

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 23 2021 03:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CARY JERARD PICKETT,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: 10C262523-2

Docket No: 83328

RECORD ON APPEAL VOLUME 3

ATTORNEY FOR APPELLANT
CARY PICKETT # 57591,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

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Financial Certificates

0057591 - PICKETT, CARY J

Date	Daily Balance	Daily Deposit	Number Of Deposit
09/15/2017	\$87.15	\$0.00	0
09/16/2017	\$87.15	\$0.00	0
09/17/2017	\$87.15	\$0.00	0
09/18/2017	\$87.15	\$0.00	0
09/19/2017	\$187.15	\$100.00	1
09/20/2017	\$187.15	\$0.00	0
09/21/2017	\$187.15	\$0.00	0
09/22/2017	\$150.01	\$0.00	0
09/23/2017	\$150.01	\$0.00	0
09/24/2017	\$150.01	\$0.00	0
09/25/2017	\$150.01	\$0.00	0
09/26/2017	\$150.01	\$0.00	0
09/27/2017	\$150.01	\$0.00	0
09/28/2017	\$150.01	\$0.00	0
09/29/2017	\$144.56	\$0.00	0
09/30/2017	\$144.56	\$0.00	0
10/01/2017	\$144.56	\$0.00	0
10/02/2017	\$144.56	\$0.00	0
10/03/2017	\$144.56	\$0.00	0
10/04/2017	\$144.56	\$0.00	0
10/05/2017	\$144.56	\$0.00	0
10/06/2017	\$126.25	\$0.00	0
10/07/2017	\$151.25	\$25.00	1
10/08/2017	\$151.25	\$0.00	0
10/09/2017	\$151.25	\$0.00	0
10/10/2017	\$151.25	\$0.00	0
10/11/2017	\$151.25	\$0.00	0
10/12/2017	\$151.25	\$0.00	0
10/13/2017	\$151.25	\$0.00	0
10/14/2017	\$251.25	\$100.00	1
10/15/2017	\$251.25	\$0.00	0
10/16/2017	\$221.55	\$0.00	0
10/17/2017	\$221.55	\$0.00	0
10/18/2017	\$221.55	\$0.00	0
10/19/2017	\$221.55	\$0.00	0
10/20/2017	\$221.55	\$0.00	0

Start Date	End Date	Total Daily Balances	Number Of Days	Average Monthly Balances
04/21/2017	05/20/2017	\$2,613.10	30	\$87.10
05/21/2017	06/20/2017	\$1,706.57	31	\$55.05
06/21/2017	07/20/2017	\$964.57	30	\$32.15
07/21/2017	08/20/2017	\$3,169.31	31	\$102.24
08/21/2017	09/20/2017	\$3,996.49	31	\$128.92
09/21/2017	10/20/2017	\$5,044.39	30	\$168.15

Start Date	End Date	Total Deposits	Number Of Deposits	Average Monthly Deposits
04/21/2017	05/20/2017	\$190.00	3	\$63.33
05/21/2017	06/20/2017	\$100.00	1	\$100.00
06/21/2017	07/20/2017	\$200.00	2	\$100.00
07/21/2017	08/20/2017	\$100.00	1	\$100.00

Financial Certificates

0057591 - PICKETT, CARY J

Start Date	End Date	Total Deposits	Number Of Deposits	Average Monthly Deposits
08/21/2017	09/20/2017	\$245.00	3	\$81.67
09/21/2017	10/20/2017	\$125.00	2	\$62.50

Current Account Balance: 10/20/2017 \$221.55
Average Monthly Balance: \$95.60
Average Monthly Deposits: \$160.00
Average Total Monthly Deposit: \$84.58

WESTERN UNION

money money for better

THIS DOCUMENT CONTAINS A TRIP WATERMARK - HOLD UP TO LIGHT TO VIEW

WESTERN UNION FINANCIAL SERVICES INC. - ISSUER - Englewood, Colorado

Payable at Wells Fargo Bank, Grand Junction - Downtown, N.A., Grand Junction, Colorado

MONEY ORDER

17-268331067

A 765616 D 120117

1 0608 07

172683310670 L 018404

NOT GOOD OVER \$500

PAY EXACTLY FIVE DOLLARS AND NO CENTS

PAY TO THE ORDER OF *CLERK of the Court*

ISSUING AGENT

17-268331067

17-268331067

\$ 5.00

PAYMENT FOR ACCT. #

PURCHASER'S ADDRESS

PURCHASER'S SIGNATURE

Signature of purchaser required to validate this money order

4021004000 40172683310670

NOTICE: Do not cash this Money Order for any person from whom you are not able to recover your payment. Should this item bear any unauthorized signature, be stolen, improperly completed, or altered, issuer will either stop payment or change back against any endorserment. For customer service, call 1-800-999-9660. Intended for domestic use only. Western Union Money Order and Design is a service mark of Western Union Holdings, Inc.

Warning - do not cash check without noting true watermark. Hold up to light to verify presence of watermark.

ENDORSE ABOVE THIS LINE

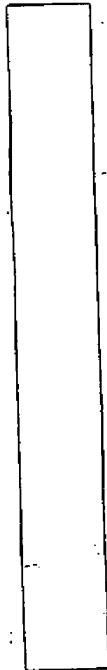
Refunds and Encashment
 7-Eleven DOES NOT cash money orders over \$75. Contact Western Union Customer Service at 1-800-999-9660 for money orders over \$75.

SERVICE CHARGE
 If this Money Order is not used or cashed (presented for payment) within 1 year of the purchase date, there will be a non-refundable Service Charge applied (where permitted by law). The Service Charge will be deducted from the amount shown on the Money Order. The Service Charge is \$1 per month (exceptions - CA: \$0.25; MD: \$0.50; CT & PR: \$0) from the purchase date, not to exceed \$84 (or the maximum amount permitted by law).

Cary Pickett 57591

P.O. Box 7000

Carson City NV 89202



Las Vegas NV 89102

FRI 01 DEC 2017 PM

Clerk of the Court
Regional Justice Center
200 Lewis Ave
Las Vegas NV 89155



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHARLES W. THOMAN
6 Deputy District Attorney
7 Nevada Bar #12649
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 CARY PICKETT,
13 #0725059

14 Defendant.

CASE NO: 10C262523-2

DEPT NO: XIX

15 **STATE'S RESPONSE TO DEFENDANT'S MOTION TO MODIFY SENTENCE**

16 DATE OF HEARING: JANUARY 3, 2018
17 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through CHARLES W. THOMAN, Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Response to Defendant's Motion to Modify
21 Sentence.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 3, 2010, Cary J. Pickett, hereinafter "Defendant," was charged by way of
4 Criminal Complaint with five (5) counts of Burglary While in Possession of a Firearm, seven
5 (7) counts of Robbery With Use of a Deadly Weapon, five (5) counts of Conspiracy to Commit
6 Robbery, and six (6) counts of Possession of a Firearm by an Ex-Felon. On March 10, 2010,
7 pursuant to negotiations, Defendant was charged by way of Information with one count each
8 of Burglary While in Possession of a Firearm, Conspiracy to Commit Robbery, Robbery With
9 Use of a Deadly Weapon, and Possession of a Firearm by an Ex-Felon. On March 11, 2010,
10 pursuant to a written Guilty Plea Agreement, Defendant pled guilty to the same charges.

11 On May 10, 2010, Defendant was adjudged a Habitual Criminal and sentenced as
12 follows: as to Count 1 – Burglary While in Possession of a Firearm, to a MAXIMUM of
13 SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24)
14 MONTHS; as to Count 2 – Conspiracy to Commit Robbery, to MAXIMUM of SIXTY (60)
15 MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; as to
16 Count 3 – Robbery with Use of a Deadly Weapon, to a MAXIMUM of TWENTY-FIVE (25)
17 YEARS with a MINIMUM parole eligibility of TEN (10) YEARS, Count 3 to run
18 CONSECUTIVE to Count 1; as to Count 4 – Possession of a Firearm by an Ex-Felon, to a
19 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-
20 FOUR (24) MONTHS, Count 4 to run CONCURRENT with Count 2, with EIGHTY-EIGHT
21 (88) DAYS credit for time served. A Judgment of Conviction was filed on May 19, 2010.¹
22 Defendant did not file a Direct Appeal.

23 Defendant filed a Petition for Writ of Habeas Corpus Post-Conviction on January 27,
24 2011. The State's Response to Defendant's Petition for Writ of Habeas Corpus Post-
25 Conviction was filed on March 22, 2011. Defendant filed a Reply to the State's Response on
26 April 5, 2011. On April 6, 2011, this Court denied Defendant's Petition for Writ of Habeas
27 //

28 _____
¹ Due to clerical errors, an Amended Judgment of Conviction was filed on September 24, 2010.

1 Corpus Post – Conviction. A Findings of Fact, Conclusions of Law and Order was filed on
2 March 19, 2011.

3 On April 18, 2011, and June 17, 2011, Defendant filed a Notice of Appeal. On October
4 5, 2011, the Nevada Supreme Court filed an Order Affirming Defendant’s Judgment.
5 Remittitur issued on November 1, 2011.

6 On December 6, 2017, Defendant filed the instant Motion for Modification of Sentence.
7 The State responds as follows.

8 ARGUMENT

9 **I. DEFENDANT’S CLAIM IS BARRED UNDER THE DOCTRINE OF RES** 10 **JUDICATA AND LAW OF THE CASE**

11 Re-litigation of this issue is precluded by the doctrine of res judicata. Exec. Mgmt. v.
12 Ticor Titles Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998) (citing Univ. of Nev. v.
13 Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)). “The doctrine is intended to
14 prevent multiple litigation causing vexation and expense to the parties and wasted judicial
15 resources...” Id.; see also Mason v. State, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the
16 doctrine’s availability in the criminal context); York v. State, 342 S.W. 3d 528, 553 (Tex.
17 Crim. App. 2011); Bell v. City of Boise, 993 F.Supp.2d 1237 (D. Idaho 2014) (finding res
18 judicata applies in both civil and criminal contexts).

19 “The law of a first appeal is law of the case on all subsequent appeals in which the facts
20 are substantially the same.” Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting
21 Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)). “The doctrine of the law of the
22 case cannot be avoided by a more detailed and precisely focused argument subsequently made
23 after reflection upon the previous proceedings.” Id. at 316, 535 P.2d at 799. Under the law of
24 the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas
25 petition. Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001) (citing McNelson v.
26 State, 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot
27 overrule the Nevada Supreme Court or Court of Appeals. NEV. CONST. Art. VI § 6.

28 //

1 Defendant is merely repeating his exact complaints from his previously denied
2 Petition for Writ of Habeas Corpus Post-Conviction and appeal. Defendant argues that he
3 was not informed that he could be treated as a habitual criminal, should not have received
4 habitual criminal treatment, and was not able to present this Court with any mitigating
5 evidence. Post-Conviction Petition for Writ of Habeas Corpus at 7, 9; Pickett v. State,
6 Docket No. 58191 (Order of Affirmance, November 1, 2011) at 4-5. Due to Defendant's
7 repetitive claims that have been previously denied res judicata and law of the case apply.
8 Accordingly, Defendant's instant motion should be denied.

9 **II. DEFENDANT IS NOT ENTITLED TO SENTENCE MODIFICATION**

10 In general, a district court lacks jurisdiction to modify a sentence once the defendant
11 has started serving it. Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1373 (1992).
12 However, a district court has inherent authority to correct, vacate, or modify a sentence that
13 violates due process where the defendant can demonstrate the sentence is based on a materially
14 untrue assumption or mistake of fact about the defendant's criminal record that has worked to
15 the *extreme detriment* of the defendant. Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321,
16 324 (1996) (emphasis added); see also Passanisi, 108 Nev. at 322, 831 P.2d at 1373.

17 Not every mistake or error during sentencing gives rise to a due process violation. State
18 v. Eighth Judicial Dist. Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984). A district court
19 has jurisdiction to modify a defendant's sentence "only if (1) the district court actually
20 sentenced appellant based on a materially false assumption of fact that worked to appellant's
21 extreme detriment, and (2) the particular mistake at issue was of the type that would rise to the
22 level of a violation of due process." Passanisi, 108 Nev. at 322-23, 831 P.2d at 1373-74.

23 "Bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor
24 are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d
25 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record
26 as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228,
27 1230 (2002).

28 //

1 Here, Defendant does not allege any untrue assumption or mistake of fact about his
2 criminal record. Defendant requests this Court to modify his sentence so that he would only
3 serve a five to twelve and a half year sentence “pursuant to the little habitual statute with credit
4 for time actually served only.” Motion at 6. Additionally, he contends that restitution should
5 be modified to pay only \$5,000 in restitution and \$5,000 in fines. Id.

6 Defendant claim that he was not aware he could receive habitual criminal treatment and
7 be sentenced to ten to twenty-five years is belied by the record. Motion at 6. The GPA reads:

8 Defendant stipulates to large habitual treatment under NRS
9 207.010. Parties stipulate to a 2-5 year sentence on Count 1.
10 Defendant treated as habitual under Count 2 and receive 10-25
11 year sentence, consecutive to Count 1 for a total of 12-20 years in
the Nevada Department of Corrections. All other counts to run
concurrent.

12 Guilty Plea Agreement, 3/11/2010 at 1-2.

13 Defendant’s plea canvas also rebuts the assertion that he did not know about the
14 potential consequences of habitual treatment in his plea.

15 The Court: And you further understand, sir, that you stipulated to
16 the use of the large habitual criminal which carries the following
17 penalty ranges: Life without the possibility of parole, life with the
18 possibility of parole with parole eligibility beginning after ten
19 years, or a definite term of twenty-five years in the Nevada
Department of Prisons with parole eligibility beginning after ten
years; you understand that?
The Defendant: Yes, sir.

20 Initial Arraignment Transcript, 3/11/10, at 4.

21 Additionally, at sentencing, Defendant was put on notice of his ability to present to the
22 Court mitigating factors before the Court sentenced him. Defendant waived his right to address
23 this Court.

24 The Court: With this multiple number of convictions you would
25 be eligible potentially for a life-without sentence, but the structure
26 as agreed upon and stipulated to was at the low range of that, the
27 ten to twenty-five. And it would be my inclination to follow that.
28 *Do you have anything else, and additional information you would
like to offer in mitigation, anything you’d like to tell me?*
The Defendant: No, sir. If you’re inclined to follow the
recommendation, that’s fine.

1 Sentencing Transcript 5/10/10 at 5 (emphasis added).

2 Although Defendant was presented with the opportunity to present mitigating factors
3 and did not do so, Defendant's Counsel did argue the following mitigating factors in his
4 defense at sentencing.

5 Mr. Almase: Judge, I would like to say that Mr. Pickett has always
6 taken responsibility for his actions, and he at no time tried to shirk
7 what occurred here. He's a very articulate individual, and I'm
hopeful that he gets the rehabilitation necessary and when he is
paroled out that he will stay on the right side of the law.

8 Id. at 5-6.

9 Defendant was specifically put on notice in his Guilty Plea Agreement that he
10 understood that he would be ordered to make restitution to the victim of the offense(s) to which
11 he was pleading guilty and to the victim of any related offense. Guilty Plea Agreement at 3.
12 Defendant's claim that he should only pay \$5,000 in restitution and \$5,000 in fines is not
13 supported by any law and is refuted by the record. Instead, the claim is supported by
14 Defendant's opinion that he can negotiate with this Court after his sentence and motivated by
15 the desire to pay less than what he owes. This Court should not deviate from Defendant's
16 Judgment of Conviction ordering restitution in the amount of \$11,948.60 jointly and severally
17 with co-defendant and \$1,550.00 individually because it is not an illegal or improper restitution
18 amount. Moreover, Defendant never objected to the fact that he would have to pay restitution
19 or claim the restitution amount this Court ordered at his sentencing was based upon a factual
20 misrepresentation. Defendant's claims are belied by the record and fail to meet the requirement
21 of demonstrating error working to his detriment. Therefore, his motion must be denied.

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CONCLUSION

For the forgoing reasons the State respectfully requests that Defendant's Motion to Modify Sentence should be DENIED.

DATED this 28th day of December, 2017.

Respectfully submitted,

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

BY /s/ CHARLES W. THOMAN
CHARLES W. THOMAN
Deputy District Attorney
Nevada Bar #12649

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 28th day of December, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CARY PICKETT, BAC #57591
Northern Nevada Correctional Center
P.O. BOX 7000
Carson City, NV, 89702

BY /s/ L.M.
Secretary for the District Attorney's Office

CWT/al/lm/GANG



1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 NOREEN DEMONTE
6 Chief Deputy District Attorney
7 Nevada Bar #8213
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 CARY PICKETT,
14 #0725059

15 Defendant.

CASE NO: 10C262523-2

DEPT NO: XIX

16 **ORDER DENYING DEFENDANT'S PRO PER MOTION FOR MODIFICATION**
17 **OF SENTENCE**

18 DATE OF HEARING: January 03, 2018
19 TIME OF HEARING: 08:30 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 3rd day of January, 2018, the Defendant not being present, IN PROPER PERSON, the
22 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through NOREEN
23 DEMONTE, Chief Deputy District Attorney, and the Court having heard the arguments of
counsel / without argument, based on the pleadings and good cause appearing therefor,

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28 W:\2010\2010F\02742\10F02742-ORDR-(PICKETT_CARY)-001.DOCX

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion For Modification of
2 Sentence, shall be, and it is DENIED.

3 DATED this 8th day of January, 2018.

4
5 Will K. [Signature]
DISTRICT JUDGE

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

9 BY [Signature]
10 for NOREEN DEMONTE
11 Chief Deputy District Attorney
12 Nevada Bar #8213

13 CERTIFICATE OF SERVICE

14 I certify that on the 10th day of January, 2018, I mailed a copy of the foregoing Order
15 to:

16 CARY PRITCHETT, BAC #57591
17 NORTHERN NEVADA CORRECTIONAL CENTER
18 P. O. BOX 7000
19 CARSON CITY, NV 89702

20 BY Janet Hayes
21 JANET HAYES
22 Secretary for the District Attorney's Office
23
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10F02742B/jlh/GCU

Steven D. Grierson

Case No: 10C262523-2

Dept. No: XIX

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA

Petitioner/Plaintiff,

VS.

NOTICE OF APPEAL

CARY PICKETT

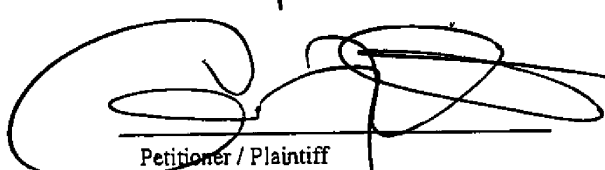
Respondent/Defendant,

NOTICE IS HEREBY GIVEN that: CARY PICKETT

hereby appeals the judgement entered in this Honorable court on or about the 8th day of

January, 2018

DATED this 24th, day of January, 2018


Petitioner / Plaintiff

Cary Pickett
(Print Name) In Proper Person

RECEIVED
JAN 30 2018
CLERK OF THE COURT

Case No: 10C262523-2

Dept No: XIX

Electronically Filed
1/30/2018 4:15 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF CLARK

3
4 THE STATE OF NEVADA

5 Petitioner / Plaintiff

6 -VS-

DESIGNATION OF RECORD
ON APPEAL

7 Cary Pickett

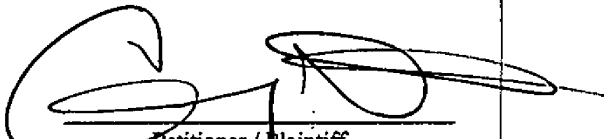
8 Respondent / Defendant

9
10 COMES NOW, Cary Pickett Petitioner/Plaintiff herein designates the

11 record on appeal to be certified by the Clerk of the Court and transcribed to the Clerk of the Nevada
12 Supreme Court.

13 All Motions, Pleading, and Transcripts.

14
15 Dated this 24th day of January, 20 18

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Petitioner / Plaintiff

19 Cary Pickett

20 (Print Name) In Proper Persona

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26 RECEIVED

27 JAN 30 2018

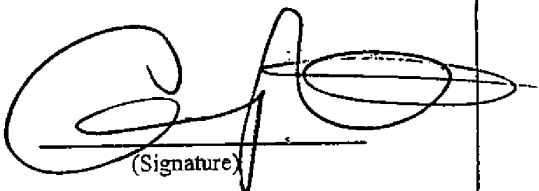
28 CLERK OF THE COURT

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PURSUANT TO N.R.S. 208.165, I understand that a false statement or answer to any question
In this declaration will subject me to penalties of perjury, I DECLARE UNDER PENALTY OF
PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING
IS TRUE AND CORRECT. See N.R.S. 208.165.

Signed at NNCC
(Location)

1/27/18
(Date)



(Signature)

57591
(Inmate Number)

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CERTIFICATE OF SERVICE BY MAIL

Pursuant to F.R.C.P. Rule 5(b), I hereby certify that I am the petitioner/Defendant named herein and
that on this 29th day of January 20 18, I deposited in the United States
Mails in Carson City, Nevada a true a correct copy of the foregoing addressed to:

CLARK County DA
RJC 200 LEWIS AVE
P.O. Box 552212
LAS VEGAS NV, 89155

Cary P. Jett 57591
P.O. Box 7000
Carson City NV 89702



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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF Appeal

(Title of Document)

filed in case number: 10C262523-2

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 1-24-18


(Signature)

Cary Piccetti
(Print Name)

PRO PER
(Attorney for)

Cary Pickett 57591

P.O. Box 7000

Carson City NV, 89402

RENO NV 895

24 JAN 2018 PM 3 T



Clerk of the Court
200 Lewis Ave
Las Vegas NV, 89155

0069310168



NORTHROP KEMURA CORRECTIONAL CENTER

JAN 24 2018



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

STATE OF NEVADA,

Plaintiff(s),

vs.

CARY J. PICKETT
aka GARY J. PICKETT,

Defendant(s),

Case No: 10C262523-2

Dept No: XIX

CASE APPEAL STATEMENT

1. Appellant(s): Cary Pickett

2. Judge: William D. Kephart

3. Appellant(s): Cary Pickett

Counsel:

Cary Pickett #57591
P.O. Box 7000
Carson City, NV 89702

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.

Las Vegas, NV 89101
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Appellant Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: March 3, 2010

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 58191

12. Child Custody or Visitation: N/A

Dated This 1 day of February 2018.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: Cary Pickett

Steven D. Grierson

1 COSCC
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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 ****

8 STATE OF NEVADA

CASE NO.: 10C262523-2

9 VS

DEPARTMENT 19

10 CARY PICKETT

11 CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

12 Upon review of this matter and good cause appearing,

13 IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
14 statistically close this case for the following reason:

15 **DISPOSITIONS:**

- 16 ☐ Nolle Prosequi (before trial)
17 ☐ Dismissed (after diversion)
18 ☐ Dismissed (before trial)
19 ☐ Guilty Plea with Sentence (before trial)
20 ☐ Transferred (before/during trial)
21 ☐ Bench (Non-Jury) Trial
22 ☐ Dismissed (during trial)
23 ☐ Acquittal
24 ☐ Guilty Plea with Sentence (during trial)
25 ☐ Conviction
26 ☐ Jury Trial
27 ☐ Dismissed (during trial)
28 ☐ Acquittal
29 ☐ Guilty Plea with Sentence (during trial)
30 ☐ Conviction

31 ☒ Other Manner of Disposition

32 DATED this 2nd day of February, 2018.

William D. Kephart

WILLIAM D. KEPHART
DISTRICT COURT JUDGE

CLERK OF THE COURT

FEB 14 2018

#24

RECEIVED

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARY JERARD PICKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 75042
District Court Case No. C262523

FILED

NOV 20 2018

Amanda Ingersoll
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 the district court AFFIRMED."

Judgment, as quoted above, entered this 24th day of August, 2018.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing denied."

Judgment, as quoted above, entered this 22nd day of October, 2018.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
November 16, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

10C262523-2
CCJA
NV Supreme Court Clerks Certificate/Judge
4797640



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARY JERARD PICKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75042

FILED

AUG 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Cary Jerard Pickett appeals from a district court order denying a motion to modify sentence filed on December 6, 2017.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Pickett claimed that his sentence should be modified because he did not understand the habitual criminal adjudication process, did not know the district court had sole discretion over the adjudication, and was unaware that mitigating evidence could be presented at sentencing.

"[A] motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment." *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). The district court may summarily deny a motion to modify sentence if the motion raises issues that fall outside of the very narrow scope of issues permissible in such motions. *Id.* at 708 n.2, 918 P.2d at 325 n.2.

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

18.90/919

We conclude the district court did not err by denying Pickett's motion because he failed to demonstrate the district court relied upon mistaken assumptions about his criminal record, and his claims regarding his unawareness of the habitual criminal adjudication and sentencing process fall outside the narrow scope of claims that may be raised in a motion to modify sentence. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver C.J.
Silver

Tao J.
Tao

Gibbons J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Cary Jerard Pickett
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: 11/16/18
Supreme Court Clerk, State of Nevada
By Angusson Deputy

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARY JERARD PICKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75042

FILED

OCT 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.



C.J.

Silver



J.

Tao



J.

Gibbons

cc: Hon. William D. Kephart, District Judge
Cary Jerard Pickett
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: 5/16/18

Supreme Court Clerk, State of Nevada

By A. Anderson Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARY JERARD PICKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 75042
District Court Case No. C262523

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: November 16, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. William D. Kephart, District Judge
Cary Jerard Pickett
Clark County District Attorney
Attorney General/Carson City

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 NOV 20 2018.

Deputy HEATHER UNGERMANN 
District Court Clerk

**RECEIVED
APPEALS**

NOV 19 2018

CLERK OF THE COURT

CARY PICKETT #57591

P.O. Box 208
INDIAN SPRINGS NV 89070
(Defendants in-pro-per)

FILED

SEP 21 2020

Alvin L. Blum
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY NEVADA

CARY PICKETT

ALAN DANIELS
Defendants,

CASE NO. C 26253

October 12, 2020
8:30 AM

v.

DEPT NO. XVIII

THE STATE OF NEVADA

REQUEST FOR AN ORDER VACATING RESTITUTION

PLAINTIFF.

COME NOW, CARY PICKETT and ALAN DANIELS "PLAINTIFF'S" in pro-per and moves this honorable court for an order vacating or recinding the restitution that each Defendant was ordered to pay on or about May 10, 2010 in the amount of: \$11,948.60 jointly and severally with co-defendant and the individual restitution ordered for Pickett in the amount of \$1,550.00 and for Daniels in the amount of \$3,034.50.

ARGUMENT

The Nevada Department of Corrections (NDOC) put into effect Administrative Regulation (A.R) 258 on September 1, 2020 based on Marsy's Law, as the law relates to the (NDOC) enforcing "victim specific" restitution orders imposed by the courts.

Marsy's Law was created with the specific legislative intent to expand the individual rights of "persons" who were victims of crime. In the case at bar Plaintiff's victims are listed as: 1. Beano's Bar, 2. Roadrunner Saloon 3. Triple Bar 4. Rites Bar 5. Timbers Bar and 6. The Tenya Lodge. (list inclusive of any non-listed businesses) included in total amount of restitution ordered in this matter.

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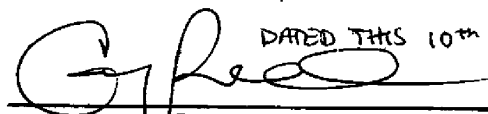
SEP 17 2020

CLERK OF THE COURT

Plaintiff's submits this request to this court to vacate its previously ordered restitution due to the fact that each victim listed are in fact commercial business who's losses have been paid through their own insurance policies. Because insurance companies receive premium payments from their customers to cover claims for losses that could potentially be filed, the restitution ordered in Plaintiff's judgment of conviction (J.O.C) can presumptively be believed to have already been paid.

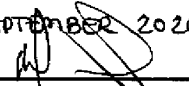
Similar to all registered vehicles being required to maintain insurance under Nevada law, commercial businesses are also required maintain coverage. Marsy's law was not created to protect large insurance companies, therefore to permit the (NDOC) to deduct 100% of Plaintiff's deposits and/or wages would be extremely prejudicial to Plaintiff's.

Plaintiff's do acknowledge that there was a cellor phone reported that belonged to a individual victim. In September of 2010 or around that timeframe approximately \$285.00 was deducted from Pickett's institutional account of which \$25.00 was paid to the court to cover administrative fees and \$263.00 was forwarded to Parole and Probation. Plaintiff would respectfully request that this court consider ordering that the \$263.00 satisfy the loss for the cellor phone and vacate the remaining balance without prejudice providing the insurance companies with the ability to seek recovery thro a civil lawsuit.



CARY PICKETT # 57591
P.O. BOX 208
INDIAN SPRING NV 89070
(Defendant - in - pro - per)

DATED THIS 10th DAY OF SEPTEMBER 2020


ALAN DANIELS # 63982
P.O. BOX 208
INDIAN SPRINGS NV 89070

(Defendant - in - pro - per)

prepared by Cary Pickett

CERTIFICATE OF MAIL SERVICE

I CARY PICKETT, ALAN DANIELS CERTIFY THAT I AM the
plaintiffs in the attached request for an order vacating
restoration that on this 10th day of September by placing
in the U.S. Mail here at S.D.C.C. ADDRESS TO (pre-paid)

THE DISTRICT ATTORNEY OFFICE

200 Lewis (RJC)

Lowry Ave. NV 89155


Cary Pickett


ALAN DANIELS

plaintiffs in - pro-per

CARLY PICKETT #57591
P.O. Box 208
Indian Springs NV
89070

LAS VEGAS NV 890
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CLERK OF THE COURT

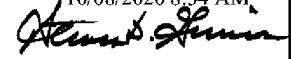
200 LEWIS

Las Vegas NV

89155

95101-630000




CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar # 5734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CARY PICKETT

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-20-817798-W
10C262523-2
DEPT NO: XIX

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

DATE OF HEARING: SEPTEMBER 14, 2020
TIME OF HEARING: 10:15 AM

THIS CAUSE having come on for hearing before the Honorable William Kephart, District Judge, on the 14th day of September, 2020, the Petitioner not being present, and being represented by MEGAN HOOPER-REBEGEA, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ANN DUNN, 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:

///

///

///

///

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

2 **PROCEDURAL HISTORY**

3 On March 10, 2010, the State filed an Information charging Cary Pickett ("Petitioner")
4 with one (1) count of BURGLARY WHILE INPOSSESSION OF A FIREARM (Felony –
5 NRS 205.060); one (1) count of CONSPIRACY TO COMMIT ROBBERY (Felony – NRS
6 199.480); one (1) count of ROBBERY WITH USE OF A DEADLY WEAPON (Felony –
7 NRS 200.380, 193.165); and one (1) count of POSSESSION OF A FIREARM BY AN EX-
8 FELON (Felony – NRS 202.360). The State also included in the Information its Intent to Seek
9 Habitual Treatment under NRS 207.010 if Petitioner was found guilty of the offenses
10 otherwise listed in the Information.

11 On August 11, 2010, Petitioner entered into a Guilty Plea Agreement with the State.
12 Petitioner pled guilty to one (1) count of BURGLARY WHILE INPOSSESSION OF A
13 FIREARM (Felony – NRS 205.060); one (1) count of CONSPIRACY TO COMMIT
14 ROBBERY (Felony – NRS 199.480); one (1) count of ROBBERY WITH USE OF A
15 DEADLY WEAPON (Felony – NRS 200.380, 193.165); and one (1) count of POSSESSION
16 OF A FIREARM BY AN EX-FELON (Felony – NRS 202.360). The parties stipulated to large
17 habitual treatment under NRS 207.010. The parties further stipulated to jointly recommend a
18 sentence of two (2) to five (5) years incarceration in the Nevada Department of Corrections
19 (NDOC) as to Count 1. The parties further stipulated to jointly recommend a sentence of ten
20 (10) to twenty-five (25) years incarceration in the NDOC, consecutive to Count 1 as sentence
21 for Petitioner's habitual criminal treatment. The parties further stipulated that all other Counts
22 would run concurrent.

23 On May 10, 2010, Petitioner was adjudicated guilty of (1) count of BURGLARY
24 WHILE INPOSSESSION OF A FIREARM (Felony – NRS 205.060); one (1) count of
25 CONSPIRACY TO COMMIT ROBBERY (Felony – NRS 199.480); one (1) count of
26 ROBBERY WITH USE OF A DEADLY WEAPON (Felony – NRS 200.380, 193.165); and
27 one (1) count of POSSESSION OF A FIREARM BY AN EX-FELON (Felony – NRS
28 202.360). Petitioner was also found as a habitual criminal under NRS 207.010. The Court

1 sentenced Petitioner as follows: as to Count 1- a maximum of sixty (60) months and a
2 minimum of twenty-four (24) months in the Nevada Department of Corrections; as to Count
3 2- a maximum of sixty (60) months and a minimum of twenty-four (24) months in the Nevada
4 Department of Corrections, concurrent to Count 1; as to Count 3- habitual criminal
5 enhancement with a maximum term of twenty-five (25) years and a minimum term of ten (10)
6 years in the Nevada Department of Corrections, consecutive to Count 1; as to Count 4- a
7 maximum of sixty (60) months and a minimum of twenty-four (24) months in the Nevada
8 Department of Corrections, concurrent to count 2.

9 Petitioner's Judgment of Conviction was filed on May 19, 2010.

10 On January 27, 2011, Petitioner filed a Petition for Writ of Habeas Corpus. On March
11 22, 2011, the State filed its Response. On April 5, 2011, Petitioner filed his Reply. On April
12 6, 2011, Petitioner's Petition was denied.

13 On April 18, 2011, Petitioner filed a Notice of Appeal, appealing this Court's denial of
14 his Petition for Writ of Habeas Corpus. On October 5, 2011, the Supreme Court of Nevada
15 affirmed this Court's judgment. Remittitur was issued on November 1, 2011.

16 On December 6, 2017, Petitioner filed a Motion for Modification of Sentence. On
17 December 28, 2017, the State filed its Response. On January 3, 2018, the Motion was denied.

18 On July 9, 2020, Petitioner filed a second Petition for Writ of Habeas Corpus. On July
19 16, 2020, Petitioner filed a Motion for Bail and/or Release Pending Review of Post-Conviction
20 Petition. On July 24, 2020, the State filed its Opposition to Petitioner's Motion for Bail and/or
21 Release Pending Review of Post-Conviction Petition. The State filed its Response on August
22 21, 2020. Petitioner filed a Reply on August 27, 2020. On September 14, 2020, the Court
23 denied Petitioner's Petition. The Court's written Order follows.

24 ANALYSIS

25 **I. THE PETITION IS PROCEDURALLY BARRED**

26 **A. The Petition is Untimely**

27 The Court finds that Petitioner's Petition for Writ of Habeas Corpus is time barred
28 with no good cause shown for delay. Pursuant to NRS 34.726(1):

1 Unless there is good cause shown for delay, a petition that
2 challenges the validity of a judgment or sentence must be filed
3 within 1 year of the entry of the judgment of conviction or, if an
4 appeal has been taken from the judgment, within 1 year after the
5 Supreme Court issues its remittitur. For the purposes of this
6 subsection, good cause for delay exists if the petitioner demonstrates
7 to the satisfaction of the court:

- 8 (a) That the delay is not the fault of the petitioner; and
9 (b) That dismissal of the petition as untimely will unduly prejudice
10 the petitioner.

11 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
12 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
13 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
14 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
15 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

16 The one-year time limit for preparing petitions for post-conviction relief under NRS
17 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
18 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
19 evidence presented by the defendant that he purchased postage through the prison and mailed
20 the Notice within the one-year time limit.

21 Furthermore, the Nevada Supreme Court has held that the district court has a duty to
22 consider whether a defendant's post-conviction petition claims are procedurally barred. State
23 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
24 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
25 conviction habeas petitions is mandatory,” noting:

26 Habeas corpus petitions that are filed many years after conviction are
27 an unreasonable burden on the criminal justice system. The necessity
28 for a workable system dictates that there must exist a time when a
criminal conviction is final.

Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court

1 has granted no discretion to the district courts regarding whether to apply the statutory
2 procedural bars; the rules must be applied.

3 In the instant case, the Court notes that the Judgment of Conviction was filed on May
4 19, 2010. Petitioner did not file a direct appeal. Petitioner had until May 19, 2011 to file a
5 timely petition for writ of habeas corpus. Petitioner did not file the instant Petition until July
6 9, 2020. As such, this Petition is untimely. The Court finds that absent a showing of good
7 cause and prejudice, the Petition must be denied pursuant to NRS 34.726(1).

