convicted of a felony.

11. Defendant was convicted under 980D4426 for felony Forgery of Financial Instruments.

12. On March 16, 2000 at a Restitution Center, Defendant intentionally exposed himself to three different people.

13. One of the Complainants Defendant exposed himself at returned and masturbated in front of the lady.

14. In the lobby of the Restitution Center, Defendant sat across from the Complainant and exposed himself.

15. Defendant approached a 10-year-old boy on November 10, 2000. Defendant's zipper was undone and then he exposed himself and masturbated.

16. In Case C186418, Defendant was convicted of a gross misdemeanor Open and Gross Lewdness.

17. That in Case C186418, Defendant was seen watching a young child, pants undone, genitals hanging out, and he was masturbating.

18. On May 5, 2004 in Case C208956, ultimately dismissed, Defendant was loitering at Lowman Elementary School. Defendant was seen with open pants and stroked his penis in front of a 14-year-old girl and a 12-year-old boy. Defendant's case was dismissed on a legal technicality.

19. In Case C216699 on October 18, 2005, Defendant was in JC Penney on

Maryland Parkway standing in the juniors' clothing section, penis was out and Defendant was masturbating. Defendant was convicted at jury trial, sentenced to 19 to 48 months.

20. In Case 08FN1701, while was denied in screening at Clark County District Attorney's Office, Defendant was arrested for moving to a storage unit, Defendant told police he was protesting sexual offender registration.

21. In Case 08F19304, Defendant was arrested for living in a storage unit without registering. Ultimately it was denied for prosecution.

22. Prosecutors did not proceed in another arrest for moving without registering, 08F25351.

23. In C254530, Defendant was convicted of Gross Misdemeanor Open and Gross Lewdness occurring May 9, 2009. Defendant touched a cocktail waitress, the day before he had grabbed her also. Defendant pled guilty to a Gross Misdemeanor Open and Gross Lewdness.

24. In C269318, Defendant was convicted of Felony Open and Gross Lewdness occurring November 2, 2010 at the Bellagio Hotel. Defendant took out his penis and began masturbating in front of two females. Defendant told police that it was not illegal if the viewers were not offended. Defendant pled guilty to Felony Open and Gross Lewdness.

25. The psychosexual evaluation indicated Defendant "is an overall high risk for sexual recidivism, which indicates that he does not present as safe and amenable to treatment in the community under supervision of the State."

26. The sentence is not cruel and unusual based upon the Eighth Amendment of the United States Constitution.

27. Defendant's life sentence is not disproportionate to the crime despite the harshness.

28. "A district court is vested with wide discretion regarding sentencing" and will only be reversed "if [the sentence] is supported *solely* by impalpable and highly suspect evidence." Denson v. State, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996) (citing Renard v. State, 94 Nev. 368, 369, 580 P.2d 470, 471 (1978); Silks v. State, 92 Nev. 91, 94, 545 P.2d

1159, 1161 (1976)).

29. In rendering its sentence, the district court may "consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant." Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

30. In Sims v. State, 107 Nev. 438 (1991), Sims was convicted of Grand Larceny for unlawfully taking a purse and wallet containing $476.00. On appeal, Sims challenged the Court's decision to adjudicate him as a habitual criminal and sentenced him to life without the possibility of parole. In particular, he argued that the sentence was "disproportionate to the gravity of the underlying offense and his prior criminal history, and that the sentence ... constituted a violation of the Eighth Amendment's proscription against cruel and unusual punishment." The Supreme Court upheld the sentence and noted:

> The district judge, who is far more familiar with Sims' criminal background and attitude than the members of this court, sentenced Sims within the parameters of Nevada law. Although we may very well have imposed a different, more lenient sentence, we do not view the proper role of this court to be that of an appellate sentencing body. Moreover, because the Legislature has determined the sentencing limitations and alternatives that our district courts may impose on criminals who habitually offend society's laws, we deem it presumptively improper for this court to superimpose its own views on sentences of incarceration lawfully pronounced by our sentencing judges.

31. I find that the Defendant has shown signs and actions to be a pedophile and a threat to society.

32. While harsh, life without the possibility of parole best protects the people of the state of Nevada.

This 14 day of May 2018

DOUGLAS E. SMITH
DISTRICT COURT JUDGE

AJOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CHRISTOPHER PIGEON aka
Christopher Edward Pigeon
#1694872

Defendant.

CASE NO. C290261-1

DEPT. NO. VIII

AMENDED JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – ATTEMPT FIRST DEGREE KIDNAPPING (Category B Felony) in violation of NRS 193.330, 200.320; COUNT 2 – AGGRAVATED STALKING (Category B Felony) in violation of NRS 200.575; COUNT 3 – LURING CHILDREN WITH THE INTENT TO ENGAGE IN SEXUAL CONDUCT (Category B Felony) in violation of NRS 201.560; COUNT 4 – BURGLARY (Category B Felony) in violation of NRS 205.060; COUNT 5 – OPEN OR GROSS LEWDNESS (Category D Felony) in violation of NRS 201.210; COUNT 6 –

☐ Nolle Prosequi (before trial)
☐ Dismissed (after diversion)
☐ Dismissed (before trial)
☐ Guilty Plea with Sent (before trial)
☐ Transferred (before/during trial)
■ Other Manner of Disposition

Bench (Non-Jury) Trial
☐ Dismissed (during trial)
☐ Acquittal
☐ Guilty Plea with Sent. (during trial)
☐ Conviction

261

3

UNLAWFUL CONTACT WITH A CHILD (Gross Misdemeanor) in violation of NRS 207.260, COUNTS 7 & 8 – PROHIBITED ACTS BY A SEX OFFENDER (Category D Felony) in violation of NRS 179D.470, 179D.550, 179D.460, and the matter having been tried before a jury and the Defendant having been found guilty of said crimes; thereafter, on the 10th day of December, 2014, the Defendant being Pro Per, was present in court for sentencing representing himself, and good cause appearing.

THE DEFENDANT WAS ADJUDGED guilty under the LARGE HABITUAL Criminal Statute of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $760.00 Psycho-Sexual Evaluation Fee and a $150.00 DNA Analysis Fee including testing to determine genetic markers plus a $3.00 DNA Collection Fee, the Defendant SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** – LIFE WITHOUT the possibility of parole; **COUNT 2** – LIFE WITHOUT the possibility of parole; **COUNT 3** – LIFE WITHOUT the possibility of parole; **COUNT 4** – LIFE WITHOUT the possibility of parole; **COUNT 5** – LIFE WITHOUT the possibility of parole; **COUNT 6** – THREE HUNDRED SIXTY-FOUR (364) DAYS in the Clark County Detention Center (CCDC) with THREE HUNDRED SIXTY-FOUR (364) DAYS credit for time served as to Count 6; **COUNT 7** – LIFE WITHOUT the possibility of parole; and **COUNT 8** – LIFE WITHOUT the possibility of parole, ALL Counts to run CONCURRENT with each other; with FIVE HUNDRED SEVENTY-THREE (573) DAYS credit for time served.

THEREAFTER, on the 9th day of May, 2018, the Defendant was present in Court representing himself, and pursuant to Supreme Court Order filed on January 4, 2018, affirming judgment on COUNT 6 and COUNT 7 ONLY and reversing remaining counts; remanding the matter back to the District Court; COURT ORDERED, in addition to ALL FEES WAIVED, the

Defendant is RESENTENCED on COUNT 6 and COUNT 7 under the LARGE HABITUAL Criminal Statute as follows: **COUNT 6** – CREDIT FOR TIME SERVED; and **COUNT 7** – LIFE WITHOUT the possibility of parole in the Nevada Department of Corrections (NDC); with ONE THOUSAND EIGHT HUNDRED NINETEEN (1,819) DAYS credit for time served.

DATED this 25 day of May, 2018.

DOUGLAS E. SMITH
DISTRICT COURT JUDGE

IMPORTANT NOTE:
PIGEON-90582 IS ALLEGING NEGLIGENCE, SO HE REQUIRES A COURTROOM NOT ON THE 11TH FLOOR.

CASE # C290261-1
NEGLIGENCE/ALLEGED BIAS HEARINGS

IN THE
JUSTICE COURT OF CLARK COUNTY COURTHOUSE - R.J.C.

MC
PP
DA
ITOR - PD

POST APPEAL STATUS #GT0833

NEGLIGENCE HEARING
NEW JUSTICE COURT REQUIRED
CCDC - 1694812; CASE C291026!

CHRISTOPHER EDWARD PIGEON - 90582
APPELLANT/DEFENDANT
VS.
STATE OF NEVADA - RESPONDENT

Hearing Date: 6-20-18
Time: 8:00am

MOTION TO WITHDRAW COUNSEL

STATEMENT OF CASE

APPELLANT/DEFENDANT CHRISTOPHER EDWARD PIGEON - 90582; PRESENTLY AT HIGH DESERT STATE PRISON, (H.D.S.P.), UNIT 3A, INDIAN SPRINGS, NV; AFTER AN APPEAL WIN - GT0833, DATED 12/6/17, IS ALLEGING NEGLIGENCE AGAINST THE SENTENCING COURT, (ALSO ORIGINALLY THE TRIAL COURT JUDGE AND SAME DA.'S), AND NOW REQUESTS TO WITHDRAW HIS COUNSEL FOR THE MOTION(S), (SENT UP SEPARATELY ON 05/14/18), AND FOR A FORMAL NEGLIGENCE DETERMINATION IN A SEPARATE AND NEW JUSTICE COURT.

ARGUMENT

DUE TO BOTH FORMER INEFFECTIVE ASSISTANCE OF COUNSEL, AND NO PRESENT COUNSEL, APPELLANT PIGEON HAS RECEIVED HIS "ORDER OF JUDGEMENT" FROM THE SUPREME COURT OF NEVADA FOR HIS SUCCESSFUL APPEAL, WHICH REMANDS HIM TO JUSTICE/(DISTRICT) COURT FOR A NEGLIGENCE DETERMINATION AND THEN A REQUIRED RESENTENCING IN A COURT NOT ON THE ELEVENTH FLOOR.

HE, CHRISTOPHER EDWARD PIGEON - 90582 - 1694812, H.D.S.P., UNIT 3A/33A, NOW REQUESTS THAT HIS COUNSEL BE WITHDRAWN, SO THAT HE MAY BE ABLE TO REPRESENT HIMSELF, AS PRO PER, IN THESE PROCEEDINGS, AND SO THAT HE MAY BE ABLE TO HAVE IMPORTANT MOTIONS HEARD IN NEW COURTROOMS.

PLEASE GRANT HIM THIS "MOTION TO WITHDRAW COUNSEL," JUSTLY, SO THAT HE MAY HAVE HIS SEPARATELY SUBMITTED "MOTION TO RE-SENTENCE DUE TO NEGLIGENCE, BIAS, AND AN EXTREMELY CRUEL PUNISHMENT ISSUED FOR LESSER CLASS "D" FELONY," HEARD IN A NEW NON-BIASED, NON-NEGLIGENT COURTROOM - NOT THE 11TH FLOOR.

DATED THE 20TH DAY OF MAY 2018;

RESPECTFULLY BY:
CHRISTOPHER EDWARD PIGEON - 90582
APPELLANT/DEFENDANT
H.D.S.P. - UNIT 3A/33A
INDIAN SPRINGS, NV 89070-0600/0650

CHRISTOPHER EDWARD PIGEON - 90582 - 1694812
H.D.S.P. - UNIT 3A/33A
INDIAN SPRINGS, NV 89070-0600/0650

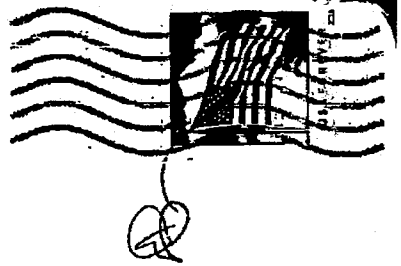
IMPORTANT NOTE:
PIGEON - 90582 IS ALLEGING NEGLIGENCE; SO HE REQUIRES A COURTROOM NOT ON THE 11TH FLOOR.

IMPORTANT NOTE:
PIGEON - 90582 IS ALLEGING NEGLIGENCE; SO HE REQUIRES A COURTROOM NOT ON THE 11TH FLOOR.

2

CHRISTOPHER EDWARD PIGEON - 90582
H.D.S.P. - UNIT 3A/33A
INDIAN SPRINGS, NV 89070-0600/0650

LAS VEGAS NV 850
21 MAY 2018 PM 3 L



HIGH DESERT STATE PRISON
MAY 20 2018
UNIT 3A/B

REGIONAL JUSTICE CENTER
CLERK OF THE COURT - MR. GRIERSON
ATTN.: MS. NAUMEC - MILLER
200 LEWIS AVENUE
LAS VEGAS, NV 89155-1160 (89101)

IMPORTANT NOTE - THIS ENCLOSED LETTER AND MOTION ARE A SECOND MAILING & AN ADDITIVE MOTION MEANT TO ACCOMPANY AN EARLIER/UP-COMING MOTION HEARING.

89101$6300 C075

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **June 20, 2018**

C-13-290261-1 State of Nevada
vs
Christopher Pigeon

June 20, 2018 **8:00 AM** **Motion** **Deft's Motion to Withdraw Counsel**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Phyllis Irby

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

Luong, Vivian	Attorney for the State
State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT NOT PRESENT. The Court stated Deft has filed this motion several times. Deft does not have counsel representing him. Deft represents himself, Deft is Pro Se. Deft represented himself before the Supreme Court for a sentencing. The Court further stated based on the fact Deft has filed this motion several times. COURT ORDERED, MOTION DENIED.

NDC

THROUGH: CLERK OF THE COURT; R.J.C.; 200 LEWIS AVENUE; 2ND FLR.; LAS VEGAS, NV 89101.

CASE C290261; P. 1 OF 1. #1694872-90582 GP

6

IN THE STATE OF NEVADA — DISTRICT COURT

04/06/20

FILED

MAY 27 2020

CLERK OF COURT

CHRISTOPHER EDWARD PIGEON — 90582 DEFENDANT — ELY STATE PRISON	CASE NO. C290261; DEPT. NO. 6 AND 8.
VS.	REMANDING APPEAL #67083.
STATE OF NEVADA	DTD. 12/01/17.

Hearing: 6/17/2020
Time: 1:45 PM

— MOTION TO WITHDRAW COUNSEL —

STATEMENT OF CASE

PRO PER/SE PETITIONER, DEFENDANT WISHES TO RETURN TO CLARK COUNTY FOR THE PURPOSE OF OBTAINING COUNSEL WHO WILL ASSIST HIM WITH FURTHER DISTRICT COURT HEARINGS CONCERNING HIS ILLEGAL AND CRUEL HABITUAL SENTENCE.

ARGUMENT

CHRISTOPHER EDWARD PIGEON — 90582 — AT ELY STATE PRISON — UNIT AB/25A/6 — ARGUES THAT HE REQUIRES ASSISTANCE OF A NEW AND SEPARATE PUBLICLY-AFFORDED COUNSEL AND ATTORNEY AT LAW FOR THE PURPOSE OF ASSISTING HIM IN REQUIRED HEARINGS WHICH EITHER VACATE OR REDUCE HIS ILLEGAL AND CRUEL HABITUAL SENTENCE AFTER FAVORABLE REMANDING APPEAL #67083.

PIGEON FURTHER NOTES THAT HE ENTERED HIS APPEAL RESULT DURING A PRO PER/SE HEARING ON 04/09/18. HE RECEIVED HIS ILLEGAL HABITUAL SENTENCE AT A SUSPECT HEARING ON 05/09/18. HENCE, FURTHER HEARINGS FOR THE REDUCTION OF SENTENCE FOR HIS LESSER "FAILURE TO UPDATE..." FELONY REMAINING, WITH THE NEW ADDITION OF A COURT APPOINTED COUNSEL AS STANDBY COUNSEL, ARE NECESSARY. PLEASE NOTE THAT PIGEON, C.E. — 90582, PRO PER/SE DEFENDANT REQUESTS THAT THIS HEARING BE HELD IN APRIL 2020, OR AS SOON AS POSSIBLE.

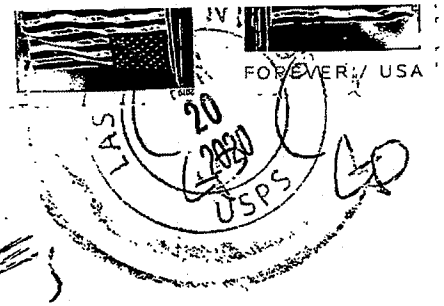
CONCLUSION

SINCE PIGEON REQUIRES A HEARING FOR THE PURPOSE OF WITHDRAWING HIS COUNSEL IN THE POST-APPEAL STAGES OF HIS CASE — C290261 — HE PRAYS THAT THE DISTRICT COURT GRANT HIM THIS "MOTION TO WITHDRAW COUNSEL."

RESPECTFULLY SUBMITTED BY:
CHRISTOPHER EDWARD PIGEON — 90582;
PRO PER/SE DEFENDANT/PETITIONER;
ELY STATE PRISON — UNIT AB/25A;
4569 N. STATE RT. #490.
ELY, NEVADA 89301-1989.

ATTACHED ALSO:
"EX PARTE MOTION FOR ORDER TO TRANSPORT PRISONER," AND,
"MOTION TO VACATE OR REDUCE HABITUAL SENTENCE." GP

E.S.P. - UNIT 4B/126A
ELY, NV 89301-1989



CLERK - COURT INTERFACE;
R.J.C. - 2ND FLOOR;
200 LEWIS AVE.
LAS VEGAS, NV 89101

89101$5300 C075

ELY STATE PRISON
APR 13 2020
NV

CLARK
90582

268

THROUGH:

CLERK OF THE COURT, R.J.C.;
200 LEWIS AVENUE; 2ND FLR.;
LAS VEGAS, NV 89101.

CASE C290261; P. 1 OF 3..
#1694812 - 90582.. GP

IN THE
STATE OF NEVADA — DISTRICT COURT

04/05/20

FILED
MAY 27 2020
CLERK OF COURT

CHRISTOPHER EDWARD PIGEON - 90582,
PETITIONER/DEFENDANT GP
VS.
STATE OF NEVADA,
RESPONDENT..

CASE # C290261; GP
DEPT. #6 AND #3;
RELATED:
APPEAL #67083.. GP

Hearing: 6/17/2020
Time: 1:45 PM

C.E. PIGEON - 90582 - #S.P. - AG/ES;
C290261 - 1694812; APPEAL #67083; GP

MOTION TO VACATE OR REDUCE HABITUAL SENTENCE

STATEMENT OF CASE

PRO PER/SE PETITIONER/DEFENDANT WISHES TO RETURN TO CLARK COUNTY FOR THE PURPOSE OF CHALLENGING HIS ILLEGAL HABITUAL SENTENCE, SO THAT IT MAY BE VACATED COMPLETELY -OR- REDUCED WITHIN THE STATE'S NORMAL RANGE OF PUNISHMENT, AND MORE IN ACCORD WITH FEDERAL GUIDELINES, FOR HIS - CHRISTOPHER EDWARD PIGEON'S - 90582 - SOLE LESSER INSTANCE OF HIS LOWER-LEVEL "PROHIBITED ACTS BY...," ("P.A.B.S.O." FROM HERE ON), FELONY REMAINING AFTER HIS FAVORABLE STATE APPEAL, #67083; ORDER OF JUDGEMENT DATED 12/0/17 AND ENTERED ON 04/09/18.

