IN THE SUPREME COURT OF THE STATE OF NEVADA



HAMZA ZALYAUL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 83334

# RESPONDENT'S ANSWERING BRIEF

**Appeal From Judgment of Conviction**
**Eighth Judicial District Court, Clark County**

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# RESPONDENT'S ANSWERING BRIEF

**Appeal from Judgement of Conviction**
**Eighth Judicial District Court, Clark County**

## STATEMENT OF THE ISSUES

1. Whether the Nevada Supreme Court lacks jurisdiction to hear this matter.
2. Whether Zalyaul waived his right to Appeal when he pled guilty.
3. Whether the district court correctly denied Zalyaul's Motion to Dismiss because he waived arguments regarding jurisdictional issues.
4. Whether the district court correctly denied Zalyaul's Motion to Dismiss because he waived his right to a speedy trial.
5. Whether the district court correctly denied Zalyaul's request to withdraw his guilty plea following sentencing.

## STATEMENT OF THE CASE

On October 14, 2019, the State of Nevada filed a Criminal Complaint charging Hamza Zalyaul (hereinafter "Zalyaul") with six (6) counts of SEXUAL ASSAULT OF A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony- NRS 200.364, 200.366- NOC 50105) alleging that Zalyaul sexually assaulted a family

friend, S.D., several times in 2013 when S.D. was 11 and Zalyaul was 14. Respondent's Appendix ("RA") 001-002.

On January 8, 2020, Zalyaul appeared in justice court on an arrest warrant return, bail was set at $60,000, and a preliminary hearing was set for February 11, 2020. RA 003. On February 11, 2020, the parties were still discussing a negotiation and set a status check on negotiations for February 25, 2020. RA 004. The matter was continued several times in 2020 for continuing negotiations. RA 005-014. Zalyaul ultimately waived up to district court to accept a Guilty Plea Agreement ("GPA") at his initial arraignment on March 9, 2021. Appellant's Appendix ("AA") 010-020.

On March 9, 2021, Zalyaul plead guilty pursuant to negotiations to ATTEMPT SEXUAL ASSAULT (Category B Felony- NRS 200.364, 200.366, 193.330- NOC 50119). AA 001-009. Pursuant to the negotiations the State would not oppose probation with a drop down after successful completion of probation to OPEN AND GROSS LEWDNESS (Gross Misdemeanor—NRS 201.210—NOC). AA 001. Zalyaul would also have his record sealed per negotiations. AA 001.

On July 1, 2021, after argument by both defense counsel and the State, with both parties standing by the negotiations, the district court sentenced Zalyaul to a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of ONE-HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections

(NDC), with SEVEN (7) DAYS credit for time served AA 032. Zalyaul was then remanded into custody. AA 033.

On July 7, 2021, a Judgement of Conviction was filed. AA 038-039.

On July 9, 2021, Zalyaul filed a Motion to Dismiss, or in the Alternative, Motion to Reconsider Sentence. AA 041-057. On July 26, 2021, the State filed an Opposition to Zalyaul's Motion. AA 058-070. On July 29, 2021, Zalyaul filed a Reply to the State's Opposition. AA 076-095. On August 3, 2021, the district court DENIED the Motion, finding that after a Judgement of Conviction was filed the district court lacked jurisdiction. AA 106-109. The district court also made findings that the sentence imposed a was a legal sentence, that the jurisdiction to hear this matter was properly with the district court, and that Zalyaul waived his right to a speedy trial and therefore there was no speedy trial violation. AA 110-111.

An Order DENYING the Motion was filed on August 4, 2021. AA 110-111.

On August 4, 2021, Zalyaul filed a Notice of Appeal. AA 113-114.

## STATEMENT OF THE FACTS

The district court relied on the following facts from the Presentence Investigation Report for sentencing:

> On September 13, 2013, the mother of the victim (DOB: 07-11-02) reported her juvenile daughter had been sexually assaulted, by the defendant Hamza Zalyaul, multiple times between the months of June and September of 2013. The victim did not immediately disclose the sexual abuse because she was scared no one would believe her. The victim was brought to the hospital where a general

exam was conducted. Attempts were made to locate and positively identify Mr. Zalyaul were unsuccessful because his family had relocated to Morocco.