8 **B. The Petition is an Abuse of the Writ**

9 The Court further finds that the Petition is also procedurally barred because it is an
10 abuse of the writ. NRS 34.810(2) reads:

11 A second or successive petition *must* be dismissed if the judge or
12 justice determines that it fails to allege new or different grounds for
13 relief and that the prior determination was on the merits or, if new and
14 different grounds are alleged, the judge or justice finds that the failure
15 of the petitioner to assert those grounds in a prior petition constituted
an abuse of the writ.

16 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
17 different grounds for relief and the grounds have already been decided on the merits or that
18 allege new or different grounds but a judge or justice finds that the petitioner's failure to assert
19 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
20 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
21 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

22 The Nevada Supreme Court has stated: "Without such limitations on the availability of
23 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
24 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
25 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
26 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
27 a careful review of the record, successive petitions may be dismissed based solely on the face
28 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

1 In other words, if the claim or allegation was previously available with reasonable
2 diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499
3 U.S. 467, 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev.
4 at 231, 112 P.3d at 1074.

5 Petitioner filed his first Petition on January 27, 2011. The Court denied that Petition on
6 April 6, 2011. On October 5, 2011, the Supreme Court of Nevada affirmed this Court's
7 judgment. This is Petitioner's second Petition. The only claim in the instant Petition is that
8 while Petitioner's sentence was originally constitutional, it now constitutes cruel and unusual
9 punishment due to the rise of COVID-19. Petition at 8.

10 Petitioner has labeled this claim in challenging his sentence as cruel and unusual
11 punishment. To the extent Petitioner is determined to articulate this claim as attacking his
12 sentence, his sentence has been known to him since May 19 of 2010 when the Judgment of
13 Conviction was filed. While a claim attacking the conditions of his confinement may arguably
14 be based on a new factual predicate (i.e. that COVID-19 constitutes a new condition for which
15 the prison is responsible for attempting to protect him from), Petitioner insists that is not the
16 basis of his claim. See Petition at 25. Further, even if the Court were to construe Petitioner's
17 claim as attacking his conditions of confinement, such a claim is barred from being raised in
18 a habeas corpus proceeding (see Section I(D)(3); Bowen v. Warden of Nevada State Prison,
19 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

20 As such, this claim either should have been brought in Petitioner's first Petition or is
21 not cognizable in a habeas corpus proceeding. Therefore, this Petition is an abuse of the writ.
22 The Court finds that absent a showing of good cause, this Petition must be denied.

23 **C. The State Affirmatively Pleads Laches**

24 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
25 exceeding five years [elapses] between the filing of a judgment of conviction, an order
26 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
27 conviction and the filing of a petition challenging the validity of a judgment of conviction..."
28 The Nevada Supreme Court observed in Groesbeck v. Warden, "[P]etitions that are filed many

1 years after conviction are an unreasonable burden on the criminal justice system. The necessity
2 for a workable system dictates that there must exist a time when a criminal conviction is final.”
3 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State
4 plead laches in its motion to dismiss the petition. NRS 34.800(2). Petitioner’s judgment of
5 conviction was filed ten (10) years ago in May of 2010. The State affirmatively plead laches
6 in the instant case, thereby invoking the presumption.

7 **D. Petitioner Has Not Shown Good Cause to Overcome the Procedural Bars**

8 A showing of good cause and prejudice may overcome procedural bars. “To establish
9 good cause, appellants *must* show that an impediment external to the defense prevented their
10 compliance with the applicable procedural rule. A qualifying impediment *might* be shown
11 where the factual or legal basis for a claim was not reasonably available at the time of default.”
12 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
13 continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526.
14 Examples of good cause include interference by State officials and the previous unavailability
15 of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012).
16 In order to establish prejudice, the defendant must show ““not merely that the errors of [the
17 proceedings] created possibility of prejudice, but that they worked to his actual and substantial
18 disadvantage, in affecting the state proceedings with error of constitutional dimensions.””
19 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.
20 Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a
21 “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252,
22 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230
23 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the petitioner.
24 NRS 34.726(1)(a).

25 As the Court articulated in Section I(B), and despite Petitioner’s insistence to the
26 contrary, there is no new factual basis to challenge his sentence as cruel and unusual
27 punishment. His sentence has been known to him since the Judgment of Conviction was filed.
28 The Court notes that COVID-19 is not a judicial or legislatively imposed punishment on

1 Petitioner, and is thus not a portion of his sentence. While Petitioner could arguably have good
2 cause to bring a claim challenging the conditions of his confinement, such a claim is not
3 cognizable in habeas corpus proceedings. (see Section I(D)(3); Bowen v. Warden of Nevada
4 State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984)). As such, the Court finds that
5 Petitioner has not shown good cause to overcome the procedural bars.

6 **E. Petitioner Cannot Show Prejudice**

7 The Court further finds that Petitioner cannot demonstrate that he would suffer
8 prejudice sufficient to overcome the procedural bar because his claim is entirely without merit.
9 See Rippo v. State, 134 Nev. 411, 422, 423 P.3d 1084, 1097, amended on denial of reh'g, 432
10 P.3d 167 (Nev. 2018) (stating: that a showing of undue prejudice under NRS 34.726
11 necessarily implicates the merits of the post-conviction claims). Petitioner's entire claim is
12 that his sentence of imprisonment is cruel and unusual punishment because he may be exposed
13 to COVID-19 while imprisoned. This claim is without merit for the following reasons.

14 **1. Petitioner's Sentence is Neither Cruel Nor Unusual Punishment**

15 The Eighth Amendment to the United States Constitution as well as Article 1, Section
16 6 of the Nevada Constitution prohibits the imposition of cruel and unusual punishment. The
17 Nevada Supreme Court has stated that "[a] sentence within the statutory limits is not 'cruel
18 and unusual punishment unless the statute fixing punishment is unconstitutional or the
19 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.
20 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435,
21 596 P.2d 220, 221-22 (1979)).

22 Additionally, the Nevada Supreme Court has granted district courts "wide discretion"
23 in sentencing decisions, and these are not to be disturbed "[s]o long as the record does not
24 demonstrate prejudice resulting from consideration of information or accusations founded on
25 facts supported only by impalpable or highly suspect evidence." Allred, 120 Nev. at 410, 92
26 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A
27 sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of
28

1 discretion, the district court's determination will not be disturbed on appeal. Randell v. State,
2 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)).
3 As long as the sentence is within the limits set by the legislature, a sentence will normally not
4 be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950 (1994).

5 The Court finds that o the extent Petitioner is determined to challenge his actual
6 sentence as cruel and unusual punishment, his claim must fail. As Petitioner concedes in his
7 Petition, the sentence imposed by the Court was constitutional. Petition at 23. At the relevant
8 time, the sentence was within the statutory range provided for the crimes for which Petitioner
9 was convicted. See NRS 199.480, NRS 205.060, NRS 203.380, NRS 193.165, NRS 202.360,
10 and NRS 207.010. Further, Petitioner has not alleged that the sentence was not proportional to
11 the crime.

12 Petitioner's only rationale for why his sentence is now cruel and unusual punishment is
13 that COVID-19 has become a pandemic. As an initial point, Petitioner has not identified a
14 single case where a defendant has successfully challenged the rise of COVID-19 as rendering
15 his entire sentence cruel and unusual punishment, rather than challenging the conditions of
16 confinement. Further, such an argument seems inapposite to the rationale behind cruel and
17 unusual punishment claims. The Eighth Amendment protects from government-imposed
18 punishments. The rise of COVID-19 is not some judicial or jury-imposed punishment on his
19 or any other defendant. It is a virus. Nowhere in Petitioner's Judgment of Conviction is his
20 exposure to this virus listed as part of his sentence. Further, this virus is currently affecting the
21 entire world, not just the prison population.

22 Petitioner's fears over the virus are well taken, as they are fears that all members of
23 society currently share. That Petitioner might at some point come into contact with this virus
24 while incarcerated would be unfortunate, and an outcome that all parties of the judicial and
25 penological systems should strive to avoid. But the mere possibility that a lawful and
26 constitutional sentence may expose a defendant to harm that is likewise suffered by the
27 community at large does not, and never has, constituted a cruel and unusual sentence. See e.g.
28 Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292, 50 L. Ed. 2d 251 (1976). (stating:

1 “Medical malpractice does not become a constitutional violation merely because the victim is
2 a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions
3 sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only
4 such indifference that can offend “evolving standards of decency” in violation of the Eighth
5 Amendment.”)

6 Petitioner’s argument that he is suffering an additional or separate punishment are not
7 persuasive. Petitioner cites to In re Medley, 134 U.S. 160, 171 (1890) for the proposition that
8 a prisoner can “face punishment beyond an imposed sentence due to circumstances of the
9 incarceration.” Petition at 24. However, such claims are resolved by challenging the conditions
10 of confinement as cruel and unusual punishment, not the sentence itself. See Hope v. Pelzer,
11 536 U.S. 730, 737–38, 122 S. Ct. 2508, 2514, 153 L. Ed. 2d 666 (2002).

12 Further, as articulated in greater detail below (see Section I(D)(4)), and contrary to
13 Petitioner’s claims and fears, NDOC is taking active steps in combating and preventing the
14 spread of COVID-19. Petitioner’s claims that inmates face an “ever present risk and attendant
15 fear that they will be exposed to and contract the virus” is not persuasive. The unfortunate fact
16 is that the potential to be exposed to coronavirus is now an aspect of every single person’s
17 daily life. There is a potential for exposure at grocery stores, places of employment, and
18 medical facilities, just to name a few. See <https://mypost.com/2020/06/13/experts-rank-most-likely-places-to-contract-coronavirus/>. The CDC has even published information regarding the
19 stress caused by the pandemic, so inmates are not alone in those aspects. See
20 <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html>.

21 The Court notes that Petitioner has failed to demonstrate that he specifically is even at
22 any increased risk of either contracting the virus or dying from it. Petitioner alleges that he
23 suffers from high blood pressure, asthma, and obesity. However, Petitioner has failed to submit
24 any documentation from certified medical professionals that he is personally at a heightened
25 risk for COVID-19 and that his risk is higher where he is incarcerated than if he were released.
26 While Petitioner claims that his medical history of asthma and high blood pressure places him
27 at greater risk, there is no evidence that those individuals suffering from asthma experience an
28

1 increased infection rate.¹ The CDC has also stated that those individuals suffering from
2 asthma and high blood pressure only *might* have an increased risk of severe illness.² Further,
3 while incarcerated, Petitioner has access to the medications necessary to control and treat both
4 of these illnesses. While the CDC has stated that individuals who are obese to the point that
5 they have a BMI of 30 or higher are at an increased risk of severe illness from COVID-19,
6 Petitioner has not submitted any proof that his BMI is at this level. Further, Petitioner's obesity
7 would place him at an increased risk of severe illness regardless of whether he was
8 incarcerated. In addition, Petitioner has not demonstrated that the NDOC is unable to provide
9 him with proper medical care regarding any complications arising from his obesity.

10 Petitioner has merely presented over-generalized aspects of COVID-19 and the
11 evolving risk factors as currently understood. Petitioner has attached the declaration of Dr.
12 Karen Gedney. However, the declaration never mentions Petitioner by name, nor indicates that
13 he is in any more danger from the illness than any other individual. Further, it seems from the
14 language used in the declaration that Dr. Karen Gedney no longer works with the Nevada
15 Department of Corrections. It would further seem that she has not worked there since COVID-
16 19 became a pandemic (Dr. Gedney's declaration states that she worked at the NDOC for thirty
17 (30) years starting in 1987. As such, it would seem she quit working for the NDOC in 2017.).
18 Given that Dr. Gedney has not worked for the NDOC in four (4) years, she does not have any
19 first-hand knowledge of the current conditions within the prison. Such a declaration, like the
20 rest of Petitioner's pleading, speaks only to generalities of the virus and assumptions of how
21 it is being handled within the NDOC. Such vague allegations are insufficient to support post-
22 conviction allegations. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984)
23 (holding that bare or naked allegations are insufficient to entitle a defendant to post-conviction
24 relief).

25 Further, Petitioner's argument that he is within eighteen (18) months of his parole
26 release date is irrelevant to the current inquiry. Whether a sentence is cruel and unusual
27

28 ¹ <https://www.aaaai.org/conditions-and-treatments/library/asthma-library/covid-asthma>

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

1 punishment does not turn based on whether a sentence is near the mandatory minimum for
2 time spent incarcerated; it turns on the nature of the punishment imposed. Petitioner seems to
3 imply that his risk of death from COVID-19 is so great that he is now being denied the
4 expectation of reaching his parole eligibility date. Petition at 26. This statement is seemingly
5 inaccurate based on current knowledge regarding how COVID-19 is affecting the Nevada
6 Department of Corrections. While COVID-19 is certainly a serious illness, the CDC has
7 estimated that as of August 3, 2020, there have been 4,601,526 reported cases of COVID-19,
8 with 154,002 deaths in the United States. If these numbers are accurate, the mortality rate
9 currently sits at approximately 3%. Given that as of July 17, 2020 only .145% of the inmates
10 in the NDOC had been infected with COVID-19, any allegations that a sentence of
11 incarceration is akin to a sentence of death is hyperbolic.³

12 The Court would further note that under the theory Petitioner advances in his Petition
13 (that his actual sentence is cruel and unusual punishment), every single sentence of
14 incarceration being served in the State of Nevada would be unconstitutional and in violation
15 of the Eighth Amendment. As Petitioner has admitted as much in an earlier filing, this
16 circumstance applies to all incarcerated individuals. See Reply to Respondent's Opposition to
17 Motion for Bail and/or Release Pending Review of Post-Conviction Petition at 6-7. However,
18 Petitioner then goes on to state that not all defendants should be released. Id. That is not the
19 way the cruel and unusual punishment standard works. If COVID-19, as Petitioner argues,
20 essentially sentences a defendant to death (See Petition at 23), then such a punishment would
21 be unconstitutional for every defendant not currently on death row, and every single one of
22 them could bring a similar Petition and be entitled to be released from custody. The ultimate
23 outcome of Petitioner's logic shows its logical inconsistency. The existence of a pandemic is
24 not a get out of jail free card for this defendant or any other.

25
26
27 ³ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> ; see also
28 http://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Press_Release/NDOC_Offenders_Arizona_Saguaro.pdf

1 The simple reality is that Petitioner's sentence is and was lawful when it was imposed.
2 The existence of a global pandemic that threatens every single person on this planet does not
3 change this fact. Petitioner is not entitled to escape the consequences of his actions based on a
4 threat that is global in nature. The Court therefore finds that COVID-19 has nothing to do with
5 Petitioner's sentence, and he is not entitled to release or a finding that his sentence is cruel and
6 unusual punishment based on its existence.

7 **2. Petitioner is Actually Challenging His Conditions of Confinement**

8 Even though Petitioner's claim clearly fails even if considered under the standard
9 Petitioner urges, the Court finds that what Petitioner is actually bringing in his Petition is a
10 claim of cruel and unusual conditions of confinement.

11 The proper way to challenge that an individual's lawful incarceration has exposed them
12 to certain harms while incarcerated is to challenge the conditions of confinement under the
13 Eighth Amendment. Farmer v. Brennan, 511 U.S. 825, 832, 114 S. Ct. 1970, 1976, 128 L. Ed.
14 2d 811 (1994) (stating: "The Constitution 'does not mandate comfortable prisons,' Rhodes v.
15 Chapman, 452 U.S. 337, 349, 101 S.Ct. 2392, 2400, 69 L.Ed.2d 59 (1981), but neither does it
16 permit inhumane ones, and it is now settled that 'the treatment a prisoner receives in prison
17 and the conditions under which he is confined are subject to scrutiny under the Eighth
18 Amendment,' Helling, 509 U.S., at 31, 113 S.Ct., at 2480.")

19 In fact, a review of both this state's and the Supreme Court's jurisprudence shows that
20 issues such as: excessive force used by prison officials (see Farmer v. Brennan, 511 U.S. 825,
21 832, 114 S. Ct. 1970, 1976, 128 L. Ed. 2d 811 (1994)); lack of access to appropriate medical
22 care (Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292, 50 L. Ed. 2d 251 (1976)); the
23 use of cruel punishments within a prison (Hope v. Pelzer, 536 U.S. 730, 737-38, 122 S. Ct.
24 2508, 2514, 153 L. Ed. 2d 666 (2002)); the danger of inmate on inmate violence (Butler ex
25 rel. Biller v. Bayer, 123 Nev. 450, 459, 168 P.3d 1055, 1062 (2007); and the use of punitive
26 segregation (Bowen v. Warden of Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250
27 (1984)) are all addressed under a conditions of confinement analysis (or a similar analysis
28 considering whether the conduct of the prison staff was indifferent).

1 Given that dangers occurring within a prison have never rendered an entire sentence of
2 incarceration as cruel and unusual punishment, Petitioner cannot show that the rise of COVID-
3 19 means that he can now challenge his sentence as cruel and unusual punishment. Any cruel
4 and unusual punishment claim must challenge the *conditions of confinement* as cruel and
5 unusual. Other Courts have come to this exact conclusion when dealing with similar filings.
6 See, inter alia, Foster v. Comm'r of Correction, 484 Mass. 698, 716, 146 N.E.3d 372, 390
7 (2020) (addressing an Eight Amendment claim regarding the rise of COVID-19 as a conditions
8 of confinement question); People ex rel. Coleman v. Brann, No. 260252/20, 2020 WL
9 1941972, at *7 (N.Y. Sup. Ct. Apr. 21, 2020)⁴; Matter of Pauley, 466 P.3d 245, 256, 259-60
10 (Wash. Ct. App. 2020) (declining to abandon the deliberate indifference standard).

11 As such, the Court finds that to the extent there is any recognizable claim presented in
12 this Petition, it is that Petitioner is challenging the conditions of his confinement as
13 unconstitutional. Petitioner claims that this is not the case, that he is asserting that his sentence
14 as a whole is now unconstitutional and he is entitled to release. Petition at 25-26. But the
15 applicable legal standard to a claim does not change simply because a Petitioner says it does.
16 As the Court has thoroughly articulated above, the relevant standard for a claim that an
17 individual's incarceration exposes him to harm is that the conditions of confinement are cruel
18 and unusual punishment. As such, the Court finds that Petitioner is actually challenging his
19 conditions of confinement.

20 **3. Conditions of Confinement Claims are Not Cognizable in a Habeas** 21 **Corpus Petition**

22 In Bowen v. Warden of Nevada State Prison, the Nevada Supreme Court stated:

23 We have repeatedly held that a petition for writ of habeas corpus may
24 challenge the validity of current confinement, but not the conditions
25 thereof. See Director, Dep't Prisons v. Arndt, 98 Nev. 84, 640 P.2d
26 1318 (1982); Rogers v. Warden, 84 Neb. 539, 445 P.2d 28 (1968);

27 ⁴ This case is cited only for the proposition that this Court analyzed a similar claim under a conditions of
28 confinement standard. That the New York Court allows such a claim to be brought in a Petition for Writ of
Habeas Corpus is irrelevant, as this jurisdiction has expressly forbid such a claim from being brought in such a
Petition. See Bowen v. Warden of Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

1 Rainsberger v. Leypoldt, 77 Nev. 399, 365 P.2d 489 (1961), cert.
2 denied, 368 U.S. 516, 82 S.Ct. 530, 7 L.Ed.2d 522 (1962). In Rogers,
3 we held that a claim of brutal treatment at the hands of prison officials
4 was not cognizable on a habeas petition, because the claim spoke to
5 the conditions and not the validity of confinement. In Arndt, we left
6 open the specific question raised by this appeal, whether the
7 imposition of a qualitatively more restrictive type of confinement
8 within the prison, such as punitive segregation, may be challenged by
9 a petition for writ of habeas corpus. We now hold that such a challenge
10 speaks only to the conditions of confinement and therefore may not
11 be raised by a habeas corpus petition. See Rogers v. Warden, supra.

12 The district court correctly ruled that the instant claim for relief was
13 not cognizable in a habeas corpus proceeding.

14 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

15 As such, the Court finds that Petitioner's claim challenging his conditions of
16 confinement is not cognizable in a Petition for Writ of Habeas Corpus. In fact, the Nevada
17 Supreme Court has recently declined to grant relief to a petitioner alleging that the dangers of
18 COVID-19 required his release from prison as this was beyond the scope of a habeas petition.
19 See Kerkorian v. Sisolak, 462 P.3d 256 (Nev. 2020) (unpublished disposition). As such, the
20 Court finds that Petitioner's claim cannot even be considered in a habeas corpus proceeding.

21 **4. Petitioner's Conditions of Confinement Are Not Cruel and Unusual** 22 **Punishment**

23 Further, even if Petitioner could bring a claim challenging the conditions of his
24 confinement in a Petition for Writ of Habeas Corpus, such a claim would be without merit.

25 In determining whether the conditions of confinement constitute cruel and unusual
26 punishment, the question is whether prison officials have displayed a deliberate indifference
27 to Petitioner's safety; or failed to undertake reasonable measures" to ensure the safety of
28 prisoners. See Farmer, 511 U.S. at 829, 114 S. Ct. at 1974; see also Hudson v. Palmer, 468
U.S. 517, 526–527, 104 S.Ct. 3194, 3200, 82 L.Ed.2d 393 (1984). The United States Supreme
Court has analogized displaying a deliberate indifference with recklessly disregarding a risk.
Farmer, 511 U.S. at 836, 114 S. Ct. at 1978. "[I]t is enough that the official acted or failed to

1 act despite his knowledge of a substantial risk of serious harm.” Id. at 842, 114 S. Ct. at 198-
2 81.

3 Recently, the Ninth Circuit held in US v. Dade that the COVID-19 pandemic and risk
4 of contracting the virus in prison does not warrant release if the risks are being adequately
5 addressed. 959 F.3d 1136, 1139 (9th Cir. 2020). The Court further explained that even if the
6 risks are not being adequately addressed transferring the defendant to a different facility, as
7 opposed to release, would likely be appropriate. Id. The Ninth Circuit has further explained
8 that granting release is appropriate only after a defendant establishes that they have serious
9 health issues and that the prison is incapable of treating those health concerns. In re Roe, 257
10 F.3d 1077, 1081 (9th Cir. 2001).

11 However, the Court notes that Nevada Department of Corrections has been undertaking
12 various measures in an attempt to protect not just Petitioner, but all inmates from the risk
13 imposed by COVID-19. According to NDOC’s official website the following protocols have
14 been instituted thus far in response to COVID-19.

15 1. Running modified operations that limit travel between facilities and
16 restricted visitation at all facilities. This will be in-place until
17 corrections and medical experts at NDOC, working alongside local
18 and state government agencies, determine that the health and safety of
staff and offenders are no longer threatened by COVID-19.

19 2. Each morning, all employees are being screened for symptoms of
20 the virus, including having their temperature taken. Anyone found
21 with one of the cardinal symptoms (fever of 100 degrees F or greater,
22 shortness of breath, dry cough, chills, muscle pain, new loss of taste
23 or smell) are sent home where they must obtain medical clearance or
test negative for COVID-19 before returning to work.

24 3. All personnel who do enter a secure facility are required to wear a
face covering.

25 4. Testing new arrivals at the intake units at High Desert State Prison
26 and Northern Nevada Correctional Center for COVID-19, and
27 isolating offenders who test positive in negative airflow cells.
28

1 5. The dissemination of the latest CDC guidance for staff and
2 offenders, including the Center of Disease Control's Stop the Spread
3 of Germs poster, in highly visible areas.

4 6. Surface Sanitation Teams, using a 10% bleach concentration,
5 thoroughly clean surfaces at all facilities.

6 7. Hand soap is readily available at every facility, both in cells and in
7 common areas. NDOC encourages all persons to frequently wash their
8 hands using warm soap and water for at least 20 seconds.

9 8. Prison Industries is manufacturing hand sanitizer, medical gowns,
10 and face coverings to ensure NDOC staff have access to these critical
11 supplies. PI is also manufacturing alcohol-free hand sanitizer and face
12 coverings for offenders.

13 9. If an offender is suspected of having an illness, or if they self-report
14 feeling ill, NDOC medical staff immediately assess and place them in
15 that facility's infirmary or medically observes them in their cell.
16 NDOC also alerts Culinary so meals are delivered to the offenders
17 while they're in the infirmary or their cell.⁵

18 Additionally, NDOC officials have instituted the following:

19 Distribution of 22,000 face coverings statewide to offenders to reduce
20 the likelihood of an asymptomatic COVID-19 carrier passing the virus
21 to others. Face covering distribution was done in conjunction with
22 new security guidelines that ensure public safety goals are fully met.

23 Clearly, Petitioner cannot argue that prison authorities are unwilling to address COVID-
24 19 problems within the prisons. In fact, the NDOC's website further states:

25 [NDOC] is working closely with local and state public health officials
26 to prepare for Novel Coronavirus (COVID-19), with the top priority
27 being the health of staff and offenders at our facilities. The plan of our
28 ongoing public health response is to detect and rapidly contain
introductions of this virus with the goal of delaying and ultimately
preventing sustained spread of COVID-19.

NDOC completed a statewide testing initiative in June during which
it tested all offenders - approximately 12,368 - for COVID-19. Of

⁵ http://doc.nv.gov/About/Press_Release/covid19_updates/

1 those tested, only 18 – or .15% of all offenders – have tested positive
2 for the virus, **one of the lowest rates in the nation.**

3 ...
4 “The very low number of offenders testing positive is a testament to
5 the strength of the firewall NDOC established to stop the spread of
6 the virus,” said Charles Daniels, NDOC Director. “Our custody staff
7 implemented pro-active procedures to ensure the safety of everyone
8 at our facilities, while our medical staff worked tirelessly to test
9 offenders and provide appropriate medical care. This has been a team
10 effort and I could not be prouder.”⁶

11 Petitioner has previously cited to an article stating that 69 of 99 Nevada inmates housed
12 at the Saguaro Correctional facility *in Arizona* tested positive for COVID-19. Reply to
13 Respondent’s Opposition to Motion for Bail and/or Release Pending Review of Post-
14 Conviction Petition at 5-6. However, Petitioner is not incarcerated at Saguaro Correctional
15 Center. Petitioner is incarcerated at the Southern Desert Correctional Center. Petition at 1.
16 Further, this very same article Petitioner cites states that “Approximately 12,368 offenders,
17 which represent 99.9% of the NDOC’s total population – were tested for COVID-19, with
18 only 18 – or .145% *testing positive* for the virus, *one of the lowest rates in the nation.*”⁷ The
19 Court would also note that this article states that of all the inmates who tested positive in this
20 Arizona facility, none had exhibited any symptoms or required hospitalization.

21 Further, the Court notes that if Petitioner’s argument is truly motivated by reducing
22 Petitioner’s exposure to COVID-19, statistics would contradict his belief that he is more at
23 risk of contracting the virus while incarcerated. Current reports establish that only .2 percent
24 of inmates in the NDOC have tested positive for COVID-19.⁸ Specifically, in Clark County
25 Correctional facilities, there are currently only five reported cases of COVID-19. Id. This is in
26 comparison to 56,972 confirmed cases in Clark County which represented 11.7 percent of

27 ⁶ http://doc.nv.gov/About/Press_Release/covid19_updates/ (emphasis added)

28 ⁷ http://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Press_Release/NDOC_Offenders_Arizona_Saguaro.pdf (emphasis added)

⁸ “Facilities with reported COVID-19 Cases, State of Nevada Department of Health and Human Services, last updated on August 10, 2020 at 9 AM (last accessed on August 10, 2020 at 3:58 PM) <https://app.powerbigov.us/view?r=eyJrIjoibDMwMDI0YmQtNmUyYS00ZmFjLWl0MGltZDM0OTY1Y2Y0YzNhIiwidCI6ImU0YTM0MGU2LWI4OWUtNGU2OC04ZWFlLTE1NDRkMjcwMzk4MCI9>.

1 those tested.⁹ As such, Petitioner's claim that he is more likely to contract COVID-19 should
2 he remain incarcerated is belied by the statistics.

3 Given the litany of ways in which the NDOC is attempting to protect prisoners from
4 this virus, as well as the NDOC's success as one of the nation's leaders in protecting those
5 incarcerated from this virus, there can be no legitimate assertion that officials are failing to act
6 despite knowledge of a substantial risk of serious harm. Therefore, the Court finds that
7 conditions of confinement cannot constitute cruel and unusual punishment.

8 As such, this claim is without merit. Since this claim is without merit, Petitioner cannot
9 show that he would be prejudiced from the imposition of the mandatory procedural bars.
10 Therefore, the Court finds that under both NRS 34.726 and NRS 34.810, this Petition is
11 procedurally barred as untimely.

12 **II. THERE IS NO NEED FOR AN EVIDENTIARY HEARING**

13 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 14 1. The judge or justice, upon review of the return, answer and all
15 supporting documents which are filed, shall determine whether an
16 evidentiary hearing is required. A petitioner must not be discharged
17 or committed to the custody of a person other than the respondent
18 unless an evidentiary hearing is held.
- 19 2. If the judge or justice determines that the petitioner is not entitled
20 to relief and an evidentiary hearing is not required, he shall dismiss
21 the petition without a hearing.
- 22 3. If the judge or justice determines that an evidentiary hearing is
23 required, he shall grant the writ and shall set a date for the hearing.

24 The Nevada Supreme Court has held that if a petition can be resolved without
25 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
26 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
27 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
28 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled

⁹ "COVID-19 (Coronavirus) State of Nevada Department of Health and Human Services, last updated on August 10, 2020 at 9:45 AM (last accessed on August 10, 2020 at 4:16 PM)
<https://app.powerbigov.us/view?r=eyJrIjoia2ZThiOWUtM2FINS00MGY5LWFmYjUtNmQwNTQ3Nzg5N2I2IiwidCI6ImU0YTU0MGU2LWI4OWUtNGU2OC04ZWZhLTE1NDRkMjcwMzk4MCJ9>.

1 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
2 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
3 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
4 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
5 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is
6 improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth
7 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court
8 considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as
9 complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

10 Further, the United States Supreme Court has held that an evidentiary hearing is not
11 required simply because counsel’s actions are challenged as being unreasonable strategic
12 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
13 post hoc rationalization for counsel’s decision making that contradicts the available evidence
14 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
15 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
16 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing
17 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
18 objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. 466
19 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

20 While not articulated in his Petition, Petitioner’s Reply to Opposition for Bail and/or
21 Release claims that an evidentiary hearing is required to “assess the actual danger of
22 transmission.” Reply to Respondent’s Opposition to Motion for Bail and/or Release Pending
23 Review of Post-Conviction Petition at 6. The Court finds that there is no need for such an
24 evidentiary hearing. COVID-19 is only relevant to the instant proceedings to the extent it was
25 a punishment imposed on Petitioner. As the Court has thoroughly articulated above, it was not.
26 As such, its existence, regardless of its severity, does not establish that Petitioner’s sentence
27 was either cruel or unusual punishment. A claim challenging the conditions of confinement as
28 cruel and unusual punishment cannot be brought in a Petition for Writ of Habeas Corpus. As

1 such, there are no grounds for an evidentiary hearing in the instant case and this request is
2 denied.

3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that the Post-Conviction Petition for Writ
5 of Habeas Corpus shall be, and it is, hereby denied.

6 DATED this 7th day of October, 2020.

Dated this 8th day of October, 2020

7 

8 DISTRICT JUDGE

918 776 C660 5F4A
William D. Kephart
District Court Judge

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

11 BY /s// TALEEN PANDUKHT
12 TALEEN PANDUKHT
13 Chief Deputy District Attorney
Nevada Bar #5734

14
15
16 **CERTIFICATE OF MAILING**

17 I hereby certify that service of the above and foregoing was made this 7th day of
18 October, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 CAREY PICKETT, #57591
20 S.D.C.C.
21 PO BOX 208
INDIAN SPRINGS, NV 89070

22 BY /s// E. DEL PADRE
23 E. DEL PADRE
24 Secretary for the District Attorney's Office

25
26
27 ed/GCU
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Cary Pickett, Plaintiff(s)

CASE NO: A-20-817798-W

7 vs.

DEPT. NO. Department 19

8 Jerry Howell, et al.,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 10/8/2020

16 ECF Notifications CHU

ecf_nvchu@fd.org

17 Richard Chavez

richard_chavez@fd.org

18 Megan Hopper-Rebegea

Megan_Hopper-Rebegea@fd.org

19 Steven Wolfson

Motions@clarkcountyda.com

20 Dept Law Clerk

dept19lc@clarkcountycourts.us



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 WILLIAM FLINN, JR.
6 Chief Deputy District Attorney
7 Nevada Bar #013119
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10
11 Plaintiff,

11 -vs-

12 CAREY PICKETT,
13 #0725059

14 Defendant.

CASE NO: 10C262523-2

DEPT NO: XIX

15 **STATE'S OPPOSITION TO DEFENDANT'S REQUEST**
16 **FOR AN ORDER VACATING RESTITUTION**

17 DATE OF HEARING: OCTOBER 12, 2020
18 TIME OF HEARING: 10:15 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through WILLIAM FLINN, JR., Chief Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Opposition to Defendant's Request for An
21 Order Vacating Restitution.

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

25 //

26 //

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 3, 2010, the State filed a Criminal Complaint charging Defendant CAREY
4 PICKETT with five (5) counts of Burglary While in Possession of a Firearm, seven (7) counts
5 of Robbery With Use of a Deadly Weapon, five (5) counts of Conspiracy to Commit Robbery,
6 and six (6) counts of Possession of a Firearm by an Ex-Felon. On March 10, 2010, pursuant
7 to negotiations, the State filed an Information charging Defendant with one count each of
8 Burglary While in Possession of a Firearm, Conspiracy to Commit Robbery, Robbery with
9 Use of a Deadly Weapon, and Possession of a Firearm by an Ex-Felon. On March 11, 2010,
10 pursuant to a written Guilty Plea Agreement, Defendant pled guilty to the same charges.

11 On May 10, 2010, Defendant was adjudged a Habitual Criminal and sentenced as
12 follows: as to Count 1 – Burglary While in Possession of a Firearm, to a MAXIMUM of
13 SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24)
14 MONTHS; as to Count 2 – Conspiracy to Commit Robbery, to MAXIMUM of SIXTY (60)
15 MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; as to
16 Count 3 – Robbery with Use of a Deadly Weapon, to a MAXIMUM of TWENTY-FIVE (25)
17 YEARS with a MINIMUM parole eligibility of TEN (10) YEARS, Count 3 to run
18 CONSECUTIVE to Count 1; as to Count 4 – Possession of a Firearm by an Ex-Felon, to a
19 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-
20 FOUR (24) MONTHS, Count 4 to run CONCURRENT with Count 2, with EIGHTY-EIGHT
21 (88) DAYS credit for time served. This Court further ordered Defendant to pay restitution of
22 \$11,948.60 jointly and severally with his codefendant and \$1,550.00 individually. A
23 Judgment of Conviction was filed on May 19, 2010.¹

24 On September 21, 2020, Defendant filed a Request for an Order Vacating Restitution.
25 The State opposes.

26 //

27 //

28 _____
¹ Due to clerical errors, an Amended Judgment of Conviction was filed on September 24, 2010.

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ARGUMENT

Defendant’s Motion requests that this Court vacate the restitution amounts ordered as part of Defendant’s sentence on May 10, 2010. Defendant’s sole basis for that request appears to be his speculation that insurance companies would have made the victim businesses whole after Defendant’s crimes, but Defendant of course offers no evidence for that claim. Moreover, victims of crime are entitled to restitution regardless of any possible insurance coverage. Defendant provides no points and authorities whatsoever to support the notion that this Court must, or even is permitted to, now revisit restitution amounts that were ordered at Defendant’s sentencing more than ten (10) years ago, amounts that were ordered without objection by Defendant at that time. Therefore, Defendant’s Motion should be denied on its merits, and given Defendant provides no authority for his request, pursuant to EDCR 3.20 as well.

CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant’s Request be denied.

DATED this 9th day of October, 2020.

Respectfully submitted,

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

BY /s/ WILLIAM FLINN JR.
WILLIAM FLINN, JR.
Chief Deputy District Attorney
Nevada Bar #013119

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 9th day of
October, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CAREY PICKETT, #57591
S.D.C.C.
PO BOX 208
INDIAN SPRINGS, NV 89070

BY /s// *E. Del Padre*
E. DEL PADRE
Secretary for the District Attorney's Office

WF/ed/GCU

CARY PICKETT #51571

P.O. BOX 203
INDIAN SPRINGS NV 89070
(Defendants in pro-per)

FILED

OCT 12 2020

CLERK OF COURT
NEVADA

EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY

November 2, 2020
8:30 AM

CARY PICKETT
ALAN DANIELS

CASE NO C26253

Petitioners

DEPT NO XVIII

(PURSUANT TO NRS 176)

THE STATE OF NEVADA

Petitioner's PRO-PER REQUEST FOR AN

Respondent,

RETRAINING ORDER / PRELIMINARY INJUNCTION

Come now, Cary Pickett and Alan Daniels "petitioners" in pro-per and moves this court for a restraining order or a preliminary injunction directed towards the Nevada Department of Corrections (NDOC) ordering the (NDOC) to cease any and all deductions from Petitioners trust account or deposits, until the court makes a ruling as to whether restitution ordered in the above referenced case number was appropriate and authorized under Nevada law.

