



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

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Elizabeth A. Brown
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Court Division Administrator

August 16, 2021

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

RE: STATE OF NEVADA vs. JAMES HOWARD HAYES

S.C. CASE: 83274

D.C. CASE: C-16-315718-1

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written Order, dated August 2, 2021, enclosed is a certified copy of the Findings of Fact, Conclusions of Law and Order filed August 13, 2021 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

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

Heather Ungermann, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES,
aka James Howard Hayes Jr.,
#2796708

Defendant.

CASE NO: C-16-315718-1

DEPT NO: III

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

**DATE OF HEARING: JULY 14, 2021
TIME OF HEARING: 8:30 AM**

THIS CAUSE having come before the Honorable MONICA TRUJILLO, District Court
Judge, on the ^{14th} ~~19th~~ day of July, 2021, the Petitioner not being present, not being represented
by counsel, and the Respondent being represented by STEVEN B. WOLFSON, Clark County
District Attorney, through PARKER BROOKS, Deputy District Attorney, and the Court
having considered the matter, including briefs, transcripts, and documents on file herein, now
therefore, the Court makes the following findings of fact and conclusions of law:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On or about July 23, 2013, James H. Hayes (hereinafter, "Defendant") was charged by
4 way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS
5 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross
6 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in
7 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound
8 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

9 On June 17, 2016, the State filed an Information with the District Court, charging
10 Defendant with one count of BURGLARY. On August 29, 2017, the State filed an Amended
11 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant
12 to a Guilty Plea Agreement ("GPA"), Defendant entered a plea of Guilty pursuant to North
13 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY.

14 The terms of the GPA are as follows:

15 The State has agreed to make no recommendation at the time of sentencing. The
16 State has no opposition to probation with the only condition being thirty (30)
17 days in the Clark County Detention Center (CCDC), with thirty (30) days credit
for time served.

18 GPA at 1:22-24.

19 The GPA further includes, in pertinent part, the following acknowledgement:

20 I understand and agree that, if...an independent magistrate, by affidavit review,
21 confirms probable cause against me for new criminal charges including reckless
22 driving or DUI, but excluding minor traffic violations, the State will have the
unqualified right to argue for any legal sentence and term of confinement
23 allowable for the crime(s) to which I am pleading guilty, including the use of
any prior convictions I may have to increase my sentence as a habitual criminal
24 to five (5) to twenty (20) years, Life without the possibility of parole, Life with
the possibility of parole after ten (10) years, or a definite twenty-five (25) year
25 term with the possibility of parole after ten (10) years.

26 GPA at 2: 1-9.

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1 An Amended Information reflecting the new charge of ATTEMPT GRAND
2 LARCENY was filed in conjunction with the GPA. Defendant was adjudged Guilty pursuant
3 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

4 On January 31, 2019, the State filed a State's Notice of Motion and Motion to Revoke
5 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace
6 had found probable cause to charge Defendant with Burglary for acts committed on or around
7 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February
8 4, 2019.

9 At the sentencing hearing on March 6, 2019, the State argued that it had regained the
10 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that
11 Defendant should be punished under NRS 207.010 (the "Small Habitual Statute"). The Court
12 agreed, and Defendant was sentenced to sixty (60) to one hundred seventy-four (174) months
13 in the Nevada Department of Corrections (NDOC), consecutive to Defendant's sentence in
14 another case (C315125). The Court also awarded Defendant ten (10) days credit for time
15 served. The Judgment of Conviction in this case was filed on March 12, 2019.

16 Defendant filed a Notice of Appeal on March 28, 2019. Defendant's Case Appeal
17 Statement was filed on August 9, 2019 (SCN 78590).

18 On April 15, 2019, Defendant filed a Petition for Writ of Habeas Corpus ("Petition").
19 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the
20 Petition on August 19, 2019, the Court noted that Defendant filed two Addenda to his original
21 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court's
22 order, the State filed a Response to the Addenda on October 10, 2019. Defendant filed a Reply
23 to the State's Response on November 4, 2019. On November 18, 2019, Defendant's Petition
24 came before the Court, at which time the Court took the matter OFF CALENDAR due to
25 Defendant's pending appeal.

26 On November 19, 2019, Defendant filed another Notice of Appeal, appealing the denial
27 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN

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1 80222). On August 31, 2020, the Nevada Court of Appeals affirmed the Court's denial of his
2 Coram Nobis motion. Remittitur issued on October 12, 2020.

3 On January 14, 2020, the Nevada Supreme Court AFFIRMED Defendant's Judgment
4 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

5 On February 12, 2020, Defendant filed an "Amended Petition for Writ of Habeas
6 Corpus" (his "Amended Petition"). This Court ordered a Response to that Amended Petition
7 on March 4, 2020. Thereafter, on March 6, 2020, Defendant filed a "Petition: Expeditious
8 Judicial Examination NRS 34.360-34.830" (his "Petition: EJE"). Pursuant to this Court's
9 order, the State filed its Response to both filings on April 17, 2020. Defendant replied to the
10 State's Response on May 15, 2020.