At a later date, during an unrelated investigation, it was discovered Mr. Zalyaul was living back in Las Vegas. In February 2019, the case was reopened. The victim was interviewed and reported during the summer of 2013, the defendant sexually assaulted her on numerous occasions. The first incident occurred at the defendant's family apartment. The victim, her siblings and the defendant's mother were there. Mr. Zalyaul asked the victim to come into the kitchen and she accompanied him. He instructed her to crouch down on the kitchen floor and pull her pants down. He slid his pants down and inserted his penis into her vagina. After about ten minutes, he pulled out and ejaculated. The victim cried afterwards stating "it hurt" and was "disgusting."

The following Sunday, while at the Mosque, Mr. Zalyaul came over to the women's section and told the victim to come to the restroom. They entered a stall in the restroom where the defendant told the victim to grab his penis and "suck it like a lollipop." While she was positioned against a wall, he instructed her to spread open the cheeks of her buttocks. He engaged her in anal intercourse and ejaculated. The victim remained in the stall for a few minutes then left. Later, she appeared to be limping and her father asked if she was okay. She told him she was fine because the defendant instructed her not to tell anyone about what had occurred.

The next incident occurred a week later at the defendant's family apartment. While the victim was in the bathroom, Mr. Zalyaul picked the lock with a paperclip. The defendant had the victim pull down her pants, bend over and he anally penetrated her. The victim tried to call for help but the defendant covered her mouth. The defendant's mother came into the bathroom; however, the defendant and victim were already dressed. The defendant told his mother that everything was fine, and the victim had stubbed her toe. As soon as the mother left, Mr. Zalyaul penetrated the victim's vagina. She told him it hurt, and he responded it was okay.

> On another occasion, the victim's family and the defendant's family went to the lake to swim. The victim went to the van to change out of her wet clothes. When she entered the van, the defendant was inside. She asked him to exit the van so she could change; however, he refused. She took off her shirt and the defendant made her perform fellatio. When she attempted to leave the van, Mr. Zalyaul discouraged her by saying she would smell like him.
>
> On two separate occasions the defendant showed the victim pornography depicting young teens between the ages of thirteen and sixteen engaged in sexual acts. Mr. Zalyaul told the victim it was normal. The victim did not know if the defendant ever filmed the assaults on her as her back was to him.
>
> Approximately three weeks after Mr. Zalyaul moved to Morocco, the victim disclosed the sexual abuse to her mother who disclosed the abuse to the victim's father. Her father contacted the defendant's uncle and told him Mr. Zalyaul had raped his daughter.
>
> At a later date, the victim saw Mr. Zalyaul during a religious event. She informed her father, but he was unable to locate the defendant. A week later, her father located the defendant and questioned him about the assault. Mr. Zalyaul told the father he was young and did not know why he committed the offenses. A short time later, the victim's father brought her to the defendant's family apartment where the families sat and discussed the abuse. He asked the defendant why he abused his daughter and Mr. Zalyaul again stated he did not know why. Mr. Zalyaul and the victim's father began arguing. Following the argument, her father told everyone in attendance that what was said that day would be kept there and told the defendant not to go near the places he frequents. At the conclusion of the investigation, a warrant was issued for the arrest of Mr. Zalyaul.
>
> On January 7, 2020, Mr. Zalyaul was arrested, transported to the Clark County Detention Center and booked accordingly.

Presentence Investigation Report ("PSI") 4-5.

## SUMMARY OF THE ARGUMENT

The Nevada Supreme Court lacks jurisdiction to hear this matter and therefore it must be dismissed. Zalyaul's argument relies almost entirely on the district court's denial of his Motion to Dismiss, or in the Alternative, Motion to Reconsider Sentence rather than Zalyaul's Judgment of Conviction. "No statute or court rule provides for an appeal from an order denying a motion to dismiss or a motion for an evidentiary hearing." McCallister v. State, 420 P.3d 562 (Nev. 2018)(unpublished). Zalyaul also cites the denial of a Motion to Withdraw Guilty Plea, which was made orally and without merit after Zalyaul was sentenced to a legal sentence that he was unhappy with.

If this Court does find that it has jurisdiction to hear this matter, Zalyaul waived all rights to appeal pursuant to his Guilty Plea Agreement in district court. As to the decisions made on the substantive issues in district court:

First, the district court correctly denied Zalyaul's Motion to Dismiss because he waived any arguments about the district court's jurisdiction. Even if Zalyaul had not waived his arguments, the district court still correctly decided on the merits finding juvenile court had no jurisdiction over Zalyaul, and Zalyaul waived all rights to appeal this issue.