ARGUMENT

A. CHRISTOPHER EDWARD PIGEON - 90582 - PRO PER/SE PETITIONER/DEFENDANT ARGUES THAT HIS HABITUAL SENTENCE IS DECIDEDLY CRUEL PUNISHMENT FOR HIS LESSER INSTANCE OF HIS LONE "P.A.B.S.O." CLASS "D" FELONY REMAINING - ESPECIALLY AFTER HIS FAVORABLE STATE APPEAL ORDER - CASE #67083.

HIS APPEAL DECISION ORDER, DATED 12/0/17, AND ENTERED INTO DISTRICT COURT ON 04/09/18, OVERTURNED AND/OR REVERSED 6 OF HIS 7 FELONIES. HIS ONLY REMAINING FELONY WAS FOR "FAILURE TO UPDATE HIS RESIDENTIAL ADDRESS AS A SEX OFFENDER" - AS "P.A.B.S.O." FELONY IN NEVADA, (NRS 179D). THERE WAS ALSO ONE GROSS MISDEMEANOR, "UNLAWFUL CONTACT WITH CHILD," IN THIS CASE — C290261 — WHICH IS OF COURSE A TIME-SERVED SENTENCE.

B. PIGEON, PRO PER/SE, ARGUES FOR A VACATING OF OR A REDUCTION IN HIS HABITUAL SENTENCE, FROM TWO POINTS OF VIEW:

1) THE FIRST IS THAT HE ARGUES THAT HIS SENTENCE IS ESPECIALLY CRUEL AND UNUSUAL PUNISHMENT — CERTAINLY TRUE AFTER SUCCESSFUL APPEAL — AND GIVEN ONLY HIS SOLE LESSER "ADMINISTRATIVE TICKET FELONY" REMAINING AFTER APPEAL AT STATE LEVEL.

IN ACCORD WITH THE APPROVED "PROPORTIONALITY ANALYSIS" WHEN COMPARING OUR STATE'S PUNISHMENT FOR THE SAME CRIME AND SEPARATELY SIMILAR CRIMES AT THE CLASS "D" FELONY LEVEL, THE PENALTY RANGE FOR "FAILURE TO UPDATE...," (OR P.A.B.S.O.), IS OFTEN (1) WEEK TO (1) MONTH, AND THEN (1) YEAR TO (3) YEARS, RESPECTIVELY. NOTE THAT THIS IS PIGEON'S FIRST CONVICTION FOR THIS "P.A.B.S.O." OFFENSE, A CLASS "D" FELONY, AND IT IS INDEED A LESSER VIOLATION AND INSTANCE.

PIGEON - 90582 - DOES NOT DESERVE AN ENHANCEMENT HERE BECAUSE IT IS CRUEL AND UNUSUAL PUNISHMENT AND NOT IN THE BEST INTERESTS OF JUSTICE. SEE THE CASE SOLEM VS. HELM; 463 U.S. 277; (1983). KEEP IN MIND THAT IN REGARD TO HABITUAL PUNISHMENT FOR PETITIONER IN THIS CASE, THIS FELONY AND TWO OF HIS MISDEMEANOR-FELONY LEWDNESS PRIORS ARE FORMALLY NOT CONSIDERED TO BE VALID FELONIES BY OUR "U.S. SENTENCING COMMISSION GUIDELINES MANUAL - 2016/2018."

2) THE SECOND POINT IS THAT OUR FEDERAL STANDARD FOR SENTENCING - KNOWN AS THE U.S. SENTENCING GUIDES, (OR "U.S.S.G.'S"), AS MENTIONED ABOVE — LIMITS THE OFFENSE OF "FAILURE TO REGISTER AS A SEX OFFENDER" TO A MANDATORY MAXIMUM OF

THIS 31 PAGE MOTION ACCOMPANIED TWO ADDITIONAL MOTIONS:
1) MOTION TO WITHDRAW COUNSEL; AND, GP
2) EXPARTE MOTION FOR ORDER TO TRANSPORT PRISONER..

04/09/20

16 TO 18 MONTHS. THIS OFFENSE IS THE CLOSEST ACTION TO MY OWN WHICH IS STILL LISTED AS A VALID FELONY BY THESE FEDERAL GUIDELINES; HOWEVER, MY "P.A.B.S.O." CONVICTION FOR "FAILURE TO UPDATE MY RESIDENTIAL ADDRESS..." IS A LESSER OFFENSE COMPARED TO THE GUIDELINE OFFENSE LISTED.

MY P.A.B.S.O. OFFENSE IS A CLASS "D" FELONY IN NEVADA WITH A NORMAL RANGE OF PENALTY OF ONE TO FOUR YEARS. SINCE THIS IS MY FIRST CONVICTION FOR THIS OFFENSE TYPE - AND - SINCE IT NORMALLY RECEIVES A PENALTY OF ONE WEEK TO ONE MONTH - AND - SINCE U.S. GUIDELINES LIMIT A SERIOUS VERSION OF THIS P.A.B.S.O. OFFENSE TO A MAXIMUM OF ONLY 16 MONTHS; PIGEON - 90582 - PRO PER/SE PETITIONER/DEFENDANT HERE, (C-19261), ARGUES THAT HIS HABITUAL SENTENCE FOR THIS LONE FELONY REMAINING IS DECIDEDLY ILLEGAL, AND SHOULD BE VACATED ENTIRELY AND/OR REDUCED TO WITHIN THE STATE'S NORMAL RANGE OF PENALTY AT 1-4 YEARS, ESPECIALLY WITH A FAVORABLE APPEAL DECISION FROM THE SUPREME COURT OF NEVADA, IN WHICH 6 OF 7 FELONIES WERE REVERSED - 12/01/17 ORDER; ENTERED 04/09/18; IN CASE #67083.

C. APPLICABLE CASES REFERENCED:

THE NEVADA SUPREME COURT HAS LONG RECOGNIZED THAT COURT'S HAVE THE POWER AND JURISDICTION TO MODIFY AN ILLEGAL OR HARSH SENTENCE. SEE THE CASE OF STALEY VS. STATE; 787 P. 2D 396; 106 NEV. 75; (1990).

> "... THAT IF A SENTENCING COURT PRONOUNCES [A] SENTENCE WITHIN STATUTORY LIMITS, THE COURT WILL HAVE JURISDICTION TO MODIFY, SUSPEND OR OTHERWISE CORRECT THAT SENTENCE IF IT IS BASED UPON MATERIALLY UNTRUE ASSUMPTIONS OR MISTAKES WHICH WORK TO THE EXTREME DETRIMENT OF THE DEFENDANT."

PETITIONER/DEFENDANT MAY ARGUE THAT LIMITS APPLY TO THE MAXIMUM SENTENCE ALLOWED FOR HIS OFFENSE CONVICTION IN HIS CASE AT HAND, EVEN DUE TO THE FACT THAT MANY YEARS HAVE PASSED SINCE THE SENTENCE WAS PRONOUNCED. ALSO FROM STALEY V. STATE, HOWEVER, THE NEVADA SUPREME COURT HELD THAT SUCH A TIME REQUIREMENT DOES NOT APPLY TO A REQUEST FOR MODIFICATION OF SENTENCE - IT MIGHT BE ALTERED SOONER. SEE CASE PASSANISI VS. STATE; 831 P. 2D 1371; 108 NEV. 318; (1992):

> "... WE NOTE THAT THE TRIAL COURT HAS INHERENT AUTHORITY TO CORRECT A SENTENCE AT ANY TIME IF SUCH SENTENCE WAS BASED ON MISTAKE OF MATERIAL FACT THAT WORKED TO THE EXTREME DETRIMENT OF THE DEFENDANT [(CITATIONS OMITTED)]. IF THE TRIAL COURT HAS INHERENT AUTHORITY TO CORRECT A SENTENCE, A FORTIORI, IT HAS AUTHORITY TO ENTERTAIN A MOTION REQUESTING IT TO EXERCISE THAT INHERENT AUTHORITY." ALSO FROM PASSANISI VS. STATE.

FURTHER, "... THUS, THE TIME LIMITS AND OTHER RESTRICTIONS WITH RESPECT TO A PETITION FOR POST-CONVICTION RELIEF DO NOT APPLY TO A MOTION TO MODIFY A SENTENCE BASED UPON A CLAIM THAT THE SENTENCE WAS ILLEGAL OR WAS BASED ON AN UNTRUE ASSUMPTION OF FACT THAT AMOUNTED TO A DENIAL OF DUE PROCESS. FROM PASSANISI VS. STATE - SEE ALSO: EDWARDS VS. STATE; 918 P. 2D 321, 324; 112 NEV. 704; (1996).

IN MY OWN CASE AT HAND, PETITIONER/DEFENDANT CHRISTOPHER EDWARD PIGEON - 90582 - ELY STATE PRISON - UNIT 4B/25A - CASE C-19261, THERE WAS A 4/5-PAGE JUDGEMENT OF CONVICTION/SENTENCING ORDER ISSUED ON 05/16/18, AFTER HIS REMANDED SENTENCING ON 05/09/18, WHICH WAS ENTITLED "SPECIAL FINDINGS." THIS TITLE MIGHT SEEM MISLEADING, BUT IT IS MEANT TO BE A FACT-FINDING FOR THE PURPOSE OF HABITUAL SENTENCING AND ENHANCEMENT, DESPITE MY FAVORABLE APPEAL - #67083. FOR ONLY THE SPECIFIC FELONY AT HAND.

THE FACT IS THOUGH, THERE IS NO PSYCH ISSUE RAISED, THERE ARE NO NEVADA OR OUT-OF-STATE HOLDS, PIGEON'S - 90582 LONE FELONY REMAINING IS A LESSER INSTANCE OF A LOW-LEVEL OFFENSE OF "FAILURE TO UPDATE HIS RESIDENTIAL ADDRESS," ("P.A.B.S.O.") AND, THIS "SPECIAL-FINDINGS," J.O.C. ORDER RELIES ILLEGALLY UPON MY PAST MISDEMEANOR CONVICTIONS, DISMISSALS,

C. W. PIGEON - 90582 - ELY S.P. - 4B/25A; C-19261 - 16 MONTHS; APPEAL RESULT; 67083. 2

THIS 3-PAGE MOTION ACCOMPANIES TWO ADDITIONAL MOTIONS: 1) MOTION TO WITHDRAW COUNSEL; AND 2) EXPARTE MOTION FOR ORDER TO TRANSPORT PRISONER.

04/25/20

AND UPON A NOT GUILTY FINDING WHICH WAS ALSO A MISDEMEANOR. ONLY FACTS DIRECTLY RELATED TO THE OFFENSE AT HAND AND ON PAST FELONIES MAY BE CONSIDERED FOR REASON TO ENHANCE ANY CURRENT FELONY SENTENCING HEARING. SEE ALSO THE CASE: STATE VS. DISTRICT COURT; 677 P. 2d. 1044; 100 NEV. 90; (1984). FURTHER, IN THE NEVADA CASE "TOWNSEND VS. BURKE;" 334 U.S. 736, 741; 68 S. CT. 1252, 1255; 92 L. Ed. 1690; (1948):

"THE DISTRICT COURT'S INHERENT AUTHORITY TO CORRECT A JUDGEMENT OR SENTENCE FOUNDED ON MISTAKE [OR A CLEAR VIOLATION OF CRIMINAL LAW AND PROCEDURE, DUE PROCESS, OR FAIR PUNISHMENT] IS IN ACCORD WITH THE CONSTITUTIONAL CONSIDERATIONS UNDERLYING THE SENTENCING PROCESS. THE UNITED STATES SUPREME COURT HAS EXPRESSLY HELD THAT WHERE A DEFENDANT IS SENTENCED ON THE BASIS OF MATERIALLY UNTRUE ASSUMPTIONS CONCERNING HIS CRIMINAL RECORD '[THE] RESULT, WHETHER CAUSED BY CARELESSNESS OR DESIGN, IS INCONSISTENT WITH DUE PROCESS OF LAW." SEE ALSO "STATE VS. DISTRICT COURT; 677 P.2d 1044; 100 NEV. 90; (1984):

" FURTHER, THE CASES CLEARLY ESTABLISH THAT CONSTITUTIONALLY VIOLATIVE 'MATERIALLY UNTRUE ASSUMPTIONS' CONCERNING A CRIMINAL RECORD MAY ARISE EITHER AS A RESULT OF A SENTENCING JUDGE'S #INCORRECT PERCEPTION OF INACCURATE OR FALSE INFORMATION, OR A SENTENCING JUDGES INCORRECT PERCEPTION OF MISAPPREHENSION OF OTHERWISE ACCURATE OR TRUE INFORMATION."

D. IT SHOULD BE REMEMBERED THAT THE STATE'S ORIGINAL 07/31/14 NOTICE TO SEEK PUNISHMENT AS AN HABITUAL CRIMINAL, LISTS (3) FELONIES:

- LESSER FORGERY OF A PERSONAL CHECK (MOTHER'S) – TEXAS 1997;
- MISDEMEANOR – FELONY LEWDNESS W/ADULT WOMAN – NEVADA 2000;
- MISDEMEANOR – FELONY LEWDNESS W/ADULT WOMAN – NEVADA 2002;

THE FIRST FELONY FROM TEXAS IS NOT ONLY A LESSER OFFENSE, BUT ALSO IS TOO OLD A CONVICTION TO BE CONSIDERED AT ANY CURRENT FELONY SENTENCING, FOR IT IS NOW 23 YEARS OLD, (17) YEARS OLD AT PIGEON'S – 90582 – ORIGINAL SENTENCING, HERE. NOTE THAT THE U.S. SENTENCING COMMISSION GUIDELINES LIMIT PRIOR FELONIES SENTENCING CONSIDERATION TO A MAXIMUM TIME OF 10-15 YEARS FOR ALL OFFENSES.

FURTHER, CHRISTOPHER EDWARD PIGEON'S – 90582 – PETITIONER/DEFENDANT, HERE IN THIS CASE – TWO PRIOR CLASS "D" LEWDNESS CONVICTIONS ARE EACH GROSS MISDEMEANOR-LEVEL OFFENSES IN NEVADA; BUT, ARE CONSIDERABLY, NOT LISTED AS EITHER VALID FELONIES – OR – EVEN GROSS MISDEMEANORS, BY THE SAME AFOREMENTIONED "U.S. SENTENCING GUIDELINES," ("U.S.S.G.'s").

ALTHOUGH THESE "U.S.S.G.'s" ARE ISSUED BY OUR U.S. CONGRESS AND SUPREME COURT OF THE UNITED STATES THROUGH WASHINGTON D.C.'s "U.S. SENTENCING COMMISSION," AND ARE MANDATORY FOR ALL FEDERAL CASES; LIMITS FOR SENTENCING ARE ALSO MEANT TO APPLY APPROXIMATELY TO ALL STATE CASES.

LASTLY, IT IS PURPORTED THAT THE SUPREME COURT OF NEVADA, IN A SERIES OF FORMAL HEARINGS FROM 10/08/19 TO 10/20/19, RESCINDED HABITUAL PUNISHMENT FOR ALL FELONY CONVICTIONS IN NEVADA, WHICH ARE NOT CLASS "A" FELONIES.

CONCLUSION

CHRISTOPHER EDWARD PIGEON'S – 90582 – HABITUAL SENTENCE RECEIVED AFTER HIS SUBSTANTIALLY FAVORABLE REMANDING APPEAL AT NEVADA'S SUPREME COURT – FROM 12/01/17, CASE #61083, SENTENCING 05/09/18 – IS PATENTLY CRUEL PUNISHMENT, BOTH BY STATE STANDARDS AND BY FEDERAL GUIDELINES. HE ARGUES FOR AND RESPECTFULLY REQUESTS THAT HIS HABITUAL SENTENCE BE REVOKED – AND – EITHER HIS SENTENCE BE VACATED COMPLETELY OR HIS PUNISHMENT FOR HIS "PROHIBITED ACTS BY SEX OFFENDER" FELONY, HIS SOLE CONVICTION REMAINING, BE REDUCED TO WITHIN THE STATE'S NORMAL RANGE OF PUNISHMENT.

RESPECTFULLY SUBMITTED BY:
CHRISTOPHER EDWARD PIGEON – 90582 – E.S.P. – UNIT 4B/125;
4569 N. STATE RT. #490; ELY, NV 89301 – 1989. AP

THIS 3-PAGE MOTION ACCOMPANIED TWO ADDITIONAL MOTIONS:
1) MOTION TO WITHDRAW COUNSEL; AND, CP
2) EX PARTE MOTION FOR ORDER TO TRANSPORT PRISONER.

C. E. PIGEON – 90582 – E.S.P. – 4B/125;
C220261 – 1674873; APPEAL RESULT; CP
OCTOBER 2

90582 - C290261 - DP

C-13-290261-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **June 17, 2020**

C-13-290261-1 State of Nevada
vs
Christopher Pigeon

June 17, 2020 **1:45 PM** **All Pending Motions**

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

PARTIES PRESENT:

JOURNAL ENTRIES

- DEFT.'S MOTION TO WITHDRAW COUNSEL . . .DEFT.'S MOTION TO VACATE OR REDUCE HABITUAL SENTENCE . . .DEFT.'S EX-PARTE MOTION FOR ORDER TO TRANSPORT PRISONER

Quanisha Holloway, Dep DA, present on behalf of the State; Deft. Pigeon is incarcerated in the Nevada Department of Corrections (NDC) and not present.

Deft.'s Ex-Parte Motion for Order to Transport Prisoner: The Court has reviewed the Motion; the Deft. requested to be transported for today's hearing. Since the Motions can be decided without his presence, COURT ORDERED, the Motion is DENIED.

Deft.'s Motion to Vacate or Reduce Habitual Sentence and Deft.'s Motion to Withdraw Counsel: The Court has reviewed these Motions as well but is not sure if the State was served. Ms. Holloway advised that the State's Appellate Division did not receive the Motions and is requesting thirty (30) days to respond.

With regard to Deft.'s Motion to Withdraw Counsel, Court noted that the Deft. is already pro se. Ms. Holloway advised that in the State's review of this Motion, it appears that the Deft. may be requesting Appointment of Counsel. Colloquy; the Court does not believe there is a specific request for counsel but if the State is construing this Motion as a request to appoint counsel, the Court has no

objection to granting it. Therefore, COURT ORDERED, the Motion is GRANTED IN PART. The Deft.'s request for appointment of counsel is GRANTED; the Deft.'s request to withdraw counsel is DENIED because the Deft. is already pro se. COURT FURTHER ORDERED, matter set for status check. This Court's staff will contact the Office of Appointed Counsel; once counsel is appointed, a briefing schedule will be set for Deft.'s Motion to Vacate or Reduce Habitual Sentence.

NDC

06/24/20 1:45 PM STATUS CHECK: CONFIRMATION OF COUNSEL

CLERK'S NOTE: A copy of this minute order was mailed to Christopher Pigeon #90582, Ely State Prison, P.O. Box 1989, Ely, Nevada, 89301.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES **June 24, 2020**

C-13-290261-1 State of Nevada
vs
Christopher Pigeon

June 24, 2020 **1:45 PM** **Status Check: Confirmation of Counsel**

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

PARTIES PRESENT:

JOURNAL ENTRIES

- Jacob Villani, Chf Dep DA, present on behalf of the State; Terrence Jackson, Esq., appearing via BlueJeans, for Deft. Pigeon, who is not present. The Deft. is incarcerated in the Nevada Department of Corrections (NDC).

This is the time set for the Status Check on Confirmation of Counsel. Mr. Jackson CONFIRMED as counsel of record; he stated that the Deft. is in NDC and is housed in Ely, Nevada; he has not had contact with the Deft. because he was just made aware of the appointment yesterday. As soon as Mr. Jackson gets the file from the Public Defender, he will begin corresponding with the Deft.