POINTS AND AUTHORITIES / ARGUMENT

Petitioners were ordered to pay restitution at sentencing pursuant to this court's order on or about May 10, 2010. Pursuant to Petitioner's Guilty Plea Memo pg 3:9-11 Plaintiff's argued that "if 'appropriate', I will be ordered to make restitution to the victim of the offense(s) to which I am pleading guilty"

The question before the court has been determined that "the authority to impose restitution is not an inherent power of the court, but is derived from statutes" State v. DAWSON 116 Wash 2d 917, 809 P2d 1374, 1375 (1991). NRS 176.033(b)(c) in pertinent part states:

(1)


"if restitution is appropriate, set an amount of restitution for each victim of the offense". NRS 176.015 (5)(b) provides that "victim" includes (1) A person, including a governmental entity, against whom a crime has been committed; (2) A person who has been injured or killed as a direct result of the commission of a crime, and (3) A relative of a person described in subparagraph (1) or (2)

A restraining order or preliminary injunction is appropriate under certain elements or scenarios (1) likelihood of success on the merits (2) that petitioner will likely suffer irreparable harm in absence of the preliminary relief (3) that the balance of equities tips in its favor, a (4) that public interest favors injunction, ... the injunction may also issue under the "serious question" test. Under this test a petitioner can obtain a preliminary injunction by demonstrating that a serious question going to the merits were raised and the balance of hardship tips sharply in favor of petitioner.

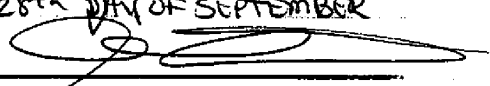
Petitioner's are not pointing a finger at the court saying that ~~the court made a mistake~~. The state of Nevada and the Division of Parole and Probation asked the court to order restitution in this matter as a matter of routine. The above mentioned state Agencies failed to advise the court that the "victims" in this case were not "victims" as defined pursuant to NRS 176.033 (1)(c) and therefore the court did not have "inherent Authority" to legally order petitioner's to pay restitution.

Because the court pursuant to Nevada statutes did not have the inherent authority to order petitioners to pay restitution as a part of petitioners judgement of conviction the (NDOC)

does not have the authority to enforce payment of restitution and make deductions from petitioner's trust account or deposits, Petitioner submits that they have demonstrated both the (4) Element requirement as well as the "serious questions" test for this court to issue an injunction or restraining order to the (NDOC) until the matter of an order to vacate petitioner's restitution is resolved.


~~ALAN DANIELS #63982~~

SUBMITTED THIS 20TH DAY OF SEPTEMBER


GARY PICKETT #57561

ALAN DANIELS #63982

P.O. BOX 208

INDIAN SPRING, NV 89076

Def in pro-per

CERTIFICATE OF SERVICE BY MAILING

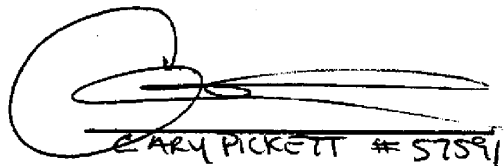
I Cary Pickett ALAN DANIELS certify that I am
the petitioner / Defendant in the attached REQUEST FOR PRELIMINARY
POINTS AND AUTHORITIES INJUNCTION
IN SUPPORT OF VACATING POSITION and that on this 28th Day of
September 2020, by placing a copy of the foregoing
in the mail here at S.D.CC Addressed pre-paid to:

The office of the District Atty

200 Lewis (RJC)

Las Vegas NV 89155

ALAN DANIELS 63982


CARY PICKETT #57591

P.O. Box 208
Indian Springs NV 89070
Defendants in pro-per

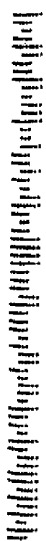
Carey Pickett #57591
P.O. Box 208
Indian Springs NV
89070

LAS VEGAS NV 890
30 SEP 2020 PM 4



Clerk of the Court
8th Judicial Dist Ct
200 Lewis (RSC)
Las Vegas NV
89155

89101-830000



CARY PICKETT #57591

P.O. Box 208
Indian Springs NV 89070
Defendants in pro-per

FILED

OCT 12 2020

Alvin L. Williams
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY NEVADA

CARY PICKETT
ALAN DANIELS

Defendants,

CASE No. C26253

Dept No. XVIII

v.

Hearing date: 10/12/2020 Time: 8:30 AM

THE STATE OF NEVADA

POINTS AND AUTHORITIES IN SUPPORT OF

Plaintiff

DEFENDANTS REQUEST FOR AN ORDER VACATING
RESTITUTION.

COME NOW CARY PICKETT and ALAN DANIELS "Defendants" in - pro - per and
submits points and authorities in support of his Request for an Order
Vacating Restitution filed September 21, 2020 scheduled for a hearing on
October 12, 2020 at 8:30 A.M.

POINTS AND AUTHORITIES / ARGUMENT IN SUPPORT OF REQUEST

Defendants were ordered by this court to pay restitution in the above case
number on or about May 10, 2010 at the request of either the Division of
Parole and Probation or the state of Nevada. The court ordered Defendants
to pay \$11,948.⁰⁰ jointly and severally, additionally individual restitution was
ordered for Pickett in the amount of \$1,550.⁰⁰ and for Daniels in the amount
of \$3,034.⁵⁰. The above mentioned restitution orders should be vacated or
reversed and any deduction previously taken should be ordered to be
restored as will be more fully explained below.

ON September 1, 2020 the NEVADA Department of Corrs. (NDOC) began deducting
80% of any deposits to prisoners trust accounts (Defendants included),
a memo posted authorized the 80% deductions based on amendments

CLERK OF THE COURT

OCT 06 2020

RECEIVED

to the (NDOC) Administrative Regulation (A.R.s) 258 and implemented due to Marry's Law according to the (NDOC). Marry's Law in Defendants understanding is a "victim" specific law that expands the rights of "PERSONS" whom a crime has been committed.

State v. DAVISON 116 Wash.2d 917, 809 P2d 1374, 1375 (1991) determined that: "the authority to impose restitution is not an inherent power of the court, but is derived from statutes" NRS 176.033 (1) (c) establishes that the court can only set restitution "if appropriate" and the only each "victim" of an offense. NRS 176.015 (5) (b) defines pursuant to Nevada law who is an appropriate "victim" which only includes (1) A person, including a governmental entity, against whom a crime has been committed; (2) A person who has been injured or killed as a direct result of the commission of a crime, and (3) A relative of a person described in subparagraph (1) or (2).

As Defendants argued in their Request for an order vacating Restitution their victims are all listed as: Bar's, Taverns and Saloons and NONE qualify as victims pursuant to NRS 176.015 (5) (b), therefore the courts order to pay restitution can be vacated as being inappropriate at the time ordered. Additionally as argued in Defendants Request the victims are in fact not persons at all but rather commercial business who's losses have presumptively been paid by their insurance companies.


Insurance companies are not a victim as defined in NRS 176.015 (5) (b) as they "do not suffer an unexpected harm or loss, as the very purpose of insurance is to cover such expenses" Hewitt v. State 113 Nev. 387 390, 936 P2d 330, 332 (1997). Further according to Defendants

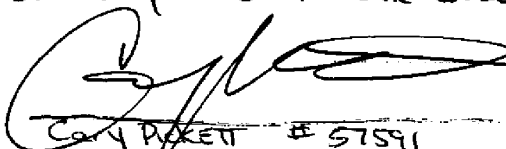
the court simply order the Defendants to pay restitution stating
" in addition to the \$25.00 Administrative Assessment Fee to pay
\$11,948.60 Restitution jointly and severally with co-defendant and
to pay \$1,550.00 individually for Pickett and \$3,034.50 for Daniels.
There was no mention as to whether the Restitution ordered was to
be paid to the insurance companies or to the businesses themselves.

Defendants might also submit to this court that due to the fact that
the order is non-specific combined with the fact that the victims in
this case do not qualify as victims pursuant to NRS 176.015(5)(b)
the Defendants would be extremely prejudiced if the order to pay
restitution were not vacated, as the NDUC would effectively deduct
funds that will in all actuality never be paid to the proper entity.

Defendants are not objecting to the amounts owed Defendants are
simply submitting that the matter is a civil matter where the
insurance company can seek a judgment from a court to recover
any loss. For the reasons as outlined above Defendant request
this court grant his REQUEST TO VACATE HIS RESTITUTION ORDER

DATED THIS 28TH DAY OF SEPTEMBER 2020


ALAN DANIELS # 63982
P.O. Box 208
INDIAN SPRINGS NV 89070
Def - in - pro - per


CARY PICKETT # 57591
P.O. Box 208
INDIAN SPRINGS NV 89070
Def - in - pro - per



1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 CARY PICKETT,

5
6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

Case No: 10C262523-2

Dept No: XIX

NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

10
11 PLEASE TAKE NOTICE that on October 8, 2020, the court entered a decision or order in this matter, a
true and correct copy of which is attached to this notice.

12 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
13 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
14 mailed to you. This notice was mailed on October 13, 2020.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 /s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

17
18
19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 13 day of October 2020, I served a copy of this Notice of Entry on the
following:

21 ☒ By e-mail:

22 Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

23
24 ☒ The United States mail addressed as follows:

25 Cary Pickett # 57591
P.O. Box 208
Indian Springs, NV 89070

26
27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar # 5734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

CARY PICKETT

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-20-817798-W
10C262523-2
DEPT NO: XIX

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

DATE OF HEARING: SEPTEMBER 14, 2020
TIME OF HEARING: 10:15 AM

THIS CAUSE having come on for hearing before the Honorable William Kephart, District Judge, on the 14th day of September, 2020, the Petitioner not being present, and being represented by MEGAN HOOPER-REBEGEA, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ANN DUNN, 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 **PROCEDURAL HISTORY**

3 On March 10, 2010, the State filed an Information charging Cary Pickett ("Petitioner")
4 with one (1) count of BURGLARY WHILE INPOSSESSION OF A FIREARM (Felony –
5 NRS 205.060); one (1) count of CONSPIRACY TO COMMIT ROBBERY (Felony – NRS
6 199.480); one (1) count of ROBBERY WITH USE OF A DEADLY WEAPON (Felony –
7 NRS 200.380, 193.165); and one (1) count of POSSESSION OF A FIREARM BY AN EX-
8 FELON (Felony – NRS 202.360). The State also included in the Information its Intent to Seek
9 Habitual Treatment under NRS 207.010 if Petitioner was found guilty of the offenses
10 otherwise listed in the Information.

11 On August 11, 2010, Petitioner entered into a Guilty Plea Agreement with the State.
12 Petitioner pled guilty to one (1) count of BURGLARY WHILE INPOSSESSION OF A
13 FIREARM (Felony – NRS 205.060); one (1) count of CONSPIRACY TO COMMIT
14 ROBBERY (Felony – NRS 199.480); one (1) count of ROBBERY WITH USE OF A
15 DEADLY WEAPON (Felony – NRS 200.380, 193.165); and one (1) count of POSSESSION
16 OF A FIREARM BY AN EX-FELON (Felony – NRS 202.360). The parties stipulated to large
17 habitual treatment under NRS 207.010. The parties further stipulated to jointly recommend a
18 sentence of two (2) to five (5) years incarceration in the Nevada Department of Corrections
19 (NDOC) as to Count 1. The parties further stipulated to jointly recommend a sentence of ten
20 (10) to twenty-five (25) years incarceration in the NDOC, consecutive to Count 1 as sentence
21 for Petitioner's habitual criminal treatment. The parties further stipulated that all other Counts
22 would run concurrent.

23 On May 10, 2010, Petitioner was adjudicated guilty of (1) count of BURGLARY
24 WHILE INPOSSESSION OF A FIREARM (Felony – NRS 205.060); one (1) count of
25 CONSPIRACY TO COMMIT ROBBERY (Felony – NRS 199.480); one (1) count of
26 ROBBERY WITH USE OF A DEADLY WEAPON (Felony – NRS 200.380, 193.165); and
27 one (1) count of POSSESSION OF A FIREARM BY AN EX-FELON (Felony – NRS
28 202.360). Petitioner was also found as a habitual criminal under NRS 207.010. The Court

1 sentenced Petitioner as follows: as to Count 1- a maximum of sixty (60) months and a
2 minimum of twenty-four (24) months in the Nevada Department of Corrections; as to Count
3 2- a maximum of sixty (60) months and a minimum of twenty-four (24) months in the Nevada
4 Department of Corrections, concurrent to Count 1; as to Count 3- habitual criminal
5 enhancement with a maximum term of twenty-five (25) years and a minimum term of ten (10)
6 years in the Nevada Department of Corrections, consecutive to Count 1; as to Count 4- a
7 maximum of sixty (60) months and a minimum of twenty-four (24) months in the Nevada
8 Department of Corrections, concurrent to count 2.

9 Petitioner's Judgment of Conviction was filed on May 19, 2010.

10 On January 27, 2011, Petitioner filed a Petition for Writ of Habeas Corpus. On March
11 22, 2011, the State filed its Response. On April 5, 2011, Petitioner filed his Reply. On April
12 6, 2011, Petitioner's Petition was denied.

13 On April 18, 2011, Petitioner filed a Notice of Appeal, appealing this Court's denial of
14 his Petition for Writ of Habeas Corpus. On October 5, 2011, the Supreme Court of Nevada
15 affirmed this Court's judgment. Remittitur was issued on November 1, 2011.

16 On December 6, 2017, Petitioner filed a Motion for Modification of Sentence. On
17 December 28, 2017, the State filed its Response. On January 3, 2018, the Motion was denied.

18 On July 9, 2020, Petitioner filed a second Petition for Writ of Habeas Corpus. On July
19 16, 2020, Petitioner filed a Motion for Bail and/or Release Pending Review of Post-Conviction
20 Petition. On July 24, 2020, the State filed its Opposition to Petitioner's Motion for Bail and/or
21 Release Pending Review of Post-Conviction Petition. The State filed its Response on August
22 21, 2020. Petitioner filed a Reply on August 27, 2020. On September 14, 2020, the Court
23 denied Petitioner's Petition. The Court's written Order follows.

24 ANALYSIS

25 **I. THE PETITION IS PROCEDURALLY BARRED**

26 **A. The Petition is Untimely**

27 The Court finds that Petitioner's Petition for Writ of Habeas Corpus is time barred
28 with no good cause shown for delay. Pursuant to NRS 34.726(1):

1 Unless there is good cause shown for delay, a petition that
2 challenges the validity of a judgment or sentence must be filed
3 within 1 year of the entry of the judgment of conviction or, if an
4 appeal has been taken from the judgment, within 1 year after the
5 Supreme Court issues its remittitur. For the purposes of this
6 subsection, good cause for delay exists if the petitioner demonstrates
7 to the satisfaction of the court:

- 8 (a) That the delay is not the fault of the petitioner; and
- 9 (b) That dismissal of the petition as untimely will unduly prejudice
10 the petitioner.

11 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its
12 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the
13 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from
14 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.
15 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

16 The one-year time limit for preparing petitions for post-conviction relief under NRS
17 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),
18 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite
19 evidence presented by the defendant that he purchased postage through the prison and mailed
20 the Notice within the one-year time limit.

21 Furthermore, the Nevada Supreme Court has held that the district court has a duty to
22 consider whether a defendant's post-conviction petition claims are procedurally barred. State
23 v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The
24 Riker Court found that “[a]pplication of the statutory procedural default rules to post-
25 conviction habeas petitions is mandatory,” noting:

26 Habeas corpus petitions that are filed many years after conviction are
27 an unreasonable burden on the criminal justice system. The necessity
28 for a workable system dictates that there must exist a time when a
criminal conviction is final.

Id. Additionally, the Court noted that procedural bars “cannot be ignored [by the district court]
when properly raised by the State.” Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court

1 has granted no discretion to the district courts regarding whether to apply the statutory
2 procedural bars; the rules must be applied.

3 In the instant case, the Court notes that the Judgment of Conviction was filed on May
4 19, 2010. Petitioner did not file a direct appeal. Petitioner had until May 19, 2011 to file a
5 timely petition for writ of habeas corpus. Petitioner did not file the instant Petition until July
6 9, 2020. As such, this Petition is untimely. The Court finds that absent a showing of good
7 cause and prejudice, the Petition must be denied pursuant to NRS 34.726(1).

8 **B. The Petition is an Abuse of the Writ**

9 The Court further finds that the Petition is also procedurally barred because it is an
10 abuse of the writ. NRS 34.810(2) reads:

11 A second or successive petition *must* be dismissed if the judge or
12 justice determines that it fails to allege new or different grounds for
13 relief and that the prior determination was on the merits or, if new and
14 different grounds are alleged, the judge or justice finds that the failure
15 of the petitioner to assert those grounds in a prior petition constituted
16 an abuse of the writ.

16 (emphasis added). Second or successive petitions are petitions that either fail to allege new or
17 different grounds for relief and the grounds have already been decided on the merits or that
18 allege new or different grounds but a judge or justice finds that the petitioner's failure to assert
19 those grounds in a prior petition would constitute an abuse of the writ. Second or successive
20 petitions will only be decided on the merits if the petitioner can show good cause and prejudice.
21 NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d 944, 950 (1994).

22 The Nevada Supreme Court has stated: "Without such limitations on the availability of
23 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-
24 conviction remedies. In addition, meritless, successive and untimely petitions clog the court
25 system and undermine the finality of convictions." Lozada, 110 Nev. at 358, 871 P.2d at 950.
26 The Nevada Supreme Court recognizes that "[u]nlike initial petitions which certainly require
27 a careful review of the record, successive petitions may be dismissed based solely on the face
28 of the petition." Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995).

1 In other words, if the claim or allegation was previously available with reasonable
2 diligence, it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499
3 U.S. 467, 497-498 (1991). Application of NRS 34.810(2) is mandatory. See Riker, 121 Nev.
4 at 231, 112 P.3d at 1074.

5 Petitioner filed his first Petition on January 27, 2011. The Court denied that Petition on
6 April 6, 2011. On October 5, 2011, the Supreme Court of Nevada affirmed this Court's
7 judgment. This is Petitioner's second Petition. The only claim in the instant Petition is that
8 while Petitioner's sentence was originally constitutional, it now constitutes cruel and unusual
9 punishment due to the rise of COVID-19. Petition at 8.

10 Petitioner has labeled this claim in challenging his sentence as cruel and unusual
11 punishment. To the extent Petitioner is determined to articulate this claim as attacking his
12 sentence, his sentence has been known to him since May 19 of 2010 when the Judgment of
13 Conviction was filed. While a claim attacking the conditions of his confinement may arguably
14 be based on a new factual predicate (i.e. that COVID-19 constitutes a new condition for which
15 the prison is responsible for attempting to protect him from), Petitioner insists that is not the
16 basis of his claim. See Petition at 25. Further, even if the Court were to construe Petitioner's
17 claim as attacking his conditions of confinement, such a claim is barred from being raised in
18 a habeas corpus proceeding (see Section I(D)(3); Bowen v. Warden of Nevada State Prison,
19 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

20 As such, this claim either should have been brought in Petitioner's first Petition or is
21 not cognizable in a habeas corpus proceeding. Therefore, this Petition is an abuse of the writ.
22 The Court finds that absent a showing of good cause, this Petition must be denied.

23 **C. The State Affirmatively Pleads Laches**

24 NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
25 exceeding five years [elapses] between the filing of a judgment of conviction, an order
26 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
27 conviction and the filing of a petition challenging the validity of a judgment of conviction..."
28 The Nevada Supreme Court observed in Groesbeck v. Warden, "[P]etitions that are filed many

1 years after conviction are an unreasonable burden on the criminal justice system. The necessity
2 for a workable system dictates that there must exist a time when a criminal conviction is final.”
3 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the presumption, the statute requires the State
4 plead laches in its motion to dismiss the petition. NRS 34.800(2). Petitioner’s judgment of
5 conviction was filed ten (10) years ago in May of 2010. The State affirmatively plead laches
6 in the instant case, thereby invoking the presumption.

7 **D. Petitioner Has Not Shown Good Cause to Overcome the Procedural Bars**

8 A showing of good cause and prejudice may overcome procedural bars. “To establish
9 good cause, appellants *must* show that an impediment external to the defense prevented their
10 compliance with the applicable procedural rule. A qualifying impediment *might* be shown
11 where the factual or legal basis for a claim was not reasonably available at the time of default.”
12 Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court
13 continued, “appellants cannot attempt to manufacture good cause[.]” Id. at 621, 81 P.3d at 526.
14 Examples of good cause include interference by State officials and the previous unavailability
15 of a legal or factual basis. See State v. Huebler, 128 Nev. Adv. Op. 19, 275 P.3d 91, 95 (2012).
16 In order to establish prejudice, the defendant must show ““not merely that the errors of [the
17 proceedings] created possibility of prejudice, but that they worked to his actual and substantial
18 disadvantage, in affecting the state proceedings with error of constitutional dimensions.””
19 Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v.
20 Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a
21 “substantial reason; one that affords a legal excuse.” Hathaway v. State, 119 Nev. 248, 252,
22 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230
23 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the petitioner.
24 NRS 34.726(1)(a).

25 As the Court articulated in Section I(B), and despite Petitioner’s insistence to the
26 contrary, there is no new factual basis to challenge his sentence as cruel and unusual
27 punishment. His sentence has been known to him since the Judgment of Conviction was filed.
28 The Court notes that COVID-19 is not a judicial or legislatively imposed punishment on

1 Petitioner, and is thus not a portion of his sentence. While Petitioner could arguably have good
2 cause to bring a claim challenging the conditions of his confinement, such a claim is not
3 cognizable in habeas corpus proceedings. (see Section I(D)(3); Bowen v. Warden of Nevada
4 State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984)). As such, the Court finds that
5 Petitioner has not shown good cause to overcome the procedural bars.

6 **E. Petitioner Cannot Show Prejudice**

7 The Court further finds that Petitioner cannot demonstrate that he would suffer
8 prejudice sufficient to overcome the procedural bar because his claim is entirely without merit.
9 See Rippo v. State, 134 Nev. 411, 422, 423 P.3d 1084, 1097, amended on denial of reh'g, 432
10 P.3d 167 (Nev. 2018) (stating: that a showing of undue prejudice under NRS 34.726
11 necessarily implicates the merits of the post-conviction claims). Petitioner's entire claim is
12 that his sentence of imprisonment is cruel and unusual punishment because he may be exposed
13 to COVID-19 while imprisoned. This claim is without merit for the following reasons.

14 **1. Petitioner's Sentence is Neither Cruel Nor Unusual Punishment**

15 The Eighth Amendment to the United States Constitution as well as Article 1, Section
16 6 of the Nevada Constitution prohibits the imposition of cruel and unusual punishment. The
17 Nevada Supreme Court has stated that "[a] sentence within the statutory limits is not 'cruel
18 and unusual punishment unless the statute fixing punishment is unconstitutional or the
19 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.
20 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435,
21 596 P.2d 220, 221-22 (1979)).

22 Additionally, the Nevada Supreme Court has granted district courts "wide discretion"
23 in sentencing decisions, and these are not to be disturbed "[s]o long as the record does not
24 demonstrate prejudice resulting from consideration of information or accusations founded on
25 facts supported only by impalpable or highly suspect evidence." Allred, 120 Nev. at 410, 92
26 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A
27 sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of
28

1 discretion, the district court's determination will not be disturbed on appeal. Randell v. State,
2 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)).
3 As long as the sentence is within the limits set by the legislature, a sentence will normally not
4 be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950 (1994).

5 The Court finds that o the extent Petitioner is determined to challenge his actual
6 sentence as cruel and unusual punishment, his claim must fail. As Petitioner concedes in his
7 Petition, the sentence imposed by the Court was constitutional. Petition at 23. At the relevant
8 time, the sentence was within the statutory range provided for the crimes for which Petitioner
9 was convicted. See NRS 199.480, NRS 205.060, NRS 203.380, NRS 193.165, NRS 202.360,
10 and NRS 207.010. Further, Petitioner has not alleged that the sentence was not proportional to
11 the crime.

12 Petitioner's only rationale for why his sentence is now cruel and unusual punishment is
13 that COVID-19 has become a pandemic. As an initial point, Petitioner has not identified a
14 single case where a defendant has successfully challenged the rise of COVID-19 as rendering
15 his entire sentence cruel and unusual punishment, rather than challenging the conditions of
16 confinement. Further, such an argument seems inapposite to the rationale behind cruel and
17 unusual punishment claims. The Eighth Amendment protects from government-imposed
18 punishments. The rise of COVID-19 is not some judicial or jury-imposed punishment on his
19 or any other defendant. It is a virus. Nowhere in Petitioner's Judgment of Conviction is his
20 exposure to this virus listed as part of his sentence. Further, this virus is currently affecting the
21 entire world, not just the prison population.

22 Petitioner's fears over the virus are well taken, as they are fears that all members of
23 society currently share. That Petitioner might at some point come into contact with this virus
24 while incarcerated would be unfortunate, and an outcome that all parties of the judicial and
25 penological systems should strive to avoid. But the mere possibility that a lawful and
26 constitutional sentence may expose a defendant to harm that is likewise suffered by the
27 community at large does not, and never has, constituted a cruel and unusual sentence. See e.g.
28 Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292, 50 L. Ed. 2d 251 (1976). (stating:

1 “Medical malpractice does not become a constitutional violation merely because the victim is
2 a prisoner. In order to state a cognizable claim, a prisoner must allege acts or omissions
3 sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only
4 such indifference that can offend “evolving standards of decency” in violation of the Eighth
5 Amendment.”)

6 Petitioner’s argument that he is suffering an additional or separate punishment are not
7 persuasive. Petitioner cites to In re Medley, 134 U.S. 160, 171 (1890) for the proposition that
8 a prisoner can “face punishment beyond an imposed sentence due to circumstances of the
9 incarceration.” Petition at 24. However, such claims are resolved by challenging the conditions
10 of confinement as cruel and unusual punishment, not the sentence itself. See Hope v. Pelzer,
11 536 U.S. 730, 737–38, 122 S. Ct. 2508, 2514, 153 L. Ed. 2d 666 (2002).

12 Further, as articulated in greater detail below (see Section I(D)(4)), and contrary to
13 Petitioner’s claims and fears, NDOC is taking active steps in combating and preventing the
14 spread of COVID-19. Petitioner’s claims that inmates face an “ever present risk and attendant
15 fear that they will be exposed to and contract the virus” is not persuasive. The unfortunate fact
16 is that the potential to be exposed to coronavirus is now an aspect of every single person’s
17 daily life. There is a potential for exposure at grocery stores, places of employment, and
18 medical facilities, just to name a few. See <https://mypost.com/2020/06/13/experts-rank-most-likely-places-to-contract-coronavirus/>. The CDC has even published information regarding the
19 stress caused by the pandemic, so inmates are not alone in those aspects. See
20 <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/managing-stress-anxiety.html>.

21 The Court notes that Petitioner has failed to demonstrate that he specifically is even at
22 any increased risk of either contracting the virus or dying from it. Petitioner alleges that he
23 suffers from high blood pressure, asthma, and obesity. However, Petitioner has failed to submit
24 any documentation from certified medical professionals that he is personally at a heightened
25 risk for COVID-19 and that his risk is higher where he is incarcerated than if he were released.
26 While Petitioner claims that his medical history of asthma and high blood pressure places him
27 at greater risk, there is no evidence that those individuals suffering from asthma experience an
28

1 increased infection rate.¹ The CDC has also stated that those individuals suffering from
2 asthma and high blood pressure only *might* have an increased risk of severe illness.² Further,
3 while incarcerated, Petitioner has access to the medications necessary to control and treat both
4 of these illnesses. While the CDC has stated that individuals who are obese to the point that
5 they have a BMI of 30 or higher are at an increased risk of severe illness from COVID-19,
6 Petitioner has not submitted any proof that his BMI is at this level. Further, Petitioner's obesity
7 would place him at an increased risk of severe illness regardless of whether he was
8 incarcerated. In addition, Petitioner has not demonstrated that the NDOC is unable to provide
9 him with proper medical care regarding any complications arising from his obesity.

10 Petitioner has merely presented over-generalized aspects of COVID-19 and the
11 evolving risk factors as currently understood. Petitioner has attached the declaration of Dr.
12 Karen Gedney. However, the declaration never mentions Petitioner by name, nor indicates that
13 he is in any more danger from the illness than any other individual. Further, it seems from the
14 language used in the declaration that Dr. Karen Gedney no longer works with the Nevada
15 Department of Corrections. It would further seem that she has not worked there since COVID-
16 19 became a pandemic (Dr. Gedney's declaration states that she worked at the NDOC for thirty
17 (30) years starting in 1987. As such, it would seem she quit working for the NDOC in 2017.).
18 Given that Dr. Gedney has not worked for the NDOC in four (4) years, she does not have any
19 first-hand knowledge of the current conditions within the prison. Such a declaration, like the
20 rest of Petitioner's pleading, speaks only to generalities of the virus and assumptions of how
21 it is being handled within the NDOC. Such vague allegations are insufficient to support post-
22 conviction allegations. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984)
23 (holding that bare or naked allegations are insufficient to entitle a defendant to post-conviction
24 relief).

25 Further, Petitioner's argument that he is within eighteen (18) months of his parole
26 release date is irrelevant to the current inquiry. Whether a sentence is cruel and unusual
27

28 ¹ <https://www.aaaai.org/conditions-and-treatments/library/asthma-library/covid-asthma>

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

1 punishment does not turn based on whether a sentence is near the mandatory minimum for
2 time spent incarcerated; it turns on the nature of the punishment imposed. Petitioner seems to
3 imply that his risk of death from COVID-19 is so great that he is now being denied the
4 expectation of reaching his parole eligibility date. Petition at 26. This statement is seemingly
5 inaccurate based on current knowledge regarding how COVID-19 is affecting the Nevada
6 Department of Corrections. While COVID-19 is certainly a serious illness, the CDC has
7 estimated that as of August 3, 2020, there have been 4,601,526 reported cases of COVID-19,
8 with 154,002 deaths in the United States. If these numbers are accurate, the mortality rate
9 currently sits at approximately 3%. Given that as of July 17, 2020 only .145% of the inmates
10 in the NDOC had been infected with COVID-19, any allegations that a sentence of
11 incarceration is akin to a sentence of death is hyperbolic.³

12 The Court would further note that under the theory Petitioner advances in his Petition
13 (that his actual sentence is cruel and unusual punishment), every single sentence of
14 incarceration being served in the State of Nevada would be unconstitutional and in violation
15 of the Eighth Amendment. As Petitioner has admitted as much in an earlier filing, this
16 circumstance applies to all incarcerated individuals. See Reply to Respondent's Opposition to
17 Motion for Bail and/or Release Pending Review of Post-Conviction Petition at 6-7. However,
18 Petitioner then goes on to state that not all defendants should be released. Id. That is not the
19 way the cruel and unusual punishment standard works. If COVID-19, as Petitioner argues,
20 essentially sentences a defendant to death (See Petition at 23), then such a punishment would
21 be unconstitutional for every defendant not currently on death row, and every single one of
22 them could bring a similar Petition and be entitled to be released from custody. The ultimate
23 outcome of Petitioner's logic shows its logical inconsistency. The existence of a pandemic is
24 not a get out of jail free card for this defendant or any other.

25
26
27 ³ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> ; see also
28 http://doc.nv.gov/uploadedFiles/docnvgov/content/About/Press_Release/NDOC_Offenders_Arizona_Saguaro.pdf

1 The simple reality is that Petitioner's sentence is and was lawful when it was imposed.
2 The existence of a global pandemic that threatens every single person on this planet does not
3 change this fact. Petitioner is not entitled to escape the consequences of his actions based on a
4 threat that is global in nature. The Court therefore finds that COVID-19 has nothing to do with
5 Petitioner's sentence, and he is not entitled to release or a finding that his sentence is cruel and
6 unusual punishment based on its existence.

7 **2. Petitioner is Actually Challenging His Conditions of Confinement**

8 Even though Petitioner's claim clearly fails even if considered under the standard
9 Petitioner urges, the Court finds that what Petitioner is actually bringing in his Petition is a
10 claim of cruel and unusual conditions of confinement.

11 The proper way to challenge that an individual's lawful incarceration has exposed them
12 to certain harms while incarcerated is to challenge the conditions of confinement under the
13 Eighth Amendment. Farmer v. Brennan, 511 U.S. 825, 832, 114 S. Ct. 1970, 1976, 128 L. Ed.
14 2d 811 (1994) (stating: "The Constitution 'does not mandate comfortable prisons,' Rhodes v.
15 Chapman, 452 U.S. 337, 349, 101 S.Ct. 2392, 2400, 69 L.Ed.2d 59 (1981), but neither does it
16 permit inhumane ones, and it is now settled that 'the treatment a prisoner receives in prison
17 and the conditions under which he is confined are subject to scrutiny under the Eighth
18 Amendment,' Helling, 509 U.S., at 31, 113 S.Ct., at 2480.")

19 In fact, a review of both this state's and the Supreme Court's jurisprudence shows that
20 issues such as: excessive force used by prison officials (see Farmer v. Brennan, 511 U.S. 825,
21 832, 114 S. Ct. 1970, 1976, 128 L. Ed. 2d 811 (1994)); lack of access to appropriate medical
22 care (Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292, 50 L. Ed. 2d 251 (1976)); the
23 use of cruel punishments within a prison (Hope v. Pelzer, 536 U.S. 730, 737-38, 122 S. Ct.
24 2508, 2514, 153 L. Ed. 2d 666 (2002)); the danger of inmate on inmate violence (Butler ex
25 rel. Biller v. Bayer, 123 Nev. 450, 459, 168 P.3d 1055, 1062 (2007); and the use of punitive
26 segregation (Bowen v. Warden of Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250
27 (1984)) are all addressed under a conditions of confinement analysis (or a similar analysis
28 considering whether the conduct of the prison staff was indifferent).

1 Given that dangers occurring within a prison have never rendered an entire sentence of
2 incarceration as cruel and unusual punishment, Petitioner cannot show that the rise of COVID-
3 19 means that he can now challenge his sentence as cruel and unusual punishment. Any cruel
4 and unusual punishment claim must challenge the *conditions of confinement* as cruel and
5 unusual. Other Courts have come to this exact conclusion when dealing with similar filings.
6 See, inter alia, Foster v. Comm'r of Correction, 484 Mass. 698, 716, 146 N.E.3d 372, 390
7 (2020) (addressing an Eight Amendment claim regarding the rise of COVID-19 as a conditions
8 of confinement question); People ex rel. Coleman v. Brann, No. 260252/20, 2020 WL
9 1941972, at *7 (N.Y. Sup. Ct. Apr. 21, 2020)⁴; Matter of Pauley, 466 P.3d 245, 256, 259-60
10 (Wash. Ct. App. 2020) (declining to abandon the deliberate indifference standard).

11 As such, the Court finds that to the extent there is any recognizable claim presented in
12 this Petition, it is that Petitioner is challenging the conditions of his confinement as
13 unconstitutional. Petitioner claims that this is not the case, that he is asserting that his sentence
14 as a whole is now unconstitutional and he is entitled to release. Petition at 25-26. But the
15 applicable legal standard to a claim does not change simply because a Petitioner says it does.
16 As the Court has thoroughly articulated above, the relevant standard for a claim that an
17 individual's incarceration exposes him to harm is that the conditions of confinement are cruel
18 and unusual punishment. As such, the Court finds that Petitioner is actually challenging his
19 conditions of confinement.