Second, the district court correctly denied Zalyaul's Motion to Dismiss because it found that he had waived his speedy trial rights. Even if he hadn't waived his right

to a speedy trial, application of the facts to the test delineated in Doggett v. United States, 505 U.S. 647, 647, 112 S. Ct. 2686, 2688, 120 L. Ed. 2d 520 (1992) and Barker v. Wingo, 407 U.S. 514, 531, 92 S. Ct. 2182, 2192, 33 L. Ed. 2d 101 (1972) show that Zalyaul's rights were not violated.

Finally, the district court correctly denied Zalyaul's oral Motion to Withdraw his Guilty Plea after he was sentenced. The district court is not bound to the negotiated recommended sentence and imposed a legal sentence. Additionally, Zalyaul freely and voluntarily entered his guilty plea, he understood the range of punishment for the crime in which he was pleading guilty, and he understood that sentencing was solely within the discretion of the district court, regardless of his agreement. Zalyaul also failed to demonstrate any manifest injustice to withdraw his guilty plea. NRS 176.165. Zalyaul's *exclusive remedy* to withdraw his plea after sentencing is a habeas petition, which he did not file. Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). See also NRS 34.724.

## ARGUMENT

### I. ZALYAUL'S APPEAL SHOULD BE DISMISSED BECAUSE THE NEVADA SUPREME COURT LACKS JURSIDICTION

Most of Zalyaul's claims are from the denial of his Motion to Dismiss, not a Judgement of Conviction. Zalyaul's Opening Brief ("AOB") iv. See Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (observing the right to appeal is statutory, and, where no statutory authority provides for appeal, there is no right

to appeal). "No statute or court rule provides for an appeal from an order denying a motion to dismiss or a motion for an evidentiary hearing." McCallister v. State, 420 P.3d 562 (Nev. 2018)(unpublished). Zalyual also cites a denial from an oral Motion to Withdraw his Guilty Plea which was meritless, came after sentencing, and was not filed as a petition for writ of habeas corpus as required by Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). See also NRS 34.724.

Zalyaul claims that the issues he is appealing are from a Judgement of Conviction, but the substance of the appeal does not bear that out. Zalyaul does not provide any authority for the initial filing of a Motion to Dismiss or, in the Alternative, to Reconsider Sentence, after sentencing had occurred; much less any statutory authority for the courts of appeals to consider an appeal from such a motion. Because this Court lacks jurisdiction to consider the appeal, it should dismiss the appeal.

## II. ZALYAUL'S APPEAL SHOULD BE DISMISSED BECAUSE HE WAIVED ANY RIGHT TO APPEAL.

Should this Court determine that the Court does have jurisdiction, Zalyaul waived his right to appeal when he plead guilty. First, language in the written and signed Guilty Plea Agreement waives those rights.

WAIVER OF RIGHTS

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

> 6. *The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4).* However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

AA 005. (emphasis added).

Second, Zalyaul was orally canvassed at his initial arraignment where he again acknowledges that he was waiving his right to Appeal when he pled guilty:

> THE COURT: And you understand that you're giving up certain appellate rights by pleading guilty?
> THE DEFENDANT: Yes, Your Honor.

AA 015-016.

As such, this matter should be dismissed because, respectfully, the Nevada Supreme Court lacks jurisdiction. However, even if this Court finds it has jurisdiction to hear this matter, Zalyaul explicitly and unambiguously waived his right to appeal.

Notwithstanding the above arguements, in the interest of being thorough, the State will now address Zalyaul's substantive claims.

## III. THE DISTRICT COURT PROPERLY DENIED ZALYAUL'S MOTION TO DISMISS BECAUSE HE WAIVED JURSIDICTIONAL ARGUMENTS AND, EVEN IF HE HADN'T, JURISDICTION WAS CORRECTLY DECIDED.

Zalyual argues, "The adult court lacked subject-matter jurisdiction over Mr. Zalyaul's case, due to his age and juvenile status at the time of the alleged offenses, as the juvenile court has exclusive jurisdiction over offenses committed by children absent certification or a statutory exception." AOB 15. First, Zalyual waived his right to argue jurisdictional issues both when he plead guilty and at sentencing. Second, the district court correctly determined that under NRS 62B.330 and NRS 62B335, because Zayaul was under 16 when he committed the crimes and 21 when he was arrested, juvenile court did not have jurisdiction. AA 110-111.