Colloquy as to whether a briefing schedule should be set at this time; Mr. Jackson would like to file a Supplemental Points and Authorities to the Deft.'s Motion. Mr. Villani suggested that the Court first set a status check. COURT SO ORDERED, a briefing schedule can be set at the status check. Additionally, Mr. Villani advised that at the last hearing on June 17, 2020, the State was GRANTED thirty (30) days to respond to Deft.'s Motion to Vacate or Reduce Habitual Sentence. COURT FURTHER ORDERED, said ORDER is RESCINDED, a response will be WAIVED until further order of the Court.

NDC

08/26/20 8:30 AM STATUS CHECK: FILE/SET BRIEFING SCHEDULE

SUPP
TERRENCE M. JACKSON, ESQ.
Nevada Bar No. 00854
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
(702) 386-0001 / Fax: (702) 386-0085
terry.jackson.esq@gmail.com
Counsel for Defendant, *Christopher E. Pigeon*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, -vs- CHRISTOPHER E. PIGEON, ID# 90582, Defendant.	Case No.: C-13-290261-1 Dept. No.: **IX**

MOTION AND SUPPLEMENTAL POINTS AND AUTHORITIES TO VACATE HABITUAL CRIMINAL SENTENCE OR MODIFY SENTENCE.

COMES NOW, Defendant, Christopher Edward Pigeon, by and through Counsel, Terrence M. Jackson, Esquire, and submits these Supplemental Points and Authorities to Vacate the Habitual Criminal Sentence and/or to Modify Defendant's Sentence.

As grounds for this Motion, Defendant submits (1) the Court abused its discretion in sentencing Defendant as an habitual criminal under NRS 207.018; (2) The sentence of Life Without Parole was excessively harsh and disproportionate, in violation of the Eighth Amendment; and (3) Defendant's habitual criminal sentence must be vacated or modified because the Court erred in granting Defendant's *Faretta* Motion, which denied Defendant competent counsel at Sentencing. This Motion is further based upon the accompanying Points and Authorities incorporated herein.

Dated this 20th day of November, 2020.

Respectfully submitted,
/s/ *Terrence M. Jackson*
TERRENCE M. JACKSON, ESQ.
terry.jackson.esq@gmail.com
Counsel for Defendant, *Christopher E. Pigeon*

SUPPLEMENTAL POINTS AND AUTHORITIES

I. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT SENTENCED DEFENDANT AS AN HABITUAL CRIMINAL TO LIFE WITHOUT THE POSSIBILITY OF PAROLE.

The habitual criminal status should never be considered automatic, but instead should be based upon a totality of sentencing factors, not just the number of prior convictions a defendant has accrued. *See, Walker v. Deeds,* 50 F.3d 670 (9th Cir.1995), *Arajakis v. State,* 108 Nev. 976, 843 P.2d 800 (1992).

It is respectfully submitted the District Court abused its discretion when it sentenced the Defendant in this case as an habitual criminal. *French v. State,* 98 Nev. 235 (1982). This Honorable Court should find this sentence was an abuse of discretion by the District Court because the District Court ignored the substantial mitigating factor of the Defendant's mental incompetency. The Court most likely also erred when it granted Defendant's ill considered demand to represent himself. Although he was found marginally competent to proceed to trial it is doubtful he was competent to represent himself. Defendant was totally ineffective at sentencing and clearly antagonized the District Court Judge by making improper comments during sentencing.

Despite the great amount of medical evidence and legal authority which established substantial mitigation of the Defendant's actions in this case, this Honorable Court gave Defendant the harshest possible punishment. This sentence was an abuse of the Court's discretion.

Many cases have recognized that mental illness of a defendant should be considered a mitigating factor at sentencing. *See, United States v. Ruklick,* 919 F.2d 95, 97 (8th Cir.1990), granting a downward departure for the defendant's longstanding schizophrenic disorders. *See also, United States v. Philibert,* 947 F.2d 1467, 1471 (11th Cir.1988). Consider *Perry v. Lynaugh,* 492 U.S. 302, 322 (1989), where the United States Supreme Court recognized that mental retardation rendered a defendant less culpable. *See also, United States v. Cantu,* 12 F.3d 1506 (9th Cir.1993), as well as *United States v. Herbert,* 902 F.Supp. 827 (N.D. Ill. 1995) and *United States v. Frazier,* 979 F.2d 1227 (7th Cir.1992), and *United States v. Glick,* 946 F.2d 335 (4th Cir.1991), all recognizing that the

defendant's diminished mental capacity or status should be considered a mitigating factor at sentencing.

The Defendant's actions during sentencing clearly made evident his medical and psychological problems. The Court however ignored the mitigation these medical issues raised when sentencing Defendant. Despite the fact that the record clearly showed Defendant was at most marginally competent, as he had been declared incompetent and sent to Lakes Crossing for many months before trial, he was not given any consideration of his marginal competency by the Court or for his psychological problems at sentencing. When considering this Motion for Modification of Sentence and analyzing whether the Court's prior decision giving the Defendant the harshest possible sentence in the case was an abuse of discretion, the Court must weigh how the Defendant's serious medical/psychological issues affected him. The Court should also consider how Defendant's medical/psychological problems will aggravate a lifelong prison sentence.

Many courts have considered a sentence reduction is appropriate when a defendant is suffering from medical conditions not easily treated in custody such as chronic pain or other illness. *See, for example, United States v. Martin,* 363 F.3d 25 (1st Cir.2004), *United States v. Lara,* 905 F.2d 599 (2nd Cir.1990), *United States v. Slater,* 971 F.2d 626 (10th Cir.1992). Defendant submits a hearing will establish the District Court failed to weigh this factor and the totality of mitigating circumstances especially the Defendant's health problems and therefore abused its discretion when it sentenced Defendant to life without parole as an habitual criminal.

II. THE SENTENCE OF LIFE WITHOUT PAROLE WAS SO EXCESSIVELY HARSH AND DISPROPORTIONATE THAT IT VIOLATED THE EIGHTH AMENDMENT'S CRUEL AND UNUSUAL PUNISHMENT CLAUSE.

> [T]he legislature, within constitutional limits, is empowered to define crimes and determine punishments, and the courts are not to encroach upon that domain lightly. . . . Thus, it is frequently stated that a sentence of imprisonment which is within the limits of a valid statute, regardless of its severity, is normally not considered cruel and unusual punishment in the constitutional sense.
>
> *Schmidt v. State,* 94 Nev. 665, 668, 584 P.2d 695, 697 (1978) (citations omitted); *see also Harmelin v. Michigan,* 501 U.S. 957, 111 S. Ct. 2680 (1991) (Emphasis added)

. . .

The Defendant submits his sentence was so disproportionate that amount to cruel and unusual under the Eighth Amendment. The Eighth Amendment to the United States Constitution, as well as Article 1, Section 6 of the Nevada Constitution, prohibits the imposition of cruel and unusual punishment.

In *Robinson v. California,* 370 U.S. 360, 8 L.Ed.2d 758, 82 S.Ct. 1417 (1962), the Supreme Court held that the Eighth Amendment's ban on cruel and unusual punishment was held applicable to the States through the Fourteenth Amendment. The Nevada Supreme Court has stated that " [a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.' " *Allred v. State,* 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting *Blume v. State,* 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State,* 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979).

Despite the fact Defendant's sentence of life without parole was technically within statutory guidelines, Defendant respectfully submits his sentence nevertheless violated the Eighth Amendment's cruel and unusual punishment clause. The cruel and unusual punishment clause of the Eighth Amendment prohibits sentences that are overly harsh and excessive. Under all the facts and circumstances of this case, Defendant submits that his sentence was unreasonable and that it was also grossly disproportionate.

Although a sentence imposed within statutory limits is not usually considered either excessive or cruel and unusual, *United States v. Moriarty,* 429 F.3d 1012, 1024 (11th Cir.2005), sometimes a statutorily-condoned punishment may in rare cases exceed the limits of the Constitution. *See, Weems,* 217 U.S. at 382:

> "[E]ven if the minimum penalty . . . had been imposed, it would have been repugnant to the [constitutional prohibition against cruel and unusual punishments]. However, the Eighth Amendment's protection against excessive or cruel and unusual punishments follows from the basic 'precept of justice that punishment for [a] crime should be graduated and proportioned to [the] offense.' " *Kennedy v. Louisiana,* 128 S.Ct. 2641, 2649 (2008) (quoting *Weems v. United States,* 217 U.S. 349, 367 (1910)). In analyzing whether a sentence is cruel and unusual punishment, a court first makes "a threshold determination that the sentence imposed is grossly disproportionate to the offense committed," the court then considers "the gravity of the

> offense and the harshness of the penalty." *Solem v. Helm,* 463 U.S. 277, 290-91 (1983). If the sentence is grossly disproportionate, the court then considers "the sentences imposed on other criminals in the same jurisdiction . . . and the sentences imposed for commission of the same crime in other jurisdictions." Id. at 291. (Emphasis added)

. . .

See also other cases where sentences have been held to be unconstitutionally cruel and unusual, notwithstanding the existence of an underlying statute which was not unconstitutional on its face. *Workman v. Commonwealth,* 429 S.W. 2d 374 (Ky.1968); *Faulkner v. State,* 445 P.2d 815 (1968); *Cox v. State,* 203 Ind. 544, 553-560, 181 N.E. 469, 470-72 (1932).

As the Court in *Weems, supra,* noted:

> "The Eighth Amendment is progressive, and does not prohibit merely the cruel and unusual punishments known in 1689 and 1787, but may acquire wider meaning as public opinion becomes enlightened by humane justice." Id. 351 (Emphasis added)

. . .

Defendant respectfully submits that there has as yet been little or no progressivity with prison reform in the last one hundred and ten years. We are still waiting for the humane justice the Supreme Court was concerned about in 1910. Unfortunately, the United States of America leads the world in the percentage of its citizens who are incarcerated. This Honorable Court should apply the progressive principles of *Weems* and find that the sentence of life without parole for the Defendant in this case is excessively harsh and cruel and unusual punishment, violating the Eighth Amendment.

Although the expression "cruel and unusual," as used when the Eighth Amendment to the Constitution of the United States was originally formulated, was directed against barbarous forms of punishment which amounted to torture, modern courts apply it to those forms of punishment or sentences of such duration that shock the conscience of reasonable persons or outrage the moral sense of the community, in light of the developing concepts of decency. *Boerngen v. United States,* 326 F.2d 326 (5th Cir.1964); *Green v. Teets,* 244 F.2d 401 (9th Cir.1957); *Jordan v. Fitzharris,* 257 F.Supp. 674 (D.C. 1966); *Workman v. Commonwealth, supra; Cannon v. Gladden,* 203 Or. 629, 281 P.2d 233 (1955); *Cox v. State, supra.*

It is respectfully submitted the sentence Defendant received of life in prison without ever getting a chance of parole is shocking to the conscience. The sentence should therefore be modified to at least allow some possibility of parole.

III. DEFENDANT'S SENTENCE OF LIFE WITHOUT PAROLE MUST BE REDUCED OR MODIFIED BECAUSE HE DID NOT RECEIVE THE NECESSARY ASSISTANCE OF COMPETENT COUNSEL BECAUSE THE COURT ERRED IN GRANTING HIS *FARETTA* MOTION.

It is well established that sentencing is a critical stage of the criminal process. *Mempa v. Rhay,* 389 U.S. 128, 134, 88 S.Ct. 254, 19 L.Ed.2d 359 (1967). It is therefore respectfully submitted that the Defendant was therefore entitled to competent counsel during that stage of the proceeding under *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

A critical stage in the proceeding is one where "the accused requires the use of counsel in coping with the legal problems or assistance in meeting his adversary and the substantial rights of the accused may be affected." *Rhay, Id.* 134, 35 (Emphasis added)

In this case, because the Court wrongly granted Defendant's *Faretta* request, he was unable to adequately present mitigating evidence of his mental problems. The District Court should have recognized that because of his long stay in the Lakes Crossing Mental Facility, his competency was doubtful. Competency to waive *Faretta* rights should be strictly construed especially in such a serious case where a Defendant was facing the possibility of life without parole. Because there had been a clear breakdown of communication between Defendant and his court-appointed counsel, the remedy was not to put Defendant in a position where he felt he must represent himself to get rid of an undesirable counsel he despised or could not work with. It is respectfully submitted the Court had a strong duty to attempt to work diligently with the Defendant and try hard to find alternate counsel to work with the Defendant. *See, Nguyen v. State,* 262 F.3d 998 (9th Cir.2001), where the Ninth Circuit Court of Appeals noted:

> "[t]he District Judge focused exclusively on the attorney's competence and refused to consider the relationship between *Nguyen* and his attorney. Even if present counsel is competent, a serious breakdown in communications can result in an inadequate defense. *United States v. Musa,* 220 F.3d 1096, 1102 (9th Cir.2000) (cert. den., *Musa v. U.S.,* 531 U.S. 999, 121 S.Ct. 498, 148 L.Ed.2d 469 (2000)). Similarly, a defendant is denied his Sixth Amendment right to counsel when he is "forced into a trial with the assistance of a particular lawyer with whom he [is] dissatisfied, with whom he [will] not cooperate, and with whom he [will] not, in any manner whatsoever, communicate." *Brown v. Craven,* 424 F.2d 1166, 1169 (9th Cir.1970).

> There is no question, in this case, that there was a complete breakdown in the attorney-client relationship. By the time of trial, the defense attorney had acknowledged to the Court that *Nguyen* "just won't talk to me anymore." In light ofthe conflict, *Nguyen* could not confer with his counsel about trial strategy or additional evidence, or even receive explanations of the proceedings. In essence, he was "left to fend for himself," *United States v. Gonzalez,* 113 F.3d 1026, 1029 (9th Cir.1997), in violation of his Sixth Amendment right to counsel. *Id.* 1003, 04 (Emphasis added)

In this case Defendant Pigeon had, as in *Nguyen*, evidenced great dissatisfaction with his counsel, filing numerous Motions to Withdraw. Defendant directs the Court to the ABA Standards on the function of the Trial Judge § 6.6:

6.6 The defendant's election to represent himself at trial.

A defendant should be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that he :

(i) has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;

(ii) possesses the intelligence and capacity to appreciate the consequences of this decision; and

(iii) comprehends the nature of the charges and proceedings, the range of permissible punishments, and any additional facts essential to a broad understanding of the case.

(Emphasis added)

The Defendant submits the District Court in this case did not adequately consider the Defendant's intelligence, capacity or ability to fully comprehend the totality of facts necessary for his defense.

The Commentary to the Standards notes:

> Most defendants who seek to appear *pro se* do so in ignorance of the value of counsel and of their own inadequacies, or out of paranoid distrust of appointed counsel. More sophisticated motives may include the hope that the absence of counsel may afford a basis for reversal of a conviction regarded as inevitable, or a desire to ventilate societal hostility through the dramatic vehicle of a disorderly trial. *See generally* Laub, *The Problem of the Unrepresented, Misrepresented and Rebellious Defendant in Criminal Court,* 2 DUQUESNE L. REV. 245 (1964). None of these sources of the desire

> to dispense with counsel outweighs the rights of co-defendants, or the interest of the public in a just and orderly trial. Nor do they require the court to disregard the long term interest of the accused in having his guilt or lack of guilt fairly determined. Thus, the judge should feel no reluctance in strongly discouraging attempted waivers of counsel and should fully and carefully explain the value of counsel and the correlative disadvantages of a *pro se* defense. (Emphasis added)

. . .

The Supreme Court has emphasized the *Faretta* rights are not absolute but are contingent upon mental competency. *Indiana v. Edwards,* 554 U.S. 164, 128 S.Ct. 2374, 171 L.Ed.2d 345 (2008).

Before granting defendant leave to represent himself, the trial court should have therefore determined "whether the defendant had the mental capacity to waive his constitutional right to counsel with realization of the probable risks and consequences of his action." *See also, People v. Teron,* 588 P.3d 773 (1979); *Curry v. Superior Court,* 75 Cal. App. 3d 221, 226, 141 Cal. Rptr. 884, 857 (1977); *People v. Zatko,* 80 Cal. App. 3d 534, 544-45, 145 Cal.Rptr. 43 (1978); Sultan and Tillis, *Mental Competency in Criminal Proceedings,* 28 Hastings L. J. 1053, 1065-69 (1977).

The mere competency to stand trial does not always equate with capacity to waive counsel. In *Government of Virgin Islands v. Niles,* 295 F.Supp. 267 (1969), the court held that even though the defendant was competent to stand trial, he could not waive counsel, stating:

> "As for defendant's competency to waive counsel, the court is of the opinion that one who may be suffering from paranoid delusions should not be entrusted with the sole conduct of his defense. . . . A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances . . . . " *Id.* 273 (Emphasis added)

. . .

Essentially the District Court allowed Pigeon to represent himself. The District Court knew, or should have known, that Defendant Christopher Edward Pigeon was at best marginally competent and the failure to provide him with alternate counsel would gravely prejudice him.

Consider the case of *Commonwealth v. Tyler,* 360 A.2d 617 (PA. 1976), where the court reversed a conviction because defendant proceeded to represent himself *pro se* when denied his appointment for new counsel, stating:

> "The trial court forced appellant in the instant case to either accept court appointed counsel with whom an irreconcilable difference as to the manner in which the trial should be conducted had arisen, a difference which was corroborated by counsel or to represent himself.

> In so doing, the court presented appellant with the same "Hobson's choice" given to the appellant in *Commonwealth v. Barnette, supra,* and such action does not comport with the constitutional standards required to be met before a court may accept an alleged waiver of one's constitutional right to representation by counsel." *Id.* 620 (Emphasis added)

. . .

Similarly, in the case of *United States v. Silkwood,* 893 F.2d 248 (10th Cir.1989), the court found the defendant's waiver was coerced because when he informed the court of his dissatisfaction with counsel, the court did nothing to cure his dissatisfaction. The court in reversing stated:

> "Since the Supreme Court held in *Faretta v. California,* 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1957), that a criminal defendant has the right to appear *pro se* if he voluntarily, knowingly, and intelligently waives his Sixth Amendment right to counsel, this court has addressed on several occasions the inquiry which a trial court must make to ensure that the waiver meets these standards. *See, United States v. Gipson,* 693 F.2d 109 (10th Cir.1982), *cert. den.,* 459 U.S. 1216, 103 S.Ct. 1218, 75 L.Ed.2d 455 (1983); *United States v. Padilla,* 819 F.2d 952 (10th Cir. 1987); *Sanchez v. Mondragon,* 858 F.2d 1462 (10th Cir.1988). For the waiver to be voluntary, the trial court must inquire into the reasons for the defendant's dissatisfaction with his counsel to ensure that the defendant is not exercising a choice between incompetent or unprepared counsel and appearing *pro se*. *Sanchez,* 858 F.2d at 1465. For a waiver to be knowing and intelligent, the trial court must conduct a " 'penetrating and comprehensive examination' " into the defendant's ' "apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.' " *Padilla,* 819 F.2d at 956-57 (quoting *Von Moltke v. Gillies,* 332 U.S. 708, 723-24, 68 S.Ct. 316, 323, 92 L.Ed. 309 (1948)). (Emphasis added)

. . .

Defendant submits he was gravely prejudiced by the lack of competent counsel at sentencing and for that reason, his sentence should be modified or he should be given a new sentencing hearing.

CONCLUSION

The Defendant received a cruel and unusual sentence of Life Without Parole. It is respectfully submitted the District Court abused its discretion when the District Judge sentenced Defendant as an habitual criminal and did not take into account the Defendant's serious mental deficiencies which should have weighed very seriously as mitigating circumstance.

The sentence of Life Without Parole was an excessively harsh and disproportional sentence that should be modified and reduced. One major reason for reconsidering or modifying the sentence is that the District Court, prior to sentencing, had wrongly granted the Defendant's Faretta Motion.