20 **3. Conditions of Confinement Claims are Not Cognizable in a Habeas** 21 **Corpus Petition**

22 In Bowen v. Warden of Nevada State Prison, the Nevada Supreme Court stated:

23 We have repeatedly held that a petition for writ of habeas corpus may
24 challenge the validity of current confinement, but not the conditions
25 thereof. See Director, Dep't Prisons v. Arndt, 98 Nev. 84, 640 P.2d
26 1318 (1982); Rogers v. Warden, 84 Neb. 539, 445 P.2d 28 (1968);

27 ⁴ This case is cited only for the proposition that this Court analyzed a similar claim under a conditions of
28 confinement standard. That the New York Court allows such a claim to be brought in a Petition for Writ of
Habeas Corpus is irrelevant, as this jurisdiction has expressly forbid such a claim from being brought in such a
Petition. See Bowen v. Warden of Nevada State Prison, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

1 Rainsberger v. Leypoldt, 77 Nev. 399, 365 P.2d 489 (1961), cert.
2 denied, 368 U.S. 516, 82 S.Ct. 530, 7 L.Ed.2d 522 (1962). In Rogers,
3 we held that a claim of brutal treatment at the hands of prison officials
4 was not cognizable on a habeas petition, because the claim spoke to
5 the conditions and not the validity of confinement. In Arndt, we left
6 open the specific question raised by this appeal, whether the
7 imposition of a qualitatively more restrictive type of confinement
8 within the prison, such as punitive segregation, may be challenged by
9 a petition for writ of habeas corpus. We now hold that such a challenge
10 speaks only to the conditions of confinement and therefore may not
11 be raised by a habeas corpus petition. See Rogers v. Warden, supra.

12 The district court correctly ruled that the instant claim for relief was
13 not cognizable in a habeas corpus proceeding.

14 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

15 As such, the Court finds that Petitioner's claim challenging his conditions of
16 confinement is not cognizable in a Petition for Writ of Habeas Corpus. In fact, the Nevada
17 Supreme Court has recently declined to grant relief to a petitioner alleging that the dangers of
18 COVID-19 required his release from prison as this was beyond the scope of a habeas petition.
19 See Kerkorian v. Sisolak, 462 P.3d 256 (Nev. 2020) (unpublished disposition). As such, the
20 Court finds that Petitioner's claim cannot even be considered in a habeas corpus proceeding.

21 **4. Petitioner's Conditions of Confinement Are Not Cruel and Unusual** 22 **Punishment**

23 Further, even if Petitioner could bring a claim challenging the conditions of his
24 confinement in a Petition for Writ of Habeas Corpus, such a claim would be without merit.

25 In determining whether the conditions of confinement constitute cruel and unusual
26 punishment, the question is whether prison officials have displayed a deliberate indifference
27 to Petitioner's safety; or failed to undertake reasonable measures" to ensure the safety of
28 prisoners. See Farmer, 511 U.S. at 829, 114 S. Ct. at 1974; see also Hudson v. Palmer, 468
U.S. 517, 526–527, 104 S.Ct. 3194, 3200, 82 L.Ed.2d 393 (1984). The United States Supreme
Court has analogized displaying a deliberate indifference with recklessly disregarding a risk.
Farmer, 511 U.S. at 836, 114 S. Ct. at 1978. "[I]t is enough that the official acted or failed to

1 act despite his knowledge of a substantial risk of serious harm.” Id. at 842, 114 S. Ct. at 198-
2 81.

3 Recently, the Ninth Circuit held in US v. Dade that the COVID-19 pandemic and risk
4 of contracting the virus in prison does not warrant release if the risks are being adequately
5 addressed. 959 F.3d 1136, 1139 (9th Cir. 2020). The Court further explained that even if the
6 risks are not being adequately addressed transferring the defendant to a different facility, as
7 opposed to release, would likely be appropriate. Id. The Ninth Circuit has further explained
8 that granting release is appropriate only after a defendant establishes that they have serious
9 health issues and that the prison is incapable of treating those health concerns. In re Roe, 257
10 F.3d 1077, 1081 (9th Cir. 2001).

11 However, the Court notes that Nevada Department of Corrections has been undertaking
12 various measures in an attempt to protect not just Petitioner, but all inmates from the risk
13 imposed by COVID-19. According to NDOC’s official website the following protocols have
14 been instituted thus far in response to COVID-19.

15 1. Running modified operations that limit travel between facilities and
16 restricted visitation at all facilities. This will be in-place until
17 corrections and medical experts at NDOC, working alongside local
18 and state government agencies, determine that the health and safety of
staff and offenders are no longer threatened by COVID-19.

19 2. Each morning, all employees are being screened for symptoms of
20 the virus, including having their temperature taken. Anyone found
21 with one of the cardinal symptoms (fever of 100 degrees F or greater,
22 shortness of breath, dry cough, chills, muscle pain, new loss of taste
or smell) are sent home where they must obtain medical clearance or
test negative for COVID-19 before returning to work.

23 3. All personnel who do enter a secure facility are required to wear a
24 face covering.

25 4. Testing new arrivals at the intake units at High Desert State Prison
26 and Northern Nevada Correctional Center for COVID-19, and
27 isolating offenders who test positive in negative airflow cells.
28

1 5. The dissemination of the latest CDC guidance for staff and
2 offenders, including the Center of Disease Control's Stop the Spread
3 of Germs poster, in highly visible areas.

4 6. Surface Sanitation Teams, using a 10% bleach concentration,
5 thoroughly clean surfaces at all facilities.

6 7. Hand soap is readily available at every facility, both in cells and in
7 common areas. NDOC encourages all persons to frequently wash their
8 hands using warm soap and water for at least 20 seconds.

9 8. Prison Industries is manufacturing hand sanitizer, medical gowns,
10 and face coverings to ensure NDOC staff have access to these critical
11 supplies. PI is also manufacturing alcohol-free hand sanitizer and face
12 coverings for offenders.

13 9. If an offender is suspected of having an illness, or if they self-report
14 feeling ill, NDOC medical staff immediately assess and place them in
15 that facility's infirmary or medically observes them in their cell.
16 NDOC also alerts Culinary so meals are delivered to the offenders
17 while they're in the infirmary or their cell.⁵

18 Additionally, NDOC officials have instituted the following:

19 Distribution of 22,000 face coverings statewide to offenders to reduce
20 the likelihood of an asymptomatic COVID-19 carrier passing the virus
21 to others. Face covering distribution was done in conjunction with
22 new security guidelines that ensure public safety goals are fully met.

23 Clearly, Petitioner cannot argue that prison authorities are unwilling to address COVID-
24 19 problems within the prisons. In fact, the NDOC's website further states:

25 [NDOC] is working closely with local and state public health officials
26 to prepare for Novel Coronavirus (COVID-19), with the top priority
27 being the health of staff and offenders at our facilities. The plan of our
28 ongoing public health response is to detect and rapidly contain
introductions of this virus with the goal of delaying and ultimately
preventing sustained spread of COVID-19.

NDOC completed a statewide testing initiative in June during which
it tested all offenders - approximately 12,368 - for COVID-19. Of

⁵ http://doc.nv.gov/About/Press_Release/covid19_updates/

1 those tested, only 18 – or .15% of all offenders – have tested positive
2 for the virus, **one of the lowest rates in the nation.**

3 ...
4 “The very low number of offenders testing positive is a testament to
5 the strength of the firewall NDOC established to stop the spread of
6 the virus,” said Charles Daniels, NDOC Director. “Our custody staff
7 implemented pro-active procedures to ensure the safety of everyone
8 at our facilities, while our medical staff worked tirelessly to test
9 offenders and provide appropriate medical care. This has been a team
10 effort and I could not be prouder.”⁶

11 Petitioner has previously cited to an article stating that 69 of 99 Nevada inmates housed
12 at the Saguaro Correctional facility *in Arizona* tested positive for COVID-19. Reply to
13 Respondent’s Opposition to Motion for Bail and/or Release Pending Review of Post-
14 Conviction Petition at 5-6. However, Petitioner is not incarcerated at Saguaro Correctional
15 Center. Petitioner is incarcerated at the Southern Desert Correctional Center. Petition at 1.
16 Further, this very same article Petitioner cites states that “Approximately 12,368 offenders,
17 which represent 99.9% of the NDOC’s total population – were tested for COVID-19, with
18 only 18 – or .145% *testing positive* for the virus, *one of the lowest rates in the nation.*”⁷ The
19 Court would also note that this article states that of all the inmates who tested positive in this
20 Arizona facility, none had exhibited any symptoms or required hospitalization.

21 Further, the Court notes that if Petitioner’s argument is truly motivated by reducing
22 Petitioner’s exposure to COVID-19, statistics would contradict his belief that he is more at
23 risk of contracting the virus while incarcerated. Current reports establish that only .2 percent
24 of inmates in the NDOC have tested positive for COVID-19.⁸ Specifically, in Clark County
25 Correctional facilities, there are currently only five reported cases of COVID-19. Id. This is in
26 comparison to 56,972 confirmed cases in Clark County which represented 11.7 percent of

27 ⁶ http://doc.nv.gov/About/Press_Release/covid19_updates/ (emphasis added)

28 ⁷ http://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Press_Release/NDOC_Offenders_Arizona_Saguaro.pdf (emphasis added)

⁸ “Facilities with reported COVID-19 Cases, State of Nevada Department of Health and Human Services, last updated on August 10, 2020 at 9 AM (last accessed on August 10, 2020 at 3:58 PM) <https://app.powerbigov.us/view?r=eyJrIjoibDMwMDI0YmQtNmUyYS00ZmFjLWl0MGltZDM0OTY1Y2Y0YzNhIiwidCI6ImU0YTM0MGU2LWI4OWUtNGU2OC04ZWFlLTE1NDRkMjcwMzk4MCI9>.

1 those tested.⁹ As such, Petitioner's claim that he is more likely to contract COVID-19 should
2 he remain incarcerated is belied by the statistics.

3 Given the litany of ways in which the NDOC is attempting to protect prisoners from
4 this virus, as well as the NDOC's success as one of the nation's leaders in protecting those
5 incarcerated from this virus, there can be no legitimate assertion that officials are failing to act
6 despite knowledge of a substantial risk of serious harm. Therefore, the Court finds that
7 conditions of confinement cannot constitute cruel and unusual punishment.

8 As such, this claim is without merit. Since this claim is without merit, Petitioner cannot
9 show that he would be prejudiced from the imposition of the mandatory procedural bars.
10 Therefore, the Court finds that under both NRS 34.726 and NRS 34.810, this Petition is
11 procedurally barred as untimely.

12 **II. THERE IS NO NEED FOR AN EVIDENTIARY HEARING**

13 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 14 1. The judge or justice, upon review of the return, answer and all
15 supporting documents which are filed, shall determine whether an
16 evidentiary hearing is required. A petitioner must not be discharged
17 or committed to the custody of a person other than the respondent
18 unless an evidentiary hearing is held.
- 19 2. If the judge or justice determines that the petitioner is not entitled
20 to relief and an evidentiary hearing is not required, he shall dismiss
21 the petition without a hearing.
- 22 3. If the judge or justice determines that an evidentiary hearing is
23 required, he shall grant the writ and shall set a date for the hearing.

24 The Nevada Supreme Court has held that if a petition can be resolved without
25 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
26 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
27 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
28 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled

⁹ "COVID-19 (Coronavirus) State of Nevada Department of Health and Human Services, last updated on August 10, 2020 at 9:45 AM (last accessed on August 10, 2020 at 4:16 PM)
<https://app.powerbigov.us/view?r=eyJrIjoia2ZThiOWUtM2FINS00MGY5LWFmYjUtNmQwNTQ3Nzg5N2I2IiwidCI6ImU0YTU0MGU2LWl4OWUtNGU2OC04ZWZhLTE1NDRkMjcwMzk4MCJ9>.

1 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100
2 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction
3 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the
4 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it
5 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It is
6 improper to hold an evidentiary hearing simply to make a complete record. See State v. Eighth
7 Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district court
8 considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make as
9 complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

10 Further, the United States Supreme Court has held that an evidentiary hearing is not
11 required simply because counsel’s actions are challenged as being unreasonable strategic
12 decisions. Harrington v. Richter, 131 S. Ct. 770, 788 (2011). Although courts may not indulge
13 post hoc rationalization for counsel’s decision making that contradicts the available evidence
14 of counsel’s actions, neither may they insist counsel confirm every aspect of the strategic basis
15 for his or her actions. Id. There is a “strong presumption” that counsel’s attention to certain
16 issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing
17 Yarborough v. Gentry, 540 U.S. 1, 124 S. Ct. 1 (2003)). Strickland calls for an inquiry in the
18 objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. 466
19 U.S. 668, 688, 104 S. Ct. 2052, 2065 (1994).

20 While not articulated in his Petition, Petitioner’s Reply to Opposition for Bail and/or
21 Release claims that an evidentiary hearing is required to “assess the actual danger of
22 transmission.” Reply to Respondent’s Opposition to Motion for Bail and/or Release Pending
23 Review of Post-Conviction Petition at 6. The Court finds that there is no need for such an
24 evidentiary hearing. COVID-19 is only relevant to the instant proceedings to the extent it was
25 a punishment imposed on Petitioner. As the Court has thoroughly articulated above, it was not.
26 As such, its existence, regardless of its severity, does not establish that Petitioner’s sentence
27 was either cruel or unusual punishment. A claim challenging the conditions of confinement as
28 cruel and unusual punishment cannot be brought in a Petition for Writ of Habeas Corpus. As

1 such, there are no grounds for an evidentiary hearing in the instant case and this request is
2 denied.

3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that the Post-Conviction Petition for Writ
5 of Habeas Corpus shall be, and it is, hereby denied.

6 DATED this 7th day of October, 2020.

Dated this 8th day of October, 2020



DISTRICT JUDGE

918 776 C660 5F4A
William D. Kephart
District Court Judge

7
8
9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001565

11 BY /s// TALEEN PANDUKHT
12 TALEEN PANDUKHT
13 Chief Deputy District Attorney
Nevada Bar #5734

14
15
16 **CERTIFICATE OF MAILING**

17 I hereby certify that service of the above and foregoing was made this 7th day of
18 October, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

19 CAREY PICKETT, #57591
20 S.D.C.C.
21 PO BOX 208
INDIAN SPRINGS, NV 89070

22 BY /s// E. DEL PADRE
23 E. DEL PADRE
24 Secretary for the District Attorney's Office

25
26
27 ed/GCU
28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Cary Pickett, Plaintiff(s)

CASE NO: A-20-817798-W

7 vs.

DEPT. NO. Department 19

8 Jerry Howell, et al.,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 10/8/2020

16 ECF Notifications CHU

ecf_nvchu@fd.org

17 Richard Chavez

richard_chavez@fd.org

18 Megan Hopper-Rebegea

Megan_Hopper-Rebegea@fd.org

19 Steven Wolfson

Motions@clarkcountyda.com

20 Dept Law Clerk

dept19lc@clarkcountycourts.us

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
WILLIAM FLINN, JR.
Chief Deputy District Attorney
Nevada Bar #013119
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-

CAREY PICKETT,
#0725059

Defendant.

CASE NO: 10C262523-2

DEPT NO: XIX

**ORDER DENYING DEFENDANT'S REQUEST FOR AN
ORDER VACATING RESTITUTION**

DATE OF HEARING: OCTOBER 12, 2020

TIME OF HEARING: 10:15 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 12th day of October, 2020, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through WILLIAM FLINN, JR., Chief Deputy District Attorney, and the Court without argument, based on the pleadings and good cause appearing therefor,

///

///


///

///

1 The Court finds that Defendant's Request is based on Defendant's speculation that the
2 victims of Defendant's crimes were compensated by insurance companies, that Defendant's
3 Request provides no points and authorities to show that the victims would not still be entitled
4 to the restitution, that Defendant's Request provides no points and authorities to show that
5 the Court is permitted to reconsider restitution amounts that were ordered without objection
6 from Defendant at sentencing more than ten years ago, and that pursuant to EDCR 3.20, the
7 lack of points and authorities is cause for denial, and therefore,

8 IT IS HEREBY ORDERED that the Defendant's Request for an Order Vacating
9 Restitution, shall be, and it is Denied.

10 DATED this _____ day of October, 2020. ~~Dated this 15th day of October, 2020~~

11 

12 DISTRICT JUDGE

579 644 AECB 75B4
William D. Kephart
District Court Judge

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

15
16 BY /s/ WILLIAM FLINN JR.
17 WILLIAM FLINN, JR.
18 Chief Deputy District Attorney
19 Nevada Bar #013119

20 CERTIFICATE OF MAILING

21 I hereby certify that service of the above and foregoing was made this 14th day of
22 October, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 CAREY PICKETT, #0725059
24 S.D.C.C.
25 PO BOX 208
INDIAN SPRINGS, NV 89070

26 BY /s/ E. DEL PADRE
27 E. DEL PADRE
28 Secretary for the District Attorney's Office

ed/GCU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: 10C262523-2

7 vs

DEPT. NO. Department 19

8 Cary Pickett

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/15/2020

15 Dept 19 Law Clerk

dept19lc@clarkcountycourts.us

CARY PICKETT #57591
P.O. Box 208
Indian Springs NV
89070

FILED

MAR 30 2021

EIGHT JUDICIAL DISTRICT COURT, CLARK COUNTY

CLERK OF COURT

CARY PICKETT
ALAN DANIELS
VS. Defendants

CASE No. C26253

DEPT No. XVIII

10C262523 2

THE STATE OF NEVADA

Plaintiff

DEFENDANT'S REQUEST FOR A REHEARING OF
HIS REQUEST FOR AN ORDER VACATING HIS
RESTITUTION / (RULE 60 CONSIDERATION) AND
HIS REQUEST FOR A RESTRAINING ORDER/PRELIMINARY
INJUNCTION, EXPLANATION OF SERVICE REQUIREMENT

COMES NOW CARY PICKETT and ALAN DANIELS "Defendants" in proper and
moves this Court for a rehearing, reconsideration or RULE 60 consideration
of this Court's order of October 12, 2020 denying Defendants motion
requesting the Court vacate their restitution.

ARGUMENT

April 21, 2021
8:30 AM

Defendants filed their motion September 21, 2020, Plaintiff The Office of
the District Attorney filed their opposition on October 9, 2020. Prior to
the Plaintiff's filing their opposition, Defendants mailed their points
and authorities on September 28, 2020 (that included a hearing date of
October 12, 2020 8:30 AM) on the cover. The clerk of the Court stamped
the points and authorities received on October 6, 2020, however
the same was not filed until the day of the hearing October 12, 2020.

Despite the fact that the office of the District Attorney's office
would have received the Defendants Points and Authorities 3 days prior
to the filing of their opposition they were not addressed in their
opposition.

The Defendants in this case has never been notified of
the outcome or rulings made regarding this matter. The Clerk

of the Court did not serve either Defendant with this Court's order of October 12, 2020. Neither has the office of the District Attorney forwarded to either Defendant this Court's Ruling. The Defendants assumed that due to Covid-19 their hearing had been indefinitely postponed or delayed.

The Defendants only discovered after February 17, 2021 when Defendant was sent his Case Summary that his motion was DENIED for failure to support his motion with points and authorities, as the court can see as stated above the Defendants did in fact file timely Points and Authorities that clearly included the date and time of his hearing and due to clerical error or inadvertence (or even Covid-19 delay) the points and authorities were not considered at his hearing.

Similarly Defendants request for an restraining order / Preliminary injunction according to the case summary was taken off calendar for failure to serve the office of the Attorney General. The Defendants are unclear of any rule or requirement to serve this motion on the "AG", however Defendant were never notified of this decision either, and request clarification.

CONCLUSION

Because Defendant did file points and authorities timely and were never notified of the Court's Oct. 12, 2020 decision Defendant request rehearing, reconsideration (Rule 60) request be granted

Dated this 16th Day of March 2021

Cary Bickett 57511

ALAN DANIES 63982
Defendants in pro-per

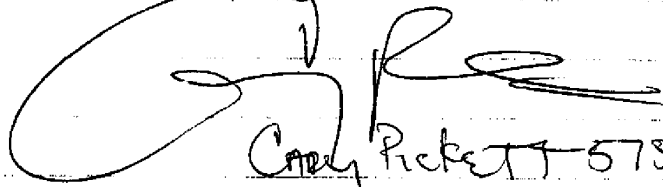
CERTIFICATE OF SERVICE
BY MAIL

I Cary Pickett hereby certify that I am the ~~Defendant~~ ^{Defendant} in the foregoing Case No. C26253 and that I placed a true and correct copy of Defendants Request For a Rehearing of his Request to vacate his Restitution / Rule 60 consideration and his request for a restraining order / preliminary injunction, Explanation of service Requirement, By placing same in the U.S. mail here at S.D. CC. on the 18th Day of March 2021

Addressed pre-paid to

The office of the District Attorney
200 Lewis RUC
Las Vegas NV 89101

Dated 3-18-21



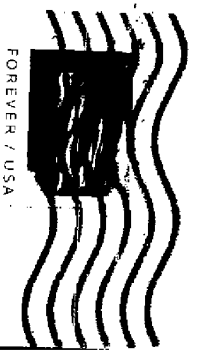
Cary Pickett 57591
P.O. Box 206
Indian Springs NV 89070

Carey Pickett 5759,
P.O. Box 208
Indian Springs, ND

84020-0000
CYRUS OFFICE

San Judicial District Court
Department 18
RJC
Las Vegas NV 89155

LAS VEGAS NV 890
19 MAR 2021 PM 3 L



6515539993





1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 WILLIAM FLINN, JR.
6 Chief Deputy District Attorney
7 Nevada Bar #013119
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 CAREY PICKETT,
13 #0725059

14 Defendant.

CASE NO: 10C262523-2

DEPT NO: III

15 **STATE'S OPPOSITION TO DEFENDANT'S REQUEST**
16 **FOR AN ORDER VACATING RESTITUTION**

17 DATE OF HEARING: 4/21/2021
18 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through WILLIAM FLINN, JR., Chief Deputy District Attorney, and hereby
20 submits the attached Points and Authorities in Opposition to Defendant's Request for An
21 Order Vacating Restitution.

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

25 //

26 //

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 3, 2010, the State filed a Criminal Complaint charging Defendant CAREY
4 PICKETT with five (5) counts of Burglary While in Possession of a Firearm, seven (7) counts
5 of Robbery With Use of a Deadly Weapon, five (5) counts of Conspiracy to Commit Robbery,
6 and six (6) counts of Possession of a Firearm by an Ex-Felon. On March 10, 2010, pursuant
7 to negotiations, the State filed an Information charging Defendant with one count each of
8 Burglary While in Possession of a Firearm, Conspiracy to Commit Robbery, Robbery with
9 Use of a Deadly Weapon, and Possession of a Firearm by an Ex-Felon. On March 11, 2010,
10 pursuant to a written Guilty Plea Agreement, Defendant pled guilty to the same charges.

11 On May 10, 2010, Defendant was adjudged a Habitual Criminal and sentenced as
12 follows: as to Count 1 – Burglary While in Possession of a Firearm, to a MAXIMUM of
13 SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24)
14 MONTHS; as to Count 2 – Conspiracy to Commit Robbery, to MAXIMUM of SIXTY (60)
15 MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; as to
16 Count 3 – Robbery with Use of a Deadly Weapon, to a MAXIMUM of TWENTY-FIVE (25)
17 YEARS with a MINIMUM parole eligibility of TEN (10) YEARS, Count 3 to run
18 CONSECUTIVE to Count 1; as to Count 4 – Possession of a Firearm by an Ex-Felon, to a
19 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-
20 FOUR (24) MONTHS, Count 4 to run CONCURRENT with Count 2, with EIGHTY-EIGHT
21 (88) DAYS credit for time served. This Court further ordered Defendant to pay restitution of
22 \$11,948.60 jointly and severally with his codefendant and \$1,550.00 individually. A
23 Judgment of Conviction was filed on May 19, 2010.¹

24 On September 21, 2020, Defendant filed a Request for an Order Vacating Restitution.
25 On October 8, 2020, the State filed an Opposition. On October 12, 2020, this Court denied
26 Defendant's Request. Additionally on October 12, 2020, Defendant filed a Memorandum of
27 Points and Authorities, which appears to represent Defendant's purported support for his
28

¹ Due to clerical errors, an Amended Judgment of Conviction was filed on September 24, 2010.

1 Request. The Memorandum was not submitted to this Court contemporaneously with the
2 Request, and was not filed before hearing on the request, and thus this Court did not consider
3 the filing.

4 On March 30, 2021, Defendant filed a Request for Rehearing for an Order Vacating
5 Restitution/Request for a Restraining Order Injunction asking this Court to reconsider its prior
6 ruling based on the late-filed Points and Authorities. The State opposes.

7 ARGUMENT

8 Defendant's Request for Rehearing argues that, on October 12, 2020, this Court denied
9 his Request for an Order Vacating Restitution because the Request lacked points and
10 authorities in support of the Request, which is largely true. Notwithstanding the Defendant
11 fails to explain why the points and authorities were filed separately from the Request, as EDCR
12 3.20(b) requires points and authorities to be filed "with" a motion, Defendant now asks this
13 Court to consider the Points and Authorities filed on October 12, 2020 and revisit its prior
14 decision.

15 Defendant's Points and Authorities filed on October 12, 2020, however, do not solve
16 the problem with Defendant's Request. The State noted in its October 8, 2020, Opposition
17 that Defendant provided "no points and authorities whatsoever to support the notion that this
18 Court must, or even is permitted to, now revisit restitution amounts that were ordered at
19 Defendant's sentencing more than ten (10) years ago, amounts that were ordered without
20 objection by Defendant at that time." Defendant, by merely filing a document entitled "Points
21 and Authorities," still does not provide any legal authority whatsoever to demonstrate that this
22 Court has jurisdiction to revisit Defendant's sentence ordered more than a decade ago.
23 Defendant did not object to the restitution amounts at sentencing, and Defendant did not file a
24 direct appeal from the Judgment of Conviction to challenge the restitution. See Passanisi v.
25 State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992) (overruled on other grounds by Harris
26 v. State, 130 Nev. 435, 447, 329 P.3d 619, 627 (2014)) (stating "[a] district court generally
27 lacks jurisdiction to modify a sentence after the defendant has begun to serve it.") .
28 Defendant's Request should, therefore, yet again be denied.

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CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Request be denied.

DATED this 16th day of April, 2021.

Respectfully submitted,

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

BY /s/ WILLIAM FLINN JR.
WILLIAM FLINN, JR.
Chief Deputy District Attorney
Nevada Bar #013119

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 16th day of April, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CAREY PICKETT, #57591
S.D.C.C.
PO BOX 208
INDIAN SPRINGS, NV 89070

BY /s/ E. Del Padre
E. DEL PADRE
Secretary for the District Attorney's Office

WF/ed/GCU

CARY PICKETT #57591
P.O. Box 208
INDIAN SPRINGS NV
89070

FILED

JUN 16 2021

8th JUDICIAL DISTRICT COURT, CLARK COUNTY

~~CLERK OF COURT~~

CARY PICKETT

ALAN DANIELS

Defendants

CASE No. C26253

10C262523-2

v

Dept No. XIX

Dept. 3

THE STATE OF NEVADA

Plaintiffs

DEFENDANTS JUDICIAL NOTICE
CITING FAILURE OF NOTIFICATION OF COURT
RULINGS, AND SEEKING RELIEF OF RESTITUTION
ISSUES VIA WRIT OF MANDAMUS / PROHIBITION
(Petitions ATTACHED TO BE FILED)

Came now CARY PICKETT and ALAN DANIELS "Defendants" in pro-per and files his judicial notification of the court clerks failure to serve the plaintiff with this courts orders regarding restitution. Also "Defendants" files and submits for this Courts consideration his writ of Mandamus / Prohibitions praying that this restitution issue can finally be sorted out, clarified and resolved.

I STATEMENT OF ISSUE FOR NOTIFICATION #1

"Defendants" filed their motion to vacate restitution on Sept 21, 2020 (admittedly vacating restitution may have been drastic, clarification may in fact be more appropriate). This court denied "Defendants" motion on October 12, 2020, however the clerk of the court failed to serve Defendant with this courts order.

As stated in "Defendants" "Request for a rehearing filed March 30, 2021" "Defendants" only became aware of the courts order February 17, 2021 after receiving his case summary. Further this Court did grant "Defendants" request for a rehearing on April 21, 2021, however the clerk of the court again failed to serve either

RECEIVED
JUN 14 2021
CLERK OF THE COURT

①

Defendant with this court's order granting a rehearing (scheduled for June 9th 2021). "Defendants" again only discovered that the court granted the rehearing by requesting a case summary that he received on June 2, 2021.

Defendant contend that they have a right to timely received notification of court orders and the clerk of the court has twice failed to serve Defendants of crucial court orders regarding the issues and this needs to be addressed.

II STATEMENT OF ISSUE FOR NOTIFICATION #2

The "Plaintiff's" in this case continually mischaracterizes the issues/argument that the "Defendants" have submitted for the court's review regarding restitution. The Defendants have at no time argued or contested or challenged the Amount of restitution ordered in this case. The "Defendants" have steadfastly sought the court's intervention to clarify the following:

#1 Restitution owed to the bars themselves, (and if that amount is based on a total loss from the incident or merely a deductible) from the amount owed to the bar owners insurance company.

The Defendants believes that the court has jurisdiction to investigate this issue at this time pursuant to NRS 176.033(1)(c) as well as State v. Davison 116 Wash 2d 917, 809 P2d 1374, 1375 (1991) to resolve this issue.

#2 The Director of the NEVADA Dept of Corrections "NDOC" who has blatantly ignored the Judgment of Conviction "JOC" where restitution was ordered both jointly and severally with the co-defendant in the amount of \$11,948.60

The Director of the "NDOC" is only enforcing payment individually for each co-defendant (SEE: Attached monthly statement for both Pickett and Daniel April 2021) (petition for writ of Mandamus / Prohibition)

The "NDOC" Director has no Authority to effectually double the amount of restitution owed and ordered pursuant the Defendants "JOC" of \$11,948.60 by ignoring the joint application of restitution. And the Defendants submits that the court has the absolute Authority to determine or inquire as to whether restitution ordered on May 10, 2010 is factually owed to the bar owners or to insurance companies, because the Defendants are not challenging the amounts only the courts inherent authority to order payment to insurance companies as insurance companies are not victims as defined in NRS 176.015 (5)(b) SEE Hewitt v. State, 113 Nev 387, 390, 936 P2d 330, 332 (1997).

III CONCLUSION

Based on the foregoing the Defendants request the court consider and grant Defendants petition for writ of Mandamus / Prohibition.

DATED THIS 8TH DAY OF JUNE 2021

CARY PICKETT

AS S-1591

Defendant in pro-per

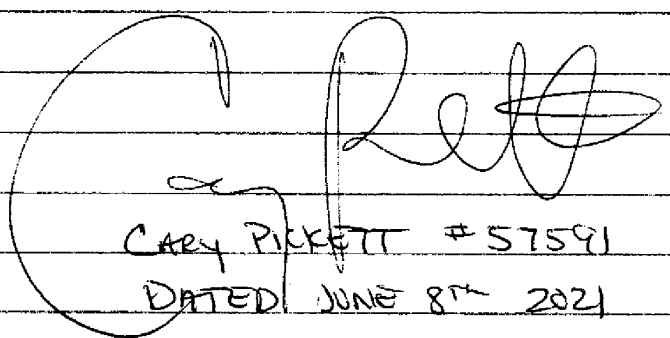
③

CERTIFICATE OF SERVICE BY MAIL

I Cary Pickett hereby certify that I am the Defendant / Petitioner in the foregoing case No. C26253, and I place a true copy of my judicial notice w/attach petition for writ of Mandamus / Prohibition by placing in the US. mail

ADDRESS PRE-PAID to
THE OFFICE OF THE ATTORNEY
555 WASHINGTON AVE
Las Vegas NV, 89101

OFFICE OF THE DISTRICT ATTORNEY
200 LEWIS
Las Vegas NV, 89101



CARY PICKETT #57591
DATED JUNE 8TH 2021

CARY PICKETT #57541
P.O. Box 208
Indian Springs NV
89070

July 7, 2021
8:30 AM

FILED
JUN 16 2021

CLERK OF COURT

8th JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA

CARY PICKETT

CASE No. C262523

10C262523-2

ALAN DANIELS

Dept. 3

PETITIONERS

v.

THE STATE OF NEVADA

DIRECTOR OF THE NEVADA
DEPT OF CORRECTIONS

RESPONDENTS

Petition For writ OF MANDAMUS and

Prohibition DIRECTING THE NDCC to

correctly apply restitution order

AND TO CEASE DEDUCTIONS UNTIL CORRECTED

Comes now Cary Pickett and Alan Daniels "petitioners" in proper and submits this petition for a writ of Mandamus / Prohibition ordering the Nevada Dept of Corrections "NDCC" to cease to deduct monies from petitioners trust account until the "NDCC" correctly applies restitution as this courts order directed

I. ARGUMENT / POINTS AND AUTHORITIES

The petitioners in this case were ordered to pay restitution for this case on May 19, 2010 jointly and severally with co-defendant in the amount of \$11,948.60. Additionally Pickett was ordered to pay \$1550.00 individually and Daniels was ordered to pay \$3,034.50 individually. (SEE: Attached Judgment of Conviction "JOC")

The director of the "NDCC" however has arbitrarily ignored the jointly ordered directive portion of this courts order electing to only individually apply restitution. Even more egregiously the "NDCC" has elected to combine the petitioners jointly and severally restitution of 11,948.60 together with each separately

individual amount. For example Pickett's restitution amount according to the "NDOC" reads as \$13,498.60 and DANIEL's amount reads as \$14,938.10. This effectively interprets as the petitioners owing a total of (\$28,436.70). (see: Attached monthly statements) April 2021, (then adding both petitioners totals.)

Petitioner Pickett has had a total of \$307.⁵¹ deducted from his inmate account to date and Daniels has had a total of \$330.¹⁷ deducted from his inmate account, however the total deduction of \$637.⁶⁸ is not reflected on both petitioners statements. The jointly owed restitution amount should reflect a balance of \$11,310.⁹².

A. WRIT OF MANDAMUS OR PROHIBITION

Writ of mandamus is available to compel performance of an act which the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion (see: NRS. 34.160 / Round Hill Gen. Imp Dist v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).)

Writ of prohibition is the counterpart of the writ of mandate. It arrest the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are with out or in excess of the jurisdiction of such tribunal, corporation, board or person. NRS 34.320

IN the case at bar the Director of the "NDOC" has a duty to enforce the restitution order exactly as the court had ordered pursuant to petitioner's "J.O.C.". Specifically to apply payments jointly and severally toward the \$11,948.⁶⁰ restitution

order, additionally to create a separate individual entry account for Pickett in the amount of \$1550.00 and Daniels in the amount of \$3,034.50. For the Director of the "NDOC" to combine an individual restitution order with a jointly and severally with co-defendant order effectively doubling the amount of restitution owed is not only arbitrary but is very capricious and must be mandated and prohibited, until such a time that the "NDOC" can demonstrate to this Court the issue has been corrected.

Petitioners have sought to remedy this issue within the "NDOC" for years and have filed with this Court request to vacate restitution and/or issue a preliminary injunction and seeks Mandamus/Prohibition to speedily remedy this issue. NRS 34.330 provides: "writ may be issued by appellate or District Court when no plain, speedy and adequate remedy in law."

II CONCLUSION

Based on the above petitioners respectfully request the Court issue writs directing the "NDOC" to cease deducting monies until the "NDOC" correctly applies and enforces the Courts restitution order pursuant to petitioners "JOC".