### a. Zalyual Waived His Right to Argue Jurisdictional Issues

As quoted above, but also relevant here, in Zalyaul's GPA, he explicitly waives his right to appeal jurisdictional issues.

> WAIVER OF RIGHTS
>
> By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:
>
> …
>
> 6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, *jurisdictional* or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

AA 005. (emphasis added).

Not only did Zalyaul waive his right to appeal generally, but he also explicitly waived the right to appeal jurisdictional issues when he pled guilty.

Furthermore, Zalyaul's attorney at sentencing, Mr. Damian Sheets, Esq., again waived the right to argue jurisdictional issues and spoke at length regarding the negotiations, making it clear that jurisdiction had been considered when ultimately coming to an agreement:

> *From the standpoint of a jurisdictional, and this is why the negotiation was structured the way it was, it's our office's belief that there is somewhat of a -- I would say maybe a blind spot in the jurisdictional statute as it relates to the age of an offense of this nature and the original court of jurisdiction being family court.* And what happens is there are some compulsory rules regarding a child who's the age of 16 or 17 and then there are not compulsory rules in this type of a case when you have somebody of 15 years of age.
>
> And our office was prepared to, and had discussed at length with the District Attorney, the possibility that jurisdiction with this case would rest with the juvenile court and that's based on the fact that the statutes indicate or would have required if he's apprehended at 21-years-old that it is mandatorily in the juvenile court system, *but the statutes stay silent as to an apprehension beyond that particular age.* And it was our office's position, obviously, because you're dealing with somebody who's in a very different developmental state of mind and that's why the jurisdictional statute exists.
>
> And as part of that, there was the discussion of possibly briefing the case, sending it to juvenile court, and arguing back and forth with the District Attorneys, interestingly enough the second case we've had in this same set of facts and I've actually approached a state legislature before this session talking about the issue and that it needed to be cleaned up, it never got addressed. And so this case continues on in the circumstance.
>
> *So when we were trying to structure a deal, we were trying to look at what the situation would be had he been charged a juvenile,*

> *what were the potential punishments. And the potential punishments were that he could have been incarcerated up to 21 and then after a number of years, 27.* You can seek to have things amended down, you can seek to have things sealed, and ***that's essentially what we tried to structure here as well at the adult level waiving any of the jurisdictional arguments.***

AA 024-026. (emphasis added).

Zalyaul's attorney explicitly waived any jurisdictional arguments. AA 026. Zalyaul's argument at sentencing shows that Zalyaul had the opportunity to raise jurisdictional issues, had the opportunity to explore attempting to go to juvenile court, and ultimately decided not to and instead enter into a GPA. In this discussion, counsel acknowledged these facts are in a legal grey area, but that ultimately Zalyaul decided to enter in this deal for his benefit.

As such, Zalyaul specifically waived raising jurisdictional issues twice: once in his GPA (AA 005), and once during through counsel at sentencing (AA 024-026). While the waiver of these jurisdictional issues is dispositive, the State will also address the merits of Zalyaul's claims.

**b. The District Court Reached the Correct Conclusion Regarding the Jurisdictional Issue on the Merits.**

The district court ultimately denied Zalyaul's Motion to Dismiss on this issue on the merits finding that, "According to NRS 62B.330 and NRS 62B.335, Defendant was under the age of 16 when he committed the offense and was over the age of 21 when he was apprehended by law enforcement, therefore juvenile court

does not have jurisdiction, as jurisdiction properly lays with the District Court." AA 100-111. The district court was correct.

Juvenile court is not the proper venue for this case and was not at the time of the plea in this case. Juvenile court is a court of limited jurisdiction created by statute. NRS 62B.330, states in pertinent part:

> 1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction over a child living or found within the county who is alleged or adjudicated to have committed a delinquent act.
>
> 2. For the purposes of this section, a child commits a delinquent act if the child: . . .
>
> (c) Commits an act designated a criminal offense pursuant to the laws of the State of Nevada.
>
> *3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged with committing such an act:*
>
> *(b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:*
>
> *(1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and . . .*
>
> *(e) A category A or B felony and any other related offense arising out of the same facts as the category A or B felony, regardless of the nature of the related offense, if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and:*
>
> (1) The person is not identified by law enforcement as having committed the offense and charged before the person is at least 20 years, 3 months of age, but less than 21 years of age; or

> *(2) The person is not identified by law enforcement as having committed the offense until the person reaches 21 years of age.*

NRS 62B.330 (emphasis added).