11 On May 15, 2020, Defendant also filed an "Affidavit of Actual Innocence not Mere
12 Legal Insufficiency but 'Factual Innocence.'" On May 27, 2020, Defendant filed a
13 Supplemental Petition. While Defendant's numerous pleadings were pending, Defendant filed
14 a Motion for Peremptory Challenge of Judge and to Disqualify Judge William Bill Kephart.
15 Thereafter, the State filed its Responses to Defendant's Affidavit of Actual Innocence and
16 Defendant's Supplemental Petition on June 10, 2020. As a result of Defendant's Peremptory
17 Challenge, Defendant's pending matters were taken off calendar on June 15, 2020. On June
18 29, 2020, Defendant filed his Reply to the State's Response to Defendant's Affidavit of Actual
19 Innocence.

20 On July 7, 2020, Chief Judge Linda Bell considered, and denied, Defendant's Motion
21 for Peremptory Challenge of Judge Kephart. Chief Judge Bell's Decision and Order was filed
22 on July 8, 2020.

23 On July 23, 2020, Defendant filed his Reply to the State's Response to Defendant's
24 Supplemental Petition. Defendant, that same day, filed a Motion for Ruling for Rule 60b
25 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State
26 filed its Response to Defendant's Motion for Ruling on September 2, 2020. Defendant's
27 Motion for Ruling was denied on September 9, 2020.

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1 On September 25, 2020, Defendant filed a Motion for Expeditious Ruling for
2 “Amended Petition for Writ of Habeas Corpus” 3rd Request. On October 7, 2020, he filed a
3 Motion to Set Evidentiary Hearing and Issue Transport Order. On October 14, 2020,
4 Defendant filed a Motion to Reconsider Order Denying Motion for Ruling for Rule 60b
5 Motion for Relief; Motion to Vacate; Amended Petition for Writ of Habeas Corpus. The State
6 filed responsive pleadings to each of Defendant’s respective filings on November 10, 2020.
7 On November 16, 2020, the Court considered, and denied, Defendant’s three Motions. The
8 Court’s Order was filed on November 21, 2020.

9 On December 22, 2020, Defendant filed a “Motion to Compel Judgment Pursuant to
10 Nevada Revised Statutes Chapter 34 FRCP Rule 12(c) for Amended Petition for Writ of
11 Habeas Corpus.” The State filed its Response to that Motion on January 27, 2021. On February
12 1, 2021, the Court denied Defendant’s Motion to Compel. The Court also noted that no order
13 had been filed regarding Defendant’s Amended Petition for Writ of Habeas Corpus; therefore,
14 the Court denied the Amended Petition as well. After the Court’s ruling on the matter,
15 Defendant filed an “Opposition to State’s Response to Petitioner’s Motion to Compel
16 Judgment” on February 18, 2021. The Court issued its Findings of Fact, Conclusions of Law
17 and Order reflecting its denial of Defendant’s Motion to Compel on March 17, 2021. Notice
18 of Entry of that Order was filed on March 19, 2021.

19 On February 2, 2021, Defendant filed a “Reply Motion to Compel Judgment Pursuant
20 to Nevada Revised Statutes Chapter 34...FRCP Rule 12(c) for Amended Petition for Writ of
21 Habeas Corpus.” The State filed its Opposition to that “Reply Motion” on April 16, 2021. On
22 May 12, 2021, the Court denied Defendant’s “Reply Motion.”

23 On March 9, 2021, the Court filed its Findings of Fact, Conclusions of Law and Order
24 denying Defendant’s Amended Petition. That entry was noticed on March 10, 2021. On March
25 11, 2021, Defendant filed a Petition to Reconsider that Order. He filed a subsequent Petition
26 to Reconsider on March 17, 2021. On March 18, 2021, Defendant filed a Notice of Appeal
27 from the Court’s denial of his Amended Petition. As of the date of the instant Opposition, no
28 remittitur has issued from that appeal. On April 7, 2021, Defendant filed a “Supplemental

1 Petition for Writ of Habeas Corpus” Petition (NRS 34.360-34.830). Defendant filed a
2 “Supplemental ‘Addendum’” on April 14, 2021.

3 The State filed its Opposition to Defendant’s various Petitions to Reconsider on April
4 9, 2021. On April 12, 2021, the Court denied Defendant’s Petitions to Reconsider. Again, well
5 after the Court’s ruling, Defendant filed a Reply to the State’s Opposition on May 6, 2021. On
6 May 12, 2021, the Court issued its Order Denying Defendant’s Petition to Reconsider.