Respectfully Submitted this 27th Day of May 2021

Cary Pickett

Alan Daniels

Alan Daniels

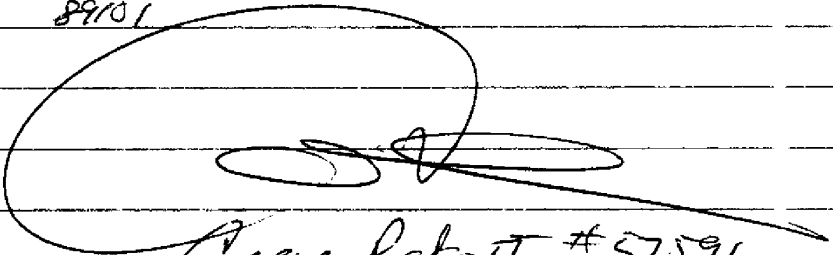
Petitioners in prayer

CERTIFICATE OF SERVICE

I Cary Pickett certify under penalty of perjury
(NRS. 208.165) that I mail postage pre-paid copies
of Cary Pickett / ALANDANES "Petition for writ of Mandamus /
Prohibition to

Office of the District Attorney
200 E. LEWIS (RJC)
Las Vegas NV, 89155

Office of the Attorney General #5700
555 E. Washington Ave
Las Vegas NV, 89101



Cary Pickett #57591
P.O. Box 208 S.D.C.C
Indian Springs NV
89070

DATED JUNE 8th 2021

AFFIDAVIT OF CARY PICKETT
IN SUPPORT OF PETITIONER
REQUEST FOR ISSUANCE OF
WRITS OF MANDAMUS/PROHIBITION

STATE OF NEVADA }
COUNTY OF CLARK } SS:

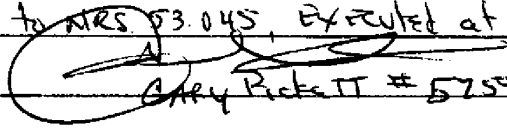
Affiant Cary Pickett, being duly sworn, hereby deposes:

1. Affiant is Petitioner in "Petition for writ of Mandamus/Prohibition"
2. Affiant is an adult (over age of 18) a NV Dept of Corrections "NDOC" inmate who is fully competent to testify regarding personal matters contained within this Affidavit.
3. That Affiant understands that he is jointly and severally ordered to pay restitution in the amount of \$11,945.60 with co-defendant Nam Daniels.
4. That the Director of the "NDOC" is deducting monies from both DANIELS AND Affiant, however is only applying these deductions indivisually and not jointly.
5. That Affiant has diligently sought correction of this issue within the "NDOC" to no avail and has been forced to seek this Courts intervention.
6. That this Affidavit is being offered in support of petitioners petition for a writ of Mandamus and/or Prohibition

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he the Affiant, has read the above Affidavit and that the information contained therein is true and correct. Said penalty is pursuant to NRS 33.045, Executed at SDCC

DATED THIS 26th OF MAY 2021


CARY PICKETT #57591 Affiant

ATTACHMENT #1

1 AJOCP

2010 JUL 28 P 1:33

3
4 DISTRICT COURT

[Signature]
CLERK OF THE COURT

5 CLARK COUNTY, NEVADA

6
7 THE STATE OF NEVADA,

8 Plaintiff,

CASE NO. C262523

9 -vs-

DEPT. NO. XVIII

10
11 CARY PICKETT
12 aka Cary Jerard Pickett
13 #0725059

Defendant.

14 AMENDED JUDGMENT OF CONVICTION
15 (PLEA OF GUILTY)
16

17 The Defendant previously appeared before the Court with counsel and entered a
18 plea of guilty to the crimes of COUNT 1 – BURGLARY WHILE IN POSSESSION OF A
19 FIREARM (Category B Felony), in violation of NRS 205.060, COUNT 2 – CONSPIRACY
20 TO COMMIT ROBBERY (Category B Felony), in violation of NRS 199.480, 200.380,
21 COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony), in
22 violation of NRS 200.380, 193.165, and COUNT 4 – POSSESSION OF FIREARM BY
23 EX-FELON (Category B Felony), in violation of NRS 202.360; thereafter, on the 10th day
24 of May, 2010, the Defendant was present in court for sentencing with his counsel,
25 CAESAR ALMASE, ESQ., and good cause appearing,
26
27
28

1 THE DEFENDANT WAS THEREBY ADJUDGED guilty of said offenses under
2 the HABITUAL Criminal Statute (NRS 207.010) and, in addition to the \$25.00
3 Administrative Assessment Fee, to PAY \$11,948.60 RESTITUTION jointly and severally
4 with co-defendant, and to PAY \$1,550.00 RESITUTION Individually, the Defendant was
5 sentenced to the Nevada Department of Corrections (NDC)as follows: AS TO COUNT
6 1 - TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of
7 TWENTY-FOUR (24) MONTHS; AS TO COUNT 2 - TO A MAXIMUM of SIXTY (60)
8 MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; AS TO
9 COUNT 3 - LIFE with a MINIMUM parole eligibility after TEN (10) YEARS has been
10 served, COUNT 3 to run CONSECUTIVE to COUNT 1; and AS TO COUNT 4 - TO A
11 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of
12 TWENTY-FOUR (24) MONTHS, COUNT 4 to run CONCURRENT with COUNT 2; with
13 EIGHTY-EIGHT (88) DAYS Credit for Time Served. As the Fee and Genetic Testing
14 have been previously imposed, the Fee and Testing in the current case are WAIVED.
15

16
17
18 THEREAFTER, on the 27th day of July, 2010, due to clerical error, Defendant's
19 sentence to be amended to reflect COUNT 3 – TO A MAXIMUM of TWENTY-FIVE (25)
20 MONTHS with a MINIMUM parole eligibility of TEN (10) MONTHS and COUNT 3 to run
21 CONSECUTIVE to COUNT 1.
22

23
24 DATED this 28th day of July, 2010

25
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27 
28 DAVID BARKER
DISTRICT JUDGE

ATTACHMENT #2

Daily Transaction Summary: April 01, 2021 - April 30, 2021

Page 1

Offender Number: 0057591
Offender Name: PICKETT, CARY J
Account Status: Open

Institution: SDCC
Housing Facility: U4

Living Unit: B
Cell: 4
Bed: B

Date	Transaction Type	Payer / Paid To	Reference Number	Deposit# / Check#	Amount	Balance	Loc Code
04/01/2021						\$180.62	
04/07/2021 07:59:02 PM	Phone Credit	Securus	161785074257591		(\$1.00)	\$179.62	DOC
04/09/2021 09:43:30 AM	Phone Credit	Securus	161798661157591		(\$1.00)	\$178.62	DOC
04/13/2021 12:58:41 PM	Phone Credit	Securus	161834392257591		(\$2.00)	\$176.62	DOC
04/17/2021 06:52:32 PM	Phone Credit	Securus	161871075257591		(\$1.00)	\$175.62	DOC
04/20/2021 12:27:29 PM	Phone Credit	Securus	161894684957591		(\$1.00)	\$174.62	DOC
04/21/2021 08:50:13 AM	Phone Credit	Securus	161902021357591		(\$1.00)	\$173.62	DOC
04/21/2021 12:07:23 PM	Phone Credit	Securus	161903204357591		(\$1.00)	\$172.62	DOC
04/21/2021 06:11:16 PM	Phone Credit	Securus	161905387657591		(\$1.00)	\$171.62	DOC
04/22/2021 08:46:44 AM	Phone Credit	Securus	161910640457591		(\$1.00)	\$170.62	DOC
04/23/2021 01:57:57 PM	Legal Postage	SDCC			(\$7.80)	\$162.82	SDCC
04/27/2021 08:52:15 AM	Phone Credit	Securus	161953873657591		(\$1.00)	\$161.82	DOC
04/30/2021						\$161.82	

Date	Reference Number	Amount	Balance	Loc Code
04/01/2021			\$0.00	
No Activity				
04/30/2021			\$0.00	

Date	Reference Number	Amount	Balance	Loc Code
04/01/2021			\$0.00	
No Activity				
04/30/2021			\$0.00	

Date	Reference Number	Amount	Balance	Loc Code
04/01/2021			\$0.00	
No Activity				
04/30/2021			\$0.00	

Department Opening Balance:

\$0.00

DOC Sanction Type	Reference Number	Document Number	V Document Number	DOC Sanction Date	Paid To
Legal Postage	2488277	10000239571		1/19/2021	SDCC
Date	Description	Check Document Number	Amount	Balance	
04/01/2021			Opening Balance:	\$0.00	
04/23/2021 01:57:57 PM	New		\$7.80	\$7.80	
04/23/2021 01:57:57 PM	Offender Payment		(\$7.80)	\$0.00	
04/30/2021			Closing Balance:	\$0.00	
			Department Closing Balance:	\$0.00	

Description	Paid To	Period To Curr	Max Per Period	Ordered Payment	Initial Paid To Curr	Outside Source	Total Paid	Remaining
Count Filing Fee - 3:17-cv-00567- MMD-WGC	USDC Nevada	\$0.00	N/A	\$350.00	N/A	\$0.00	\$350.00	\$0.00
Count Filing Fee - 2:19-cv-00611- JAD-EJY	USDC Nevada	\$56.00	N/A	\$350.00	N/A	\$0.00	\$114.00	\$236.00
Restitution - C262523	Clark County CH	\$0.00	N/A	\$25.00	Y	\$25.00	\$25.00	\$0.00
Restitution - C262523	Parole and Probation	\$44.00	N/A	\$13,498.60	Y	\$263.51	\$307.51	\$13,191.09
Total:								\$13,427.09

Daily Transaction Summary: April 01, 2021 - April 30, 2021

Page 1

Offender Number 0063982
Offender Name: DANIELS, ALAN D
Account Status: Open

Institution: SDCC
Housing Facility: U4

Living Unit: B
Cell: 4
Bed: A

Date	Transaction Type	Payer / Paid To	Reference Number	Deposit# / Check#	Amount	Balance	Loc Code
04/01/2021						\$121.66	
04/02/2021 12:03:03 PM	Victim Specific	7194 - Prison Industries Payroll	0331/2021	9900016418	\$151.74	\$273.40	SDCC
04/03/2021 12:03:03 PM	Victim Specific	Parole and Probation	0331/2021		(\$75.87)	\$197.53	SDCC
04/03/2021 12:03:03 PM	Room and Board	Capital Improvement	0331/2021		(\$7.59)	\$189.94	SDCC
04/03/2021 12:03:03 PM	Room and Board	Room and Board	0331/2021		(\$37.18)	\$152.76	SDCC
04/03/2021 12:03:03 PM	Savings		0331/2021		(\$15.17)	\$137.59	SDCC
04/05/2021 12:03:03 PM	Victim of Crime Fund	Victim of Crime Fund	0331/2021		(\$7.59)	\$130.00	SDCC
04/05/2021 12:03:03 PM	Court Order Fine	Clark County CH	0331/2021		(\$4.55)	\$125.45	SDCC
04/08/2021 12:03:15 PM	Commissary		3809-102989059		(\$44.20)	\$81.25	SDCC
04/13/2021 09:52:21 AM	Commissary Refund		3809-102975576		\$3.15	\$84.40	SDCC
04/13/2021 09:52:21 AM	Trust 2				(\$3.15)	\$81.25	SDCC
04/16/2021 02:06:39 PM	Prison Industries Payroll	7194 - Prison Industries Payroll	0415/2021	9900016494	\$132.27	\$213.52	SDCC
04/16/2021 02:06:39 PM	Victim Specific	Parole and Probation	0415/2021		(\$66.14)	\$147.38	SDCC
04/16/2021 02:06:39 PM	Capital Improvement	Capital Improvement	0415/2021		(\$6.61)	\$140.77	SDCC
04/16/2021 02:06:39 PM	Room and Board	Room and Board	0415/2021		(\$32.41)	\$108.36	SDCC
04/16/2021 02:06:39 PM	Savings		0415/2021		(\$11.50)	\$96.86	SDCC
04/16/2021 02:06:39 PM	Victim of Crime Fund	Victim of Crime Fund	0415/2021		(\$6.61)	\$90.25	SDCC
04/16/2021 02:06:39 PM	Court Order Fine	Clark County CH	0415/2021		(\$3.97)	\$86.28	SDCC
04/22/2021 09:26:29 AM	Trust 2				\$3.15	\$89.43	SDCC
04/22/2021 09:26:29 AM	Commissary		3809-103002280		(\$14.72)	\$74.71	SDCC
04/30/2021						\$74.71	

Date	Reference Number	Amount	Balance	Loc Code
04/01/2021		\$0.00	\$0.00	
04/13/2021 09:52:21 AM		\$3.15	\$3.15	SDCC
04/22/2021 09:26:29 AM		(\$3.15)	\$0.00	SDCC
04/30/2021		\$0.00	\$0.00	

Daily Transaction Summary (0063982 - ALAN DANIELS cont.): April 01, 2021 - April 30, 2021

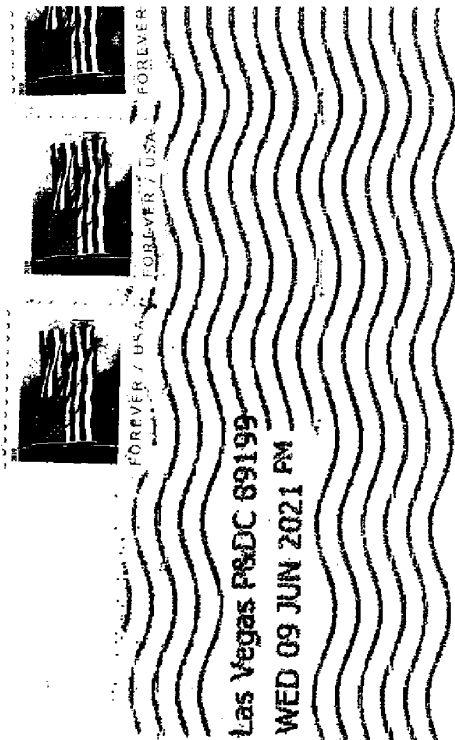
Date	Reference Number	Amount	Balance	Loc Code
04/01/2021			\$0.00	
No Activity				
04/30/2021			\$0.00	

Date	Reference Number	Amount	Balance	Loc Code
04/01/2021			\$523.33	
04/05/2021 12:03:03 PM	04/05/2021	\$15.17	\$538.50	SDCC
04/16/2021 02:06:39 PM	04/15/2021	\$11.50	\$550.00	SDCC
04/30/2021			\$550.00	

Date Held	Hold Type	Notes	Amount
No Activity			

Description	Paid To	Period To	Max Per	Ordered	Initial	Paid To Curr	Outside	Total Paid	Total
Restitution - C262523	Clerk County CH	\$12.83	N/A	\$25.00	N	\$12.83	\$0.00	\$12.83	\$12.07
Restitution - C262523	Parole and Probation	\$330.17	N/A	\$14,983.10	N	\$330.17	\$0.00	\$330.17	\$14,652.93
Total:									\$14,665.00

CARY PICKETT # 57591
P.O. Box 208
Indian Springs NV
89070



Las Vegas P&DC 89199
WED 09 JUN 2021 PM

3rd Floor

8th Judicial Dist Court
200 Lewis
Las Vegas NV
89155

RECEIVED
JUN 14 2021
CLERK OF THE COURT

ORDER
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BERNARD ZADROWSKI
Chief Deputy District Attorney
Nevada Bar #006545
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-

CARY JERARD PICKETT,
#00725059
Defendant.

CASE NO: 10C262523-2

DEPT NO: III

**ORDER DENYING DEFENDANT'S REQUEST FOR AN ORDER
VACATING RESTITUTION**

DATE OF HEARING: June 09, 2021

TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 9th day of June, 2021, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through BERNARD ZDROWSKI, Chief Deputy District Attorney, and the Court without argument, based on the pleadings and good cause appearing therefor,

///

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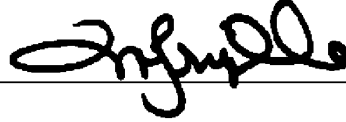
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1 IT IS HEREBY ORDERED that the Defendant's Request for an Order Vacating
2 Restitution, shall be, and it is DENIED consistent with State's Opposition.

3 Dated this 24th day of June, 2021

4 
5

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

CFA 883 D991 CE68
Monica Trujillo
District Court Judge

9 BY /s/ BERNARD ZADROWSKI
10 BERNARD ZADROWSKI
11 Chief Deputy District Attorney
Nevada Bar #006545

12
13 CERTIFICATE OF SERVICE

14 I certify that on the 24th day of June, 2021, I mailed a copy of the foregoing Order to:

15 CARY JERARD PICKETT, BAC #57591
16 S.D.C.C.
17 P. O. BOX 208
INDIAN SPRINGS, NEVADA 89070

18
19 BY /s/ J. HAYES
20 Secretary for the District Attorney's Office

21
22
23
24
25
26
27
28 10F02742X/jh/GCU

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 State of Nevada

CASE NO: 10C262523-2

7 vs

DEPT. NO. Department 3

8 Cary Pickett
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 6/24/2021

15 Dept 19 Law Clerk

dept19lc@clarkcountycourts.us



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JONATHAN VANBOSKERCK
6 Deputy District Attorney
7 Nevada Bar #006528
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: 10C262523-2

12 CARY PICKETT,
13 #0725059

DEPT NO: III

14 Defendant.

15 **STATE'S OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF**
16 **MANDAMUS AND PROHIBITION**

17 DATE OF HEARING: July 7, 2021
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through JONATHON VANBOSKERCK, Chief Deputy District Attorney,
21 and hereby submits the attached Points and Authorities in Response to Petitioner's Petition for
22 Writ of Mandamus and Prohibition (hereinafter "Writ").

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

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1 arbitrary or capricious exercise of discretion.” Id. (quoting Marshall v. District Court, 108
2 Nev. 459, 466 (1992)).

3 NDOC is not a judicial body. NDOC is an agency within the executive branch of
4 Nevada’s state government. A writ of mandamus may not be used to control its exercise of
5 discretion.

6 **B. Prohibition Standard**

7 A writ of prohibition may be used by a court to order a judicial body to refrain from
8 doing an act in excess of its jurisdiction. NRS 34.320. “The writ [of prohibition] may be issued
9 only by the Supreme Court, the Court of Appeals or a district court to an inferior tribunal, or
10 to a corporation, board or person, in all cases where there is not a plain, speedy and adequate
11 remedy in the ordinary course of law.” NRS 34.330.

12 NDOC is not a judicial body. A writ of prohibition may not be used to order it to refrain
13 from engaging in certain activities.

14 **C. Petitioner Has Other Remedies Available**

15 “[M]andamus and prohibition are extraordinary remedies, and the decision of whether
16 a petition will be entertained lies within the discretion of this court.” Hickey, 105 Nev. at 731.
17 Before seeking the extraordinary relief of mandamus, a petitioner must first pursue the “plain,
18 speedy, and adequate” remedies otherwise available to him. Id.; NRS 34.170.

19 The petitioner carries “the burden of demonstrating that extraordinary relief is
20 warranted.” Min. Cty. v. State, Dep’t of Conservation & Nat. Res., 117 Nev. 235, 246, 20 P.3d
21 800, 807 (2001). The Nevada Supreme Court has previously emphasized the narrow
22 circumstances under which mandamus is available and has cautioned that extraordinary
23 remedies are not a means for routine correction of error.

24 If Petitioner desires to challenge the seizure of funds from his inmate account by
25 NDOC, he may do so through any of a number of remedies that are potentially at his disposal.
26 Petitioner may avail himself of administrative remedies, or file a civil lawsuit alleging trespass
27 to property or conversion. He may be able to file a civil rights complaint pursuant to 42 U.S.C.
28 § 1983 if he believes he can demonstrate NDOC’s actions have “deprive[d] him of a right,

1 privilege, or immunity protected by the Constitution or laws of the United States.” Butler ex
2 rel. Biller v. Bayer, 123 Nev. 450, 458, 168 P.3d 1055, 1061 (2007).

3 **D. This Court Lacks Authority to Address Petitioner’s Claims**

4 Most importantly, this Court does not have the authority to issue orders related to
5 conditions of confinement that are unrelated to a defendant’s sentence. A court is limited in
6 the actions it may take in a criminal case in which the defendant is currently serving a sentence.
7 A motion to modify a sentence or to correct an illegal sentence may be considered by a
8 sentencing court, but may only be granted in a narrow range of circumstances. See Edwards
9 v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996). A court may consider a post-conviction
10 habeas relief, but habeas claims are limited to challenges as to the conviction or sentence, not
11 conditions of confinement. See NRS 34.724(1); Bowen v. Warden of Nevada State Prison,
12 100 Nev. 489, 490, 686 P.2d 250, 250 (1984). There is nothing in Nevada case law or statute
13 which grants a court with jurisdiction over a criminal matter authority to issue orders related
14 solely to the petitioner’s confinement conditions and not to the petitioner’s conviction or
15 sentence.

16 Here, Petitioner has options to correct an alleged error, but the extraordinary writs of
17 mandamus or prohibition addressed to this court are not available options.

18 **II. CHALLENGES TO RESTITUTION MUST BE ADDRESSED TO THE**
19 **ATTORNEY GENERAL**

20 A challenge to the conditions of confinement must be responded to by the Attorney
21 General, as the legal representative of NDOC. See NRS 228.110. Claims regarding the
22 conditions of confinement do not concern the validity of the sentence or conviction itself, and
23 thus must be dealt with separately from the criminal case.

24 If the Court wishes to address the appropriateness of Petitioner’s reimbursing his
25 victims, Petitioner should be required to serve the Attorney General’s Office (“AG”). The
26 Attorney General responds to claims regarding the conditions of confinement after a person
27 has begun serving a sentence.

28 //

1 The Clark County District Attorney's Office is prohibited from addressing Petitioner's
2 claims as they are statutorily assigned to the AG. NRS 228.110. This court should deny writ
3 relief and require Petitioner to serve his petition on the AG if he wants his complaint
4 adjudicated.

5 **III. PETITIONER IS JOINTLY AND SEVERALLY LIABLE FOR THE**
6 **RESTITUTION ORDERED**

7 NRS 176.033(1)(c) provides that, where restitution is appropriate, the Court may set an
8 amount of restitution for each victim of the offense. This restitution should be treated as a civil
9 judgment. NRS 176.275(1). The statutory provisions governing civil judgments require joint
10 and several liability. NRS 17.235.

11 Despite Petitioner's objections to victim reimbursement being deducted from his
12 account, the law states that joint and several liabilities are charged to each responsible party
13 until the total amount is paid. Here, Petitioner claims he is being charged double for the
14 restitution, though he has not paid anywhere close to "his half" of the amount due. Should one
15 party end up paying more than his share, he may seek contribution from his co-defendant in a
16 civil lawsuit.

17 **CONCLUSION**

18 Based on the foregoing the State respectfully requests that Petitioner's Petition for Writ
19 of Mandamus and Prohibition be DENIED.

20 DATED this 16th day of June, 2021.

21 Respectfully submitted,
22 STEVEN B. WOLFSON
23 Clark County District Attorney
24 Nevada Bar #001565

25 BY /s/ JONATHAN VANBOSKERCK
26 JONATHAN VANBOSKERCK
27 Deputy District Attorney
28 Nevada Bar #006528

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 29th day of June, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CAREY PICKETT, BAC#57591
SOUTHERN DESERT CORRECTIONAL CENTER
P.O. BOX 208
INDIAN SPRINGS, NEVADA 89070

BY /s/ L.M.
Secretary for the District Attorney's Office

10F02742B/JVB/sr/lm/GCU

ORDER
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BERNARD ZADROWSKI
Chief Deputy District Attorney
Nevada Bar #006545
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-

CARY PICKETT,
#0725059

Defendant.

CASE NO: 10C262523-2

DEPT NO: III

**ORDER DENYING PETITIONER'S PETITION FOR WRIT OF
MANDAMUS AND PROHIBITION**

DATE OF HEARING: July 07, 2021

TIME OF HEARING: 08:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 7th day of July, 2021, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through BERNARD ZADROWSKI, Chief Deputy District Attorney, and the Court without argument, based on the pleadings and good cause appearing therefor,

///

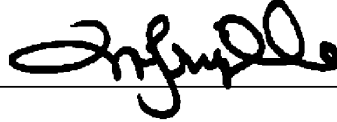
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1 IT IS HEREBY ORDERED that the Petitioner's Petition for Writ of Mandamus and
2 Prohibition, shall be, and it is DENIED. Dated this 15th day of July, 2021

3 
4

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

2F8 C10 7E18 ECAB
Monica Trujillo
District Court Judge

8 BY /s/BERNARD ZADROWSKI
9 BERNARD ZADROWSKI
10 Chief Deputy District Attorney
11 Nevada Bar #006545

12 CERTIFICATE OF SERVICE

13 I certify that on the 14th day of July, 2021, I mailed a copy of the foregoing Order to:

14 CAREY PICKETT, BAC #57591
15 SOUTHERN DESERT CORRECTIONAL CENTER
16 P. O. BOX 208
17 INDIAN SPRINGS, NEVADA 89070-0208

18 BY /s/ J. HAYES
19 Secretary for the District Attorney's Office
20
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28 10F02742B/jh/GCU

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: 10C262523-2

7 vs

DEPT. NO. Department 3

8 Cary Pickett
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 7/15/2021

15 Dept 3 Law Clerk

dept03lc@clarkcountycourts.us

CARY PICKETT #57591
PO. BOX 208
Indian Springs NV
89070

Electronically Filed
08/03/2021

Heather Shuman
CLERK OF THE COURT

27

DISTRICT COURT CLARK COUNTY NEVADA

THE STATE OF NEVADA
Plaintiff

CASE No. 10C262523-2

v.

DEPT No. III

CARY PICKETT
Defendant

NOTICE OF APPEAL

Come Now Cary Pickett in pro-per and submits
his Notice of Appeal of the District Courts decision
Denying his petition for Writ of Mandamus and
Prohibition without explanation.

The District Court was specific in ordering
restitution both jointly and severally with co-defendant
and the NDOC has refused to jointly apply restitution,
therefore the the Court has the authority to enforce
the Defendants JOC and order the NDOC to
apply restitution accordingly including a joint
application with co-defendant as originally ordered.

DATED THIS 27TH DAY OF JULY 2021

Cary Pickett
Cary Pickett Defendant in pro-per

CERTIFICATE OF SERVICE

I Cary Pickett Certify that on July 27, 2021 I
mailed a copy of the foregoing Notice of Appeal to:

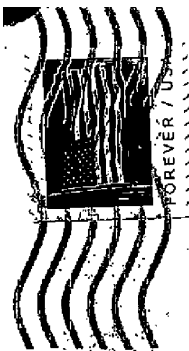
STEVEN WOLFSON (ECDA)
200 LEWIS AVE
Las Vegas NV, 89155

Cary Pickett
Cary Pickett
Defendant

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CLERK OF THE COURT

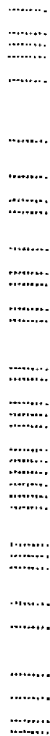
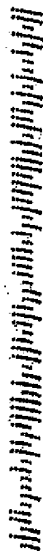
Cary Pickett #57571
P.O. Box 208
Indian Springs NV
89070

LAS VEGAS NV 890
29 JUL 2021 PM 4 L



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CLERK OF THE COURT
Clerk of the 8th Judicial Dist Court
200 Leans Ave
Las Vegas NV
89155

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

STATE OF NEVADA,

Plaintiff(s),

vs.

CARY PICKETT aka CARY JERARD PICKETT,

Defendant(s),

Case No: 10C262523-2

Dept No: III

CASE APPEAL STATEMENT

1. Appellant(s): Cary Pickett

2. Judge: Monica Trujillo

3. Appellant(s): Cary Pickett

Counsel:

Cary Pickett #57591
P.O. Box 208
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

1 (702) 671-2700

2 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
3 Permission Granted: N/A

4 Respondent(s)'s Attorney Licensed in Nevada: Yes
5 Permission Granted: N/A

6 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7 7. Appellant Represented by Appointed Counsel On Appeal: N/A

8 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9 9. Date Commenced in District Court: March 3, 2010

10 10. Brief Description of the Nature of the Action: Criminal

11 Type of Judgment or Order Being Appealed: Misc. Order

12 11. Previous Appeal: Yes

13 Supreme Court Docket Number(s): 58191, 65037, 75042, 75468, 83187

14 12. Child Custody or Visitation: N/A

15 Dated This 4 day of August 2021.

16 Steven D. Grierson, Clerk of the Court

17
18 /s/ Heather Ungermann

19 Heather Ungermann, Deputy Clerk
20 200 Lewis Ave
21 PO Box 551601
22 Las Vegas, Nevada 89155-1601
23 (702) 671-0512
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25 cc: Cary Pickett
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DOCUMENTARY EXHIBITS

ORIGINAL

FILED

FEB 21 3 42 PM '07

Cliff Smith
CLERK OF THE COURT

JOCP
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
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-

CARY JERARD PICKETT,
#0725059

Defendant.

Case No: C226282

Dept No: 1

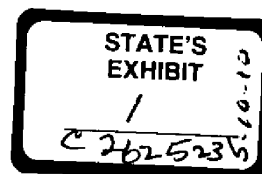
JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of **TRANSPORT OF A CONTROLLED SUBSTANCE** (Category B, Felony), in violation of NRS 453.321; thereafter, on the 14th day of February, 2007, the Defendant was present in court for sentencing with his counsel, JAMES L. BUCHANAN II, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in addition to the \$25.00 Administrative Assessment Fee, \$60.00 Drug Analysis fee and \$150.00 DNA Analysis fee are IMPOSED, the Defendant is sentenced as follows: to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC), SUSPENDED; placed on PROBATION for FIVE (5) YEARS.

CONDITIONS:

1. Enter and complete Drug Court.



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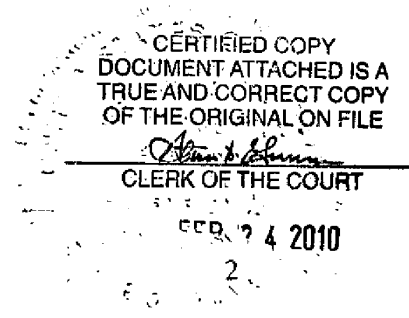
FEB 20 2007

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- 1 2. Search Clause for illegal substances.
2 3. Maintain full-time employment.

3 DATED this 20 day of February, 2007.

4 
5 DISTRICT JUDGE

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FILED IN OPEN COURT

OCT 17 2005

SHIRLEY B. PARRAGUIRE, CLERK

BY

PAMELA HUMPHREY

DEPUTY

1 GMEM

2 DAVID ROGER

3 DISTRICT ATTORNEY

4 Nevada Bar #002781

5 ERIC A. BAUMAN

6 Deputy District Attorney

7 Nevada Bar #009755

8 200 Lewis Avenue

9 Las Vegas, NV 89155-2212

10 (702) 671-2500

11 Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 CARY JERARD PICKETT,
16 #725059

17 Defendant.

CASE NO:

C226282

DEPT NO:

VII

18 GUILTY PLEA AGREEMENT

19 I hereby agree to plead guilty to: **TRANSPORT OF A CONTROLLED**
20 **SUBSTANCE (Category B Felony - NRS 453.321)**, as more fully alleged in the charging
21 document attached hereto as Exhibit "1".

22 My decision to plead guilty is based upon the plea agreement in this case which is as
23 follows:

24 The State has agreed to recommend a sentence of twelve (12) to thirty (30) months in
25 the Nevada Department of Corrections (NDC), consecutive to my parole violation in Case
26 No. C145127. Further, the State agrees to not seek treatment as a habitual criminal in this
27 case.

28 CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of
the offense(s) to which I now plead as set forth in Exhibit "1".

///

1 I understand that as a consequence of my plea of guilty the Court must sentence me to
2 imprisonment in the Nevada Department of Corrections for a minimum term of not less than
3 one (1) year and a maximum term of not more than six (6) years. The minimum term of
4 imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I
5 understand that I may also be fined up to \$20,000. I understand that the law requires me to
6 pay an Administrative Assessment Fee. I also understand that a conviction of any violation
7 of NRS Chapter 453, the Uniform Controlled Substance Act, requires that I pay a controlled
8 substance analysis fee.

9 I understand that, if appropriate, I will be ordered to make restitution to the victim of
10 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
11 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
12 reimburse the State of Nevada for any expenses related to my extradition, if any.

13 I understand that I am eligible for probation for the offense to which I am pleading
14 guilty. I understand that, except as otherwise provided by statute, the question of whether I
15 receive probation is in the discretion of the sentencing judge.

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

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

22 I have not been promised or guaranteed any particular sentence by anyone. I know
23 that my sentence is to be determined by the Court within the limits prescribed by statute.

24 I understand that if my attorney or the State of Nevada or both recommend any
25 specific punishment to the Court, the Court is not obligated to accept the recommendation.

26 I understand that if the State of Nevada has agreed to recommend or stipulate a
27 particular sentence or has agreed not to present argument regarding the sentence, or agreed
28 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor

1 when the offense could have been treated as a felony, such agreement is contingent upon my
2 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing
3 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
4 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
5 right to argue for any lawful sentence.

6 I understand if the offense(s) to which I am pleading guilty to was committed while I
7 was incarcerated on another charge or while I was on probation or parole that I am not
8 eligible for credit for time served toward the instant offense(s).

9 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
10 United States, I may, in addition to other consequences provided for by federal law, be
11 removed, deported, excluded from entry into the United States or denied naturalization.

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

19 WAIVER OF RIGHTS

20 By entering my plea of guilty, I understand that I am waiving and forever giving up
21 the following rights and privileges:

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

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

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

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

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

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

9 VOLUNTARINESS OF PLEA

10 I have discussed the elements of all of the original charge(s) against me with my
11 attorney and I understand the nature of the charge(s) against me.

12 I understand that the State would have to prove each element of the charge(s) against
13 me at trial.

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

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

18 I believe that pleading guilty and accepting this plea bargain is in my best interest,
19 and that a trial would be contrary to my best interest.

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


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


26 ///

27 ///

28 ///

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

4 DATED this 17 day of ^{OCTOBER}~~September~~, 2006. 
5
6 CARY JERARD PICKETT
Defendant

7
8 AGREED TO BY:
9 
10 ERIC A. BAUMAN
11 Deputy District Attorney
Nevada Bar #009755
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1 CERTIFICATE OF COUNSEL:

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

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which guilty pleas are being entered.

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

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

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

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 17 day of ~~September~~ ^{OCTOBER}, 2006.

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ATTORNEY FOR DEFENDANT

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CLERK OF THE COURT

FEB 24 2010

djj

Shirley Chan
CLERK

1 **INFO**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **ERIC A BAUMAN**
6 **Deputy District Attorney**
7 **Nevada Bar #009755**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

12 I.A. 09/26/06
13 10:30 A.M.
14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**
16 **J. BUCHANAN II,**
17 **ESQ.**

18 **THE STATE OF NEVADA,**
19
20 **Plaintiff,**
21
22 **-vs-**
23
24 **CARY JERARD PICKETT,**
25 **#725059**
26
27 **Defendant.**

Case No: C226282
Dept No: VII

INFORMATION

28 **STATE OF NEVADA** }
29 **COUNTY OF CLARK** } ss.

30 **DAVID ROGER, District Attorney within and for the County of Clark, State of**
31 **Nevada, in the name and by the authority of the State of Nevada, informs the Court:**

32 **That CARY JERARD PICKETT, the Defendant(s) above named, having committed**
33 **the crime of TRANSPORT OF A CONTROLLED SUBSTANCE (Category B Felony -**
34 **NRS 453.321), on or about the 14th day of July, 2006, within the County of Clark, State of**
35 **Nevada, contrary to the form, force and effect of statutes in such cases made and provided,**

36 ///

37 ///

38 ///

39 ///

EXHIBIT "I"

1 and against the peace and dignity of the State of Nevada, did then and there wilfully,
2 unlawfully, and feloniously transport within Clark County, Nevada, a controlled substance,
3 to-wit: Cocaine.

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6
7 BY David Roger
8 DAVID ROGER
9 DISTRICT ATTORNEY
10 Nevada Bar #002781
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26 DA#06F13591X/djj
27 LVMPD EV#0607143059
28 TRANSPORT CS - F
(TK6)

ORIGINAL

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

FILED

MAY 20 11:33 AM '02

Shirley E. Thompson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 ALAN DEMETRIUS DANIELS,
13 #0747918

14 Defendant.

Case No. C156246
Dept. No. XIV

16 JUDGMENT OF CONVICTION
17 (PLEA OF GUILTY)

18 The Defendant previously appeared before the Court herein with counsel and entered a
19 plea of guilty to the crime(s) of COUNT I - BURGLARY WHILE IN POSSESSION OF A
20 FIREARM (Category B Felony) and COUNT II - ROBBERY (Category B Felony), in violation
of NRS 200.380; thereafter, on the 14th day of May, 2002, the Defendant was present in court
for sentencing with his counsel, STANLEY A. WALTON, ESQUIRE, and good cause
appearing.

21 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in addition
22 to the \$25.00 Administrative Assessment Fee and \$3,400.00 Restitution, the Defendant is
23 sentenced as to COUNT I - to the Nevada Department of Corrections for a MAXIMUM term
24 of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of
THIRTY-FIVE (35) MONTHS and on COUNT II - a MAXIMUM term of ONE HUNDRED

RECEIVED

COUNTY CLERK

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S2

STATE'S
EXHIBIT

07-07-10-10

1 EIGHTY (180) MONTHS with a MINIMUM parole eligibility of THIRTY-FIVE (35)
2 MONTHS. COUNT II to run CONCURRENT to COUNT I; this sentence to run
3 CONSECUTIVE to the sentence the defendant is currently serving. Defendant to receive
4 THIRTY-SIX (36) DAYS credit for time served.

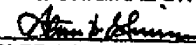
5 DATED this 24TH day of May, 2002.