Because of the Defendant's dubious mental capacity, his ability to represent himself was very questionable. Defendant was extremely prejudiced by his inept attempt at self-representation during the sentencing proceeding. He was unable to present mitigating evidence for himself and he only succeeded in antagonizing the Judge.

Defendant urges this Honorable Court to consider all the mitigating circumstances and reduce his sentence to Life With the Possibility of Parole in ten years or alternatively, order a new sentencing hearing where Defendant *with counsel* can present necessary mitigating evidence.

Dated this 20th day of November, 2020.

Respectfully submitted,

/s/ Terrence M. Jackson
TERRENCE M. JACKSON, ESQ.
Nevada Bar No. 00854
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: (702) 386-0001/Fax: (702) 386-0085
terry.jackson.esq@gmail.com
Counsel for Defendant, *Christopher E. Pigeon*

CERTIFICATE OF SERVICE

The undersigned certifies she is an assistant in the office of Terrence M. Jackson, Esquire, and is a person of such age and discretion as to be competent to serve papers and that on this 20th day of November, 2020, she served an electronic e-filed copy via *Odyssey* eFile NV of the attached MOTION AND SUPPLEMENTAL POINTS AND AUTHORITIES TO VACATE HABITUAL CRIMINAL SENTENCE OR MODIFY SENTENCE to the attorney(s) of record:

STEVEN WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountyda.com

JONATHAN VANBOSKERCK
Chief Deputy DA - Criminal
jonathan.vanboskerck@clarkcountyda.com

and by United States first class mail to the Defendant:

CHRISTOPHER E. PIGEON
Inmate #90582
Ely State Prison
ELY, NV 89301-1989

By: */s/ Ila C. Wills*
Assistant to Terrence M. Jackson, Esq.

THROUGH:

CLERK OF THE COURT, R.J.C.; 2ND FLOOR;
200 LEWIS AVENUE; VEGAS, NV 89101;
ATTENTION: MR. G. BOYCE/MS. ANN NAUMEC-MILLER.

CASE C290261; P.1 OF 2;
1487Z-90582.

IN THE
MOTION, P.1 OF 2. STATE OF NEVADA - DISTRICT COURT

January 20, 2021
11:00 AM

CHRISTOPHER EDWARD PIGEON - 90582,
PETITIONER/DEFENDANT
VS.
STATE OF NEVADA, RESPONDENT.

CASE #C290261;
DEPT. #6/#8; CHRISTINA D. SILVA; JUDGE;
LINDA A. BELL; JUDGE;
RELATED APPEAL #61083.

FILED
DEC 28 2020
CLERK OF COURT

PP
DA
ADC
Terrence Jackson

MOTION TO WITHDRAW COUNSEL

STATEMENT OF CASE:

PRO PER/SE DEFENDANT WISHES TO RETURN TO CLARK COUNTY FOR THE PURPOSE OF CHALLENGING HIS ILLEGAL HABITUAL SENTENCE, SO THAT IT MAY BE VACATED COMPLETELY -OR- REDUCED WITHIN THE STATE'S NORMAL RANGE OF PUNISHMENT, AND IN ACCORD WITH CURRENT FEDERAL GUIDELINES, FOR MY - CHRISTOPHER EDWARD PIGEON'S - 90582 - SOLE INSTANCE OF HIS LESSER CLASS "D" FELONY OFFENSE, REMAINING AFTER APPEAL #61083; A "PROHIBITED ACTS BY SEX OFFENDER" ("P.A.B.S.O."), VIOLATION OF FAILURE TO UPDATE MY RESIDENTIAL ADDRESS. THE ORDER OF JUDGEMENT IS DATED 12/01/17, AND ENTERED ON 04/09/19.

I FEEL THAT MY PRESENT ATTORNEY, MR. TERRENCE M. JACKSON, HAS NOT COMMUNICATED WITH ME EFFECTIVELY, AND HAS DENIED ME COPIES OF VITAL MINUTES AND LETTERS FROM THE JUDGE AND STATE - THIS IS ESPECIALLY TRUE GIVEN THE HIGHLY QUESTIONABLE "IN ABSENTIA" STATUS AT THIS TIME.

ALTHOUGH LEGAL MAILINGS AND IDENTIFICATION ISSUES HAVE BEEN SIGNIFICANT PROBLEMS LATELY, A TRANSFER FROM ELY STATE PRISON WOULD SOLVE MOST OF THESE PROBLEM(S).

FURTHER, I, C.E. PIGEON - 90582, FEEL THAT THE DECISION TO EXTEND THE SCHEDULE FOR THE ARGUMENT FOR MY PRO PER/SE "MOTION TO VACATE OR REDUCE HABITUAL SENTENCE" - FILED 05/27/20, DATED 04/05/20, AND FIRST HEARING 06/17/20 - TO MORE THAN 10 MONTHS, IS NOT GOOD JURISPRUDENCE AND NOT ACCEPTABLE.

I ASK FOR THE COURT TO WITHDRAW MY COUNSEL, AND ALLOW ME EITHER PRO PER/SE OR STANDBY COUNSEL STATUS, SO THAT MY PENDING "MOTION TO VACATE OR..." AND RE-ISSUED REQUEST FOR "MOTION FOR THE ORDER FOR PRODUCTION OF INMATE; CHRISTOPHER EDWARD PIGEON, DOC #90582," MAY BE FILED AND HEARD IN A TIMELY FASHION.

ARGUMENT:

SINCE THE COURT, STATE, AND MY CURRENT ATTORNEY, TERRENCE M. JACKSON, ESQUIRE, HAVE DECIDED TO:

1) DELAY THE HEARING OF MY "MOTION TO VACATE OR...," DATED 05/27/20, FOR MORE THAN 10 MONTHS, WITHOUT RESPONDING TO MY WRITTEN OBJECTION;
2) NOT CONTACT ME FOR MORE THAN TWO AND A HALF MONTHS;
3) NOT STATE WHETHER OR NOT I HAVE BEEN GRANTED STANDBY COUNSEL STATUS;
4) NOT MAIL ME COPIES OF MINUTES FROM JULY AND AUGUST HEARINGS FOR MY RECORD;
5) HOLD THESE HEARINGS "IN ABSENTIA," WITHOUT MY APPROVAL, OR PROPER LEGAL PROCEDURE;
6) ISSUE AN ORDER TO PRODUCE, FOR THE PURPOSE OF RESOLVING THIS CASE IN A TIMELY FASHION;
7) NOT RECOGNIZE FORMALLY THE APPARENT PROBLEMS WITH OTHERS ATTEMPTING TO "STEAL MY IDENTITY," AND WITH THE SENDING AND RECEIVING OF LEGAL MAILINGS;

I STRONGLY MOVE THAT MY COUNSEL OF RECORD BE REMOVED, AND THAT I BE ALLOWED TO PROCEED PRO PER/SE, WITH STANDBY COUNSEL IF REQUIRED; AND, THAT THE ORDER OF PRODUCTION FOR THIS CASE, THE 2-PAGE "MOTION FOR THE ORDER FOR PRODUCTION OF INMATE...," BE GRANTED WITHOUT RESERVATION.

(-END OF PARAGRAPH - MOTION CONTINUES ON P.2-)

RECEIVED
NOV 23 2020
CLERK OF THE COURT

THROUGH:
CLERK OF THE COURT, R.J.C.; 2ND FLOOR;
200 LEWIS AVENUE; VEGAS, NV 89101;
ATTENTION: MR. G. BOFFE/MS. ANN-NAUMEC-MILLER.

CASE C290261; P.2 OF 2;
94872-90582.

MOTION. P.2 OF 2. STATE OF NEVADA - DISTRICT COURT 11/10/20

FURTHER, I, PRO PER/SE DEFENDANT CHRISTOPHER EDWARD PIOESN - 90582, STATE THAT THE ALLEGED EXISTENCE OF THE "COVID-19 VIRUS," NOT BE REASON TO DENY AN ORDER OF PRODUCTION OR DELAY MY VALID AND JUST CASE. I HAVE NO FORMAL "PSYCHOLOGICAL" ISSUE RAISED, AM A GRADUATE WITH TWO UNIVERSITY DEGREES, HAVE NO FORMAL HOLDS IN-STATE OR ELSEWHERE, AND NEITHER PSYCHOLOGY, MEDICAL CONCERNS, NOR THE IMPLIED VALIDITY OF AN HABITUAL SENTENCE HERE, SHOULD PREVENT MY TRANSFER OR THE REVOCATION OF MY CRUEL AND ILLEGAL HABITUAL SENTENCE FOR MY SOLE LESSER CLASS "D" FELONY REMAINING - "FAILURE TO UPDATE MY RESIDENCE AS SEX OFFENDER," (P.A.B.S.O.) - AFTER VERY FAVORABLE APPEAL.

CONCLUSION:

DUE TO MY ATTORNEY, MR. TERRENCE M. JACKSON - ESQUIRE, NOT CONTACTING ME RECENTLY, DESPITE (2) LETTERS; DUE TO ME NOT RECEIVING MINUTES OF THE LAST SEVERAL HEARINGS, FROM 06/24/20; DUE TO THE HEARINGS BEING CONDUCTED "IN ABSENTIA," AND DUE TO THE UNACCEPTABLE DELAY IN SCHEDULING FOR THESE HEARINGS FOR MY PRO PER/SE "MOTION TO VACATE OR REDUCE HABITUAL SENTENCE;" I STRONGLY URGE AND RESPECTFULLY ASK THAT THE COURT AND HONORABLE JUDGE LINDA M. BELL; DISTRICT COURT, DEPARTMENT #6 THROUGH #9; REGIONAL JUSTICE CENTER, (R.J.C.), LAS VEGAS, NV; GRANT ME THIS "MOTION TO WITHDRAW" AND THE ATTACHED AND ACCOMPANTING "MOTION FOR THE 'ORDER FOR PRODUCTION OF INMATE...;'" PLEASE HELP - THANK YOU.

RESPECTFULLY SUBMITTED BY:
CHRISTOPHER EDWARD PIOESN - 90582;
ELY STATE PRISON - UNIT 4A/25A;
4569 N. STATE RT. #490;
ELY, NEVADA 89301-1989.

ENCLOSED:
"MOTION FOR THE ORDER FOR PRODUCTION OF INMATE:
CHRISTOPHER EDWARD PIOESN - DOC #90582." [DATED 11/11/20]

[- END OF MOTION -]

Electronically Filed
1/19/2021 3:17 PM
Steven D. Grierson
CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHON VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CHRISTOPHER PIGEON, aka,
Christopher Edward Pigeon, #90582

Defendant.

CASE NO: C-13-290261-1

DEPT NO: IX

STATE'S OPPOSITION TO DEFENDANT'S MOTION AND SUPPLEMENTAL POINTS AND AUTHORITIES TO VACATE HABITUAL CRIMINAL SENTENCE OR MODIFY SENTENCE

DATE OF HEARING: MARCH 24, 2021
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHON VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion and Supplemental Points and Authorities to Vacate Habitual Criminal Sentence or Modify Sentence.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On June 5, 2013, Defendant Christopher Pigeon ("Defendant") was charged by way of Indictment with Counts 1 and 2 – Prohibited Acts by a Sex Offender (Category D Felony – NRS 179D.470; 179D.550; 179D.460); Count 3 – Attempt First Degree Kidnapping (Category B Felony – NRS 193.330; 200.320); Count 4 – Aggravated Stalking (Category B Felony – NRS 200.575); Count 5 – Luring Children with Intent to Engage in Sexual Conduct (Category B Felony – NRS 201.560); Count 6 – Burglary (Category B Felony – NRS 205.060); Count 7 – Open or Gross Lewdness (Category D Felony – NRS 201.210); and Count 8 – Unlawful Contact with a Child (Gross Misdemeanor – NRS 207.260).

On July 31, 2014, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal.

On August 4, 2014, the State filed an Amended Indictment charging Defendant with Count 1 – Attempt First Degree Kidnapping; Count 2 – Aggravated Stalking; Count 3 – Luring Children with the Intent to Engage in Sexual Conduct; Count 4 – Burglary; Count 5 – Open or Gross Lewdness; Count 6 – Unlawful Conduct with a Child; and Counts 7 and 8 – Prohibited Acts by a Sex Offender.

On August 4, 2014, Defendant's jury trial began. On August 5, 2014, a jury found Defendant guilty of all counts.

On December 10, 2014, the district court sentenced Defendant as a large habitual criminal to Counts 1, 2, 3, 4, 5, 7, and 8 to life without the possibility of parole and as to Count 6 – 364 days in the Clark County Detention Center. Defendant's Judgment of Conviction was filed on December 23, 2014.

On December 1, 2017, the Nevada Supreme Court affirmed in part and reversed in part Defendant's Judgment of Conviction. Specifically, the court concluded that there was insufficient evidence of Count 5, Count 2, Count 3, Count 1, and Count 4, Count 8. Remittitur issued on December 29, 2017.

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On May 29, 2018, an Amended Judgment of Conviction was filed resentencing Defendant as a large habitual criminal statute to Count 6 – credit for time served; Count 7 – life without the possibility of parole.

On May 29, 2018, Defendant filed a Motion to Withdraw Counsel. On June 20, 2018, the district court denied Defendant's Motion to Withdraw Counsel because Defendant was representing himself and there was no counsel to withdraw.

On May 27, 2020, Defendant filed a Motion to Vacate or Reduce Habitual Sentence. On June 17, 2020, the district court appointed counsel. Counsel confirmed on June 24, 2020.

On November 20, 2020, Defendant filed the instant Motion and Supplemental Points and Authorities to Vacate Habitual Criminal Sentence or Modify Sentence ("Motion to Modify").

ARGUMENT

I. DEFENDANT'S CLAIM IS BARRED BY LAW OF THE CASE

"The law of a first appeal is law of the case on all subsequent appeals in which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct appeal may not be reargued. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelton v. State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot overrule the Nevada Supreme Court. NEV. CONST. Art. VI § 6. See Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the criminal context); see also York v. State, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file motions with the same arguments, Defendant's motion is barred by the doctrines of the law of the case and res judicata. Id.; Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

Here, Defendant contends that his sentence must be reduced because the court erred when granting his Faretta motion. Motion to Modify at 6-8. This claim is barred by law of the

case. On direct appeal, Defendant claimed both that the court's decision to allow Defendant to represent himself were incorrect. The Nevada Supreme Court rejected this claim and held that "the district court correctly canvassed Pigeon under current Nevada law, and the record reflects that Pigeon was competent and that his waiver was knowing, intelligent, and voluntary, we conclude the district court did not abuse its discretion in granting Pigeon's request to represent himself and waive his right to counsel." Order Affirming in Part, Reversing in Part and Remanding, Docket No. 67083 at 5 (filed December 1, 2017) (internal citation omitted).

II. DEFENDANT'S CLAIM IS NOT PROPER FOR A MOTION TO MODIFY

"Motions to correct illegal sentences address only the facial legality of a sentence." Edwards v. State, 112 Nev. 704, 704, 918 P.2d 321, 324 (1996). "Pursuant to NRS 34.724(2)(b), a post-conviction petition for a writ of habeas corpus comprehends and takes the place of all other common-law, statutory, or other remedies which have been available for challenging the validity of the conviction or sentence and must be used exclusively in place of them." See Harris v. State, 130 Nev. 448, 329 P.3d 619, 628 (2014); NRS 34.724(2)(b). Other claims attacking the conviction or sentence are inappropriate for a motion for sentence modification must be raised by a timely filed direct appeal, a timely filed Petition for a Post-Conviction Writ of Habeas Corpus per NRS 34.720-34.830, or other appropriate motion. Edwards, 112 Nev. at 708, 918 P.2d at 324.

Motions to correct illegal sentences evaluate whether the sentence imposed is "'at variance with the controlling statute, or illegal in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided.'" Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)). Nevada law has clearly established that a criminal defendant is to be sentenced under the criminal statute in effect at the time of the offense, not at the time of sentencing. See, Tellis v. State, 84 Nev. 587, 591-2, 445 P.2d 938, 941 (1968) (holding that NRS 193.130 constitutes a legislatively enacted savings clause requiring application of the criminal statute in effect at the time of the offense).

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Here, Defendant argues that he is entitled to a modified sentence because his sentence constitutes cruel and unusual punishment. Motion to Modify at 4-5. Specifically, Defendant alleges that the district court abused its discretion when sentencing Defendant as a habitual criminal because it did not consider mitigating factors like Defendant's competence at sentencing. Id. at 2-5. Such claims fall outside the scope of a motion to modify and/or correct illegal sentence and must be raised in the correct procedural context. NRS 34.724(2)(a)-(b); Harris, 130 Nev. at 449, 329 P.3d at 628-29. Defendant's claim does not challenge the facial legality of his sentence. Indeed, Defendant acknowledges that his sentence does fall within the statutory range allowed. Motion to Modify at 4. Instead, he merely claims that the court did not properly weigh the impact Defendant's mental health had on his actions. Id. at 3. This is a claim that should have be raised in a post-conviction petition for writ of habeas corpus and is therefore improperly made in the instant Motion to Modify.

III. DEFENDANT IS NOT ENTITLED TO A SENTENCE MODIFICATION

In general, a district court lacks jurisdiction to modify or vacate a sentence once the defendant has started serving it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other grounds, Harris v. State, 130 Nev. 435, 446, 329 P.3d 619, 627 (2014). However, a district court does have inherent authority to correct, vacate, or modify a sentence where the defendant can demonstrate the sentence is based on a materially untrue assumption or mistake of fact that has worked to the defendant's extreme detriment in violation of due process. Edwards, 112 Nev. at 707, 918 P.2d at 324. But not every mistake or error during sentencing gives rise to a due process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984). Such material mistakes surrounding a defendant's criminal record can arise, "either as a result of a sentencing judge's correct perception of inaccurate or false information, or a sentencing judge's incorrect perception or misapprehension of otherwise accurate or true information." Id., 100 Nev. at 97, 677 P.2d at 1048.

Defendant is not entitled to a sentence modification. Defendant does not claim that his sentence was based on a martially untrue assumption of fact. Instead, he claims that his sentence as a habitual criminal constitutes cruel and unusual punishment. Motion to Modify at

2-5. Defendant was adjudicated and convicted of Prohibited Acts by a Sex Offender pursuant to NRS 179D.550 and adjudicated as a large habitual criminal pursuant to NRS 207.010. Pursuant to the State's Notice of Intent to Seek Punishment as a Habitual Criminal, Defendant had three prior felony convictions: two for open or gross lewdness and one for forgery. Pursuant to Defendant's Presentence Investigation Report, one of Defendant's convictions for Open or Gross Lewdness occurred less than one year before Defendant was charged in the instant case. Further, at sentencing and in the State's Sentencing Memorandum, the State detailed the facts of Defendant's crime, as well as the details surrounding his prior criminal history. Sentencing Memorandum at 4-11. At sentencing, Defendant did not contend that any of the facts argued by the State were incorrect. Court Minutes, May 9, 2018. That Defendant now argues that his sentence amounts to cruel and unusual punishment because the court should have considered Defendant's mental health conditions, does not mean that his sentence is invalid or that it was based on any mistake or untrue fact. Indeed, prior to sentencing, the district court made clear that Defendant's background and evidence presented at trial indicated that he was a pedophile and a threat to society. Court Minutes, April 11, 2018. Therefore, Defendant has failed to establish that he is entitled to any sentence modification.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court DENY Defendant's Motion and Supplemental Points and Authorities to Vacate Habitual Criminal Sentence or Modify Sentence.