Accordingly, Zalyaul was 14 when he committed the instant offenses, he was not 16-18 years of age, and he was not apprehended until he was over the age of 21. The juvenile court does not have jurisdiction because he is not a child. Zalyaul was born in September 1998, and was arrested on January 7, 2020, making him 21 years, 3 months, and 27 days old at the time of his arrest. NRS 62B.335 discusses the Jurisdiction of juvenile court over Adults who committed Certain Delinquent Acts as children and reads in pertinent part:

> 1. If:
> (a) A person is charged with the commission of a delinquent act that occurred when the person was at least 16 years of age but less than 18 years of age;
> (b) The delinquent act would have been a category A or B felony if committed by an adult;
> (c) The person is identified by law enforcement as having committed the delinquent act before the person reaches 21 years of age; and
> (d) The person is apprehended by law enforcement after the person reaches 21 years of age, the juvenile court has jurisdiction over the person to conduct a hearing and make the determinations required by this section in accordance with the provisions of this section.
> 2. The juvenile court shall conduct a hearing to determine whether there is probable cause to believe that the person committed the delinquent act.
> 3. If the juvenile court determines that there is not probable cause to believe that the person committed the

> delinquent act, the juvenile court shall dismiss the charges and discharge the person.

NRS 62B.335.

The juvenile court does not have jurisdiction over Zalyaul under this statute as well as he was not at least 16 years of age but less than 18 years of age when the crimes occurred and over 21 years of age when apprehended.

This issue is further discussed in Stave v. Barren, 128 Nev. 337 (2012). The Barren court held that:

> Some court always has jurisdiction over a criminal defendant. *See* NRS 171.110 ("Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States."); see also *Castillo v. State*, 110 Nev. 535, 542, 874 P.2d 1252, 1257 (1994) (rejecting a defendant's claim that he was "home free" from any court's jurisdiction), *disapproved of on other grounds* by *Wood v. State*, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995); *D'Urbano v. Commonwealth*, 345 Mass. 466, 187 N.E.2d 831, 835 (1963) (holding that "[t]he absence of valid juvenile procedure did not deprive the Superior Court of jurisdiction" and noting that "[t]he statute [did] not intend, for example. That a person who committed murder at [16] and is apprehended at [23] should be beyond the reach of criminal statutes"); *State ex rel. Elliot v. District Court*, 211 Mont. 1, 684 P.2d 481, 485 (1984) ("[L]ack of jurisdiction in Youth Court does not limit a district court's jurisdiction."); *Trujillo v. State*, 79 N.M. 618, 447 P.2d 279, 280 (1968) (explaining that the district court had jurisdiction to try the defendant because he was over 21 years of age and "the district court is one of general jurisdiction," while the juvenile court is

> limited, by statute, to persons less than 21 years of age); *State v. Hodges*, 63 P.3d 66, 68-69 (Utah 2002) (noting that a statute that gave a juvenile court jurisdiction in proceedings over a person younger than 21 years of age did "not limit *341 the general grant of jurisdiction made to the district court . . . so as to preclude its jurisdiction over proceedings against persons [21] years of age or older"); *State v. Bradley*, 20 Wash.App. 222, 580 P.2d 640, 642 (1978) ("Want of jurisdiction of the juvenile court merely precludes acts of that court. It does not invalidate an otherwise valid act of the superior court which property had jurisdiction of the subject matter and the person.").

*Id.* at 340-341.

Accordingly, some court must have jurisdiction of this case. The juvenile court is a court of limited jurisdiction defined by statute, and as discussed above, those statutes do not delineate jurisdiction over Zalyaul. In this case, Zalyaul committed these crimes when he was under 16, but was not apprehended until after he was 21 years of age. As some court must have jurisdiction, and juvenile court's jurisdiction does not apply here per NRS 62B.330 and NRS 62B.335, therefore the district court must properly have jurisdiction as a court of general jurisdiction.

As such, the district court correctly determined it was the proper venue for this case to be heard, and Zalyaul waived any jurisdictional arguments.