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8 DISTRICT JUDGE

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24 DEC 09 2009

25 CERTIFIED COPY
26 DOCUMENT ATTACHED IS A
27 TRUE AND CORRECT COPY
28 OF THE ORIGINAL ON FILE


CLERK OF THE COURT

ORIGINAL

FILED IN OPEN COURT
APR - 2 2002

SHIRLEY B. PARRAGUIRE, CLERK
BY Connie Kalski
CONNIE KALSKIE, DEPUTY

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

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 ALAN DEMETRIUS DANIELS,
12 #0747918

13 Defendant.
14

Case No. C156246
Dept. No. XIV
Docket T

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: COUNT I - BURGLARY WHILE IN POSSESSION
17 OF A FIREARM (Category B Felony - NRS 205.060); and COUNT II - ROBBERY (Category
18 B Felony - NRS 200.380), as more fully alleged in the charging document attached hereto as
19 Exhibit "I".

20 My decision to plead guilty is based upon the plea agreement in this case which is as
21 follows:

22 The State is not opposed to concurrent time with Case No. C160684, but will retain the
23 right to argue at rendition of sentence.

24 CONSEQUENCES OF THE PLEA

25 I understand that by pleading guilty I admit the facts which support all the elements of
26 the offense(s) to which I now plead as set forth in Exhibit "I".

27 I understand that as a consequence of my plea of guilty as to Count I, the Court must
28 sentence me to imprisonment in the Nevada State Prison for a minimum term of not less than

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1 two (2) year(s) and a maximum term of not more than fifteen (15) years. The minimum term
2 of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment.
3 I understand that I may also be fined up to \$10,000.00; as to Count II, the Court must sentence
4 me to imprisonment in the Nevada State Prison for a minimum term of not less than two (2)
5 year(s) and a maximum term of not more than fifteen (15) years for Robbery. The minimum
6 term of imprisonment may not exceed forty percent (40%) of the maximum term of
7 imprisonment. I understand that the law requires me to pay an Administrative Assessment Fee.

8 I understand that, if appropriate, I will be ordered to make restitution to the victim of the
9 offense(s) to which I am pleading guilty and to the victim of any related offense which is being
10 dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the
11 State of Nevada for any expenses related to my extradition, if any.

12 I understand that as to Count I, I understand that I am eligible for probation for the
13 offense to which I am pleading guilty. I understand that, except as otherwise provided by statute,
14 the question of whether I receive probation is in the discretion of the sentencing judge.

15 I understand as to Count II, I understand that I am not eligible for probation for the
16 offense to which I am pleading guilty.

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

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

22 I have not been promised or guaranteed any particular sentence by anyone. I know that
23 my sentence is to be determined by the Court within the limits prescribed by statute.

24 I understand that if my attorney or the State of Nevada or both recommend any specific
25 punishment to the Court, the Court is not obligated to accept the recommendation.

26 I understand that if the State of Nevada has agreed to recommend or stipulate a particular
27 sentence or has agreed not to present argument regarding the sentence, or agreed not to oppose
28 a particular sentence, such agreement is contingent upon my appearance in court on the initial

1 sentencing date (and any subsequent dates if the sentencing is continued). I understand that if
2 I fail to appear for the scheduled sentencing date or I commit a new criminal offense prior to
3 sentencing the State of Nevada would regain the full right to argue for any lawful sentence.

4 I understand if the offense(s) to which I am pleading guilty to was committed while I was
5 incarcerated on another charge or while I was on probation or parole that I am not eligible for
6 credit for time served toward the instant offense(s).

7 I understand that as a consequence of my plea of guilty, if I am not a citizen of the United
8 States, I may, in addition to other consequences provided for by federal law, be removed,
9 deported, excluded from entry into the United States or denied naturalization.

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

17 WAIVER OF RIGHTS

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

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

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

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

- 1 4. The constitutional right to subpoena witnesses to testify on my behalf.
2 5. The constitutional right to testify in my own defense.
3 6. The right to appeal the conviction, with the assistance of an attorney, either appointed
4 or retained, unless the appeal is based upon reasonable constitutional jurisdictional or other
5 grounds that challenge the legality of the proceedings and except as otherwise provided in
6 subsection 3 of NRS 174.035.

7 VOLUNTARINESS OF PLEA

8 I have discussed the elements of all of the original charge(s) against me with my attorney
9 and I understand the nature of the charge(s) against me.

10 I understand that the State would have to prove each element of the charge(s) against me
11 at trial.

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

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

16 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
17 that a trial would be contrary to my best interest.

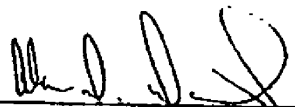
18 I am signing this agreement voluntarily, after consultation with my attorney, and I am not
19 acting under duress or coercion or by virtue of any promises of leniency, except for those set
20 forth in this agreement.

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

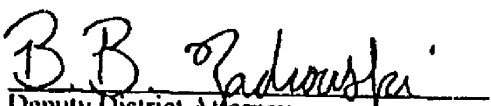
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My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 2nd day of ^{April 2002}~~August, 2001~~.


ALAN DEMETRIUS DANIELS
Defendant

AGREED TO BY:


Deputy District Attorney

1 CERTIFICATE OF COUNSEL:

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

4 1. I have fully explained to the Defendant the allegations contained in the charge(s) to
5 which guilty pleas are being entered.

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

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent
9 with the facts known to me and are made with my advice to the Defendant.

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

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs 1
17 and 2 above.

18 Dated: This 2nd day of April, 2002.

19 Stanley A. Dalton
20 ATTORNEY FOR DEFENDANT
21
22
23
24
25
26
27
28 mmw

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

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 ALAN DEMETRIUS DANIELS,
12 #0747918

13 Defendant.

Case No. C156246
Dept No. XIV
Docket T

AMENDED
INDICTMENT

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss:

17 The Defendant above named, ALAN DEMETRIUS DANIELS, is accused by the Clark
18 County Grand Jury of the crimes of **BURGLARY WHILE IN POSSESSION OF A**
19 **FIREARM (Felony - NRS 205.060); and ROBBERY (Felony - NRS 200.380)**, committed at
20 and within the County of Clark, State of Nevada, on or between February 20, 1998, and April
21 12, 1998, as follows:

22 **COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM**

23 did, on or about April 12, 2002, then and there wilfully, unlawfully, and feloniously enter,
24 while in possession of a firearm, with intent to commit a felony, to-wit: robbery and/or larceny,
25 that certain building occupied by TOWN HALL CASINO, located at 4155 Koval Lane, Las
26 Vegas, Clark County, Nevada, and/or ELLIS ISLAND HOTEL AND CASINO, located at 4178
27 Koval Lane, Las Vegas, Clark County, Nevada, said Defendant aiding or abetting an unnamed
28 individual by counsel and encouragement and by entering into a course of conduct whereby

EXHIBIT "1"

1 Defendant drove said unnamed individual to said location, waited outside and acted as a lookout
2 while the unnamed individual directly committed said act and fled the scene together.

3 || COUNT II - ROBBERY

4 did, on or about April 12, 1998, then and there wilfully, unlawfully, and feloniously take
5 personal property, to-wit: \$3,400.00 in lawful money of the United States, from the person of
6 RICHARD COLACINO, or in their presence, by means of force or violence, or fear of injury
7 to, and without the consent and against the will of the said RICHARD COLACINO, said
8 Defendant aiding or abetting an unnamed individual by counsel and encouragement and by
9 entering into a course of conduct whereby Defendant drove said unnamed individual to said
10 location, waited outside and acted as a lookout while the unnamed individual directly committed
11 said act and fled the scene together.

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY B.B. Zadrowski
BERNARD B. ZADROWSKI
Deputy District Attorney
Nevada Bar #006545

DEC 19 2000

**CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE**

John P. Schriener
CLERK OF THE COURT

27 DA#99-156246X/mmw
27 LVMPD EV#9804120119;9802200082
28 BURG W/W; ROBB - F
(TK5)

John L. Riggins

JAN 27 12 39 PM '99

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

ORIGINAL

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA.

9 Plaintiff,

10 -vs-

11 ALAN DEMETRIUS DANIELS,
12 #747918

13 Defendant(s).

Case No. C156246
Dept. No. XIV
Docket T

INDICTMENT

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 The Defendant(s) above named, ALAN DEMETRIUS DANIELS, accused by the Clark
18 County Grand Jury of the crimes of **BURGLARY WHILE IN POSSESSION OF A**
19 **FIREARM (Felony - NRS 205.060, 193.165); ROBBERY WITH USE OF A DEADLY**
20 **WEAPON (Felony - NRS 200.380, 193.165); and CONSPIRACY TO COMMIT**
21 **ROBBERY (Felony - NRS 199.480, 200.380),** committed at and within the County of Clark,
22 State of Nevada, on or between February 20, 1998 and April 12, 1998, as follows:

23 COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM

24 did, on or about February 20, 1998, then and there wilfully, unlawfully, and feloniously
25 enter, while in possession of a firearm, with intent to commit a felony, to-wit: robbery, that
26 certain building occupied by TOWN HALL CASINO, located at 4155 Koval Lane, Las Vegas,
27 Clark County, Nevada.

28 //

1 COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

2 did, on or about February 20, 1998, then and there wilfully, unlawfully, and feloniously
3 take personal property, to-wit: \$40,000.00 in lawful money of the United States, from the person
4 of VIRGINIA THOMPSON, or in her presence, by means of force or violence, or fear of injury
5 to, and without the consent and against the will of the said VIRGINIA THOMPSON, said
6 Defendant using a deadly weapon, to-wit: a firearm, during the commission of said crime.

7 COUNT III - ROBBERY WITH USE OF A DEADLY WEAPON

8 did, on or about February 20, 1998, then and there wilfully, unlawfully, and feloniously
9 take personal property, to-wit: \$40,000.00 in lawful money of the United States, from the person
10 of WILLIAM COZBY, or in his presence, by means of force or violence, or fear of injury to, and
11 without the consent and against the will of the said WILLIAM COZBY, said Defendant using
12 a deadly weapon, to-wit: a firearm, during the commission of said crime, the Defendant using
13 force or fear to obtain or retain possession of the property, and/or to prevent or overcome
14 resistance to the taking of the property, and/or to facilitate escape with the property.

15 COUNT IV - CONSPIRACY TO COMMIT ROBBERY

16 did, on or about April 12, 1998, then and there meet with an unnamed individual and
17 between themselves, and each of them with the other, wilfully, unlawfully and feloniously
18 conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said conspiracy,
19 did commit the acts as set forth in Counts V and VI, said acts being incorporated by this
20 reference as though fully set forth herein.

21 COUNT V - BURGLARY WHILE IN POSSESSION OF A FIREARM

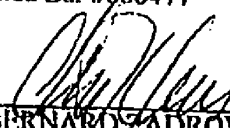
22 did, on or about April 12, 1998, then and there wilfully, unlawfully, and feloniously
23 enter, while in possession of a firearm, with intent to commit a felony, to-wit: robbery and/or
24 larceny, that certain building occupied by ELLIS ISLAND HOTEL AND CASINO, located at
25 4178 Koval Lane, Las Vegas, Clark County, Nevada, said Defendant aiding or abetting an
26 unnamed individual by counsel and encouragement and by entering into a course of conduct
27 whereby Defendant drove said unnamed individual to said location, waited outside and acted as
28 a lookout while the unnamed individual directly committed said act and fled the scene together.

1 COUNT VI - ROBBERY WITH USE OF A DEADLY WEAPON


2 did, on or about April 12, 1998, then and there wilfully, unlawfully, and feloniously take
3 personal property, to-wit: \$3,400.00 in lawful money of the United States, from the person of
4 RICHARD COLACINO, or in his presence, by means of force or violence, or fear of injury to,
5 and without the consent and against the will of the said RICHARD COLACINO, said Defendant
6 using a deadly weapon, to-wit: a firearm, during the commission of said crime, said Defendant
7 aiding or abetting an unnamed individual by counsel and encouragement and by entering into
8 a course of conduct whereby Defendant drove said unnamed individual to said location, waited
9 outside and acted as a lookout while the unnamed individual directly committed said act and fled
10 the scene together.

11 DATED this 27 day of January, 1999.

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

15 BY 
16 BERNARD ZADROWSKI
17 Deputy District Attorney
Nevada Bar #006545

18 ENDORSEMENT: A True Bill

19 
20 For person, Clark County Grand Jury
21

22 //

23 //

24 //

25 //

26 //

27 //

28 //

Names of witnesses testifying before the Grand Jury:

VIRGINIA THOMPSON, 4155 KOVAL LANE, LAS VEGAS, NV
WILLIAM COZBY, 1901 LAS VEGAS BLVD. NORTH, LAS VEGAS, NV
RICHARD J. COLACINO, 4178 KOVAL LANE, LAS VEGAS, NV
DET. ANTHONY J. PLEW, LVMPD #2031, ROBBERY

Names of additional witnesses known to the District Attorney at the time of filing of
this indictment:

CLINTON MALBURG, LVMPD #4002
CLIFFORD MOGG, LVMPD #5096
LOUISE RENHARD, LVMPD #5223
FRANCIE PULLIAM, LMVPD #5412
CHRISTOPHER J. LITTLE, LVMPD #5442
BRIAN R. MILDEBRANDT, LVMPD #5449
JOANN HOLT, 4690 PHEBE AVE., FREMONT, CA
PATRICK HATCH, 3875 CAMBRIDGE, LAS VEGAS, NV
DARRELL WRIGHT, 100 S. MARTIN LUTHER KING, LAS VEGAS, NV
DANE FRANCIS, 4409 CINDERELLA LANE, LAS VEGAS, NV
JAMES COYLE, 3875 CAMBRIDGE, LAS VEGAS, NV
COR, METRO COMMUNICATIONS

DEC 11 9 2009

98BCJ002X/98F06167X/1g
LVMPD EV#9802200082;9804120119
BURG WDW; RWDW; CONSP ROBB - F

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OF THE ORIGINAL ON FILE

Alan L. Daniels
CLERK OF THE COURT

-4-

ORIGINAL

FILED IN OPEN COURT
APR - 2 2002

SHIRLEY B. PARRAGUIRE, CLERK
BY *Connie Kalsch*
CONNIE KALSCH DEPUTY

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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

Plaintiff,

-vs-

11 ALAN DEMETRIUS DANIELS,
12 #0747918

Defendant.

Case No. C156246
Dept No. XIV
Docket T

AMENDED
INDICTMENT

15 STATE OF NEVADA)
16 COUNTY OF CLARK) ss:

17 The Defendant above named, ALAN DEMETRIUS DANIELS, is accused by the Clark
18 County Grand Jury of the crimes of BURGLARY WHILE IN POSSESSION OF A
19 FIREARM (Felony - NRS 205.060); and ROBBERY (Felony - NRS 200.380), committed at
20 and within the County of Clark, State of Nevada, on or between February 20, 1998, and April
21 12, 1998, as follows:

22 COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM

23 did, on or about April 12, 2002, then and there wilfully, unlawfully, and feloniously enter,
24 while in possession of a firearm, with intent to commit a felony, to-wit: robbery and/or larceny,
25 that certain building occupied by TOWN HALL CASINO, located at 4155 Koval Lane, Las
26 Vegas, Clark County, Nevada, and/or ELLIS ISLAND HOTEL AND CASINO, located at 4178
27 Koval Lane, Las Vegas, Clark County, Nevada, said Defendant aiding or abetting an unnamed
28 individual by counsel and encouragement and by entering into a course of conduct whereby

82

COUNT II - ROBBERY

STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

BY

BERNARD B. ZADROWSKI
Deputy District Attorney
Nevada Bar #006545

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DOCUMENT ATTACHED IS A
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OF THE ORIGINAL ON FILE

CLERK OF THE COURT

DA#99-156246X/mmww
1.VMPD EV#9804120119;9802200082
BURG W/W; ROBB - F
(TK5)

-2-

2147 DOTS INTERACTIVE 576 8061674 0713

CRIMINAL COURT MINUTES

C-156246-C STATE OF NEVADA vs Daniels, Alan D

01/27/99 09:00 AM 00 GRAND JURY INDICTMENT

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: DELOIS WILLIAMS, Court Clerk
YVONNE VALENTIN, Reporter/Recorder

PARTIES: STATE OF NEVADA
001190 Owens, Christopher J.

Y
Y

Jim Treanor, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. The State presented Grand Jury Case Number 98BGJ002X to the Court. COURT ORDERED, the indictment may be filed and is assigned Case Number C156246, Department XIV. Exhibit(s) 1 thru 2 lodged with Clerk of District Court. Exhibit 3 returned to DDA Bernard Zadrowski. State requested a summons be issued and sent Stan Walton, Esq.; COURT SO ORDERED. State advised defendant previously posted bail in the amount of \$53,000.00 in Case Number C154432, and requested bail be transferred to this case; and COURT SO ORDERED. COURT FURTHER ORDERED, matter set for initial arraignment.

SUMMONS

2/10/99 9 AM INITIAL ARRAIGNMENT (DEPARTMENT XIV)

02/10/99 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: RITA LOPEZ, Court Clerk
MAUREEN SCHORN, Reporter/Recorder

PARTIES: STATE OF NEVADA
006545 Zadrowski, Bernard B.

Y
Y

0001 D1 Daniels, Alan D
004784 Walton, Stanley A.

Y
Y

DEFENDANT DANIELS ARRAIGNED, PLED NOT GUILTY and WAIVED THE 60-DAY RULE. COURT ORDERED, matter set for trial. Mr. Walton requested thirty days to file a writ, COURT FURTHER ORDERED, RIGHTS MAINTAINED.

NIC

11/16/99 9:30 AM CALENDAR CALL

11/22/99 1:00 PM TRIAL BY JURY

PAGE: 002

MINUTES DATE: 11/16/99

CRIMINAL COURT MINUTES

C-156246-C STATE OF NEVADA

vs Daniels, Alan D

CONTINUED FROM PAGE: 001

11/16/99 09:00 AM 00 CALENDAR CALL

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LINDA SKINNER, Court Clerk
MAUREEN SCHORN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005144	Sweetin, James R.	Y
0001 D1	Daniels, Alan D	Y
004784	Walton, Stanley A.	Y

State announced ready for trial. However, Mr. Walton advised he has picked up a new case that may cause an interference and requested a continuance. Upon Court's inquiry, Mr. Sweetin advised trial would take 5 days with 20 witnesses. COURT ORDERED, matter CONTINUED.

NIC (COC)

CONTINUED TO: 11/17/99 09:30 AM 01

11/17/99 09:30 AM 01 CALENDAR CALL

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LINDA SKINNER, Court Clerk
MAUREEN SCHORN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005144	Sweetin, James R.	Y
0001 D1	Daniels, Alan D	Y
004784	Walton, Stanley A.	Y

Mr. Walton requested trial date be vacated and reset in ordinary course; DEFT WAIVED THE 60 DAY RULE. There being no objection, COURT SO ORDERED.

NIC (COC)

7/18/00 9:30 AM CALENDAR CALL

7/24/00 1:00 PM JURY TRIAL

CONTINUED ON PAGE: 003
MINUTES DATE: 11/17/99

PRINT DATE: 12/08/09

PAGE: 002

10F02742X - DANIELS, ALAN

Page 253 of 299

PAGE: 003

MINUTES DATE: 07/18/00

CRIMINAL COURT MINUTES

C-156246-C STATE OF NEVADA

vs Daniels, Alan D

CONTINUED FROM PAGE: 002

07/18/00 09:30 AM 00 CALENDAR CALL (OVERFLOW FROM DEPT. XIV)
SWEETIN // WALTON // 5 DAYS

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: JUDY NORMAN, Court Clerk
MAUREEN SCHORN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005734	Pandukht, Taleen R.	Y
0001 D1	Daniels, Alan D	Y
004784	Walton, Stanley A.	Y

Ms. Pandukht announced ready for trial. Mr. Walton requested matter continued to resolve matter of post conviction in defendant's other case which could affect this case. Conference at the Bench. COURT ORDERED, MOTION TO CONTINUE DENIED; matter referred to OVERFLOW for FURTHER PROCEEDINGS.

NIC (COC)

/24/00 1:00 PM JURY TRIAL (OVERFLOW DEPT. XIV)
SWEETIN // WALTON
5 DAYS
20 WITNESSES // NO OUT-OF-STATE

CALENDAR CALL

CONTINUED TO: 07/21/00 09:00 AM 01

07/21/00 09:00 AM 01 CALENDAR CALL (OVERFLOW FROM DEPT. XIV)
SWEETIN // WALTON // 5 DAYS

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: JUDY NORMAN, Court Clerk
MAUREEN SCHORN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005144	Sweetin, James R.	Y
0001 D1	Daniels, Alan D	Y
004784	Walton, Stanley A.	Y

There being no Courtroom available, COURT ORDERED, matter referred to Department XIV for further proceedings.

CUSTODY

CONTINUED ON PAGE: 004

PRINT DATE: 12/08/09

PAGE: 003

MINUTES DATE: 07/21/00

10F02742X - DANIELS, ALAN

Page 254 of 299

CRIMINAL COURT MINUTES

C-156246-C STATE OF NEVADA

vs Daniels, Alan D

CONTINUED FROM PAGE: 003

7/27/00 9:00 AM TRIAL SETTING

07/27/00 09:00 AM 00 TRIAL SETTING

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LINDA SKINNER, Court Clerk
MAUREEN SCHORN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
006639	Fattig, John T	Y
0001 D1	Daniels, Alan D	Y
004784	Walton, Stanley A.	Y

Court noted this matter was previously set for trial, however, as no Courts were available, it was referred back to this Dept. As the 60-day rule has been WAIVED, COURT ORDERED, matter reset for trial in ordinary course.

NIC (COC)

2/6/01 9:30 AM CALENDAR CALL

2/12/01 1:00 PM JURY TRIAL

02/06/01 09:30 AM 00 CALENDAR CALL

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: LINDA SKINNER, Court Clerk
JOE D'AMATO, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
006526	Turner, Robert B.	Y
0001 D1	Daniels, Alan D	Y
004784	Walton, Stanley A.	Y

Mr. Turner advised he has a witness problem and requested to file MOTION TO CONTINUE IN OPEN COURT. Mr. Walton had no opposition to a continuance. COURT ORDERED, trial date VACATED and reset in ordinary course.

NIC (COC)

7/24/01 9:30 AM CALENDAR CALL

7/30/01 1:00 PM JURY TRIAL

PAGE: 005

MINUTES DATE: 07/24/01

CRIMINAL COURT MINUTES

C-156246-C STATE OF NEVADA

vs Daniels, Alan D

CONTINUED FROM PAGE: 004

07/24/01 09:30 AM 00 CALENDAR CALL

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: Connie Kalski, Relief Clerk
Maureen Schorn, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	006526 Turner, Robert B.	Y
	0001 D1 Daniels, Alan D	Y
	004784 Walton, Stanley A.	Y

Mr. Walton requested a continuance as he was in trial last week and is picking a jury for another trial today. Further, Mr. Walton stated he believes the matter may negotiate. COURT ORDERED, trial date VACATED and matter set for status check.

NIC (COC)

8/28/01 9:00 AM STATUS CHECK: NEGOTIATIONS/TRIAL SETTING

08/28/01 09:00 AM 00 STATUS CHECK: TRIAL SETTING

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: Linda Skinner, Court Clerk
Maureen Schorn, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	006381 Knapp, Gregory D.	Y
	0001 D1 Daniels, Alan D	Y
	004784 Walton, Stanley A.	Y

Mr. Walton advised matter is close to being negotiated, however, requested matter be set for trial. COURT ORDERED, matter set for trial in ordinary course as defendant has WAIVED THE SIXTY-DAY RULE.

NIC (COC)

4/2/02 9:30 AM CALENDAR CALL

4/8/02 1:00 PM JURY TRIAL

PRINT DATE: 12/08/09

PAGE: 005

CONTINUED ON PAGE: 006
MINUTES DATE: 08/28/01

10F02742X - DANIELS, ALAN

Page 256 of 299

CRIMINAL COURT MINUTES

C-156246-C STATE OF NEVADA

vs Daniels, Alan D

CONTINUED FROM PAGE: 005

04/02/02 09:30 AM 00 CALENDAR CALL

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: Connie Kalski, Relief Clerk
Maureen Schorn, Reporter/RecorderPARTIES: STATE OF NEVADA
006545 Zadrowski, Bernard B.
0001 D1 Daniels, Alan D
004784 Walton, Stanley A.Y
Y
Y
Y

Matter TRAILED for the presence of Mr. Walton.

Matter RECALLED with Mr. Walton present. Amended Indictment and Guilty Plea Agreement FILED IN OPEN COURT. NEGOTIATIONS: The State retains the right to argue the facts and circumstances but will not oppose concurrent time between all counts and Defendant's case C160684. Upon Court's inquiry, Defendant WITHDREW his not guilty plea, was ARRAIGNED AND PLED GUILTY to COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM (F) and COUNT II - ROBBERY (F). Court ACCEPTED plea, referred matter to the Division of Parole and Probation and ORDERED, set for sentencing. FURTHER, trial date VACATED.

NIC (COC)

5/14/02 9:00 AM SENTENCING

05/14/02 09:00 AM 00 SENTENCING

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: Connie Kalski, Relief Clerk
Maureen Schorn, Reporter/RecorderPARTIES: STATE OF NEVADA
006541 Lewis, Linda Y.
0001 D1 Daniels, Alan D
004784 Walton, Stanley A.Y
Y
Y
Y

Officer Lorena Yonashiro of the Division of Parole and Probation present. DEFENDANT DANIELS ADJUDGED GUILTY of COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM (F) and COUNT II - ROBBERY (F). Statements by counsel and Defendant. COURT ORDERED, in addition to the \$25 Administrative Assessment fee and \$3,400 in RESTITUTION, Defendant SENTENCED on COUNT I - to a MAXIMUM term of ONE-HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of THIRTY-FIVE (35) MONTHS and on COUNT II - to a MAXIMUM term of ONE-HUNDRED EIGHTY (180) MONTHS with a MINIMUM parole eligibility of THIRTY-FIVE (35)

CRIMINAL COURT MINUTES

C-156246-C STATE OF NEVADA

vs Daniels, Alan D

CONTINUED FROM PAGE: 006

MONTHS in the Nevada Department of Corrections. Count II to run CONCURRENT with COUNT I; this sentence to run CONSECUTIVE to the sentence Defendant is currently serving. Defendant to receive 36 DAYS credit for time served.

NDC

01/07/03 09:00 AM 00 DEFT'S PRO PER MTN DISCHARGE ATTY/16.

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: Linda Skinner, Court Clerk
Maureen Schorn, Reporter/RecorderPARTIES: STATE OF NEVADA
006541 Lewis, Linda Y.Y
Y

Court noted this is post conviction in nature and ORDERED, motion is GRANTED. Court directed Clerk to notify Mr. Walton to send the file to Defendant.

NDC

CLERK'S NOTE: 1/8/03 Clerk spoke with Carolina from Mr. Walton's Office and advised her of Court's ruling.

02/18/03 09:00 AM 00 DEFT'S PRO PER FOR REHEARING OF MTN TO
DISCHARGE ATTY/PRODUCTN OF PAPER/DOCU/17

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: Linda Skinner, Court Clerk
Judy McFadden/jm, Relief Clerk
Maureen Schorn, Reporter/RecorderPARTIES: STATE OF NEVADA
006381 Knapp, Gregory D.Y
Y

Court noted Mr. Walton is counsel in this matter and is presently in trial. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 02/19/03 09:00 AM 01

CRIMINAL COURT MINUTES

C-156246-C STATE OF NEVADA

vs Daniels, Alan D

CONTINUED FROM PAGE: 007

02/19/03 09:00 AM 01 DEFT'S PRO PER FOR REHEARING OF MTN TO
DISCHARGE ATTY/PRODUCTN OF PAPER/DOCU/17

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: Judy McFadden, Relief Clerk
Maureen Schorn, Reporter/Recorder

PARTIES: STATE OF NEVADA Y
007295 Saragosa, Melissa A. Y
0001 D1 Daniels, Alan D Y

Mr. Walton advised the Court that he had sent the files to Deft. several months ago. MATTER RESOLVED.

NDC

04/08/03 09:00 AM 00 DEFT'S PRO PER MTN FOR TRANSCRIPTS/18

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: Linda Skinner, Court Clerk
Maureen Schorn, Reporter/Recorder

PARTIES: STATE OF NEVADA Y
001648 Barker, David B. Y

Court noted Defendant is asking for discovery from the Court and wants the Court to turn over transcripts. There being no need shown and not the practice of this Court, COURT ORDERED, Deft's motion is DENIED. Further, Court noted Mr. Walton was the previous attorney and he has sent the file to Defendant.

NDC

CRIMINAL COURT MINUTES

C-156246-C STATE OF NEVADA

vs Daniels, Alan D

CONTINUED FROM PAGE: 008

05/20/03 09:00 AM 00 ALL PENDING MOTIONS 5/20/03

HEARD BY: Donald M. Mosley, Judge; Dept. 14

OFFICERS: Linda Skinner, Court Clerk
Joe D'Amato, Reporter/RecorderPARTIES: STATE OF NEVADA
000370 Ponticello, Frank M.Y
YDEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS...DEFT'S PRO
PER MOTION FOR MODIFICATION OF SENTENCEAs to Deft's Pro Per Motion for Leave to Proceed in Forma Pauperis; COURT
ORDERED, GRANTED.

As to Deft's Pro Per Motion for Modification of Sentence: Court noted Defendant does not indicate where this Court would have jurisdiction; that he does not show material fact at the time of sentencing. Court reviewed the file and stated a writ would have been the proper vehicle for Defendant's allegations. Defendant stated he was not interviewed by Parole and Probation, however, Court noted that Defendant never made the Court aware that he was not. Defendant stated he had a problem with the text of the Pre-sentence Report. Defendant noted the State would not oppose concurrent time, however, the Court noted it is not to be bound by those negotiations. Court noted this motion has no merit and as this Court lacks jurisdiction, ORDERED, motion is DENIED.

NDC

DEC 09 2009

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ORIGINAL

APR 10 2000

Connie Kalsch
CONNIE KALSCH DEPUTY

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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ALAN DANIELS, aka
Alan Demetrius Daniels, #0747918

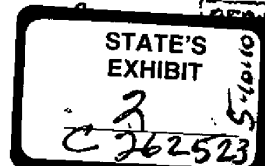
Defendant.

Case No. C160684
Dept. No. VJ
Docket B

AMENDED
JUDGMENT OF CONVICTION (JURY TRIAL)

WHEREAS, on the 10th day of August, 1999, the Defendant ALAN DANIELS, aka Alan Demetrius Daniels, entered a plea of not guilty to the crimes of COUNTS I AND III - BURGLARY WHILE IN POSSESSION OF A FIREARM (CATEGORY B FELONY); AND COUNTS II AND IV - ROBBERY WITH USE OF A DEADLY WEAPON (CATEGORY B FELONY), committed on the 10th day of May, 1999, in violation of NRS 205.060, 193.165; 200.380, 193.165, and the matter having been tried before a jury, and the Defendant being represented by counsel and having been found guilty of the crimes of COUNTS I AND III - BURGLARY WHILE IN POSSESSION OF A FIREARM (CATEGORY B FELONY); AND COUNTS II AND IV - ROBBERY WITH USE OF A DEADLY WEAPON (CATEGORY B FELONY) on the 7th day of December, 1999; and

WHEREAS, thereafter, on the 10th day of January, 2000, the Defendant being present in Court with his counsel G. DARREN COX, Deputy Public Defender, and TALEEN R.



1 PANDUKH, Deputy District Attorney also being present; the above entitled Court did adjudge
2 Defendant guilty thereof by reason of said trial and verdicts and, in addition to the \$25.00
3 Administrative Assessment Fee, \$250.00 DNA Test and Fee, \$4,100.00 Restitution on Count
4 I, and \$3,000.00 Restitution on Count III, Defendant Sentenced as follows:

5 COUNT I - to a Maximum term of Ninety (90) Months with a Minimum parole eligibility of
6 Twenty-Four (24) Months.

7 COUNT II - to a Maximum term of Ninety (90) Months with a Minimum parole eligibility of
8 Twenty-Four (24) Months; plus an Equal and Consecutive Maximum term of Ninety (90)
9 Months with a Minimum parole eligibility of Twenty-Four (24) Months for use of a deadly
10 weapon. Count II Concurrent to Count I.

11 COUNT III - to a Maximum term of Ninety (90) Months with a Minimum parole eligibility of
12 Twenty-Four (24) Months. Count III Concurrent with Count II.

13 COUNT IV - to a Maximum term of Ninety (90) Months with a Minimum parole eligibility of
14 Twenty-Four (24) Months; plus an Equal and Consecutive Maximum term of Ninety (90)
15 Months with a Minimum parole eligibility of Twenty-Four (24) Months for use of a deadly
16 weapon. Count IV Consecutive to Count II.

17 All sentences above to be served in the Nevada Department of Prisons. Defendant to receive
18 two hundred ten (210) days credit for time served.

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

21 DATED this 10th day of April, 2000, in the City of Las Vegas, County of Clark, State
22 of Nevada

23
24 
25 DISTRICT JUDGE
26

27 DA009-160684X pm
28 LVMPD EV#0905100533
BURGWW: RWTW-F
(JK7)

ORIGINAL

16

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

FILED

JAN 14 9 40 AM '00

Shirley L. Thompson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ALAN DANIELS, aka
Alan Demetrius Daniels, #0747918

Defendant.

Case No. C160684
Dept. No. VI
Docket B

JUDGMENT OF CONVICTION (JURY TRIAL)

WHEREAS, on the 10th day of August, 1999, the Defendant ALAN DANIELS, aka Alan Demetrius Daniels, entered a plea of not guilty to the crimes of COUNTS I AND III - BURGLARY WHILE IN POSSESSION OF A FIREARM (CATEGORY B FELONY); AND COUNTS II AND IV - ROBBERY WITH USE OF A DEADLY WEAPON (CATEGORY B FELONY), committed on the 10th day of May, 1999, in violation of NRS 205.060, 193.165; 200.380, 193.165, and the matter having been tried before a jury, and the Defendant being represented by counsel and having been found guilty of the crimes of COUNTS I AND III - BURGLARY WHILE IN POSSESSION OF A FIREARM (CATEGORY B FELONY); AND COUNTS II AND IV - ROBBERY WITH USE OF A DEADLY WEAPON (CATEGORY B FELONY) on the 7th day of December, 1999; and

WHEREAS, thereafter, on the 10th day of January, 2000, the Defendant being present in Court with his counsel G. DARREN COX, Deputy Public Defender, and TALEEN R. PANDUKIIT, Deputy District Attorney also being present; the above entitled Court did adjudge

CE-02

JAN 18 2000

FILED

JAN 13 2000
COUNTY CLERK

JAN 11 2000
COUNTY CLERK

1 Defendant guilty thereof by reason of said trial and verdicts and, in addition to the \$25.00
2 Administrative Assessment Fee, \$250.00 DNA Test and Fee, \$4,100.00 Restitution on Count
3 I, and \$3,000.00 Restitution on Count III. Defendant Sentenced as follows:

4 COUNT I - to a Maximum term of Ninety (90) Months with a Minimum parole eligibility of
5 Twenty-Four (24) Months.

6 COUNT II - to a Maximum term of Ninety (90) Months with a Minimum parole eligibility of
7 Twenty-Four (24) Months; plus an Equal and Consecutive Maximum term of Ninety (90)
8 Months with a Minimum parole eligibility of Twenty-Four (24) Months for use of a deadly
9 weapon. Count II Consecutive to Count I.

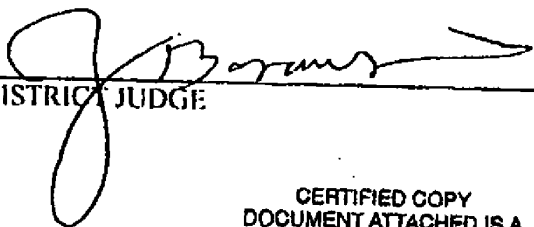
10 COUNT III - to a Maximum term of Ninety (90) Months with a Minimum parole eligibility of
11 Twenty-Four (24) Months. Count III Concurrent with Count I.

12 COUNT IV - to a Maximum term of Ninety (90) Months with a Minimum parole eligibility of
13 Twenty-Four (24) Months; plus an Equal and Consecutive Maximum term of Ninety (90)
14 Months with a Minimum parole eligibility of Twenty-Four (24) Months for use of a deadly
15 weapon. Count IV Concurrent with Count II.

16 All sentences above to be served in the Nevada Department of Prisons. Defendant to receive
17 two hundred ten (210) days credit for time served.

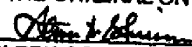
18 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
19 Judgment of Conviction as part of the record in the above entitled matter.