DATED this 18th day of January, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #

BY _____ #10539 for
JONATHON VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition To Defendant's Motion And Supplemental Points And Authorities To Vacate Habitual Criminal Sentence Or Modify Sentence, was made this 11th day of January, 2021, by Electronic Filing to:

TERRENCE MICHAEL JACKSON, ESQ.
EMAIL: terry.jackson.esq@gmail.com

Secretary for the District Attorney's Office

13F06455X/JV/jb/mlb/SVU

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ROPP
TERRENCE M. JACKSON, ESQ.
Nevada Bar No. 00854
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
Terry.jackson.esq@gmail.com
Counsel for Defendant, Christopher E. Pigeon

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. CHRISTOPHER PIGEON, ID# 90582, Defendant.	District Court Case No.: C-13-290261-1 Dept.: **IX** Date of Hearing: March 24, 2021 Time of Hearing: 11:00 AM

DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION AND SUPPLEMENTAL POINTS AND AUTHORITIES TO VACATE HABITUAL CRIMINAL SENTENCE OR MODIFY SENTENCE

I. DEFENDANT'S MOTION TO REDUCE HIS SENTENCE IS NOT BARRED BY THE LAW OF THE CASE DOCTRINE.

Defendant respectfully submits the State is mistaken in claiming the 'law of the case doctrine' bars consideration of Defendant's Motion to Vacate or Modify Sentence in this case. The State in their Opposition/Reply cites *Hall v. State,* 91 Nev. 314, 315 (1975) and *Pellegrini v. State,* 117 Nev. 860 (2001), for the proposition that issues previously decided on direct appeal may not be reargued.

This doctrine does not apply because the Defendant's Motion does not directly deal with the facts decided in his Appeal. Defendant's Motion instead raised counsel's ineffectiveness at sentencing. The principle issue in this Motion is whether counsel was so ineffective that Defendant received an excessive and unconstitutional sentence because counsel did not adequately present all the mitigating circumstances to the Court. The law of the case does not apply to the issue of counsel's ineffectiveness at sentencing because that issue was never decided on appeal.

II. DEFENDANT'S MOTION TO MODIFY IS PROPER BECAUSE HIS SENTENCE WAS EXCESSIVE AND UNJUST AND IT VIOLATES THE EIGHTH AMENDMENT'S PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT.

Defendant was sentenced as an habitual criminal to a life sentence despite the fact he has serious mental health difficulties. As previously argued, this sentence was an abuse of discretion by the Court. This sentence was the product of counsel's gross ineffectiveness. Because of counsel's ineffectiveness the Court ignored the substantial mitigating circumstances in Defendant's background and followed the prosecutor's harsh recommendation for habitual criminal treatment.

It is respectfully submitted the Eighth Amendment's prohibition against cruel and unusual punishment should have prevented the imposition of a life sentence under the facts of this case. "[T]he Eighth Amendment's protection against excessive or cruel and unusual punishments follows from the basic 'precept of justice that punishment for [a] crime should be graduated and proportioned to [the] offense.' " *Kennedy v. Louisiana,* 128 S.Ct. 2641, 2649 (2008) (quoting *Weems v. United States,* 217 U.S. 349, 367 (1910)). In analyzing whether a sentence is cruel and unusual punishment, a court first makes "a threshold determination that the sentence imposed is grossly disproportionate to the offense committed." The court then considers "the gravity of the offense and the harshness of the penalty." *Solem v. Helm,* 463 U.S. 277, 290-91 (1983). If the sentence is grossly disproportionate, the court then considers "the sentences imposed on other criminals in the same jurisdiction . . . and the sentences imposed for commission of the same crime in other jurisdictions." *Id.* at 291.

The court initially did not apply the proper proportionality analysis required by *Kennedy v. Louisiana, supra,* therefore because of counsel's ineffectiveness in this case, modification of Defendant's sentence is proper and just.

III. THE COURT HAS DISCRETION AT ANY TIME TO MODIFY A SENTENCE THAT IS EXCESSIVE AND UNJUST WHEN BASED UPON LACK OF KNOWLEDGE.

The State suggests that the Court has no discretion, or extraordinarily little discretion, in modifying excessive and unjust sentences. Because the habitual criminal statute was clearly abused

in this case, it is respectfully submitted that the Court has the right and the duty to correct the unjust or excessive sentence which resulted from the Court not having considered fully the extent of available mitigating evidence when Defendant was sentenced.

The State relies on *Passanisi v. State,* 108 Nev. 318, 831 P.2d 1371 (1992), for the proposition the Court had no jurisdiction to modify or vacate a sentence once the Defendant has started serving that sentence. Defendant however submits the Court has the inherent power to correct its errors at any time, if the Court recognizes that it did not have adequate facts to make the correct judgment at the time of sentence and that the sentence was unjust.

The Court in *Passanisi, supra,* specifically recognized that there were exceptions to the jurisdictional rule limiting sentence modification which allows modification of a sentence such as: . . . "when a Court has made a mistake in rendering judgment, which works to the extreme detriment of the defendant." *Id.* 322 (Emphasis added) *See also, State v. District Court,* 100 Nev. 90, 95, 677 P.2d 1044, 1047 (1984), and *Warden v. Peters,* 83 Nev. 298, 301, 429 P.2d 549, 551 (1967).

In this case it is respectfully submitted this Court therefore has jurisdiction to consider a Motion to Reduce or Modify the Defendant's Sentence because the Court has entered a mistaken Judgment which worked to the extreme detriment of the Defendant.

CONCLUSION

Defendant, Christopher E. Pigeon, respectfully submits he can demonstrate his sentence was excessively harsh and unjust because of the substantial mitigating factors in his background. The procedural issues the State has raised in Opposition to Defendant's Motion should not prevent the Defendant from getting a fair hearing on this Motion and then a well deserved reduction of his sentence. Defendant urges the Court to grant his Motion for Reduction of Sentence and/or reverse his conviction and remand his case for a new Sentencing Hearing.

DATED this 28th day of January, 2021.

Respectfully submitted,

/s/ Terrence M. Jackson

TERRENCE M. JACKSON, ESQ.
Terry.jackson.esq@gmail.com
Counsel for Defendant, *Christopher E. Pigeon*

CERTIFICATE OF SERVICE

I hereby certify that I am an assistant to Terrence M. Jackson, Esq., I am a person competent to serve papers and not a party to the above-entitled action and on the 28th day of January, 2021, I served copy of the foregoing: Defendant, Christopher Pigeon's, Reply to State's Opposition to Defendant's Motion and Supplemental Points and Authorities to Vacate Habitual Criminal Sentence or Modify Sentence as follows:

[X] Via Electronic Service (CM/ECF) to the Eighth Judicial District Court and by United States first class mail to the Nevada Attorney General and Petitioner/Appellant as follows:

STEVEN B. WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountyda.com

JONATHON VANBOSKERCK
Chief Deputy D.A. - Criminal
jonathon.vanboskerck@clarkcountyda.com

Christopher E. Pigeon
ID# 90582
Ely State Prison
Post Office Box 1989
Ely, Nevada 89301

Aaron D. Ford, Esquire
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

By: */s/ Ila C. Wills*
Assistant to T. M. Jackson, Esq.

THROUGH: CLERK OF THE COURT, R.J.C.; 2ND FLOOR; 200 LEWIS AVE.; LAS VEGAS, NV 89101.

FOR: WRIT/MOTION - (1-PAGE LTR.) HONORABLE JUDGE C.D. SILVA; DISTRICT COURT - DEPT. IX; LAS VEGAS, NV 89155-1160.

(P.1)

CASE C290261-1; P. 1 OF #1694872-90582-PIGEON.

FILED
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CLERK OF COURT

04/23/21

A-21-835129-W
Dept. 9

IN THE
STATE OF NEVADA - DISTRICT COURT

CHRISTOPHER EDWARD PIGEON-90582, PETITIONER; vs. STATE OF NEVADA, RESPONDENT.	CASE NO.: C-13-290261-1; DEPT. NO.: IX; RELATED APPEAL: #67083, 12/01/17.

WRIT OF HABEAS CORPUS

(OR SUPPLEMENTAL TO ORIGINAL MOTION)

REF.: ORIGINAL "MOTION TO VACATE OR REDUCE HABITUAL SENTENCE," FILED 08/21/20.
REF.: "STATE'S OPPOSITION TO DEFENDANT'S MOTION AND SUPPLEMENTAL POINTS AND AUTHORITIES TO VACATE HABITUAL CRIMINAL SENTENCE OR MODIFY SENTENCE," FILED 01/19/21.
REF.: "DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION AND SUPPLEMENTAL POINTS AND AUTHORITIES TO VACATE HABITUAL CRIMINAL SENTENCE OR MODIFY SENTENCE." FILED 01/28/21.

STATEMENT OF CASE

DEFENDANT/PETITIONER PIGEON-90582, WISHES TO CHALLENGE HIS ILLEGAL HABITUAL SENTENCE, AFTER VERY FAVORABLE APPEAL, SO THAT IT MAY BE VACATED COMPLETELY -OR- REDUCED WITHIN THE STATE'S NORMAL RANGE OF PUNISHMENT, OF 1 TO 4 YEARS, FOR THE SINGLE "PROHIBITED ACTS BY SEX OFFENDER," CLASS "D" FELONY REMAINING FOR DEFENDANT/PETITIONER HERE.

THIS LESSER INSTANCE OF THE LOWER-LEVEL FELONY IS FOR A VIOLATION OF "FAILURE TO UPDATE RESIDENTIAL ADDRESS AS SEX OFFENDER," IS TOO "TRIVIAL" AN OFFENSE FOR ANY ENHANCEMENT; AND, HIS (3) PRIORS ARE ONLY MISDEMEANOR-FELONY WOBBLERS, WHICH ARE ALSO TOO "TRIVIAL" FOR ANY CONSIDERATION FOR HABITUAL PUNISHMENT. IN ORDER FOR THIS WRIT/MOTION TO BE RULED UPON PROPERLY BY THE DISTRICT COURT, IT MUST REFER PRIMARILY TO THE STATE'S ORIGINAL "NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL," DATED 01/30/14.

CHRISTOPHER EDWARD PIGEON-90582-#67083-C290261-1, CITES HIS APPEAL DECISION ORDER, FILING 17-41371; DATED 12/01/17; AS CAUSE FOR RESCINDING HIS HARSH HABITUAL SENTENCE - NOW A 10 YEARS TO LIFE SENTENCE, AS OF 11/01/18, AS PER ELY STATE PRISON CASEWORKERS AND WARDEN DRUMMOND. ALSO IMPORTANT ARE THE U.S. CONSTITUTION'S 8TH AND 14TH AMENDMENTS, WHICH AFFORD DEFENDANTS THEIR RIGHT TO FAIR PUNISHMENT; MAKING CRUEL AND UNUSUAL PUNISHMENT ILLEGAL, ESPECIALLY IN THE CASE OF "FORMULAIC" HABITUAL PUNISHMENT, OR AUTOMATIC ENHANCEMENT. FURTHER, THE STATUTE FOR PUNISHMENT AS A HABITUAL CRIMINAL, SUBSECTION (2) OF NRS 207.010.

PIGEON PRAYS THAT THE HONORABLE JUDGE AND COURT PLEASE GRANT HIM REPRIEVE, AND THIS RESCINDMENT.

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C.E. #: PIGEON - 90582 - H.D.S.P. - 11A/B; C290261 - #1694872; APPEAL RESULT #67083; 12/01/17.

ARGUMENT

INTRO: A. PETITIONER/DEFENDANT C.E. PIGEON-90582-C290261-1, PRO PER/SE, ARGUES THAT HIS HABITUAL SENTENCE IS DECIDEDLY CRUEL PUNISHMENT FOR HIS LESSER INSTANCE OF HIS LONE "PROHIBITED ACTS BY SEX OFFENDER," CLASS "D" FELONY REMAINING - ESPECIALLY AFTER HIS FAVORABLE STATE APPEAL ORDER - CASE #67083.

298.a

(P.2)

WRIT OF HABEAS CORPUS/MOTION - DISTRICT COURT. 04/20/21

ARGUMENT: (CONTINUED)

FOR THE RECORD, NRS 207.010, SUBSECTION (2), NEVADA'S STATUTE FOR PUNISHMENT AS A HABITUAL CRIMINAL, ACTUALLY READS:

"IT IS WITHIN THE DISCRETION OF THE PROSECUTING ATTORNEY WHETHER TO INCLUDE A COUNT UNDER THIS SECTION IN ANY INFORMATION OR FILE A NOTICE OF HABITUAL CRIMINALITY IF AN INDICTMENT IS FOUND. THE TRIAL JUDGE MAY, AT HIS OR HER DISCRETION, DISMISS A COUNT UNDER THIS SECTION WHICH IS INCLUDED IN ANY INDICTMENT OR INFORMATION."

AS MENTIONED, HIS APPEAL DECISION ORDER, DATED 12/01/17, CASE #67083, AND ENTERED INTO DISTRICT COURT ON 04/09/18, OVERTURNED 6 OF 7 FELONIES, WHICH WERE WITHOUT VALID WITNESS AND SUFFICIENT EVIDENCE. HIS ONLY REMAINING FELONY IS A VIOLATION OF "FAILURE TO UPDATE RESIDENTIAL ADDRESS," PART OF A "PROHIBITED ACTS BY SEX OFFENDER," A LOWER-LEVEL CLASS "D" FELONY, (SEE NRS 179D.550).

THERE IS ALSO ONE GROSS MISDEMEANOR FOR CHRISTOPHER EDWARD PIGEON - 90582, CASE C290261-1, "UNLAWFUL CONTACT WITH CHILD" HERE, WHICH IS TIME-SERVED.

IMPORT: B. PIGEON'S P.S.I. REPORT OF 11/26/14, CONCERNING HIS SINGLE FELONY, READS IN ITS ENTIRETY:

"IT WAS ALSO DISCOVERED THAT THE DEFENDANT DOES NOT LIVE AT THE ADDRESS FOR WHICH HE WAS REGISTERED PER HIS ANNUAL SEX OFFENDER VERIFICATION."

PIGEON - 90582, CONTENDS THAT THE DISTRICT COURT MAY HAVE ACTED QUESTIONABLY IN DECIDING TO CONDUCT HEARING OVER A PERIOD OF 10 MONTHS, IN ORDER TO RULE ON HIS ORIGINALLY PRO PER/SE "MOTION TO VACATE OR REDUCE HABITUAL SENTENCE." THIS IS ESPECIALLY TRUE AFTER HIS APPEAL #67083 TOOK A FULL (3) YEARS TO RULE ON; AND, GIVEN THE FACT THAT IT HAS NOW BEEN AN ADDITIONAL (3) YEARS SINCE THE UNFAIR REMANDED SENTENCING OF 05/09/18. THIS IS ESPECIALLY SO GIVEN HIS INABSENTIA STATUS, QUESTIONABLY APPROVED BY THE COURT.

NOTE THAT PRO PER/SE PIGEON - 90582, CHALLENGED THE 6 REVERSED FELONIES, BEFORE TRIAL - ON APPROXIMATELY 08/2013, 01/2014, AND 06/2014 - THREE SEPARATE TIMES, ONE PRO PER/SE, TO INCLUDE A SECOND OPPOSING MOTION AGAINST THE STATE'S REPLY; WITH NO MERCY FROM THE DISTRICT COURT AND STATE, DEPARTMENT #8, THROUGHOUT THE PROCEEDINGS.

THE PETITIONER EMPHASIZES THAT NO PSYCHOLOGICAL ISSUE IS CURRENTLY "TABLED" VALIDLY; THE SUPREME COURT OF NEVADA FOUND HIM NOT ONLY COMPETENT TO STAND TRIAL; BUT ALSO, COMPETENT TO HAVE REPRESENTED HIMSELF AT HIS TWO 08/04/14 TRIALS.

IF CHRISTOPHER EDWARD PIGEON'S - 90582 - C290261-1, IDENTITY IS AT ALL IN QUESTION - THIS ISSUE MUST BE MADE FORMAL.

PIGEON IS 5'-11" TALL, 175 POUNDS, HAS BROWN HAIR/EYES, A GREY BEARD IF NOT SHAVEN, PRESCRIPTION WIRE-FRAME GLASSES (TAN-PEWTER), AND A LONG 6" SCATTERRED RED BIRTHMARK ON HIS RIGHT FOREARM.

IT SHOULD BE STRESSED THAT CHRISTOPHER EDWARD PIGEON - 90582 - HAS TWO UNIVERSITY DEGREES FROM NOTRE DAME, (1984), AND DREXEL, (1993).

C.E. PIGEON - 90582 - HDSP - IIA/09B; C290261 - #1694812; APPEAL RESULT #67083.

(P. 3)

WRIT OF HABEAS CORPUS/MOTION - DISTRICT COURT. 04/28/21

ARGUMENT: I. CRUEL AND UNUSUAL PUNISHMENT AS ILLEGAL HABITUAL PUNISHMENT.
(CONTINUED)

① PIGEON, CHRISTOPHER EDWARD - 90582 - 1694812 - HDSP, UNIT IIA/09B, ARGUES THAT THE COURT SHOULD VACATE AND/OR REDUCE HIS HABITUAL SENTENCE, DUE TO THE FACT THAT HIS HABITUAL PENALTY - NOW 10 YEARS TO LIFE AS OF 11/05/18, ACCORDING TO WARDEN AND CWS'S - IS ESPECIALLY HARSH, CRUEL AND UNUSUAL PUNISHMENT GIVEN ONLY THE LESSER, FIRST TIME INSTANCE OF HIS "ADMINISTRATIVE," CLASS "D" FELONY REMAINING, AFTER APPEAL #67083 AT THE STATE LEVEL.

② FROM P.14 OF PIGEON'S - 90582, 15 - PAGE "ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING," APPEAL #67083, 12/01/17, FILING 17-41371, IT URGES:

"NEVERTHELESS, WE ARE CONCERNED THAT THE DISTRICT COURT, IN IMPOSING THE MOST SEVERE SENTENCE AVAILABLE IN THIS CASE UNDER NEVADA LAW, MAY HAVE ASCRIBED GREATER CRIMINAL INTENT TO PIGEON THAN WAS ACTUALLY DEMONSTRATED AT TRIAL. AS DISCUSSED ABOVE, THERE WAS INSUFFICIENT EVIDENCE AT TRIAL TO SUPPORT ALL BUT TWO OF PIGEON'S CONVICTIONS, LEAVING HIM WITH ONLY A SINGLE FELONY CONVICTION (FAILURE TO UPDATE HIS ADDRESS) AND A SINGLE MISDEMEANOR CONVICTION (UNLAWFUL CONTACT WITH A CHILD). BECAUSE THE CONVICTIONS THAT WE ARE REVERSING MAY HAVE ADVERSELY INFLUENCED THE SENTENCES IMPOSED ON THE TWO REMAINING CONVICTIONS (COUNTS 6 AND 8)...."

③ FROM THE RECENT CASE LACHANCE VS. STATE; 321 P. 2d 919; 130 NEV. ADV. REPORTER 29; (2014); IT STATES:

"WHEN THE PRIOR OFFENSES ARE STALE OR TRIVIAL, OR IN OTHER CIRCUMSTANCES WHERE AN ADJUDICATION OF HABITUAL CRIMINALITY WOULD NOT SERVE THE PURPOSES OF THE STATUTE OR THE INTERESTS OF JUSTICE; SEE ALSO PATTON VS. STATE, (1964); FRENCH VS. STATE, (1982); AND, SESSIONS VS. STATE; (1990). THIS IS PERMITTED, OF COURSE, BY NRS 207.010(2), ON HABITUAL PUNISHMENT."