## IV. THE DISTRICT COURT PROPERLY DENIED ZALYAUL'S MOTION TO DISMISS BECAUSE HE WAIVED HIS SPEEDY TRIAL RIGHTS AND, EVEN IF HE HADN'T, ANALYSIS UNDER DOGGETT AND BARKER SHOW THERE WAS NO VIOLATION.

Zalyaul argues that "law enforcement's seven-year delay in prosecution violated Zalyaul's Speedy Trial Rights and resulted in substantial prejudice to the Defense" and thus the district court erred in failing to grant Zalyaul's Motion to Dismiss on these grounds. AOB 16. First, the district court correctly held Zalyaul waived his right to a speedy trial. Second, Zalyaul's argument fails on the merits because the argument is belied by controlling case law and the facts of this case. AA 111.

**a. Zalyaul Waived His Right to a Speedy Trial.**

The district court correctly found that "there is no speedy trial violation analysis as the Defendant waived his right to a trial and to a speedy trial as enumerated in his guilty plea agreement on page 5." AA 111.

First, the Guilty Plea Agreement that Zalyaul signed through counsel and agreed to reads:

> WAIVER OF RIGHTS
>
> By entering my plea of guilty, *I understand that I am waiving and forever giving up the following rights and privileges:*
>
> ...
>
> 2. *The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.*

AA 005. (emphasis added).

The language in the agreement that Zalyaul signed and affirmed is clear and unambiguous, stating that he agreed to forever waive his right to a speedy trial. In addition to the written Guilty Plea Agreement, Zalyaul affirmed in his oral canvass to the Court he understood that he would be giving up his right to any trial which would obviously include his right to a speedy trial:

> THE COURT: All right. Before directing your attorney to sign the guilty plea agreement, did you understand all of the terms and conditions of it?
> THE DEFENDANT: Yes, Your Honor.
> …
> *THE COURT: All right. Do you understand that by pleading guilty you're giving up certain constitutional rights, including the right to a jury trial and the right to have the State put on sufficient evidence to prove beyond a reasonable doubt that you are in fact guilty of the offense?*
> *THE DEFENDANT: Yes, Your Honor.*

AA 015-016. (emphasis added).

Zalyaul fails to even address the fact that when he pled guilty, both in writing and orally, gave up the right to trial, and specifically a speedy trial. Therefore, the district court did not err in denying Zalyaul's Motion to Dismiss due to a speedy trial violation because Zalyaul had agreed to waive a right to a speedy trial. AA 111.

While Zalyaul's waiver alone is dispositive of this issue, the State will still address in underlying test pursuant to Doggett, 505 U.S. at 651-52 and Barker, 407 U.S. at 530.

**b. The District Court's Finding That Zalyaul's Speedy Trial Rights Were Not Violated Was Not Arbitrary and Capricious Pursuant to Dogget and Barker.**

As discussed above, this Court has no jurisdiction to hear this matter. "No statute or court rule provides for an appeal from an order denying a motion to dismiss or a motion for an evidentiary hearing." McCallister v. State, 420 P.3d 562 (Nev. 2018)(unpublished). However, should the Court consider this matter it should be done so under an abuse of discretion standard. Hill v. State, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008) ("Supreme court reviews a district court's decision to grant or deny a motion to dismiss an indictment for abuse of discretion.") "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." Nunnery v. State, 127 Nev. 263 P.3d 235, 247 (2011) (quoting Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)).

An analysis under Doggett, 505 U.S. at 651-52 and Barker, 407 U.S. at 530 was not necessary because Zalyaul's length of delay (87 days) did not trigger an analysis, but even if it had, Zalyaul was not denied his right to a speedy trial. Thus, the district court was correct that a Dogget and Barker analysis was not necessary, even if it had been the district court reached the correct conclusion that Zalyaul's speedy trial rights were not violated.

"Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary

from presumptively prejudicial delay." Doggett, 505 U.S. at 651-52. If this hurdle is overcome, a court determines if a constitutional speedy trial violation has occurred by applying the four-part test laid out in Barker, which examines the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." Prince v. State, 118 Nev. 634, 640, 55 P.3d 947, 951 (2002) (quoting, Barker, 407 U.S. at 530)).