20 DATED this 13th day of January, 2000, in the City of Las Vegas, County of Clark,
21 State of Nevada.

22
23 
24 DISTRICT JUDGE OK

25
26 DA#99-160684X/pm
27 LVMPD EV#9905100533
28 BURGWW; RWDW-F
(TK7)

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CLERK OF THE COURT

DEC 09 2009

P WELLS J 101 005 0805301 WPD

-2-

ORIGINAL

FILED

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

AUG 2 10 06 AM '99

Shirley Ann Jones
CLERK

9 I.A. 08/10/99
10 8:30 A.M.
11 P.D.

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 ALAN DANIELS, aka
16 Alan Demetrius Daniels, #747918

17 Defendant.

Case No. C 160684
Dept. No. VI
Docket B

INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK } ss:

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

22 That ALAN DANIELS, aka Alan Demetrius Daniels, the Defendant(s) above named,
23 having committed the crimes of **BURGLARY WHILE IN POSSESSION OF A FIREARM**
24 **(Felony - NRS 205.060, 193.165); ROBBERY WITH USE OF A DEADLY WEAPON**
25 **(Felony - NRS 200.380, 193.165); and FIRST DEGREE KIDNAPPING WITH USE OF**
26 **A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165), on or about the 10th day**
27 **of May, 1999, within the County of Clark, State of Nevada, contrary to the form, force and**
28 **effect of statutes in such cases made and provided, and against the peace and dignity of the State**
29 **of Nevada,**

30 **COUNT 1 - BURGLARY WHILE IN POSSESSION OF A FIREARM**

31 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a

1 firearm, with intent to commit larceny and/or robbery, that certain building occupied by the INN
2 ZONE BAR, located at 238 South Rainbow Boulevard, Las Vegas, Clark County, Nevada.

3 COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

4 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
5 lawful money of the United States, from the person of DONALD REA and/or BOB [LAST
6 NAME UNKNOWN], or in their presence, by means of force or violence, or fear of injury to,
7 and without the consent and against the will of the said DONALD REA and/or BOB [LAST
8 NAME UNKNOWN], said Defendant using a deadly weapon, to-wit: a firearm, during the
9 commission of said crime.

10 COUNT III - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

11 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,
12 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away DONALD REA and/or BOB
13 [LAST NAME UNKNOWN], human beings, with the intent to hold or detain the said DONALD
14 REA and/or BOB [LAST NAME UNKNOWN], against their will, and without their consent,
15 for the purpose of committing Burglary and/or Robbery Use of a Deadly Weapon, said
16 Defendant using a deadly weapon, to-wit: a firearm, during the commission of said crime.

17 COUNT IV - BURGLARY WHILE IN POSSESSION OF A FIREARM

18 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a
19 firearm, with intent to commit larceny and/or robbery, that certain building occupied by PEPE
20 MULDOON'S BAR, located at 4341 North Rancho Drive, Las Vegas, Clark County, Nevada.

21 COUNT V - ROBBERY WITH USE OF A DEADLY WEAPON

22 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
23 lawful money of the United States, from the person of JAMES CASEY, or in his presence, by
24 means of force or violence, or fear of injury to, and without the consent and against the will of
25 the said JAMES CASEY, said Defendant using a deadly weapon, to-wit: a firearm, during the
26 commission of said crime.

27 COUNT VI - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

28 did wilfully, unlawfully, feloniously, and without authority of law, seize, confine,

1 inveigle, entice, decoy, abduct, conceal, kidnap, or carry away JAMES CASEY, a human being,
2 with the intent to hold or detain the said JAMES CASEY, against his will, and without his
3 consent, for the purpose of committing Burglary and/or Robbery Use of a Deadly Weapon, said
4 Defendant using a deadly weapon, to-wit: a firearm, during the commission of said crime.

5 STEWART L. BELL
6 DISTRICT ATTORNEY
7 Nevada Bar #000477

8 BY 
9 GARY L. GUYMON
10 Chief Deputy District Attorney
Nevada Bar #003726

11 Names of witnesses known to the District Attorney's Office at the time of filing this
12 information are as follows:

13	NAME	ADDRESS
14	BLASKO, KEITH J.	LVMPD P#2995
15	BOYD, FRED M.	LVMPD P#5216
16	CASEY, JAMES	6633 WHEELBARROW PEAK
17		LAS VEGAS, NV 89108
18	CUSTODIAN OF RECORDS	CLARK COUNTY DETENTION CENTER
19		330 S. CASINO CENTER BLVD.
20	CUSTODIAN OF RECORDS	LAS VEGAS, NV 89101
21	FORD, DANIEL P.	LVMPD-DISPATCH/COMMUNICATIONS
22	IANOVER, JOHN W.	LVMPD P#4244
23	MENTAL, ROBERT	LVMPD P#2946
24	MORTON, LARRY R.	238 S. RAINBOW BLVD.
25	REA, DONALD	LAS VEGAS, NV 89128
26		LVMPD P#4935
27	DA#99F08053X/sbs	6609 BURGUNDY WAY
28	LVMPD EV#9905100533	LAS VEGAS, NV 89107
	BURGAW;RWDW;KDNP/W - F	
	(TK7)	

ORIGINAL

FILED IN OPEN COURT

1999 19

SHIRLEY B. PARRAGUIRRE, CLERK

BY Connie Kalski

CONNIE KALSKI, DEPUTY

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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

Plaintiff,

-vs-

11 ALAN DANIELS, aka
12 Alan Demetrius Daniels, #747918

Defendant.

Case No. C160684
Dept. No. VI
Docket B

AMENDED
INFORMATION

15 STATE OF NEVADA)
16 COUNTY OF CLARK)ss:

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

19 That ALAN DANIELS, aka Alan Demetrius Daniels, the Defendant(s) above named,
20 having committed the crimes of **BURGLARY WHILE IN POSSESSION OF A FIREARM**
21 **(Felony - NRS 205.060, 193.165) and ROBBERY WITH USE OF A DEADLY WEAPON**
22 **(Felony - NRS 200.380, 193.165)**, on or about the 10th day of May, 1999, within the County of
23 Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and
24 provided, and against the peace and dignity of the State of Nevada,

25 COUNT I - BURGLARY WHILE IN POSSESSION OF A FIREARM

26 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a
27 firearm, with intent to commit larceny and/or robbery, that certain building occupied by the INN
28 ZONE BAR, located at 238 South Rainbow Boulevard, Las Vegas, Clark County, Nevada.

8

6261

1 COUNT II - ROBBERY WITH USE OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
3 lawful money of the United States, from the person of DONALD REA and/or BOB [LAST
4 NAME UNKNOWN], or in their presence, by means of force or violence, or fear of injury to,
5 and without the consent and against the will of the said DONALD REA and/or BOB [LAST
6 NAME UNKNOWN], said Defendant using a deadly weapon, to-wit: a firearm, during the
7 commission of said crime.

8 COUNT III - BURGLARY WHILE IN POSSESSION OF A FIREARM

9 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a
10 firearm, with intent to commit larceny and/or robbery, that certain building occupied by PEPE
11 MULLDOON'S BAR, located at 4341 North Rancho Drive, Las Vegas, Clark County, Nevada.

12 COUNT IV - ROBBERY WITH USE OF A DEADLY WEAPON

13 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
14 lawful money of the United States, from the person of JAMES CASEY, or in his presence, by
15 means of force or violence, or fear of injury to, and without the consent and against the will of
16 the said JAMES CASEY, said Defendant using a deadly weapon, to-wit: a firearm, during the
17 commission of said crime.

18 STEWART L. BELK
19 DISTRICT ATTORNEY
Nevada Bar #000477

20
21 BY 
22 TALEEN PANDURHT
23 Deputy District Attorney
Nevada Bar #005734

24 Names of witnesses known to the District Attorney's Office at the time of filing this
25 information are as follows:

26	<u>NAME</u>	<u>ADDRESS</u>
27	BLASKO, KEITH J.	LVMPD P#2995
28	BOYD, FRED M.	LVMPD P#5216

1 CASEY, JAMES
2
3 CUSTODIAN OF RECORDS
4
5 CUSTODIAN OF RECORDS
6 FORD, DANIEL P.
7 HANOVER, JOHN W.
8 MENTAL, ROBERT
9 MORTON, LARRY R.
10 REA, DONALD
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6633 WHEELBARROW PEAK
LAS VEGAS, NV 89108

CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS, NV 89101

LVMPD - DISPATCH/COMMUNICATIONS

LVMPD P#4244

LVMPD P#2946

238 S. RAINBOW BLVD.
LAS VEGAS, NV 89128

LVMPD P#4935

6609 BURGUNDY WAY
LAS VEGAS, NV 89107

DA#99F08053X/sbs
LVMPD EV#9905100533
BURGW: RWDW - F
(TK7)

DEC 09 2009

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Alan L. Daniels
CLERK OF THE COURT

-3-

P-WPDX'S IN 908-0001534 WPD

CRIMINAL COURT MINUTES

C-160684-C STATE OF NEVADA vs Daniels, Alan

08/10/99 08:30 AM 00 INITIAL ARRAIGNMENT

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: CONNIE KALSKI, Relief Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	006503 Skupa, Kristy L.	Y
	0001 D1 Daniels, Alan	Y
	PUBDEF Public Defender	Y
	005924 Cox, G. Darren	Y

DEFENDANT DANIELS ARRAIGNED, PLED NOT GUILTY AND INVOKED THE SIXTY-DAY RULE.
COURT ORDERED, matter set for trial.

CUSTODY

10/14/99 8:30 AM CALENDAR CALL

10/18/99 9:30 AM JURY TRIAL

09/20/99 08:30 AM 00 DEFT'S PETITION FOR WRIT OF HABEAS
CORPUS

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: CONNIE KALSKI, Relief Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005734 Pandukht, Taleen R.	Y
	0001 D1 Daniels, Alan	Y
	PUBDEF Public Defender	Y
	005924 Cox, G. Darren	Y

Colloquy between Court and counsel regarding writ. Ms. Pandukht advised the State agrees there are questions regarding counts III and VI and submitted the matter on the State's reply. COURT ORDERED, Writ GRANTED as to COUNTS III and VI. FURTHER ORDERED, trial date STANDS.

CUSTODY

CRIMINAL COURT MINUTES

C-160684-C STATE OF NEVADA

vs Daniels, Alan

CONTINUED FROM PAGE: 001

10/13/99 08:30 AM 00 ALL PENDING MOTIONS 10/13/99

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005734 Pandukht, Taleen R.	Y
	0001 D1 Daniels, Alan	Y
	PUBDEF Public Defender	Y
	005924 Cox, G. Darren	Y

DEFT'S MOTION TO SEVER UNRELATED CRIMINAL OFFENSES...CALENDAR CALL

Ms. Pandukht announced is ready for trial. Mr. Cox advised he received information and is not ready for trial. Court noted the State will not use the fingerprint evidence if the deft. takes a chance and goes to trial now further stated it has the fingerprints on both cases. Ms. Pandukht concurred. Mr. Cox requested a continuance on behalf the deft. COURT ORDERED, trial VACATED and reset. Opposition by Ms. Pandukht on deft's motion. Matter submitted by Mr. Cox. COURT ORDERED, Deft's motion to sever unrelated criminal offenses DENIED.

CUSTODY

12/02/99 8:30 AM CALENDAR CALL

12/06/99 9:30 AM JURY TRIAL

12/02/99 08:30 AM 00 CALENDAR CALL

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: CONNIE KALSKI, Relief Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005734 Pandukht, Taleen R.	Y
	0001 D1 Daniels, Alan	Y
	PUBDEF Public Defender	Y
	005924 Cox, G. Darren	Y

AMENDED INFORMATION FILED IN OPEN COURT. Mr. Cox noted the matter has not been negotiated and Defendant requests to proceed to trial; Mr. Cox announced ready. The State announced ready for trial. Court noted for the record, an offer has been made to the defendant to which he has rejected.

CRIMINAL COURT MINUTES

C-160684-C STATE OF NEVADA

vs Daniels, Alan

CONTINUED FROM PAGE: 002

COURT ORDERED, trial date STANDS and will proceed on 12/6/99 - 9:15 AM.

CUSTODY

12/06/99 09:15 AM 00 TRIAL BY JURY

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
003726	Guymon, Gary L.	Y
005734	Pandukht, Taleen R.	Y
0001 D1	Daniels, Alan	Y
PUBDEF	Public Defender	Y
005924	Cox, G. Darren	Y
006762	O'Brien, Timothy P.	Y

Jury summoned. Parties announced ready to proceed. The Clerk called the roll of the prospective Jury Panel and all present. Court Clerk gave the Voir Dire Oath. Court and Counsel examined the prospective jurors. CONFERENCE AT THE BENCH. Jury selected and sworn to try the case. Alternate Juror selected and sworn to try the case. Amended Information read to the Jury. COURT ORDERED, 10 minute recess and admonished the jury. Court reconvened with all parties present. Counsel stipulated to the presence of the jury. Opening statements by Ms. Pandukht. Opening statements by Mr. O'Brien. Testimony and exhibits presented (see worksheets.) COURT ORDERED, recess for lunch until 1:15 PM and admonished the jury. Court reconvened with all parties present. Counsel stipulated to the presence of the jury. Testimony and exhibits presented (see worksheets.) Mr. Guymon advised the State will not admit exhibits #12 and #33. State rest. COURT ORDERED, recessed.

OUTSIDE THE PRESENCE OF THE JURY: Counsel stipulated that Jury Instructions were settled in open court and the Court would read them prior to argument. Court read statutes and advised Deft. of his right not to testify. Mr. Cox advised he explained this to his client and advised him of his rights. Argument by Mr. Guymon to bring up two issues, the use a weapon and his gambling. Response by Mr. Cox and Mr. O'Brien. COURT ORDERED, Mr. Guymon will be allowed to pursue these two issues if the Deft. takes the stand; if deft. admits it then will have to drop it. Court advised Mr. Cox it does not want this jury to know about the deft's other trial date and other cases.

Jury summoned. Counsel stipulated to the presence of the jury. Witnesses sworn and testified. Exhibits presented (see worksheets.) CONFERENCE AT THE BENCH. Defense rest. COURT ORDERED, matter CONTINUED tomorrow at 9:00 AM and admonished the jury.

CONTINUED TO: 12/07/99 09:15 AM 01

PRINT DATE: 12/08/09

PAGE: 003

CONTINUED ON PAGE: 004
MINUTES DATE: 12/06/99

10F02742X - DANIELS, ALAN

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CRIMINAL COURT MINUTES

C-160684-C STATE OF NEVADA

vs Daniels, Alan

CONTINUED FROM PAGE: 003

12/07/99 09:15 AM 01 TRIAL BY JURY

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES: STATE OF NEVADA
003726 Guymon, Gary L.
005734 Pandukht, Taleen R.

0001 D1 Daniels, Alan
PUBDEF Public Defender
005924 Cox, G. Darren
006762 O'Brien, Timothy P.

Y
Y
Y

Y
Y
Y
Y

OUTSIDE THE PRESENCE OF THE JURY: Court noted Mr. Guymon would like to withdraw a jury instruction. Objection by Mr. O'Brien. Mr. Guymon moved to withdraw stock instruction #15A. COURT ORDERED, Will allow over the objection to withdraw #15A.

Jury summoned. Counsel stipulated to the presence of the jury. Mr. Guymon noted the State rest. Court read the Jury Instructions. Closing argument by Ms. Pandukht. Closing argument by Mr. Cox. Closing argument by Mr. Guymon. 10:20 AM Bailiff sworn to take charge of the Jury and retired them to deliberate. Court thanked and excused the alternate juror.

11:18 AM Jury returned with the Verdict and the Foreperson read it in open Court. CONFERENCE AT THE BENCH. COURT ORDERED, the Jury to return for deliberation again to review instructions 10 and 16 which the Court read.

11:24 AM Bailiff retired the jury for deliberation.

11:26 AM Jury returned with the following VERDICTS:

AS TO COUNT I - GUILTY of BURGLARY WHILE IN POSSESSION OF A FIREARM (F); AS TO COUNT II - GUILTY of ROBBERY WITH USE OF A DEADLY WEAPON (F); AS TO COUNT III - GUILTY of BURGLARY WHILE IN POSSESSION OF A FIREARM (F); AS TO COUNT IV - GUILTY of ROBBERY WITH USE OF A DEADLY WEAPON (F)

Upon request of Defense, Jury polled. COURT ORDERED, matter referred to the Department of Parole & Probation and set for sentencing. Court thanked and excused the Jury. Court recessed.

CUSTODY

1/10/00 8:30 AM SENTENCING

PAGE: 005

MINUTES DATE: 12/27/99

CRIMINAL COURT MINUTES

C-160684-C STATE OF NEVADA vs Daniels, Alan

CONTINUED FROM PAGE: 004

12/27/99 08:30 AM 00 DEFT'S MOTION FOR NEW TRIAL

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: CONNIE KALSKI, Relief Clerk
JERI ANDERSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005398	Lalli, Christopher J.	Y
0001 D1	Daniels, Alan	Y
PUBDEF	Public Defender	Y
006762	O'Brien, Timothy P.	Y

Mr. O'Brien noted this is Mr. Cox's case who is out of the jurisdiction.
Mr. O'Brien requested matter be continued. COURT ORDERED, matter CONTINUED
to Defendant's sentencing date.

CUSTODY

CONTINUED TO: 01/10/00 08:30 AM 01

01/10/00 08:30 AM 00 ALL PENDING MOTIONS (1/10/00)

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: CONNIE KALSKI, Relief Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005734	Pandukht, Taleen R.	Y
0001 D1	Daniels, Alan	Y
PUBDEF	Public Defender	Y
005924	Cox, G. Darren	Y

DEFENDANT'S MOTION FOR NEW TRIAL...SENTENCING

Court advised all the motions and pleadings have been read by the Court.
Court noted the law is clear as to Deft's motion for a new trial based upon
severing. Argument by Mr. Cox. Opposition by the State. COURT ORDERED,
Defendant's Motion DENIED. Officer Dawn Williams of the Division of Parole
and Probation present. By virtue of jury verdicts, DEFENDANT DANIELS
ADJUDGED GUILTY of COUNTS I and III - BURGLARY WHILE IN POSSESSION OF A
FIREARM (F) and COUNTS II and IV - ROBBERY WITH USE OF A DEADLY WEAPON (F).
Statements by counsel and Defendant. COURT ORDERED, in addition to the \$25
Administrative Assessment fee, \$250 DNA Test and Fee, \$4,100 RESTITUTION on
count I, and \$3,000 RESTITUTION on Count III, Defendant SENTENCED as
follows:

PRINT DATE: 12/08/09

PAGE: 005

CONTINUED ON PAGE: 006
MINUTES DATE: 01/10/00

10F02742X - DANIELS, ALAN

Page 230 of 299

CRIMINAL COURT MINUTES

C-160684-C STATE OF NEVADA

vs Daniels, Alan

CONTINUED FROM PAGE: 005

COUNT I - to a MAXIMUM term of NINETY (90) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS.

COUNT II - to a MAXIMUM term of NINETY (90) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; plus an EQUAL and CONSECUTIVE MAXIMUM term of NINETY (90) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS for use of a deadly weapon. Count II CONCURRENT to Count I.

COUNT III - to a MAXIMUM term of NINETY (90) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS. Count III CONCURRENT with Count II.

COUNT IV - to a MAXIMUM term of NINETY (90) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; plus an EQUAL and CONSECUTIVE MAXIMUM term of NINETY (90) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS for use of a deadly weapon. Count IV CONSECUTIVE to Count II.

All sentences above to be served in the Nevada Department of Prisons. Deft to receive 210 DAYS credit for time served.

NDP

CASE CLOSED

CLERK'S NOTE: Minute order amended on 1/20/00 to reflect Count IV CONSECUTIVE to Count II./ck 1/26/00 Minute order amended to reflect Count II CONCURRENT to Count I./ck

04/10/00 09:08 AM 00 DEFT'S REQUEST CLARIFY JUDGMENT OF CONVICTION

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: CONNIE KALSKI, Court Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES: STATE OF NEVADA
005398 Lalli, Christopher J.

Y
Y

Court noted Defendant is confined to the Nevada Department of Prisons. Mr. Lalli advised an amended JOC needed to be filed, to which he offered to the Court. AMENDED JOC SIGNED in open court.

NDP

CASE CLOSED

PAGE: 007

MINUTES DATE: 07/25/00

CRIMINAL COURT MINUTES

C-160684-C STATE OF NEVADA

vs Daniels, Alan

CONTINUED FROM PAGE: 006

07/25/00 08:30 AM 00 DEFT'S PRO PER MOTION TO DISCHARGE
ATTORNEY OF RECORD

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: NORA PENA, Court Clerk
ROBERT MINTUN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005398 Lalli, Christopher J.	Y
	0001 D1 Daniels, Alan	N
	PUBDEF Public Defender	Y
	005924 Cox, G. Darren	Y

COURT ORDERED, Deft's pro per motion to discharge attorney of record GRANTED and directed Mr. Cox to send the file to the Deft. Mr. Cox stated he will do so.

NDP

CASE CLOSED

08/22/01 08:30 AM 00 DEFT'S PRO PER PETITION FOR WRIT OF
HABEAS CORPUS

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: Carole D'Aloia, Court Clerk
Shawn Ott, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	004739 Rutledge, Brian S.	Y

Court advised it reviewed Defendant's Petition and the State's Opposition. Statements by Court regarding the history of the case. Court noted Defendant is claiming ineffective assistance of counsel as the basis for his petition. Court advised it agrees with the State that these are just "bare naked" allegations and, ORDERED, motion DENIED; State to prepare appropriate Order.

NDC

PRINT DATE: 12/08/09

PAGE: 007

CONTINUED ON PAGE: 008
MINUTES DATE: 08/22/01

10F02742X - DANIELS, ALAN

Page 232 of 299

PAGE: 008

MINUTES DATE: 05/11/06

CRIMINAL COURT MINUTES

C-160684-C STATE OF NEVADA vs Daniels, Alan

CONTINUED FROM PAGE: 007

05/11/06 08:30 AM 01 AT THE REQUEST OF THE COURT POST
CONVICTION WRIT OF HABEAS CORPUS /17

HEARD BY: Joseph T. Bonaventure, Judge; Dept. 6

OFFICERS: Keith Reed, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005691 Kochevar, Brian J.	Y
	0001 D1 Daniels, Alan	Y
	007941 Turner, Paul G.	Y

Arguments in support of motion by Mr. Turner. Court stated findings and
ORDERED, petition DENIED.

NDC

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TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

PRINT DATE: 12/08/09

PAGE: 008

MINUTES DATE: 05/11/06

10F02742X - DANIELS, ALAN

Page 233 of 299

ORIGINAL

16

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

FILED

1997 OCT 17 A 8:53

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 CARY JERARD PICKETT, aka
12 Gary Pickett, #0725059

13 Defendant.

Case No. C145127
Dept. No. XI
Docket S

15 JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 18th day of September, 1997, the Defendant CARY JERARD
17 PICKETT, aka Gary Pickett, appeared before the Court herein with his counsel and entered a
18 plea of guilty to the crime(s) of BURGLARY (CATEGORY B FELONY), committed on or
19 about the 7th day of August, 1997, in violation of NRS 205.060 and

20 WHEREAS, thereafter on the 25th day of September, 1997, the Defendant, In Propria
21 Persona, being present in court with his counsel JORDAN, SAVAGE, ESQ., as Stand By
22 Counsel, and ARTHUR G. NOXON, Deputy District Attorney, also being present; the above
23 entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in
24 addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a minimum of
25 thirty-six (36) months and a maximum of one-hundred twenty (120) months in the Nevada
26 Department of Prisons, to be served consecutive to sentence imposed in Case No. C143146,
27 suspended; placed on probation for an indeterminate period not to exceed five (5) years.
28 Conditions: 1. Search Clause for controlled substances and stolen property. 2. Complete Drug

OCT 14 1997

CE-05

OCT 20 1997

STATE'S
EXHIBIT

2

C 262523

CE31

1 Court Program, noting there was no use of weapons in this incident. 3. Complete long-term
2 counseling, vocational and educational programs as deemed necessary. 4. Defendant to be
3 supervised in the Nevada Division of Parole and Probation's House Arrest Program for the first
4 four (4) months of probation. Defendant to receive thirty-five (35) days credit for time served.
5 Court referred matter to Drug Court, and Ordered, set for further proceedings on October 6,
6 1997 at 9:00 o'clock a.m. in Department X.

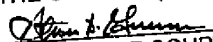
7 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
8 Judgment of Conviction as part of the record in the above entitled matter.

9 DATED this 16th day of October, 1997, in the City of Las Vegas, County of Clark,
10 State of Nevada.

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13 DISTRICT JUDGE MB
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27 DA#97-145127X/pm
28 LVMPD EV#9708071616
BURG-F
(TK1)

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

2-22-2010

ORIGINAL

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

FILED IN OPEN COURT

SEP-18-1997 19

LORETTA BOWMAN, CLERK

By Loretta Bowman Deputy

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 GARY PICKETT, aka
12 Cary Jerard Pickett, #0725059

13 Defendant.
14

Case No. C145127
Dept. No. XI
Docket S

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: BURGLARY (CATEGORY B FELONY - NRS
17 205.060), as more fully alleged in the charging document attached hereto as Exhibit "1". I also
18 hereby agree to plead guilty to Grand Larceny (Category B Felony) in Case No. C143146.

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 The State has agreed to retain the right to argue at rendition of sentence. This is a
22 conditional plea. If the Court refuses probation or refuses to sentence to the maximum term of
23 imprisonment the Defendant and/or the State may withdraw this offer.

24 The Defendant and the State agree to request the following:

25 A) That the Defendant be sentenced to a minimum term of thirty-six (36) months to a
26 maximum term of one-hundred twenty (120) months in the Nevada Department of Prisons in this
27 case (C145127). That the Defendant be sentenced to a minimum term of thirty-six (36) months
28 to a maximum term of one-hundred twenty (120) months in the Nevada Department of Prisons

CE31

1 in Case No. C143146, consecutive to this case, for a total of a minimum term of seventy-two
2 (72) months to a maximum term of two-hundred forty (240) months in the Nevada Department
3 of Prisons. The Defendant is to have the sentence suspended and be placed on probation for an
4 indeterminate period not to exceed five (5) years with the following Special Conditions:

5 1. Search Clause for the detection of Controlled Substances and Stolen Property.

6 2. That the Defendant be released to the Division of Parole and Probation for Intensive
7 Supervision, including House Arrest for the first four (4) to six (6) months of probation as
8 deemed necessary by the Division of Parole and Probation.

9 ✓ 3. Enter and successfully complete the Drug Court Program.

10 4. Enter and successfully complete any long term drug counseling, vocational, and
11 controlled education deemed necessary by the Division of Parole and Probation during and after
12 the Drug Court Program.

13 5. Complete eight (8) hours of Community Service not to exceed the provisions of NRS
14 176.087.

15 CONSEQUENCES OF THE PLEA

16 I understand that by pleading guilty I admit the facts which support all the elements of
17 the offense(s) to which I now plead as set forth in Exhibit "1".

18 I understand that as a consequence of my plea of guilty the Court must sentence me to
19 imprisonment in the Nevada State Prison for a minimum term of not less than one (1) year(s)
20 and a maximum term of not more than ten (10) years. The minimum term of imprisonment may
21 not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may
22 also be fined up to \$10,000.00. I understand that the law requires me to pay an Administrative
23 Assessment Fee.

24 I understand that, if appropriate, I will be ordered to make restitution to the victim of the
25 offense(s) to which I am pleading guilty and to the victim of any related offense which is being
26 dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the
27 State of Nevada for any expenses related to my extradition, if any.

28 I understand that I am eligible for probation for the offense to which I am pleading guilty.

1 I understand that, except as otherwise provided by statute, the question of whether I receive
2 probation is in the discretion of the sentencing judge.

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

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

9 I have not been promised or guaranteed any particular sentence by anyone. I know that
10 my sentence is to be determined by the Court within the limits prescribed by statute. I
11 understand that if my attorney or the State of Nevada or both recommend any specific
12 punishment to the Court, the Court is not obligated to accept the recommendation.

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

20 WAIVER OF RIGHTS

21 By entering my plea of guilty, I understand that I am waiving and forever giving up the
22 following rights and privileges:

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

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

145127.26

1 of proving beyond a reasonable doubt each element of the offense charged.

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

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

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

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

10 VOLUNTARINESS OF PLEA

11 I have discussed the elements of all of the original charge(s) against me with my attorney
12 and I understand the nature of the charge(s) against me.

13 I understand that the State would have to prove each element of the charge(s) against me
14 at trial.

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

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

19 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
20 that a trial would be contrary to my best interest.

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

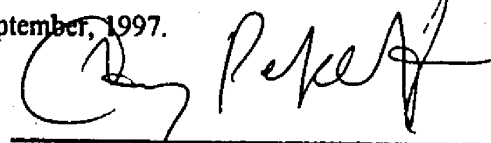
24 I am not now under the influence of any intoxicating liquor, a controlled substance or
25 other drug which would in any manner impair my ability to comprehend or understand this
26 agreement or the proceedings surrounding my entry of this plea.

27 My attorney has answered all my questions regarding this guilty plea agreement and its

28 ///

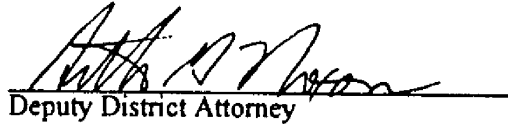
1 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

2 DATED this _____ day of September, 1997.

3 

4
5 GARY PICKETT, aka Cary Jerard Pickett
6 Defendant, In Propria Persona

7 AGREED TO BY:

8 
9 Deputy District Attorney

1 CERTIFICATE OF COUNSEL:

2 1, the undersigned, as the attorney for the Defendant named herein and as an officer of
3 the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the charge(s) to
5 which guilty pleas are being entered.

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

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent
9 with the facts known to me and are made with my advice to the Defendant.

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

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs 1
17 and 2 above.

18 Dated: This 18 day of September, 1997.

19 Jordan Savage
20 STAND-BY ATTORNEY FOR DEFENDANT
21
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pm

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

John J. Quinn
CLERK OF THE COURT

2 · 22 · 2010

ORIGINAL

16

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

FILED

1997 OCT 17 A 8:51

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 GARY PICKETT, aka
12 Cary Jerard Pickett, #0725059

13 Defendant.

Case No. C143146
Dept. No. XI
Docket S

15 JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 28th day of August, 1997, the Defendant GARY PICKETT, aka Cary
17 Jerard Pickett, appeared before the Court herein with his counsel and entered a plea of guilty to
18 the crime(s) of GRAND LARCENY (CATEGORY B FELONY), committed on or about the 3rd
19 day of May, 1997, in violation of NRS 205.220 and

20 WHEREAS, thereafter on the 25th day of September, 1997, the Defendant, In Propria
21 Persona, being present in court with his counsel JORDAN SAVAGE, ESQ., as Stand By
22 Counsel, and ARTHUR G. NOXON, Deputy District Attorney, also being present; the above
23 entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in
24 addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a minimum of
25 thirty-six (36) months and a maximum of one-hundred twenty (120) months in the Nevada
26 Department of Prisons, suspended; placed on probation for an indeterminate period not to
27 exceed five (5) years. Conditions: 1. Search Clause for controlled substances and weapons.
28 2. Complete Drug Court Program, noting weapons were not involved. 3. Complete long-term

CE-05

OCT 20 1997

STATE'S
EXHIBIT

3

C 262523

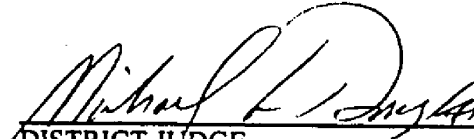
CE31

31 S

1 counseling, vocational and educational programs as deemed necessary by the Division of Parole
2 and Probation. 4. Complete eight (8) hours community service per month within the first three
3 (3) years of probation. 5. Pursuant to NRS 176.185, Defendant to be supervised in the Nevada
4 Division of Parole and Probation's House Arrest Program for the first four (4) months of
5 probation. Defendant to receive eighty-nine (89) days credit for time served. Court referred
6 matter to Drug Court, and Ordered, set for further proceedings on October 6, 1997 at 9:00
7 o'clock a.m. in Department X.

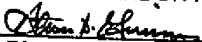
8 THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this
9 Judgment of Conviction as part of the record in the above entitled matter.

10 DATED this 16th day of October, 1997, in the City of Las Vegas, County of Clark,
11 State of Nevada.

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13 
14 DISTRICT JUDGE SP3

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26 DA#97-143146X/pm
27 LVMPD EV#9705030904
28 G/L-F
(TKI)

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OF THE ORIGINAL ON FILE


CLERK OF THE COURT

2-22-2010

ORIGINAL

FILED IN OPEN COURT

AUG 28 1997 19

LORETTA BOWMAN, CLERK

By Susan Burdette
Deputy

1 GMEM
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 435-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 GARY PICKETT, aka
12 Cary Jerard Pickett, #0725059

13 Defendant.
14

Case No. C143146
Dept. No. XI
Docket S

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: GRAND LARCENY (CATEGORY B FELONY - NRS
17 205.220), as more fully alleged in the charging document attached hereto as Exhibit "1". I also
18 hereby agree to plead guilty to Burglary (Category B Felony), in Case No. 97F11223X.

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 The State has agreed to retain the right to argue at rendition of sentence. This is a
22 conditional plea. If the Court refuses probation or refuses to sentence to the maximum term of
23 imprisonment the Defendant and/or the State may withdraw this offer.

24 The Defendant and the State agree to request the following:

25 A) That the Defendant be sentenced to a minimum term of thirty-six (36) months to a
26 maximum term of one-hundred twenty (120) months in the Nevada Department of Prisons in this
27 case (C143146). That the Defendant be sentenced to a minimum term of thirty-six (36) months
28 to a maximum term of one-hundred twenty (120) months in the Nevada Department of Prisons

CE31

8

1 in Case No. 97F11223X, consecutive to this case, for a total of a minimum term of seventy-two
2 (72) months to a maximum term of two-hundred forty (240) months in the Nevada Department
3 of Prisons. The Defendant is to have the sentence suspended and be placed on probation for an
4 indeterminate period not to exceed five (5) years with the following Special Conditions:

- 5 1. Search Clause for the detection of Controlled Substances and Stolen Property.
- 6 2. That the Defendant be released to the Division of Parole and Probation for Intensive
7 Supervision, including House Arrest for the first four (4) to six (6) months of probation as
8 deemed necessary by the Division of Parole and Probation.
- 9 3. Enter and successfully complete the Drug Court Program.
- 10 4. Enter and successfully complete any long term drug counseling, vocational, and
11 controlled education deemed necessary by the Division of Parole and Probation during and after
12 the Drug Court Program.
- 13 5. Complete eight (8) hours of Community Service not to exceed the provisions of NRS
14 176.087.

15 CONSEQUENCES OF THE PLEA

16 I understand that by pleading guilty I admit the facts which support all the elements of
17 the offense(s) to which I now plead as set forth in Exhibit "1".

18 I understand that as a consequence of my plea of guilty the Court must sentence me to
19 imprisonment in the Nevada State Prison for a minimum term of not less than one (1) year(s)
20 and a maximum term of not more than ten (10) years. The minimum term of imprisonment may
21 not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may
22 also be fined up to \$10,000.00. I understand that the law requires me to pay an Administrative
23 Assessment Fee.

24 I understand that, if appropriate, I will be ordered to make restitution to the victim of the
25 offense(s) to which I am pleading guilty and to the victim of any related offense which is being
26 dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the
27 State of Nevada for any expenses related to my extradition, if any.

28 I understand that I am eligible for probation for the offense to which I am pleading guilty.

1 I understand that, except as otherwise provided by statute, the question of whether I receive
2 probation is in the discretion of the sentencing judge.

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

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

9 I have not been promised or guaranteed any particular sentence by anyone. I know that
10 my sentence is to be determined by the Court within the limits prescribed by statute. I
11 understand that if my attorney or the State of Nevada or both recommend any specific
12 punishment to the Court, the Court is not obligated to accept the recommendation.

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

20 WAIVER OF RIGHTS

21 By entering my plea of guilty, I understand that I am waiving and forever giving up the
22 following rights and privileges:

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

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

1 of proving beyond a reasonable doubt each element of the offense charged.

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

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

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

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

10 VOLUNTARINESS OF PLEA

11 I have discussed the elements of all of the original charge(s) against me with my attorney
12 and I understand the nature of the charge(s) against me.

13 I understand that the State would have to prove each element of the charge(s) against me
14 at trial.

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

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

19 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
20 that a trial would be contrary to my best interest.