④ THE STATE'S "SENTENCING MEMORANDUM" OF PIGEON, CHRISTOPHER EDWARD'S - 90582 "CRIMINAL RECORD" IS INCLUDED IN THE DEFENDANT/PETITIONER'S J.O.C./SENTENCING ORDER, DATED 05/16/18, ENTITLED "SPECIAL FINDINGS:" AND, CONTAINS SUBSTANTIAL ERRORS AND AMBIGUITY DUE TO IT LISTING, IN EXAGGERATED TERMS, ONLY HIS PAST DISMISSALS AND MISDEMEANORS. BOTH THESE ACTIONS AND ALLEGED ACTIONS ARE NOT ALLOWED TO BE CONSIDERED AT A FELONY SENTENCING; AND, CAN NOT BE USED TO SUPPORT ANY TYPE OF ENHANCEMENT HERE.

⑤ "A SENTENCING JUDGE MAY CONSIDER, FOR EXAMPLE, PRIOR FELONY CONVICTIONS AND ANY UNDERLYING CHARGES THAT WERE ULTIMATELY DISMISSED IN THE CASE IN QUESTION." FROM MARTINEZ VS STATE; 114 NEV. 735; 961 P. 2d 143; (1998). HOWEVER, THESE CHARGES MUST BE DIRECTLY RELATED.

⑥ HABITUAL CRIMINAL STATUS IS AND SHOULD NOT BE AUTOMATIC:

"THE DECISION TO ADJUDICATE A PERSON AS A HABITUAL CRIMINAL IS NOT AN AUTOMATIC ONE. IN PARTICULAR, HAVING COMMITTED THREE FELONIES DOES NOT, OF ITSELF, A HABITUAL CRIMINAL MAKE. THE SIMPLE FINDING OF THREE PRIOR FELONIES IS NOT THE SAME AS AN ADJUDICATION OF HABITUAL CRIMINAL STATUS AND IS INADEQUATE BECAUSE IT DOES NOT CLEARLY DISCLOSE THAT THE COURT WEIGHED THE APPROPRIATE FACTORS FOR AND AGAINST THE HABITUAL CRIMINAL ENHANCEMENT." FROM WALKER VS. DEEDS; 50 F. 3d 670; 1995 U.S. APPEALS LEXIS 4501; 95 CAL. DAILY OP. SERVICE 1798; (9TH CIR., 1995).

C.E. PIGEON - 90582 - H.D.S.P. - IIA/09B; C290261-1 - #1694812; APPEAL-RESULT #67083

C.E. PIOEN - 90582; HDSP - 11A/09"

CASE C290261-1; P.4 of #1GAA012 - 90582 - PIOEN"

(P.4) WRIT OF HABEAS CORPUS/MOTION - DISTRICT COURT. 04/20/21

ARGUMENT: (CONTINUED)

(7) IT IS IMPORTANT TO NOTE THAT ELY STATE PRISON FORMALLY REDUCED MY HABITUAL PENALTY, FOR MY LESSER CLASS "D" FELONY OF "PROHIBITED ACTS BY SEX OFFENDER," AS OF 11/05/18, ACCORDING TO THE WARDEN AND TWO SEPARATE CASEWORKERS - THIS IN WRITING, OF COURSE - FROM LIFE WITHOUT PAROLE TO 10 YEARS TO LIFE, CURRENTLY.

(8) FROM MR. TERRENCE M. JACKSON, ATTORNEY IN MY DEFENSE, IN HIS 01/28/21, MOTION OF "DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION AND... TO VACATE HABITUAL CRIMINAL SENTENCE...," ("ROPP" REPLY), HE REFERENCES KENNEDY VS. LOUISIANA; 128 S. CT. 2641; (2008); AND THEN, SOLEM VS. HELM; 463 U.S. 277; (1983); FURTHER BELOW:

"THE EIGHTH AMENDMENT'S PROSCRIPTION AGAINST EXCESSIVE OR CRUEL AND UNUSUAL PUNISHMENTS FOLLOWS FROM THE BASIC PRECEPT OF JUSTICE THAT PUNISHMENT FOR A CRIME SHOULD BE GRADUATED AND PROPORTIONED TO THE OFFENSE."

A COURT FIRST MAKES "... A THRESHOLD DETERMINATION THAT THE SENTENCE IMPOSED IS GROSSLY DISPROPORTIONATE TO THE OFFENSE COMMITTED." THIS ALSO FROM KENNEDY VS. LOUISIANA; (2008). FURTHER, FROM "SOLEM...";

THE COURT THEN COMPARES "... THE GRAVITY OF THE OFFENSE AND THE HARSHNESS OF THE PENALTY."

IF THE SENTENCE IS DISPROPORTIONATE, THE COURT THEN CONSIDERS "... THE SENTENCES IMPOSED ~~FOR COMMISSION~~ ON OTHER CRIMINALS IN THE SAME JURISDICTION... AND THE SENTENCES IMPOSED FOR COMMISSION OF THE SAME CRIME IN OTHER JURISDICTIONS."

(9) MR. JACKSON CONCLUDES ON P.2 OF DEFENDANT'S REPLY MOTION, THAT:

"THE COURT INITIALLY DID NOT APPLY THE PROPER PROPORTIONALITY ANALYSIS REQUIRED BY KENNEDY VS. LOUISIANA, SUPRA, THEREFORE... MODIFICATION OF THE DEFENDANT'S SENTENCE IS PROPER AND JUST."

(10) ALSO FROM SOLEM VS. HELM; (1983):

"THE UNITED STATES SUPREME COURT HAS DETERMINED THAT APPELLATE COURTS MAY REVIEW SENTENCES WHICH ARE SO DISPROPORTIONATE TO THE CRIME COMMITTED THAT THE PUNISHMENT VIOLATES THE EIGHTH AMENDMENT PROSCRIPTION AGAINST CRUEL AND UNUSUAL PUNISHMENT."

(11) "DEFENDANT'S SOUGHT RESENTENCING ON THE GROUND THAT THE DISTRICT JUDGE MISTAKENLY FAILED TO [PROPERLY] EXERCISE DISCRETION GIVEN TO HIM BY..." NRS 207.010, (2), WHICH REQUIRES HIM TO DISMISS FELONY COUNTS WHEN THE CURRENT FELONY OR "PRIOR OFFENSES ARE STALE OR TRIVIAL;" FROM FRENCH VS. STATE; 98 NEV. 235; 645 P. 2d 440; 1982 NEV. LEXIS 438; (1982)."

(12) IT CONTINUES, "WE AGREE WITH THE APPELLANT'S ARGUMENT, AND REMAND THE CASE FOR RESENTENCING," HENCE VACATING THE ADJUDGEMENT OF HABITUAL CRIMINALITY. SEE ALSO POTSON VS. STATE; 80 NEV. 42; 389 P. 2d 77; (1964); AND, ALLRED VS. STATE; 120 NEV. 410; 92 P. 3d 1246; (2004)."

(13) "SURELY A CASE INVOLVING CRIMES LESS VIOLENT AND MORE STALE THAN PRESENTED HERE WOULD BE HARD TO FIND; HENCE, THE ADJUDICATION OF HABITUAL CRIMINALITY IN THIS CASE SERVES NEITHER THE PURPOSES OF THE STATUTE NOR THE INTERESTS OF JUSTICE. WE THEREFORE REVERSE [THE HABITUAL DETERMINATION];" FROM SESSIONS VS. STATE; 106 NEV. 186; 789 P. 2d 1242; (1990)."

C.E. PIOEN - 90582 - H.D.S.P. - 11A/09"; C290261 - #1GAA012; APPEAL RESULT #67083"

C.E. PIGEON - 90582; HDSP - IIA/09 ..

CASE C290261-1; P.S OF #1648812 - 90582 - PIGEON ..

(P.S) WRIT OF HABEAS CORPUS/MOTION — DISTRICT COURT 04/28/21

ARGUMENT: (CONTINUED) (14) EVEN THE "STATE'S OPPOSITION TO DEFENDANT'S MOTION AND..." EMPHASIZES AN EXCERPT FROM ALLEN VS. U.S.; 495 P. 2d 1145; (D.C. CIR., 1985); WHICH NOT ONLY STATES THAT IT IS POSSIBLE TO CONTEST AN UNUSUAL HARSH SENTENCE WITH A MOTION; BUT, MORE IMPORTANTLY, RAISES THE ISSUE OF THE CONTROLLING STATUTE, IN THE DEFENDANT'S CASE AND IN HIS FAVOR, WITHOUT VALID REBATE FROM THE STATE:

> "MOTIONS TO CORRECT ILLEGAL SENTENCES EVALUATE WHETHER THE SENTENCE IMPOSED IS 'AT VARIANCE WITH THE CONTROLLING STATUTE, OR ILLEGAL IN THE SENSE THAT THE COURT GOES BEYOND ITS AUTHORITY... WITHOUT JURISDICTION OR IMPOSING A SENTENCE IN EXCESS OF THE STATUTORY MAXIMUM PROVIDED...."

WHEN THE SENTENCE IN QUESTION IS DECIDEDLY HARSH, THE "CONTROLLING STATUTE" HERE IN PIGEON'S CASE, WOULD NOT BE THE HABITUAL STATUTE; BUT, THE NORMAL CLASS "D" FELONY RANGE OF PENALTY OF 1 TO 4 YEARS FOR HIS SINGLE "PROHIBITED ACTS BY..." CONVICTION; WHICH IS NOT A NEW "ACT OF CRIME." BUT, AN "ADMINISTRATIVE" TICKET FOR NOT UPDATING RESIDENTIAL INFORMATION, WHILE TEMPORARILY HOMELESS..

(15) WHENEVER THE 3 OR MORE FELONIES ARE CLASS "D" FELONIES ONLY, AND NONE HIGHER LEVEL FELONIES, I.E. CLASS "A" OR "B" THEN THESE FELONIES CAN NOT BE CONSIDERED HABITUAL PUNISHMENT ELIGIBLE - FOR THEY ARE ALWAYS TOO "TRIVIAL" AN OFFENSE FOR ANY ENHANCEMENT, AND IT WOULD NOT EITHER MEET THE PURPOSES OF THE STATUTE, NOR BE IN THE BEST INTERESTS OF JUSTICE..

SECTION II. DUE PROCESS VIOLATIONS HAVE HINDERED A FAIRER SENTENCING.

(16) WITH RESPECT TO CHRISTOPHER EDWARD PIGEON'S - 90582 - C290261-1, JUDGEMENT OF CONVICTION/SENTENCING ORDER, OF 05/16/18; THERE IS INACCURATE, MISLEADING, AND IMPROPERLY ORGANIZED INFORMATION, BY THE STATE, IN ORDER TO ACHIEVE AN UNNECESSARILY HARSH HABITUAL PUNISHMENT FOR HIM, WHEN HE HAS THE LOWEST FELONY IN ALL OF NEVADA LAW; AND TWO LESSER MISDEMEANOR-LEVEL WOBBLER FELONIES FOR PRIORS - AS THE STATED CAUSE FOR THIS ILLEGAL ENHANCEMENT. FURTHER, THE SENTENCING ORDER IS REFERRING ONLY TO HIS LESSER CROSS-MISDEMEANORS AND DISMISSALS, AND ALSO A MISDEMEANOR NOT-GUILTY FINDING..

(17) AFTER 6 FELONIES REVERSED ON APPEAL, THESE EACH WITHOUT VALID WITNESS, IT IS NOT SURPRISING THAT THE STATE'S 09/28/18 SENTENCING "MEMO" AND THE SIMILAR ARGUMENTS IN HIS 09/6/18 J.O.C./SENTENCING ORDER, (4 PLUS 1 PAGES), ARE HARSHER AND BIASED. FROM EDWARDS VS. STATE; 112 NEV. 704; 918 P. 2d 324; (1996):

> "... A DISTRICT COURT DOES HAVE INHERENT AUTHORITY TO CORRECT, VACATE, OR MODIFY A SENTENCE..." WHEN IT IS "BASED ON A MATERIALLY UNTRUE ASSUMPTION... THAT HAS WORKED TO THE DEFENDANT'S EXTREME DETRIMENT...," ESPECIALLY CONCERNING A DEFENDANT'S CRIMINAL RECORD - OR - HIS HARSHER, ILLEGAL SENTENCE.

(18) "FURTHER, THE CASES CLEARLY ESTABLISH THAT "CONSTITUTIONALLY VIOLATIVE 'MATERIALLY UNTRUE ASSUMPTIONS' CONCERNING A CRIMINAL RECORD MAY ARISE EITHER AS A RESULT OF A SENTENCING JUDGE'S CORRECT PERCEPTION OF INACCURATE OR FALSE INFORMATION, OR A SENTENCING JUDGE'S INCORRECT PERCEPTION OF MISAPPREHENSION OF OTHERWISE ACCURATE OR TRUE INFORMATION." FROM STATE VS. DISTRICT COURT; 100 NEV. 90; 677 P. 2d 1044; (1984)..

(END OF SECTION)

C.E. PIGEON - 90582 - H.D.S.P. - IIA/09 ..
C290261-1 - #1648812: APPEAL RESULT #61883 ..

C.E. PIGEON - 90582; HDSP - IIA/09"

CASE C290261-1; P. 6 OF #1GA082 - 90582 - PIGEON"

(P.6) WRIT OF HABEAS CORPUS/MOTION - DISTRICT COURT 04/28/21

ARGUMENT: III (CONTINUED) THE STATE'S ARGUMENT IN ITS OPPOSING MOTION OF 01/19/21, WHICH IS 1-PAGES, CONTAINS LITTLE DEBATE, AND IS ENTITLED:

"STATE'S OPPOSITION TO DEFENDANT'S MOTION AND SUPPLEMENTAL POINTS AND AUTHORITIES TO VACATE HABITUAL CRIMINAL SENTENCE OR MODIFY SENTENCE;"

IT INCLUDES THREE PREMISES WITH SOME DEBATE:

I. DEFENDANT'S CLAIM IS BARRED BY LAW OF THE CASE PRECEDENT.
II. DEFENDANT'S CLAIM IS NOT PROPER FOR A MOTION TO MODIFY.
III. DEFENDANT IS NOT ENTITLED TO A SENTENCE MODIFICATION."

(19) WITH RESPECT TO SECTION I., CONCERNING LAW OF THE CASE AS MAIN PRECEDENT, THE STATE'S ARGUMENT IS TOO GENERAL AND UNRELATED TO THE ~~CASE~~ ISSUE OF CLEAR CRUEL AND UNUSUAL PUNISHMENT, IN C.E. PIGEON'S - 90582, CASE HERE.

(20) WHEN A VALID CONSTITUTIONAL VIOLATION OF A DEFENDANT'S RIGHT TO DUE PROCESS, FAIR PUNISHMENT OR ANY OTHER PROTECTED ISSUE EXISTS, APPEALS COURTS WILL SET ASIDE ALL TIME TO FILE LIMITS, AND FORMER ILLEGAL RULINGS, AND/OR ANY VIOLATION OF A CONSTITUTIONAL RIGHT, IN THE CASE; IN ORDER TO GRANT THE DEFENDANT HIS PROTECTED RIGHT. IT WILL REVERSE THE FORMER JUDGEMENT OR SENTENCE WHICH IS CAUSE FOR THE VALID CONSTITUTIONAL VIOLATION.

(21) AS STATED CLEARLY ON PP. 14 AND 15 OF CHRISTOPHER EDWARD PIGEON'S - 90582, APPEAL ORDER OF 12/01/17, CASE #67083, COUNTY C290261-1, WHICH IS ENTITLED: "ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING," THE ISSUE OF "CRUEL AND UNUSUAL PUNISHMENT" HAS NOT YET BEEN ARGUED, AND HENCE, IS UNEXHAUSTED FORMALLY.

(22) REGARDING VALID CONSTITUTIONAL VIOLATIONS WHICH WERE NOT RAISED AT TRIAL OR AT SENTENCING OR ON EARLIER APPEAL, THESE ISSUES MAY STILL BE CONTESTED IN DISTRICT COURT AND ON APPEAL. THE SAME IS TRUE WITH REGARD TO TIME CONSTRAINTS FOR THE TIMELY FILING OF VIOLATIONS ON APPEAL:

"GENERALLY, THE FAILURE TO CLEARLY OBJECT ON THE RECORD TO A JURY INSTRUCTION [OR ANY CONSTITUTIONAL VIOLATION] PRECLUDES APPELLATE REVIEW. HOWEVER, AN APPELLATE COURT HAS THE DISCRETION TO ADDRESS AN ERROR IF IT WAS PLAIN AND AFFECTED THE DEFENDANT'S SUBSTANTIAL RIGHTS." FROM GREEN VS. STATE; 119 NEV. 542; 80 P. 3d 93; (2003)"

(23) WITH RESPECT TO SECTION II., CONCERNING THE "PROPER FORM" FOR A MOTION TO MODIFY, IN THE STATE'S OPPOSING MOTION, PIGEON - 90582, CONTENDS THAT ALTHOUGH THIS MAY BE THE STATE'S MOST INTERESTING ARGUMENT OF ITS THREE SECTIONS OF OF DEBATE, IT IS STILL A GENERAL DISCUSSION ABOUT FORM/FORMAT ONLY; WHICH IS UNFORTUNATELY NOT RELATED CLOSELY ENOUGH TO THE ISSUE OF HARSH AND EXTREMELY CRUEL PUNISHMENT FOR THE DEFENDANT/PETITIONER'S SINGLE LESSER, CLASS "D" ADMINISTRATIVE TICKET FELONY, OF "PROHIBITED ACTS BY SEX OFFENDER," AFTER HIS VERY FAVORABLE APPEAL #67083. EITHER A MOTION OR WRIT IS POSSIBLE."

(24) FROM PASSANISI VS. STATE; 108 NEV. 318; 831 P. 2d 1371; (1992):

"IF THE TRIAL COURT HAS INHERENT AUTHORITY TO CORRECT A SENTENCE, A FORTIORI, IT HAS AUTHORITY TO ENTERTAIN A MOTION REQUESTING IT TO EXERCISE THAT INHERENT AUTHORITY."

(25) THE STATE HAS SIMPLY LITTLE DEBATE OF WORTH IN SECTION I. AND II. OF ITS OPPOSING MOTION - AND ALSO - HAS TROUBLE SUCCESSFULLY SUPPORTING AN

C.E. PIGEON - 90582 - H.D.S.P. - IIA/09"; C290261 #1GA082; APPEAL RESULT #67083"

C. E. PIGEON - 90582; HDSP - 11A/09B.

CASE C290261-1; P.T OF #1694812-90582-PIGEON.

P.T — WRIT OF HABEAS CORPUS/MOTION - DISTRICT COURT — 04/28/21

ARGUMENT: (CONTINUED)

ARGUMENT FOR ISSUING CHRISTOPHER EDWARD PIGEON - 90582 - C290261-1, A HABITUAL PENALTY OR ANY ENHANCEMENT AT ALL IN HIS CASE.

(26) THE THIRD PART/SECTION OF THE STATE'S DISCUSSION RELATED TO ITS CLAIM THAT THE "DEFENDANT IS NOT ENTITLED TO A SENTENCE MODIFICATION," IS ITS ONLY ARGUMENT WHICH SUPPORTS A HARSHER SENTENCE - IT REALLY DOES NOT HOLD WATER, HOWEVER, DUE TO THE FACT THAT PIGEON, HAS NO FELONY CHARGE MORE SERIOUS THAN A MISDEMEANOR - FELONY "WOBBLER" OFFENSE - (3) OF THEM ONLY IN NEVADA. WITH PIGEON'S TWO UNIVERSITY DEGREES AND BEING A RESIDENT IN LAS VEGAS AND NEVADA, NOW FOR TWENTY YEARS; HE DOES NOT DESERVE AN ENHANCEMENT HERE.