The Barker factors must be considered collectively as no single element is necessary or sufficient. Moore v. Arizona, 414 U.S. 25, 26, 94 S. Ct. 188, 189 (1973) (quoting, Barker, 407 U.S. at 533). However, to warrant relief, "failure to accord a speedy trial must be shown to have resulted in prejudice attributable to the delay." Anderson v. State, 86 Nev. 829, 833, 477 P.2d 595, 598 (1970). Here, the collective consideration of the Barker factors show that Zalyaul is not entitled to dismissal of this case.

### i. Length of Delay

The first factor, length of delay, is a "double [i]nquiry." Doggett, 505 U.S. at 651, 112 S.Ct. 2686. First, to trigger the Barker-Doggett speedy-trial analysis, the length of the delay must be presumptively prejudicial. *Id.* at 651-52, 112 S.Ct. 2686; United States v. Erenas-Luna, 560 F.3d 772, 776 (8th Cir. 2009). A post-accusation delay meets this standard "as it approaches one year." Doggett, 505 U.S. at 652 n.1, 112 S.Ct. 2686; see also United States v. Corona-Verbera, 509 F.3d 1105,

1114 (9th Cir. 2007) (recognizing that "[m]ost courts have found a delay that approaches *517 one year is presumptively prejudicial"). Second, if the speedy-trial analysis is triggered, the district court must consider, "as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." Doggett, 505 U.S. at 652, 112 S.Ct. 2686; United States v. Ingram, 446 F.3d 1332, 1336 (11th Cir. 2006). The length of time extending beyond the threshold one-year mark tends to correlate with the degree of prejudice the defendant suffers and will be considered under factor four—the prejudice to the defendant. Doggett, 505 U.S. at 652, 112 S.Ct. 2686.

Here, Zalyaul did not address anything more than the threshold question in his Brief. The lapse in time from the filing of the Criminal Complaint to Zalyaul's initial arraignment was 87 days (the criminal complaint was filed on October 14, 2019, and Zalyaul was arraigned on January 8, 2020). While this is a delay, it is not so lengthy as to greatly prejudice Zalyaul. The length of the delay in this case is significantly less than the eight-and-one-half years in the Doggett case, and the circumstances vary greatly. Furthermore, Speedy Trial Rights only attach after a complaint has been filed; Zalyaul would have them attach to pre filing delay, which is not the legal standard.

In Doggett the Supreme Court examined the threshold requirement and the length of delay element together. Doggett, 505 U.S. at 651-52, 112 S. Ct. at 2690.

The first part of this double inquiry is the threshold requirement. In order to meet the threshold requirement Zalyaul must demonstrate "that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay. Id. The Court justified the imposition of this threshold requirement by noting that "by definition he cannot complain that the government has denied him a 'speedy trial' if it has, in fact, prosecuted the case with customary promptness." Id. at 651-52.

Lower courts have generally found post-accusation delays to be presumptively prejudicial as they approach the one-year mark. Id. at 652 n.1, 112 S. Ct. at 2691 n.1. However, there is no binding rule on the length of time necessary to presume prejudice; nor does presumptive prejudice indicate that the remaining factors need not be considered. See id. In Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998), the Nevada Supreme Court held that a delay of two and one-half years did not deprive the defendant of his right to a speedy trial, particularly where the defense was responsible for most of the delay and was not prejudiced by the delay. Indeed, even if a defendant satisfies the threshold question, the court is still required to consider "the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim." Doggett, 505 U.S. at 652.

The Court in Doggett discussed that the defendant had moved in and out of the United States, interacted with government authorities, married, gone to college, found steady work, lived openly under his own name, and stayed within the law. Id. at 526-27. The length of time and change in the defendant's circumstances in that case would cause a reasonable person to believe the authorities were no longer interested in them.

In this case, however, not all the same factors may apply to Zalyaul, the length of time was not nearly as long, nor was it sufficient to cause a reasonable person to believe there would be no legal repercussions for his actions. Zalyaul fled to Morocco after S.D. made her accusations of sexual assault on a minor, showing Zalyaul certainly understood there were legal ramifications for his actions. Here, the State submits that the delay in this case does not raise to the considerable delay in Doggett.

Thus, this factor should not weigh in favor of Zalyaul.

**ii. The Reason for the Delay**

As for the second factor, the Barker Court made clear that different weights should be assigned to different reasons for delay. Barker, 407 U.S. at 531. While delaying in order to hamper the defense is weighed heavily against the State, negligence is weighed less heavily. Id. Similarly, delay for "a valid reason, such as a missing witness, should serve to justify appropriate delay." Id.