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

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

27 My attorney has answered all my questions regarding this guilty plea agreement and its

28 ///

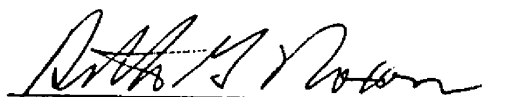
1 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

2 DATED this 27 day of August, 1997.

3 

4
5 GARY PICKETT, aka Cary Jerard Pickett
6 Defendant, In Propria Persona

7 AGREED TO BY:

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9 Deputy District Attorney
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1 CERTIFICATE OF COUNSEL:

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

4 1. I have fully explained to the Defendant the allegations contained in the charge(s) to
5 which guilty pleas are being entered.

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

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent
9 with the facts known to me and are made with my advice to the Defendant.

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

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs 1
17 and 2 above.

18 Dated: This 27 day of August, 1997.

19 Jordan Savage
20 STAND-BY ATTORNEY FOR DEFENDANT
21
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pm

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Alvin L. Johnson
CLERK OF THE COURT

2.22.2010

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

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 GARY PICKETT, aka
16 Cary Jerard Pickett, #0725059

17 Defendant.

Case No. C143146
Dept. No. XI
Docket S

18 AMENDED
19 INFORMATION

20 STATE OF NEVADA }
21 COUNTY OF CLARK } ss:

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

24 That GARY PICKETT, aka Cary Jerard Pickett, the Defendant above named, having
25 committed the crime of GRAND LARCENY (FELONY - NRS 205.220), on or about the 3rd
26 day of May, 1997, within the County of Clark, State of Nevada, contrary to the form, force and
27 effect of statutes in such cases made and provided, and against the peace and dignity of the State
28 of Nevada, did then and there wilfully, unlawfully, and feloniously, with intent to deprive the
owner permanently thereof, steal, take, and carry away personal property of ROSS DRESS FOR
LESS, 121 North Nellis, Las Vegas, Clark County, Nevada, having a value of \$250.00, or more,

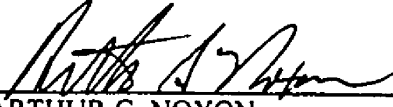
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1 to-wit: miscellaneous clothing items.

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

5 BY 
6 ARTHUR G. NOXON
7 Deputy District Attorney
8 Nevada Bar #000981

9 Names of witnesses known to the District Attorney's Office at the time of filing this
10 Information are as follows:

11	<u>NAME</u>	<u>ADDRESS</u>
12	BAKER, JAMES D.	LVMPD P#4895
13	HOOTEN, CHERYL D.	LVMPD P#5262
14	PIHLGREN, BRANDY DALE	5075 Spyglass Hill Dr. Las Vegas, NV 89122
15	REDIGER, CHRISTIAN J.	LVMPD P#1886
16	SOTO, FRANK ANTHONY (JR.)	LVMPD P#4516
17	SZUKIEWICZ, JOSEPH P.	LVMPD P#5411

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26 DA#97-143146X/pm
27 LVMPD EV#9705030904
28 G/L-F
(TK1)

1 UNDER NO CIRCUMSTANCES IS THE LANGUAGE CONTAINED HEREINAFTER
2 TO BE READ TO A JURY HEARING THE PRIMARY OFFENSE FOR WHICH THE
3 DEFENDANT IS PRESENTLY CHARGED.

4 Defendant GARY PICKETT, aka Cary Jerard Pickett, hereinbefore named, is placed on
5 notice that, in accordance with the authorization of NRS 207.010, punishment imposed pursuant
6 to the above-stated habitual criminal statute will be urged upon the Court if said Defendant is
7 found guilty on the primary offense of GRAND LARCENY, for which the Defendant is
8 presently charged.

9 This page concerning the prior convictions hereinbelow set forth is to be considered by
10 the Court in its discretion ONLY after the finding of guilty of Defendant on the primary charge
11 herein.

12 That said Defendant GARY PICKETT, aka Cary Jerard Pickett, has been four (4) times
13 convicted of crimes, which, under the laws of the situs of the crime and/or the State of Nevada,
14 amount to felonies, to-wit:

15 1. That on or about the 15th day of July, 1991, the Defendant was convicted in the Eighth
16 Judicial District Court, State of Nevada, in and for the County of Clark, for the crime of Attempt
17 Grand Larceny, in Case No. C99915.

18 2. That on or about the 10th day of December, 1992, the Defendant was convicted in the
19 Eighth Judicial District Court, State of Nevada, in and for the County of Clark, for the crime of
20 Burglary, in Case No. C107733.

21 3. That on or about the 21st day of January, 1993, the Defendant was convicted in the
22 Eighth Judicial District Court, State of Nevada, in and for the County of Clark, for the crime of
23 Attempt Grand Larceny, in Case No. C109725.

24 4. That on or about the 8th day of July, 1994, the Defendant was convicted in the Eighth

25 ///

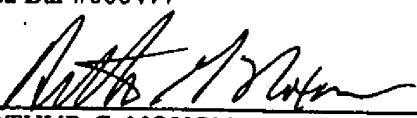
26 ///

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28 ///

1 Judicial District Court, State of Nevada, in and for the County of Clark, for the crime of Escape,
2 in Case No. C119000.

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

5
6 BY 
7 ARTHUR G. NOXON
8 Deputy District Attorney
Nevada Bar #000981

9 **DO NOT READ TO THE JURY**

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26 DA#97-143146X/pm
27 LVMPD EV#9705030904
28 G/L-F
(TK1)

CERTIFIED COPY
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TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Allen P. Johnson
CLERK OF THE COURT

2-22-2010

3
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Letta Soume

CLERK

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

9 I.A. 06/05/97
10 9:00 A.M.
11 P.D.

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 GARY PICKETT, aka
16 Cary Jerard Pickett, #0725059

17 Defendant(s).

Case No. C143146
Dept. No. XI
Docket S

INFORMATION

18 STATE OF NEVADA }
19 COUNTY OF CLARK }ss:

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

22 That GARY PICKETT, aka Cary Jerard Pickett, the Defendant(s) above named, having
23 committed the crime of **GRAND LARCENY (Felony - NRS 205.220)**, on or about the 3rd day
24 of May, 1997, within the County of Clark, State of Nevada, contrary to the form, force and
25 effect of statutes in such cases made and provided, and against the peace and dignity of the State
26 of Nevada, did then and there wilfully, unlawfully, and feloniously, with intent to deprive the
27 owner permanently thereof, steal, take, and carry away personal property of ROSS DRESS FOR
28 LESS, 121 North Nellis, Las Vegas, Clark County, Nevada, having a value of \$250.00, or more,

///

///

///

Letta S

1 to-wit: miscellaneous clothing items.

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

5 BY Melisa De La Garza
6 MELISA DE LA GARZA
7 Deputy District Attorney
8 Nevada Bar #005927

9 Names of witnesses known to the District Attorney's Office at the time of filing this
10 Information are as follows:

11 <u>NAME</u>	12 <u>ADDRESS</u>
13 BAKER, JAMES D.	14 LVMPD P#4895
15 HOOTEN, CHERYL D.	16 LVMPD P#5262
17 PIHLGREN, BRANDY DALE	18 5075 Spyglass Hill Dr. 19 Las Vegas, NV 89122
20 REDIGER, CHRISTIAN J.	21 LVMPD P#1886
22 SOTO, FRANK ANTHONY (JR.)	23 LVMPD P#4516
24 SZUKIEWICZ, JOSEPH P.	25 LVMPD P#5411

26 DA#97F06803X/pm
27 LVMPD EV#9705030904
28 G/L-F
(TKI)

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OF THE ORIGINAL ON FILE

CLERK OF THE COURT

2-22-2010

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA vs Pickett, Gary

06/05/97 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
DEBRA WINN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004352	Owens, Steven S.	Y
0001 D1	Pickett, Gary	Y
PUBDEF	Public Defender	Y
002293	Creel, Craig D.	Y

DEFENDANT PICKETT ARRAIGNED, PLED NOT GUILTY TO COUNT I - GRAND LARCENY (F)
AND INVOKED THE 60 DAY RULE. COURT ORDERED, matter set for TRIAL.

CUSTODY

07-17-97 9:00 AM CALENDAR CALL

07-21-97 10:00 AM JURY TRIAL

07/14/97 09:00 AM 00 DEFT'S PRO PER REQUEST TO RECEIVE
FERETTA CANVASS

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
001398	Bloxham, Ronald C.	Y
0001 D1	Pickett, Gary	Y
PUBDEF	Public Defender	Y
003749	Justice, Patricia R.	Y

Upon Court's inquiry, Deft. stated he wishes to represent himself as he and Ms. Justice have a conflict of interest; she does not believe he can win this case; she has insulted him and requested a psychological evaluation; he requested a substitution of counsel and she suggested that he represent himself. Court stated the penalty and admonished Deft. that if he represents himself at trial, the Court will not make any exceptions for him. Ms. Justice stated the defenses Deft. wants her to take at trial would be obvious ineffective assistance of counsel and it would be unethical to go forward. Following further statements by Deft., COURT ORDERED, matter CONTINUED; Ms. Justice to contact and discuss with Deft. Court stated he will have his office contact Mr. Savage for possible appointment -- not as counsel of record but as stand-by counsel if Deft. wishes to go forward and

CONTINUED ON PAGE: 002

PRINT DATE: 02/19/10

PAGE: 001

MINUTES DATE: 07/14/97

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA

vs Pickett, Gary

CONTINUED FROM PAGE: 001

represent himself. Deft. requested a copy of the discovery. COURT ORDERED, DENIED. Ms. Justice requested this matter be recalled at 2:00 p.m., and COURT SO ORDERED.

At 2:00 P.M., matter recalled with all parties present. COURT ORDERED, State excused. Court noted the Calendar Call and Jury Trial, noted that Deft. wishes to go forward and represent himself, and noted Ms. Justice's request to make certain representations on the record this date. Ms. Justice concurred and make in-camera representations as to this case. Statements by Deft. as to his defense. Court found that Deft. has a right a trial that is based on physical identification of physical evidence available.

CUSTODY

07-17-97 9:00 AM DEFT'S REQUEST: PRO PER MOTION TO RECEIVE FERETA CANVASS CANVASS ... CALENDAR CALL ... POSSIBLE CONFIRMATION OF COUNSEL (J. SAVAGE)

07-21-97 10:00 AM JURY TRIAL

CONTINUED TO: 07/17/97 09:00 AM 01

07/17/97 09:00 AM 00 ALL PENDING MOTIONS (07-17-97)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005218	Peterson, Tamara M.	Y
0001 D1	Pickett, Gary	Y
PUBDEF	Public Defender	Y
003749	Justice, Patricia R.	Y
005480	Savage, Jordan S.	Y

DEFT'S PRO PER REQUEST TO RECEIVE FERETTA CANVASS ... POSSIBLE CONFIRMATION OF COUNSEL (J. SAVAGE) ... CALENDAR CALL

Ms. Justice stated she is prepared to proceed. Court noted Deft's concern as to representing himself; upon Court's inquiry, Deft. stated he is not satisfied that he can be properly represented by counsel. COURT ORDERED, Jury Trial VACATED; Deft's Pro Per Request to Receive Feretta Canvass and Possible Confirmation of Counsel CONTINUED; if need be, the Court will look at having either the State or Mr. Savage as stand-by; a new trial date will be set at that time.

CONTINUED ON PAGE: 003

PRINT DATE: 02/19/10

PAGE: 002

MINUTES DATE: 07/17/97

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA

vs Pickett, Gary

CONTINUED FROM PAGE: 002

CUSTODY

07-22-97 9:00 AM DEFT'S PRO PER REQUEST TO RECEIVE FERETTA CANVASS ...
POSSIBLE CONFIRMATION OF COUNSEL (J. SAVAGE) ... TRIAL SETTING

07/22/97 09:00 AM 00 ALL PENDING MOTIONS 7-22-97

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: JOYCE BROWN, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000981	Noxon, Arthur G.	Y
0001 D1	Pickett, Gary	Y
PUBDEF	Public Defender	Y
003749	Justice, Patricia R.	Y
005480	Savage, Jordan S.	Y

POSSIBLE CONFIRMATION OF COUNSEL (J. SAVAGE)...DEFT'S PRO PER REQUEST TO
RECEIVE FERETTA CANVASS...TRIAL SETTING

Ms. Justice advised the Defendant still wanted to represent himself; she had explained what the Feretta canvass was and the repercussions of representing himself. Upon inquiry by the Court, Defendant Pickett advised he wanted to represent himself and made further statements to the Court. Court advised Defendant the Court would not interfere in negotiations between Defendant and State; the Court would not be pre-bound on what it was going to do; and unless it was in negotiations, the Court would not agree to anything. Mr. Noxon advised the Defendant would not be an automatic referral as Drug Court would have to accept him. Ms. Justice advised an offer had been made and the cap was twelve to thirty. Court gave the Feretta Canvass to Defendant. COURT ORDERED Mr. Savage would be Defendant's stand-by Counsel during the trial; but could not make objections during the trial or aid Defendant in any way; Court would allow Defendant to speak to Mr. Savage in preparation for trial. Court inquired of Defendant if he still wished to represent himself and he stated that he did. At Court's inquiry Defendant advised he had no formal law courses, had not sat through a trial, and did not know how to conduct a trial. Mr. Noxon advised the State had the option and may file habitual criminal on this case. COURT ORDERED matter set for trial in sixty days and a status check in mid-August for status of the trial.

CUSTODY

8-14-97 9:00 AM STATUS CHECK: TRIAL STATUS

8-28-97 9:00 AM CALENDAR CALL

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA

vs Pickett, Gary

CONTINUED FROM PAGE: 003

9-2-97 10:00 AM JURY TRIAL

08/14/97 09:00 AM 00 ALL PENDING MOTIONS (08-14-97)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
JANICE LISTON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000981	Noxon, Arthur G.	Y
0001 D1	Pickett, Gary	Y
PRO SE	Pro Se	Y
005480	Savage, Jordan S.	Y

STATUS CHECK: TRIAL STATUS ... STATE'S MOTION TO AMEND INFORMATION

As to STATUS CHECK: TRIAL STATUS: Upon Court's inquiry, Mr. Noxon noted the State is ready for trial. Deft. requested discovery as to the photos. Mr. Noxon lodged the photos and copies of Deft's four (4) prior convictions with Mr. Savage. Mr. Noxon requested that Deft. advise the State, so they can respond, if he challenges any of those convictions.

As to STATE'S MOTION TO AMEND INFORMATION: Mr. Noxon noted the State wishes to seek Habitual Criminal treatment. Deft. objected to the State filing Habitual Criminal treatment at this late date. Response by Mr. Noxon that per Statute, any time up to 15 days prior to sentencing, the State may file Habitual Criminal charges and will obtain the Statute and respond if the Court so wishes, noting the State is within the limit. He further stated that if Deft. wishes to discuss negotiations, he will do so. Court cited NRS 207.010, and ORDERED, State's Motion to Amend Information GRANTED, noting it is the State's prerogative to go forward with it, if appropriate. ORDER TO AMEND INFORMATION signed and FILED IN OPEN COURT. AMENDED INFORMATION FILED IN OPEN COURT. COURT ORDERED, Calendar Call and Jury Trial dates STAND. Mr. Noxon stated he will contact Mr. Savage as to negotiating this matter.

CUSTODY

08-28-97 9:00 AM CALENDAR CALL

09-02-97 10:00 AM JURY TRIAL

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA

vs Pickett, Gary

CONTINUED FROM PAGE: 004

08/28/97 09:00 AM 00 CALENDAR CALL

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000981	Noxon, Arthur G.	Y
0001 D1	Pickett, Gary	Y
PRO SE	Pro Se	Y
005480	Savage, Jordan S.	Y

GUILTY PLEA AGREEMENT FILED IN OPEN COURT. Upon Court's inquiry, Deft. stated he withdrew his plea of Not Guilty. Mr. Noxon noted the State will request that Deft.'s case, 9711223X in Justice Court 4 that will go to District Court Dept. V, and will ask that it be transferred here after entering his plea; he will request the sentencing to be on the same date. As to NEGOTIATIONS, Mr. Noxon stated Deft. will plead guilty to Information; Deft. has four (4) prior felonies and after reviewing same, Deft. may have a drug problem; the State will request 3-10 years in this case and 3-10 years in the subsequent Burglary case; will request probation in this case and noted page 2 of the Guilty Plea Agreement as to the minimums; if Deft. successfully completes drug counseling and goes five (5) years without any problem, the State will look at 6-20 years, noting he has had some conversations with Deft. and with Mr. Savage there. Mr. Noxon further noted that because of the totality of that, this is a conditional plea; if Court is not inclined to follow that, Deft. will be allowed to withdraw his plea and proceed to trial; if the Court would not sentence Deft. to that much, the State would be able to withdraw his plea. Penalty stated. DEFENDANT PICKETT ARRAIGNED AND PLED GUILTY TO COUNT I - GRAND LARCENY (F). Court accepted plea, referred matter to P & P and ORDERED set for sentencing. FURTHER, COURT ORDERED, Trial date VACATED.

CUSTODY

09-25-97 9:00 AM SENTENCING

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA

vs Pickett, Gary

CONTINUED FROM PAGE: 005

09/25/97 09:00 AM 00 SENTENCING

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
JO ANN HANEMAN, Relief Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	000981 Noxon, Arthur G.	Y
	0001 D1 Pickett, Gary	Y
	005480 Savage, Jordan S.	Y

Larry Scott of the Division of Parole & Probation present. Court noted he has reviewed the Pre-Sentence Report and the Guilty Plea Agreement, noting that if the Court determines anything other than negotiated, either party can determine that the deal is off. Statement by Mr. Noxon. By virtue of Deft's plea, DEFENDANT PICKETT ADJUDGED GUILTY OF COUNT I - GRAND LARCENY (F). Following statements in mitigation of sentencing, Court stated its findings, and ORDERED, in addition to the \$25.00 Administrative Assessment Fee, Defendant SENTENCED to a MINIMUM of THIRTY-SIX (36) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Prisons, SUSPENDED, placed on PROBATION for for an indeterminate period not to exceed FIVE (5) YEARS. CONDITIONS:

1. Search Clause for controlled substances and weapons.
2. Complete Drug Court Program, noting weapons were not involved.
3. Complete long-term counseling, vocational and educational programs as deemed necessary by P & P.
4. Complete eight (8) hours community service per month within the first three (3) years of probation.
5. Pursuant to NRS 176.185, defendant to be supervised in the Nevada Div. of Parole and Probation's House Arrest Program for the first four (4) months of probation.

Deft. to receive 89 days credit for time served. FURTHER, COURT ORDERED, Deft. to report to the Div. of Parole and Probation at 215 East Bonanza immediately upon being released; failure to do so will result in a bench warrant. Bond, if any, exonerated. Mr. Scott stated he will discuss House Arrest with Deft. Court referred matter to Drug Court, and ORDERED, set for FURTHER PROCEEDINGS.

NIC

10-06-97 9:00 AM FURTHER PROCEEDINGS (DEPT X)

CONTINUED ON PAGE: 007

PRINT DATE: 02/19/10

PAGE: 006

MINUTES DATE: 09/25/97

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA vs Pickett, Gary

CONTINUED FROM PAGE: 006

10/06/97 09:00 AM 00 FURTHER PROCEEDINGS

HEARD BY: Jack Lehman, Judge; Dept. 10

OFFICERS: MELISSA DAVIS, Court Clerk
DEBRA WINN, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004353	Pace, Barter G.	Y
0001 D1	Pickett, Gary	Y
PUBDEF	Public Defender	Y
001443	Gibson, David S.	Y

Defendant present in custody on other charges. COURT ORDERED, matter CONTINUED.

BOND (COC)

10/13/97 9AM STATUS CHECK: FURTHER PROCEEDINGS

10/13/97 09:00 AM 00 STATUS CHECK: FURTHER PROCEEDINGS

HEARD BY: Jack Lehman, Judge; Dept. 10

OFFICERS: NANCY NOBLE, Court Clerk
SHARLEEN NICHOLSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004353	Pace, Barter G.	Y
0001 D1	Pickett, Gary	Y
PUBDEF	Public Defender	Y
004620	Grauman, David A.	Y

Defendant stated he is being held on Municipal charge also and will go to court tomorrow. State advised defendant has two charges that he was referred to drug court on from Dept. XI (Ref. C145127). COURT ORDERED, matter CONTINUED. If released defendant to report to Public Defender's office for orientation.

BOND (COC)

CONTINUED TO: 10/20/97 09:00 AM 01

CONTINUED ON PAGE: 008

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA vs Pickett, Gary

CONTINUED FROM PAGE: 007

10/20/97 09:00 AM 01 STATUS CHECK: FURTHER PROCEEDINGS

HEARD BY: Jack Lehman, Judge; Dept. 10

OFFICERS: MELISSA DAVIS, Court Clerk
SHARLEEN NICHOLSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004353	Pace, Barter G.	Y
0001 D1	Pickett, Gary	Y
PUBDEF	Public Defender	Y
004620	Grauman, David A.	Y

Dean Prater with the Division of Parole and Probation also present. Officer Prater advised there is a hold on defendant and paperwork is being processed for revocation proceedings. COURT ORDERED, matter CONTINUED.

BOND

CONTINUED TO: 11/03/97 09:00 AM 02

10/27/97 09:00 AM 00 STATE'S REQUEST FURTHER PROCEEDINGS

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
RITA LOPEZ, Relief Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
000981	Noxon, Arthur G.	Y
0001 D1	Pickett, Gary	Y
PRO SE	Pro Se	Y
005480	Savage, Jordan S.	Y

Dean Prater of the Division of Parole & Probation present. Following conference at the bench, Court noted the new charges have not been formally filed at this point, but it does create a problem as to Drug Court, and ORDERED, Deft. RELEASED only to P & P to be placed on the HOUSE ARREST Program; matter CONTINUED for STATUS CHECK as to Drug Court.

(See C145127)

H.A.

11-03-97 9:00 AM STATUS CHECK: FURTHER PROCEEDINGS (DEPT X)

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PRINT DATE: 02/19/10

PAGE: 008

MINUTES DATE: 10/27/97

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA

vs Pickett, Gary

CONTINUED FROM PAGE: 008

11-24-97 9:00 AM STATUS CHECK: DRUG COURT (DEPT XI)

11/03/97 09:00 AM 02 STATUS CHECK: FURTHER PROCEEDINGS

HEARD BY: Jack Lehman, Judge; Dept. 10

OFFICERS: MELISSA DAVIS, Court Clerk
SHARLEEN NICHOLSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005065 Rushton, Kimberly M.	Y
	0001 D1 Pickett, Gary	N
	004620 Grauman, David A.	Y

Defendant not present. COURT ORDERED, BENCH WARRANT WILL ISSUE, NO BAIL.

B.W. (BOND)

11/24/97 09:00 AM 00 STATUS CHECK: DRUG COURT

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
ARLENE BLAZI, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005122 Savage, Darin	Y
	0001 D1 Pickett, Gary	N
	005480 Savage, Jordan S.	Y

Deft. not present. Mr. Savage stated Deft. is not in jail on any other charges being filed as of yet. State noted Deft. has another case in screening and does not know if it has been filed. Mr. Savage noted the basis of the pending violation was for the new charges and this was calendared to see if the new charges were going to be taken out of screening. Court noted Deft. has an outstanding Bench Warrant as of November 3 from Judge Lehman as to the Drug Court Program. Upon Court's inquiry, Mr. Savage stated Deft. was released to P & P and he has had no contact with him. Court stated he is not aware of any other outstanding cases. Mr. Savage concurred and requested that the State put this matter back on calendar if the new charges are filed. Court directed Mr. Savage to write to Deft. at his last known address advising him to take care of the outstanding Bench Warrant in Drug Court, and ORDERED, this matter OFF CALENDAR.

(See Case C145127)

CONTINUED ON PAGE: 010

PRINT DATE: 02/19/10

PAGE: 009

MINUTES DATE: 11/24/97

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA

vs Pickett, Gary

CONTINUED FROM PAGE: 009

B.W. (O.R.)

03/16/98 09:00 AM 00 BENCH WARRANT RETURN

HEARD BY: Jack Lehman, Judge; Dept. 10

OFFICERS: NANCY NOBLE, Court Clerk
SHARLEEN NICHOLSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
004353	Pace, Barter G.	Y
0001 D1	Pickett, Gary	Y
004620	Grauman, David A.	Y

Upon Court's inquiry, defendant stated he will not be released for at least a month and is in on a probation violation. COURT ORDERED bench warrant QUASHED and if released, defendant to report to the Public Defenders office at 10:20 AM for drug court orientation. Matter CONTINUED for Status Check.

BOND

04/27/98 9:00 AM STATUS CHECK: FURTHER PROCEEDINGS

03/26/98 09:00 AM 00 SET TIME CERTAIN: REVOCATION OF
PROBATION

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: JOYCE BROWN, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005927	De La Garza, Melisa	Y
0001 D1	Pickett, Gary	Y
005480	Savage, Jordan S.	Y

At Court's inquiry, both Counsel advised one week would be sufficient. COURT ORDERED matter CONTINUED for revocation hearing.

CUSTODY

4-2-98 10:30 AM REVOCATION OF PROBATION

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA vs Pickett, Gary

CONTINUED FROM PAGE: 010

04/02/98 10:30 AM 00 REVOCATION OF PROBATION

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: SUSAN BURDETTE/sb, Court Clerk
CATHY NELSON, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005122 Savage, Darin	Y
	0001 D1 Pickett, Gary	Y
	005480 Savage, Jordan S.	Y

Dean Prater of the Division of Parole & Probation present. Mr. Savage stated this matter is resolved: Deft. is prepared to stipulate to the violations and counsel will argue as to what to do. Upon Court's inquiry, Deft. stipulated to the violations, made a statement and requested to be reinstated on probation, noting he will enter the Drug Treatment Program.

Mr. Savage stated Deft. declined an offer that would make this sentence and the sentence imposed in Case C145127 to run concurrent instead of the pending consecutive sentence, noting the offer extended was very favorable and that is why this is distressing; Deft. absconded and was not out there committing new crimes; if the Court is inclined to grant Deft. an in-patient counseling program, he would request that Deft. be released to an in-patient treatment only, and then be brought back here for a Status Check and the parties can argue over what he did in the program, noting he is not requesting an immediate release.

State argued that Deft. needs to help himself, noting Deft. was to do House Arrest, Vocational Training, and Complete Drug Court; within four (4) days of Deft's release, he broke the bracelet and has been gone since November; he requested that Deft. be revoked, noting that in October, 1997, Deft. was picked up for Grand Larceny.

Mr. Prater gave a brief history of the case noting that Deft. was arrested for Grand Larceny and cut the bracelet off; he requested that Deft.'s probation be revoked and the original sentence be imposed.

Further statements by Deft., noting he was only arrested for the new crime.

Court found he is aware of what went on and a number of people, including the Court, attempted to help Deft. address his problems as the Court was aware that they are drug-related; the ultimate problem is that Deft. did not accept responsibility and had a conscious duty to get himself in line, and ORDERED, PROBATION REVOKED; original sentence of MINIMUM of THIRTY-SIX (36) MONTHS and MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS Nevada Department of Prisons, will be imposed with SIXTY-FOUR (64) DAYS Credit for Time Served.

CUSTODY

CRIMINAL COURT MINUTES

97-C-143146-C STATE OF NEVADA

vs Pickett, Gary

CONTINUED FROM PAGE: 011

04/14/99 09:00 AM 00 ALL PENDING MOTIONS (04-14-99)

HEARD BY: Michael L Douglas, Judge; Dept. 11

OFFICERS: JOYCE BROWN, Court Clerk
CATHY NELSON, Reporter/RecorderPARTIES: STATE OF NEVADA
006163 Weckerly, Pamela C.Y
Y

DEFT'S PRO PER MOTION FOR EXTENSION OF TIME, MOTION FOR TRANSCRIPTS, JUDGMENT OF CONVICTION, MOTION FOR PRE-SENTENCING REPORT, SENTENCING TRANSCRIPT, GUILTY PLEA MEMORANDUM, PRE-TRIAL AND ALL POST-TRIAL HEARING TRANSCRIPTS AND AMENDED INFORMATION TO RESPOND TO STATE'S OPPOSITION TO PETITIONERS WRIT OF HABEAS CORPUS...DEFT'S PRO PER PETITION FOR A WRIT OF HABEAS CORPUS (POST-CONVICTION)...DEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

AS TO THE FIRST MOTION LISTED, COURT ORDERED motion DENIED. Court advised it would be appropriate to have the file sent to the Defendant by the previous Counsel, Mr. Savage, if he still had it.

AS TO DEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, COURT ORDERED motion GRANTED.

AS TO THE DEFT'S PRO PER PETITION FOR A WRIT OF HABEAS CORPUS (POST-CONVICTION), Court advised it was untimely; good cause had not been shown in this matter; and ORDERED, pursuant to NRS 34.726 the Petition was DENIED. Additionally, Court noted for the record, against the Court's advice, Mr. Pickett represented himself. Court further advised the petition was without merit; the Defendant had signed off on the negotiations; and he was canvassed thoroughly; as to Counsel, it was by his own design; and Court had ordered stand-by Counsel for him. State to prepare the order.

NDP

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

[Signature]
CLERK OF THE COURT

2.22.2010

1 FRANKIE SUE DEL PAPA
2 Attorney General
3 By: WILLIAM P. HENRY
4 Senior Deputy Attorney General
5 Nevada Bar No. 101
6 401 South Third Street, #500
7 Las Vegas, NV 89101
8 (702) 486-3420
9 Attorneys for Plaintiff

7
FILED

JUL 28 12 37 PM '94

Loetta Brown
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

11 STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 CARY PICKETT a/k/a
~~GARY PICKETT,~~

15 Defendant.

CASE NO. C119000
DEPT. NO. VIII
DOCKET "M"

17 JUDGMENT OF CONVICTION

18 Date of Hearing: 7/08/94
19 Time of Hearing: 9 a.m.

20 On the 13th day of April, 1994, defendant CARY PICKETT a/k/a
21 GARY PICKETT pled guilty to the crime of Count I - Escape, a
22 felony, in violation of NRS 212.090.

23 On the 8th day of July, 1994, defendant CARY PICKETT a/k/a
24 GARY PICKETT, being present with his counsel Douglas P. DeJulio,
25 Deputy Public Defender, and William P. Henry, Senior Deputy
26 Attorney General, also being present, the above-entitled court,
27 in addition to requiring payment of a Twenty-five Dollar (\$25)
28 administrative assessment, adjudged the defendant guilty of

CE-01

AUG 01 1994

ATTORNEY
GENERAL'S
OFFICE
NEVADA

STATE'S
EXHIBIT

4

7-262543

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1 Count I - Escape, a felony, and imposed a sentence of two and one-
2 half (2-1/2) years in the Nevada Department of Prisons to run
3 consecutively with the sentence imposed in Case No. C109725.

4 Pursuant to plea negotiation between counsel, Count II was
5 dismissed.

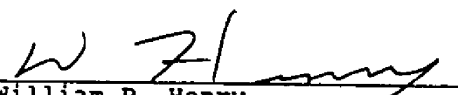
6 THEREFORE, the clerk of the above-entitled court is directed
7 to enter this Judgment of Conviction as part of the record of the
8 above-entitled matter.

9 DATED this 26 day of July, 1994.

10
11 
12 DISTRICT COURT JUDGE *leg*

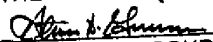
13 SUBMITTED BY:

14 FRANKIE SUE DEL PAPA
15 Attorney General

16 By: 
17 William P. Henry
18 Senior Deputy Attorney General
19 Nevada Bar No. 101
20 401 South Third Street, #500
21 Las Vegas, NV 89101
22 Attorneys for Plaintiff
23
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25
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27
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ATTORNEY
GENERAL'S
OFFICE
NEVADA

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

2 · 22 · 2010

FILED IN OPEN COURT
APR 13 1994 19

LORETTA A. BOWMAN, CLERK

BY *Stanley Seal*
Deputy

FRANKIE SUE DEL PAPA
Attorney General
By: WILLIAM P. HENRY
Senior Deputy Attorney General
Nevada Bar No. 101
401 South Third Street, #500
Las Vegas, NV 89101
(702) 486-3420
Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

STATE OF NEVADA,
Plaintiff,
vs.
Gary
~~GARY~~ PICKETT,
Defendant.

CASE NO. C119000
DEPT. NO. VIII
DOCKET "M"

GUILTY PLEA MEMORANDUM

Date of Hearing: 4/13/94
Time of Hearing: 8:45 a.m.

I, *G* GARY PICKETT, unconditionally waive my preliminary hearing and desire to enter a plea of guilty to the offense of Count I, ESCAPE, a felony, as more fully alleged in the Criminal Information, a copy of which is attached hereto.

My decision to plead guilty is based upon the plea bargain in this case which I, my attorney, and the State represent is the following:

/ / / /
/ / / /

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ATTENDED BY ORDER OF THE COURT
LORETTA A. BOWMAN, CLERK
BY *Stanley Seal* Deputy
APR 13 1994 19

ATTORNEY GENERAL'S OFFICE
NEVADA
100-1077

1 1. Defendant agrees to plead guilty to one (1) count of
2 Escape, a felony. At the time of sentencing, the State will not
3 recommend habitual criminal enhancement. In addition, while the
4 State is free to address the Court regarding Defendant's history
5 or claimed motives, it will not recommend any sentence. Finally,
6 all other counts in this Criminal Information will be dismissed.

7 2. By the Defendant entering his plea of guilty and by
8 accepting the terms, conditions and waivers set forth in this
9 Memorandum, the State agrees not to pursue the original charges
10 in this matter, which charges carry a harsher penalty upon
11 conviction than the penalty that he could receive under this
12 Memorandum.

13 CONSEQUENCES OF THE PLEA

14 I understand that by pleading guilty, I admit the facts
15 which support all the elements of the offense to which I now
16 plead.

17 I understand that the consequences of my plea of guilty are:
18 that I may be imprisoned in the Nevada Department of Prisons for
19 a period of up to ten (10) years; I understand that I may also be
20 fined up to \$10,000. I understand that I am required to pay an
21 administrative assessment fee.

22 In addition, I also understand that information regarding
23 charges not filed, dismissed charges, or charges to be dismissed
24 pursuant to this agreement may be considered by the judge at
25 sentencing.

26 I understand that if I am eligible for probation, whether
27 nor not I receive probation, is solely up to the sentencing
28 judge.

1 I understand that I have been guaranteed no particular
2 sentence by anyone and that sentencing is to be determined solely
3 by the Court.

4 I understand that, if my attorney and the State agree to
5 recommend an appropriate punishment to the Court, the Court is
6 not obligated to accept that recommendation.

7 I also understand that the Department of Parole and
8 Probation will prepare a report for the sentencing judge prior to
9 sentencing. This report will inform the judge of the nature,
10 scope and extent of my conduct regarding the charges against me
11 and related matters. This report will include all matters
12 relevant to the issue of sentencing, including my criminal
13 history. Further, I acknowledge that this report may contain
14 hearsay information regarding my background and criminal history.
15 My attorney and I will both have the opportunity of commenting on
16 information contained in this report at the time of sentencing.
17 If the State has reserved the right to make a sentencing
18 recommendation, then the State may also comment on this report.

19 WAIVER OF RIGHTS

20 In entering this plea of guilty, I know and understand that
21 I am waiving and give up the following constitutional rights and
22 privileges:

23 1. The right to a speedy and public trial by an impartial
24 jury. This right would be free from pretrial publicity. At the
25 time of trial, it would be the burden of the State to prove each
26 and every element of the offense(s) beyond a reasonable doubt.

27 / / / /

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1 2. The right to confront my accusers, that is, the right
2 to confront and cross-examine all witnesses who would testify at
3 trial.

4 3. The right to subpoena witnesses for the trial on my
5 behalf.

6 4. The right to testify in my own defense.

7 5. The right to refuse to testify. In this event, the
8 prosecution would not be allowed to comment to the jury upon my
9 refusal to testify.

10 6. The right to appeal any conviction to the Nevada
11 Supreme Court.

12 7. The right to the assistance of an attorney during all
13 stages of these proceedings.

14 VOLUNTARINESS OF PLEA

15 I have discussed the elements of the offense(s) with my
16 attorney, and I understand the nature of the charge(s) against
17 me.

18 I understand what the State would have to prove against me
19 at trial.

20 I have discussed possible defenses, defense strategies, and
21 circumstances in my favor with my attorney.

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

24 I believe that pleading guilty to the offense set forth in
25 the charging document and the plea bargain are in my best
26 interest, and that a trial would be contrary to my best interest.

27 My plea of guilty is voluntary and not the result of any
28 threats, coercion, or promises of leniency.

**PLEADING
CONTINUES
IN NEXT
VOLUME**