IMPORT (27) C. E. PIGEON - 90582 - H.D.S.P., UNIT 11A/09B, EMPHASIZES THAT THIS ENTIRE MOTION/WRIT IS DEDICATED TO ARGUING AND OPPOSING THE STATE'S THIRD SECTION OF ITS MEAGER ARGUMENT/DEBATE.

(28) FROM TOWNSEND VS. BURKE; 334 U.S. 736; 68 S. CT. 1252; 92 L. ED. 1690; (1948):

"THE DISTRICT COURT'S INHERENT AUTHORITY TO CORRECT A JUDGEMENT OR SENTENCE FOUNDED ON MISTAKE [OR A CLEAR VIOLATION OF CRIMINAL LAW AND PROCEDURE, DUE PROCESS, OR FAIR PUNISHMENT] IS IN ACCORD WITH THE CONSTITUTIONAL CONSIDERATIONS UNDERLYING THE SENTENCING PROCESS.' THE UNITED STATES SUPREME COURT HAS EXPRESSLY HELD THAT WHERE A DEFENDANT IS SENTENCED ON THE BASIS OF MATERIALLY UNTRUE ASSUMPTIONS CONCERNING HIS CRIMINAL RECORD,' [THE] RESULT, WHETHER CAUSED BY CARELESSNESS OR DESIGN, IS INCONSISTENT WITH DUE PROCESS OF LAW."

C. E. PIGEON - 90582 - H.D.S.P. - 11A/09B; C290261-1 - #1694812; APPEAL RESULT #67083

IV. OTHER IMPORTANT ISSUES:

A. (29) PIGEON'S - 90582, CURRENT ATTORNEY TERRENCE M. JACKSON, AT THE RECENT HEARING - 04/23/21, 11:00 AM; DISTRICT COURT, DEPT. #9, COURT 11B; JUDGE CHRISTINA D. SILVA, PRESIDING - DID ARGUE EFFECTIVELY THAT THE DEFENDANT SHOULD RECEIVE A NEW, LOWER SENTENCE, AND THAT HIS SINGLE FELONY REMAINING IS A VERY LESSER "ADMINISTRATIVE" FELONY. UNFORTUNATELY, HE NEGLECTED TO COVER SEVERAL OTHER IMPORTANT ISSUES:

a) HE DID NOT ADDRESS THE FACT THAT PIGEON'S THREE PRIOR FELONIES OF 1991, 2005, AND 2010 ARE EACH LESSER MISDEMEANOR - FELONY "WOBBLER" OFFENSES, WHICH DO NOT REQUIRE OR DESERVE HABITUAL CONSIDERATION, EACH OF THESE BEING "TRIVIAL" AND/OR "STALE," AND ELIGIBLE TO BE DISMISSED FROM THE DEFENDANT'S RECORD AND FROM HIS 07/30/14 "NOTICE OF INTENT TO SEEK PUNISHMENT...."

b) HE DID NOT MENTION THAT PIGEON, CHRISTOPHER EDWARD'S - 90582, APPEAL DECISION ORDER, #67083, FORMALLY STATES THAT THE SUPREME COURT OF NEVADA DID NOT RULE UPON THE ISSUE OF CRUEL AND UNUSUAL PUNISHMENT - HENCE, THIS ISSUE IS UNEXHAUSTED.

c) THE STATUTE NRS 176.555 STATES MERELY THAT:

"A COURT MAY CORRECT AN ILLEGAL SENTENCE AT ANY TIME."

d) ACCORDING TO A LETTER FROM MR. T. M. JACKSON, ATTORNEY, ESQUIRE, MY HEARINGS FOR MY ORIGINAL "MOTION TO VACATE OR REDUCE..." OF 05/27/20, WERE QUESTIONABLY CONDUCTED "IN ABSENTIA," AND A FINAL RULING ISSUED AT THE 03/24/21 HEARING. PLEASE ANNOUNCE THE RESULT OF THIS HEARING!

(P.8) WRIT OF HABEAS CORPUS/MOTION - DISTRICT COURT 04/28/21

ARGUMENT: (CONTINUED)

d) DESPITE A REMAND IN PIGEON'S - 90582, FAVOR FROM THE SUPREME COURT OF NEVADA, THE TRIAL COURT, ON 05/09/18, DID NOT "RECONSIDER" ITS ORIGINAL SENTENCE, PROPERLY, FOR THE APPELLANT/DEFENDANT - CASE #67083, AS WAS STRONGLY, YET SUBTLEY URGED BY THE STATE'S HIGHEST COURT OF APPEALS.

(31) IF CHRISTOPHER EDWARD PIGEON'S - 90582 - HDSP 11A/09B, IDENTITY IS AT ALL IN QUESTION, THIS ISSUE NEEDS TO BE BROUGHT UP FORMALLY AT A HEARING BY THE COURT SOON.

(32) FOR SOME REASON, DEPUTY DISTRICT ATTORNEY JONATHAN VANBOSKERCK, WAS NOT IN COURT FOR THE 04/12/21 "CALENDAR CALL"/PRE-SENTENCE HEARING; AND, SINCE HE SIGNED THE OPPOSING MOTION OF 6/7 PAGES, DATED 01/19/21, HE SHOULD BE PRESENT. CEP

(33) ALSO, IT IS TROUBLING THAT PIGEON WAS NOT ALLOWED TO ATTEND THE HEARING IN PERSON. THE ATTORNEY - MR. TERRENCE JACKSON - SHOULD HAVE BEEN VISIBLE AT THIS VIDEO COURT HEARING.

SECTION B. (34) NOTE THAT THE PRO PER/SE PIGEON, WAS NOT ALLOWED TO SPEAK ON HIS OWN BEHALF AT HIS REMANDED SENTENCING HEARING OF 05/09/18, NOW (3) YEARS AGO. THIS UNFAIR HEARING SHOULD NOT BE REPEATED FOR HIM, WHETHER PRO PER/SE OR NOT.

C.E. PIGEON - 90582 - H.D.S.P. - 11A/09B;
C290261 #1694012; APPEAL RESULT #67083; CEP

(35) IN ADDITION, PIGEON'S ATTORNEY CLAIMS A "MENTAL HEALTH" ISSUE(S), WHEN NONE IS FORMALLY RAISED, ESPECIALLY NONE BY THE STATE. HE HAS BEEN FORMERLY DIAGNOSED WITH MILD TO MEDIUM DEPRESSION AND "OVER-QUALIFICATION(S) SYNDROME," WHICH ARE NOT DEHABILITATING - (A NORMAL STATE AFTER A DIVORCE, EVEN DECADES) - AND TWICE FOUND TO BE MILDLY SCHIZOPHRENIC. HOWEVER, PIGEON - 90582, WAS FOUND COMPETENT TO HAVE REPRESENTED HIMSELF AT HIS TRIAL(S), (AT FIRST BY LAKES CROSSING CLINIC), AND ESPECIALLY BY THE SUPREME COURT OF NEVADA ON APPEAL #67083. NO MENTAL HEALTH ISSUE SHOULD BE EITHER DELAYING OR HINDERING HIS CASE HERE.

(36) WITH SO LITTLE A FELONY OFFENSE REMAINING - ESSENTIALLY A "TICKET FELONY," HERE WITH NO NEW CRIMINAL ACT COMMITTED; BUT, MERELY A HARMLESS BIT OF OMISSION OR OVERSIGHT - DEFENDANT/PETITIONER C.E. PIGEON - 90582 - APPEAL #67083, DESERVES A REPRIEVE HERE, AND A RESCINDED HABITUAL PENALTY.

SECTION C. (37) THERE IS A CLEAR, OBVIOUS AND EASIER DECISION HERE FOR THE COURT AND STATE TO RULE IN CHRISTOPHER EDWARD PIGEON'S - 90582, FAVOR.

(38) MY CURRENT ATTORNEY'S CLOSING COMMENT IN HIS REPLY MOTION, 01/28/21, IN RESPONSE TO THE STATE'S OPPOSING MOTION IS SUBSTANTIALLY HELPFUL FOR PIGEON. MR. T. M. JACKSON ARGUES THAT HE:

> "... HAS SERIOUS MENTAL HEALTH DIFFICULTIES;" THOUGH PIGEON WAS FOUND NOT ONLY COMPETENT TO STAND TRIAL; BUT ALSO, COMPETENT TO HAVE REPRESENTED HIMSELF AT HIS TRIAL(S), BY THE SUPREME COURT OF NEVADA ON APPEAL. THE ATTORNEY CONTINUES WITH: "THE PROCEDURAL ISSUES THE STATE HAS RAISED IN OPPOSITION TO DEFENDANT'S MOTION SHOULD NOT PREVENT [HIM] FROM GETTING A FAIR HEARING ON THIS MOTION AND THEN A WELL-DESERVED REDUCTION OF HIS SENTENCE."

(39) PIGEON'S - 90582, SINGLE "PROHIBITED ACTS BY SEX OFFENDER," A CLASS "D" FELONY, REMAINING AFTER APPEAL, IS GOVERNED BY NRS 179D.550 - ITS NORMAL

C.E. PIGEON - 90582; HDSP - 11A/09B.

CASE C290261-1; P.9 OF #1614812 - 90582 - PIGEON.

(P.9) WRIT OF HABEAS CORPUS/MOTION - DISTRICT COURT 04/23/21

ARGUMENT: (CONTINUED) RANGE OF PUNISHMENT IS 1 - 4 YEARS, AS IS THE MAXIMUM RANGE FOR ALL CLASS "D" FELONIES.

(40) PIGEON, CHRISTOPHER EDWARD - 90582 - C290261, EMPHASIZES THAT NO WRIT OR NEW APPEAL IS NECESSARY - MOTIONS TO CORRECT ILLEGAL SENTENCES ARE POSSIBLE, FURTHER, REQUESTS FOR AND RE-HEARINGS FOR CORRECTION OF A HARSHER SENTENCE ARE POSSIBLE IN DISTRICT COURT.

(41) WHETHER A WRIT OR MOTION, THE DISTRICT COURT CAN CORRECT AND/OR ISSUE A NEW SENTENCE, UNDER NRS 176.555, WITHIN THE STATE'S NORMAL RANGE OF PUNISHMENT OF 1 TO 4 YEARS, FOR PIGEON'S SOLE FELONY REMAINING, WHICH WAS FOR A LESSER VIOLATION - A FIRST-TIME INSTANCE OF "FAILURE TO UPDATE RESIDENCE," (NRS 179D.550).

(42) THIS MAY BE ACCOMPLISHED BY DISMISSING 1 TO 3 OF THE OLDER AND LESSER COUNTS ON MY "NOTICE OF INTENT TO PUNISH AS A HABITUAL CRIMINAL," OF 01/30/14; OF COURSE, THIS POSSIBLE UNDER NRS 207.010, (2).

SECTION D. (45) SINCE IT HAS BEEN NOW (3) FULL YEARS SINCE C.E. PIGEON'S - 90582 - #610833, POST-APPEAL, HARSHER, REMANDED SENTENCING HEARING OF 05/09/18; IT IS NOT NECESSARY TO DELAY A DECISION IN HIS FAVOR. THIS IS ESPECIALLY SO, GIVEN HIS CHARACTER AND LESSER OFFENSE.

(44) PIGEON, DEFENDANT, HAS TOO SERIOUS AN HABITUAL SENTENCE TO DELAY A QUICK COMPARISON OF A PROPER SENTENCE FOR HIS "PROHIBITED ACTS BY SEX OFFENDER," CONVICTION ~~OF A FELONY~~ AND FOR A REDUCTION IN HIS FAVOR. THE ISSUE OF "TIME TO RULE" HERE BECOMES A FACTOR.

(45) NOTE THAT THERE ARE NO FORMAL HOLDS AND/OR OUTSTANDING CHARGES AGAINST PIGEON HERE.

(46) PIGEON, CHRISTOPHER EDWARD - 90582 - C290261, CONTENDS THAT THE DISTRICT COURT MAY HAVE ACTED QUESTIONABLE IN DECIDING TO TAKE 10 MONTHS IN ORDER TO RULE ON HIS ORIGINALLY PRO PER/SE MOTION FILED ON 05/27/20, "MOTION TO VACATE OR REDUCE HABITUAL SENTENCE."

(47) IF THE PETITIONER IS REQUIRED TO PROCEED TO THE SUPREME COURT OF NEVADA IN ORDER TO SEEK RELIEF FOR HIS HARSH, ILLEGAL HABITUAL PUNISHMENT, THE COURT AND STATE SHOULD BE WARY OF:

1) MORE THAN 12 SEPARATE TRANSCRIPTS WOULD HAVE TO BE PROVIDED FOR PIGEON, FOR HEARINGS WHICH TOOK PLACE BETWEEN 03/12/18, AND THE PRESENT TIME;
2) LEGAL MAILINGS BETWEEN THE CLERK'S OFFICE, R.J.C., CLARK COUNTY, AND THE PRISON SYSTEM, (H.D.S.P. AT PRESENT), HAVE BEEN UNRELIABLE, AND "TROUBLESOME!" AND,
3) BEING CORRECTLY ESCORTED TO A COURT HEARING AT OUR REGIONAL JUSTICE CENTER, (R.J.C.), IS ALSO SOMETHING WHICH REQUIRES EXTRA COORDINATION IN ORDER TO DELIVER THE INMATE PROPERLY.

C.E. PIGEON - 90582 - H.D.S.P. - 11A/09B; C290261 - #1614812; APPEAL RESULT #610833.

CONCLUSION:

(48) A NEW WRIT OF HABEAS CORPUS WOULD BE SIMILAR TO PIGEON'S "MOTION TO VACATE..." IN QUESTION; BUT, IF IT HAD TO BE PURSUED AT THE STATE LEVEL, IT WOULD REQUIRE A HIGH DEGREE OF THOROUGHNESS, WHEN THOROUGHNESS IS NOT REQUIRED IN THE CASE AND BREVITY PREFERRED MOST.

(49) GIVEN THE FACT THAT THE ISSUE OF "CRUEL AND UNUSUAL PUNISHMENT," IS UNEXHAUSTED AT THE SUPREME COURT OF NEVADA, THE DISTRICT COURT IS REQUIRED TO RULE ON THIS

C.E. PIGEON - 90582; HDSP - 11A/098.

CASE C290261-1; P. 10 OF #1694812 - 90582 - PIGEON.

(P. 10) WRIT OF HABEAS CORPUS/MOTION - DISTRICT COURT 04/28/21

CONCLUSION: (CONTINUED) CAUSE, WITH SUBSTANTIAL REASON TO TAKE A STANCE HERE - AND - RULE IN THE DEFENDANT'S/PETITIONER'S FAVOR - CHRISTOPHER EDWARD PIGEON - 90582.

(52) PIGEON IS A UNIVERSITY GRADUATE OF NOTRE DAME, MANAGEMENT INFORMATION SYSTEMS, (1984); AND, ALSO OF DREXEL UNIVERSITY, ARCHITECTURE, (1993). HE ENJOYS SPORTS ON THE STRIP, IS A CONNOISSEUR OF FOOD AND BEVERAGE, IS AN ARCHITECT, AND PREFERS THE 24-HOUR LIFE OF THE TOURIST-ORIENTED "LAS VEGAS STRIP." HE WAS ALSO AN ADMINISTRATIVE OFFICER, CAPTAIN IN FACT, IN THE U.S. ARMY..

(53) ACCORDING TO THE SUPREME COURT OF NEVADA, JUSTICE CADISH, AND JUSTICE PICKERING; ALL HABITUAL PUNISHMENT/ENHANCEMENT IS BEING RESCINDED IN NEVADA AS OF 10/08 THROUGH 10/15/19, ESPECIALLY FOR LOWER-LEVEL FELONIES..

IMPORT (54) PETITIONER CHRISTOPHER EDWARD PIGEON'S - 90582, HABITUAL SENTENCE RECEIVED AFTER HIS FAVORABLE REMANDING APPEAL - NOW A 10 YEARS TO LIFE SENTENCE AS OF 11/05/18, AFTER ELY STATE PRISON REDUCTION - IS DECIDEDLY CRUEL AND UNUSUAL PUNISHMENT, (CASE #C1085), BY NEVADA STATE STANDARDS. SINCE HE HAS ONLY A SINGLE CONVICTION LEFT-OVER, FOR THE LOWEST-LEVEL FELONY POSSIBLE - CLASS "D" LEVEL - PIGEON ARGUES FOR AND RESPECTFULLY REQUESTS THAT HIS HABITUAL SENTENCE BE REVOKED; AND, THAT EITHER HIS SENTENCE BE VACATED COMPLETELY OR HIS PUNISHMENT FOR HIS "PROHIBITED ACTS BY SEX OFFENDER" OFFENSE BE REDUCED TO WITHIN THE STATE'S NORMAL 1 TO 4 YEAR RANGE OF PUNISHMENT..

SUM (55) HOWEVER, TO PIGEON'S ADVANTAGE, IF YOU READ AND DRAW FROM THE STATE'S 5/19/21, 6/1-PAGE OPPOSITION MOTION, THE DISTRICT ATTORNEY HAS NO WORTHWHILE ARGUMENT TO UPHOLD THE DEFENDANT/PETITIONER'S HARSH AND ILLEGAL HABITUAL ENHANCEMENT..

(56) PIGEON, CHRISTOPHER EDWARD - 90582, CONTENDS THAT IT IS OBVIOUS THAT AT LEAST SOME BIAS AGAINST HIM BY THE ORIGINAL TRIAL COURT, DEPARTMENT 8/9, HAS BEEN DEMONSTRATED THROUGHOUT THESE PROCEEDINGS, (SINCE 06/05/18). HE, MYSELF, FURTHER ARGUES THAT THIS SHOULD BRING ABOUT A SWIFT DECISION ALMOST ENTIRELY IN HIS FAVOR..

(57) PIGEON ASKS FOR AN INTELLIGENT RULING BY THE HONORABLE JUDGE C.D. SILVA AND COURT, WHICH ENDS THE APPARENT ILLEGALITY HERE..

RESPECTFULLY SUBMITTED BY:
CHRISTOPHER EDWARD PIGEON - 90582 - H.D.S.P. - UNIT 11A/098;
(4569 N. STATE RT. #490; ELY, NV 89301 - 1989, FORMERLY).
NOW: H.D.S.P.
INDIAN SPRINGS, NV 89070 - 0650/0650..

END OF WRIT OF HABEAS CORPUS - IN DISTRICT COURT; OR,
"MOTION TO VACATE OR REDUCE HABITUAL SENTENCE," SUMMATION..
- NOTHING FOLLOWS -

C.E. PIGEON - 90582 - H.D.S.P. - 11A/098; CENSUS 1 - #1694812; APPEAL RESULT #81085.

298. K

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ROBERT STEPHENS
Chief Deputy District Attorney
Nevada Bar #011286
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-

CHRISTOPHER PIGEON, aka,
Christopher Edward Pigeon, #1694872

Defendant.

CASE NO: C-13-290261-1
DEPT NO: IX

ORDER DENYING DEFENDANT'S MOTION TO VACATE OR REDUCE HABITUAL SENTENCE

DATE OF HEARING: 04/12/2021
TIME OF HEARING: 11:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 12th day of June, 2021, the Defendant being present, represented by TERRENCE MICHAEL JACKSON, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through ROBERT STEPHENS, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's motion, shall be, and it is DENIED WITHOUT PREJUDICE.

DATED this _____ day of June, 2021.