7 In the interim, Defendant also filed a “Petition for Writ of Habeas Corpus COVID-19
8 (Coronavirus)” under a new civil case number. The State filed its Opposition to that Petition
9 on June 24, 2021.

10 On June 23, 2021, Defendant filed the instant Motion to Modify and/or Correct Illegal
11 Sentence. The State filed its Opposition to that Motion on July 7, 2021. On July 14, 2021, this
12 matter came on for hearing before this Court. This Court did not accept argument at the time
13 of hearing, but made the following findings and conclusions:

14 ANALYSIS

15 In general, a district court lacks jurisdiction to modify or vacate a sentence once the
16 defendant has started serving it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373
17 (1992), overruled on other grounds by Harris v. State, 130 Nev. 435, 447, 329 P.3d 619, 627
18 (2014). Not every mistake or error during sentencing gives rise to a due process violation.
19 State v. District Court (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).

20 Instead, the Nevada Supreme Court has emphasized, “a motion to modify a sentence is
21 limited in scope to sentences based on mistaken assumptions about a defendant’s criminal
22 record which work to the defendant’s extreme detriment.” Edwards v. State, 112 Nev. 704,
23 708, 918 P.2d 321, 324 (1996). Such motions address “only the facial legality of a sentence”
24 and cannot “be used as a vehicle for challenging the validity of a judgment of conviction or
25 sentence based on alleged errors occurring at trial or sentencing.” Id. The latter “must be raised
26 in habeas proceedings.” Id.

27 However, district courts have “wide discretion” in sentencing decisions, and “[s]o long
28 as the record does not demonstrate prejudice resulting from consideration of information or

1 accusations founded on facts supported only by impalpable or highly suspect evidence,” their
2 decisions will not be disturbed. Allred v. State, 120 Nev. 410, 420, 92 P.2d 1246, 1253 (2004)
3 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). Pursuant to statute,
4 district courts may consider “any reliable and relevant evidence at the time of sentencing.”
5 NRS 176.015(6). So long as the district court’s sentencing decision falls within the statutory
6 range of punishment, the length of a sentence itself will not be considered an abuse of the
7 court’s discretion. See Glegola v. State, 110 Nev. 344, 349, 871 P.2d 950, 953 (1994) (citing
8 Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)).

9 This Court finds that Defendant’s sentence was within the statutory range of
10 punishment. Glegola, 110 Nev. at 349, 871 P.2d at 953. Further, this Court finds that
11 Defendant’s guilty plea was knowingly and voluntarily entered, as was ensured by the Court’s
12 canvass of Defendant prior to accepting the GPA. As such, Defendant waived any alleged
13 defects relating to his conviction for Attempt Grand Larceny. Woods, 114 Nev. at 477, 958
14 P.2d at 97. Included within the text of the GPA was a clause entitling the State to seek
15 punishment as a habitual criminal in the event Defendant failed to abide by the terms of the
16 GPA. GPA at 2:1-9. On February 4, 2019, the Court determined that Defendant had violated
17 the terms of his GPA by committing a new offense pending his sentencing in this case. As
18 such, the Court determined that the State had regained its right to seek punishment as a habitual
19 criminal pursuant to the GPA. Therefore, this Court concludes that Defendant’s sentence is
20 legal, pursuant to Defendant’s GPA and applicable Nevada statutes.

21 This Court further finds that Defendant does not, in the instant Motion, challenge the
22 “facial legality of [his] sentence.” Edwards, 112 Nev. at 708, 918 P.2d at 324. Therefore, this
23 Court concludes that Defendant fails to demonstrate that this Court has jurisdiction to modify
24 Defendant’s sentence now that Defendant has begun serving it. Passanisi, 108 Nev. at 322,
25 831 P.2d at 1373.

26 Because Defendant’s sentence is legal, and this Court lacks jurisdiction to modify the
27 same, Defendant’s instant Motion is suitable only for denial.

28 //

ORDER

THEREFORE, Court ORDERED, Defendant James H. Hayes's Motion to Modify and/or Correct Illegal Sentence shall be, and is, DENIED.

DATED this _____ day of August, 2021. ^{Dated this 13th day of August, 2021}


DISTRICT COURT JUDGE

Respectfully submitted,

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

8BA F99 8246 6F15
Monica Trujillo
District Court Judge

BY  for
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #06528

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this _____ day of _____, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JAMES H. HAYES, BAC #1175077
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NV 89018

BY _____ August 16, 2021
C. Garcia
Secretary for the District Attorney's Office



JV/jj/cg/L2

CERTIFIED COPY
ELECTRONIC SEAL (NRS 1.190(3))

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-16-315718-1

7 vs

DEPT. NO. Department 3

8 James Hayes
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/13/2021

15 "Kelli DeVaney-Sauter, DPD" .

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