Dated this 2nd day of July, 2021

EC

49A 952 0502 E66E
Cristina D. Silva
District Court Judge

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

BY
ROBERT STEPHENS
Chief Deputy District Attorney
Nevada Bar #011286

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DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-13-290261-1
vs	DEPT. NO. Department 9
Christopher Pigeon	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 7/2/2021

"Steven B. Wolfson, Esq." .	steven.wolfson@ccdanv.com
Sandra Stewart .	nvatt@icloud.com
PUBLIC DEFENDER	pdclerk@clarkcountynv.gov
terrence jackson	terry.jackson.esq@gmail.com

NOASC
TERRENCE M. JACKSON, ESQ.
Nevada Bar No. 00854
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
Terry.jackson.esq@gmail.com

Counsel for Defendant, Christopher E. Pigeon

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
v.
CHRISTOPHER E. PIGEON, #90582,
Defendant.

District Case No.: C-13-290261-1

Dept.: IX

NOTICE OF APPEAL

NOTICE is hereby given that the Defendant, Christopher Edward Pigeon, by and through his counsel, Terrence M. Jackson, Esquire, hereby appeals to the Nevada Supreme Court, from the Order Denying Defendant's Motion to Vacate or Reduce Habitual Sentence, file-stamped July 2, 2021.

Defendant, Christopher E. Pigeon, further states he is indigent and requests that the filing fees be waived.

Respectfully submitted this 14th day of July, 2021.

/s/ Terrence M. Jackson
Terrence M. Jackson, Esquire
Nevada Bar No. 00854
Law Office of Terrence M. Jackson
624 South Ninth Street
Las Vegas, NV 89101
T: 702-386-0001 / F: 702-386-0085
Terry.jackson.esq@gmail.com

Counsel for Defendant, Christopher E. Pigeon

CERTIFICATE OF SERVICE

I hereby certify I am an assistant to Terrence M. Jackson, Esq., not a party to this action, and on the 14th day of July, 2021, I served a true, correct and e-filed stamped copy of the foregoing: Defendant, Christopher E. Pigeon's, NOTICE OF APPEAL as follows:

[X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;

[X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408 E. Clark Avenue in Las Vegas, Nevada;

[X] and by United States first class mail to the Nevada Attorney General and the Defendant as follows:

STEVEN B. WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountyda.com

ROBERT STEPHENS
Chief Deputy D.A. - Criminal
robert.stephens@clarkcountyda.com

CHRISTOPHER E. PIGEON
ID # 90582
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070-0650

AARON D. FORD
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

By: */s/ Ila C. Wills*
Assistant to T. M. Jackson, Esq.

Electronically Filed
7/27/2021 10:22 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. CHRISTOPHER PIGEON, Defendant.	CASE#: C-13-290261-1 DEPT. IX

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE

MONDAY, APRIL 12, 2021

RECORDER'S TRANSCRIPT OF HEARING: DEFENDANT'S MOTION TO VACATE OR REDUCE HABITUAL SENTENCE

APPEARANCES:

For the State: BRYAN S. SCHWARTZ, ESQ.
Chief Deputy District Attorney

For the Defendant: TERRENCE M. JACKSON, ESQ.

RECORDED BY: GINA VILLANI, COURT RECORDER

Case Number: C-13-290261-1

Las Vegas, Nevada, Monday, April 12, 2021

[Hearing commenced at 11:49 a.m.]

THE COURT: Page 3, Case Number C290261, State of Nevada versus Christopher Pigeon.

MS. DUNN: Your Honor, that's Mr. Schwartz' case. He's been on but he had to jump on another calendar. He'll be back in about -- it should be eight minutes from now.

THE COURT: Eight minutes from now.

All right. So, I'm sorry, Mr. Pigeon, go ahead and have a seat, we'll recall your case shortly. We're waiting for the prosecutor to come.

[Hearing trailed at 11:49 a.m.]

[Hearing recalled at 11:56 a.m.]

THE COURT: All right. We're going to be in a brief recess until Mr. Schwartz joins us for the Pigeon matter. So we're here. We're just going to --

MR. SCHWARTZ: I'm here, Your Honor.

THE COURT: Oh, you're here. Good morning. I didn't see you signed on.

MR. SCHWARTZ: Good morning. Yes.

THE COURT: All right. And is Mr. Jackson present?

MR. JACKSON: Can you hear me?

THE COURT: Yeah, good morning, Mr. Jackson.

All right. Let's recall Case C-13-290261-1, State of Nevada versus Christopher Pigeon.

All right. We are here for defendant's motion. I have read the motion, as well as the opposition, and the reply thereto.

I'm going to start with Mr. Jackson, and this is the defendant's motion, anything you would like to add outside the written pleadings?

Mr. Jackson?

Mr. Jackson, I heard you a minute ago but I don't hear you now. Can you hear me, this is Judge Silva?

H'm, we seem to have -- oh, he's muted. Can we unmute him?

MR. JACKSON: Can you hear me now, Your Honor?

THE COURT: I can hear you now, Mr. Jackson.

MR. JACKSON: All right.

THE COURT: So I'll ask the question again, is there anything you would like to add outside the written pleadings?

MR. JACKSON: Yeah, just very briefly. This case came from the Supreme Court; with the Supreme Court finding that six of the counts he was convicted on there was insufficient evidence. I think that almost raises a presumption that the six most serious charges the Court found there wasn't sufficient evidence that there should be a resentencing. The defendant was sentenced to the most serious sentence you could possibly get, life without, except for a death penalty murder case. But the more serious charges the Supreme Court found there wasn't sufficient evidence of. I think there should at least have been a resentencing and when you take away the six serious charges, life without, sentencing seems extremely harsh and disproportionate.

I argued in my motion that this sentence was a violation of his

Eighth Amendment rights. It was unconstitutional. And the State -- in their argument to suggest that he had no -- it was barred procedurally, that we couldn't raise this because he's already been sentenced and he's already been serving his time.

I think the Court has an inherent power to correct an unjust sentence. And also since the case had been reversed by the Supreme Court I think that the Court has a right to look at the sentencing again. I think that's the main point, to look at a sentence that is unfair and unjust and overly harsh it is the duty of a Court, especially when the Supreme Court has intervened, looking at some of the charges.

I raised certain issues about the fact that the defendant maybe should not have represented himself. He was not adequately, maybe prepared or able to do that and he was prejudiced by that. But that's not the main issue. The main issue is that his convictions, all of them didn't stand.

And if you look at -- if you compare this case with cases where life without is appropriate they're usually much more serious cases. They're cases of murder, they're cases of sexual assault, they're cases where extreme, extreme violence is done. I'm not saying this wasn't a serious offense but it doesn't compare -- it's not proportional to what he was sentenced to in this case.

And I'll just submit it with that. I think it deserves a resentencing. I think it deserves a reduction of the sentence of -- that was given and the enhancement for habitual criminal I think should be reconsidered.

I'll submit it with that.

THE COURT: Well, all right, and so I have two questions for you, Mr. Jackson, first question is you're saying that there's an inherent power for me to resentence somebody but you don't cite to any authority in support of that argument. So what inherent authority would I have? Because if I look at the statute, it tells me that this isn't the avenue for the relief that you're requesting.

MR. JACKSON: Can I -- can I refer the Court to my brief. I do cite the case, it's *State versus District Court*, at 100 Nev., and in that case they cite, on page 109 of that case, *State versus District Court*, it's 100 Nev. 90, but on page 109 it cites to statute NRS 177.320, which says NRS 177.320, which is a writ statute, provides the jurisdiction of the district court, in post-conviction relief hearings, to find in favor of a petitioner, is limited to those cases in which the Court finds that there has been a specific denial of the petitioner's constitutional rights, which -- with respect to his conviction or sentence.

THE COURT: So --

MR. JACKSON: My argument is that the defendant was denied a fair sentencing, a constitutional sentence. His sentence at this time is in violation of his constitutional right to a fair sentence under the Eighth Amendment and also the Court did not properly take into account all the factors necessary for a fair sentence. The Court gave him -- clearly objectively unfair and overly harsh and disproportionate sentence which violated the constitution. Any unconstitutional sentence can be looked at as the Court has an inherent power to consider a sentence.

I'll quote directly from *State versus District Court*, and it's -- I think it's a concurring opinion, but it says, --

THE COURT: Well, hold --

MR. JACKSON: -- the sentencing Court retains the inherent power to correct an unlawful sentence at any time. This inherent power has been legislatively recognized. NRS 176.555 provides, The Court may correct an illegal sentence at any time. See *Anderson versus State*, 90 Nev. 385; *Summers versus State*, 90 Nev. 460. See also *Hayes versus State*. It goes on to cite a bunch of cases. That's on page 109 of *State versus District Court*.

And I think --

THE COURT: All right. Mr. Jackson, hold on.

MR. JACKSON: -- there's substantial authority --

THE COURT: Mr. Jackson.

MR. JACKSON: -- that --

THE COURT: Mr. Jackson. All right.

MR. JACKSON: Yeah.

THE COURT: Now, the very -- right out of the gate you talked about that power by way of a petition for writ in a post-conviction setting, but you didn't file a petition for writ, you filed a motion to modify, which would then invoke a different statute.

So are you asking me to consider this motion -- because that's not what it's titled and that's not how it's briefed -- as a petition for writ of habeas corpus? Because that's a different animal and the State was thereby deprived of the right to address those issues as well.

MR. JACKSON: It says the Court has the power to consider an illegal sentence at any time. I don't know if I have to file a writ. The defendant filed this motion per se and I filed points and authorities in support of it. Maybe I should have filed a writ. I can go back and file a writ but I believe that the defendant filing its motion to set aside.

Here's the thing, this came -- this Court -- this motion came to the Court in a different posture than most motions to modify a sentence come to the court in because it came right after, right after the Nevada Supreme Court ran a partial reversal and so it's in a different posture than most of the motions to modify comes. So I think it's -- I think it could be handled either way.

If the Court wishes me or -- to file a habeas corpus petition or if the Court wishes this to be construed as a habeas corpus petition, I'd be glad to say -- I'd ask this Court to consider this as a habeas corpus petition because I think there's ample authority either way.

But, I think, as I said, I believe there's plenty of case law that the Court has the inherent authority to consider whether or not that sentence that the defendant has at this time is improper and unconstitutional. I will file a writ of habeas corpus if the Court thinks that's the better avenue.

I think the State was simply grasping at straws. They recognize, I believe, that the sentence is very harsh and probably unconstitutional but they're simply trying to uphold it arguing a procedural or coming up with a statute saying that it can't be raised now. I think that's, you know, not a very good argument because there's plenty of

case law saying -- especially when it's fundamentally unfair that the Court should take action.

The -- I will go back and seek a different remedy if the Court thinks that that's the only way the Court has jurisdiction. I don't want the Court to get tied up in a jurisdictional conundrum.

THE COURT: Oh, I'm not in a conundrum, Mr. Jackson.

MR. JACKSON: But I think that either way --

THE COURT: I just -- I think that we need to clarify that.

So, hold that thought.

THE DEFENDANT: Can I -- can I comment, Your Honor?

THE COURT: No, I'm sorry, Mr. Pigeon, you have an attorney. So I'm going to talk to the State and then we'll figure out where we are.

So I'm going to make some initial --

THE DEFENDANT: Well, I -- I need to say something that's very important. I would like to be able to talk.

THE COURT: I appreciate that you would like to be able to talk but you have an attorney. And I -- there is a proper procedure of things that need to happen in the courtroom.

So I'm going to talk --

[Simultaneously speaking]

THE COURT: Mr. Pigeon --

THE DEFENDANT: Yes.

THE COURT: -- Mr. Pigeon, let me talk to the State and then we'll figure out what we're going to do from there. So just sit tight and

then I'm going to talk to you.

MR. JACKSON: When we get done, Mr. Pigeon, maybe you can say a few words, but I will consult with you after this is over and make your wishes known.

THE COURT: All right. So --

THE DEFENDANT: Well, --

THE COURT: Hold on, Mr. Pigeon, let me talk to the State.

All right. So I'm going to note a couple different things and perhaps the State can then hone its -- any response it would like to give based on my observations.

One, I'm going to make an initial finding that I do not believe that I can rule on this motion as I don't have jurisdiction. As I noted, I don't believe I'm in a jurisdictional conundrum. I think that the statute is very clear as to what and when I can grant this type of motion. And the facts --

THE DEFENDANT: Which statute, Your Honor?

THE COURT: Mr. Pigeon, I need you to -- I need --

[Simultaneously speaking]

THE COURT: Mr. Pigeon, I'm going to mute you. I would like you to listen. I need to talk to the State and then I can talk to you if I have the opportunity or I need to, but you have an attorney, you don't have an unqualified right to just talk to me. I need to go on with the court procedure. So just sit tight. I'm asking you please.

Do you understand?

THE DEFENDANT: Yes, but the -- my attorney is missing

some key points, there were six major felonies overturned, which they didn't even have --

THE COURT: Mr. Pigeon, I'm going to go ahead and mute you because you're talking anyway.

So if we could please go ahead and mute him.

All right. There's a very -- it's very strange and rare day for someone to upset me because individuals aren't listening, but unfortunately Mr. Pigeon was not listening and I had to raise my voice and yet he continued and persisted to talk. Unfortunately at this point I have muted him so I can continue with this hearing and get the necessary findings on the record. I don't believe at this point it would be appropriate for Mr. Pigeon to speak as he is not listening to court instructions and I was considering giving him some moments to speak but he has persisted in defying my request to be quiet for a short while so I could talk to the State.

With that I'm going to continue and move forward with what I was talking about. I don't believe that I have jurisdiction at this point to grant the relief that is requested by way of this motion to vacate the sentence or modify the sentence. I think that motions to modify sentence are based mostly on, as an example, scrivener's errors or other technical errors, and this goes far beyond that. There is an avenue for seeking the relief that is requested in this motion that is by way of a post-conviction writ for habeas corpus, but that isn't what was filed and that isn't what I'm considering here today.

I'm also going to note that I am going to find, even though I

don't believe I have jurisdiction, I'll note for the record I do not believe that there is an Eighth Amendment issue pending in this matter, again, based on the facts that I have in front of me, as Mr. Pigeon was deemed to be a habitual criminal that places him outside of a standard criminal defendant who isn't found to be a habitual criminal. And because of that he is subject to enhanced or greater penalties than others would.

So while Mr. Jackson makes valid arguments that others that commit, for example, you know, killing of another human being face similar sentences, that is separate and apart from the fact that Mr. Pigeon was found to be a habitual criminal.

And so that's going to be my initial findings. So with that on the record I'm going to ask the State to kind of narrow any opposition it would like to make or any argument it would like to make in light of what I've stated here on the record.

MR. SCHWARTZ: Your Honor, in light of the findings that you just made, I don't believe the State has anything to add to their -- the opposition that was filed. Certainly if Your Honor had any other questions that you'd like me to address, I could. But I do think it's sufficiently covered within the opposition.

One thing I will note, just for way of preserving, at least having it on the record, because it hasn't been addressed yet, at least in this hearing, is if I could incorporate by reference the State's sentencing memorandum, which lays forth a myriad of reasons why the habitual criminal statute was applicable in this case, numerous prior sex convictions on the defendant's behalf, as well as the high risk to reoffend

that he was deemed by someone who evaluated him for his psychosexual evaluation.

With that being said, Your Honor, I don't have anything to add to our pleadings.

THE COURT: And I just want to make sure that I'm clear, and I -- that I interpreted your argument correctly, and that you would agree with what I put here on the record that this isn't the avenue, a motion to correct the illegal sentence is reserved for the limited circumstances that I've talked about, and a couple more, but that this -- this sort of motion or the relief sought in this motion is more appropriate for a post-conviction petition; is that correct?

MR. SCHWARTZ: That's correct, Your Honor.

And just, again, to kind of add it to the record, subsection 3 of our motion addresses the jurisdiction, *State versus District Court*, for which defense counsel addressed, also addresses exactly what you had said that this type of motion is really one for specific mistake that -- they made a mistake with the specific sentence, as opposed to what is being addressed here today. So I would agree with that, Your Honor.

THE COURT: All right. Thank you for that.

And your request to incorporate those documents is granted.

I did read the PSI. I did read the psychosexual evaluation. And I did read the State's sentencing memorandum prior to today's hearing specifically because there were arguments addressing the habitual criminal statute and those documents were relevant to ultimately the district court's finding of habitual qualification.

All right. So with that I'm going to turn back to Mr. Jackson, so, Mr. Jackson, you know where I'm landing now on this issue, I am going to deny the motion without prejudice. As I indicated, I do believe that a post-conviction petition for writ of habeas corpus is the appropriate filing for this sort of relief.

MR. JACKSON: Can I say one thing, Your Honor?

THE COURT: Yes, you may.

MR. JACKSON: I want to discuss with my client whether he wishes me -- and, you know, I'm going to listen to what he says but -- maybe or maybe not follow exactly what he says because I want to do some research before I decide whether he -- I choose to appeal the denial of the motion that I filed or whether I choose to simply file a writ of habeas corpus, because there may be problems with filing a writ of habeas corpus because of timeliness.

And I -- so I have to judge which is the better approach for him because I haven't really resolved that issue. I think that there are grounds to file a habeas corpus petition. But I -- I have to discuss with my client whether to go forward with appealing your denial of this motion or whether to not do that or to do both. I haven't decided that. So I will wait until I get an order to make that decision or I may start working on a habeas petition right away, but which would probably simply be just formatting the motion I've done in a habeas petition. But I need to discuss that issue with my client.

THE COURT: Certainly. And I understand that. And to the extent that you decide to do that, and to file the petition, you are welcome

to incorporate the filing you already made into any petition you filed because I'll consider that.

MR. JACKSON: Yeah, I -- but I need to --

THE COURT: So you're not doing duplicative work.

MR. JACKSON: -- discussion with my client as to which route we're going to take. I might do both or I might just do one. I just have to decide.

THE COURT: And I understand that.

MR. JACKSON: I haven't made that decision yet.

THE COURT: I'll caution both you and your client that I think there could be a challenge with the petition as well because it looks like --

MR. JACKSON: Right.

THE COURT: -- the Judgment of Conviction came down in 2018 and so timing is certainly an issue.

MR. JACKSON: And I'm aware of both of those concerns and so that's why I --

THE COURT: I understand.

MR. JACKSON: -- one reason why I simply went forward with -- doing supplemental points to his motion. So we'll see what research develops and I will do the best I can on his behalf.

THE COURT: Understood. And I appreciate that, Mr. Jackson. I know those deadlines and whatnot can be tricky and I appreciate your awareness to all of that.

So to be clear, my -- for the reasons I set forth, before the State presented argument, I am going to deny the motion and it's denied

without prejudice.

Mr. Jackson, you know, certainly communicate with your client, go forward from there, and we'll take it from there.

So, again, I apologize to all parties for raising my voice. It's a rare day when that happens, but sometimes, especially with the remote appearances it can be challenging and so I unfortunately had no choice.

Mr. Pigeon remains on mute and he will remain on mute as he does not have an unqualified right to speak. He does have counsel. Mr. Jackson can make any representations that he needs to on Mr. Pigeon's behalf should we have another hearing.

All right. Thanks everybody.

I think that's the end of our 11 o'clock calendar, so we'll see everyone again at 12:30.

MR. SCHWARTZ: Your Honor, I hate to jump in, would you like the State to prepare a findings or anything --

THE COURT: Oh, yes, I would appreciate that. You have 30 days.

And please send that to Mr. Jackson for -- to meet and confer, make sure he's okay with that, I'd appreciate it.

MR. SCHWARTZ: Okay. Thank you.

THE COURT: Thank you so much.

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MR. SCHWARTZ: You're welcome.

MR. JACKSON: Thank you.

[Hearing concluded at 12:17 p.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Gina Villani

Gina Villani
Court Recorder/Transcriber
District Court Dept. IX