While there was a delay in arresting Zalyaul on this case, the delay was not extraordinarily long. There is no indication that the delay in arraigning Zalyaul was in any way to hamper Zalyaul. Zalyaul had moved to Morocco and the State waited to charge him until he had been located within the United States, honoring his speedy trial rights. Even assuming, *arguendo*, that the State was negligent in arresting Zalyaul, as the Barker Court ruled, negligence on behalf of the State is a factor to be considered but is not determinative. Barker, 407 U.S. at 531; see also, Sondergaard v. Sheriff, 91 Nev. 93, 95, 531 P.2d 474, 475 (1975) (wherein the State's inability to give any reason for the delay was "exceedingly disturbing" but did not outweigh the other factors).

Indeed, in Barker, the Court found that the government *purposefully* delayed the accused's trial in order to strengthen its case, but even that purposeful delay that was not sufficient to overcome the other factors. Barker, 407 U.S. at 516, 536. The reason for the delay must be weighed against the other facts, and Zalyaul has failed to show that he is entitled to relief under the other factors nor show any evidence of bad-faith delay on part of the prosecution in this case.

Zalyaul asserts that the victim knew how to find him, even though he had left the country. AOB 18-19. These are nothing but bare and naked allegations. "Bare" and "naked" allegations are not sufficient to warrant relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225

(1984). In fact, nothing in the record shows that the State had any means of obtaining the whereabouts of Zalyaul.

Thus, this factor should not weigh in Zalyaul's favor.

### iii. Zalyaul's Assertion of His Right

As discussed above, Zalyaul never asserted his right to a speedy trial, and explicitly waived it when he pled guilty. The Court in Barker discussed in length the unique nature of the speedy trial right and how it is "impossible to determine with precision when the right has been denied." Barker, 407 U.S. at 521. Additionally, Courts have found no violation when defendant "only became interested in invoking the Sixth Amendment when it became an avenue to dismiss the indictment or obtain release." United States v. Avalos, 541 F.2d 1100, 1115 (5th Cir.) (1976) ("promptness in asserting the right is important"); Barker, 407 U.S. at 531-32 ("failure to assert the right will make it more difficult for a defendant to prove that he was denied a speedy trial"); United States v. Trueber, 238 F.3d 79, 90 (1st Cir.) (2001).

Here, Zalyaul seemingly invoked his speedy trial rights after he waived them, pled guilty, and was sentenced. This is arguably the least "prompt" assertion of a speedy trial right possible. Barker, 407 U.S. at 531-32.

Thus, this factor should not weigh in Zalyaul's favor.

### iv. Prejudice to Zalyaul

As for the fourth Barker factor, Zalyaul was not harmed by the delay. When examining prejudice, courts look to "oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the [accused's] defense will be impaired by dimming memories and loss of exculpatory evidence." Doggett, 505 U.S. at 654 (internal citations omitted). As in Doggett, and as Zalyaul concedes, the only one of these which could apply to Zalyaul is the last form of prejudice. Id. Because this type of prejudice is difficult to prove, it is presumed to exist, and it is presumed to grow stronger over time. Id. at 656.

However, in Doggett, the Court also held that "to warrant granting relief, negligence unaccompanied by ***particularized*** trial prejudice must have lasted longer than negligence demonstrably causing such prejudice." Doggett, 505 U.S. at 657 (emphasis added). Indeed, presumptive prejudice alone is not sufficient to support a Sixth Amendment claim without regard to the other factors. Id. at 656. Zalyaul has failed to demonstrate particularized trial prejudice, and instead relies entirely on the presumptive prejudice.

First, Zalyaul did not face pre-trial incarceration based on this case. Zalyaul was not in custody on this case until the arrest warrant return. Therefore, there is no prejudice from pre-trial incarceration, as Zalyaul has spent only a small amount of time in custody pursuant to this case.

Second, Zalyaul does not allege that any delay has caused him anxiety and that factor should not be considered.

Finally, Zalyaul is tasked with arguing "particularized" trial prejudices. Zalyaul does not assert that any exculpatory evidence is inaccessible or that witnesses may not be available. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. In fact, the record as it currently stands does not indicate any evidence that is exculpatory or inculpatory, thereby showing that this limited jurisdiction court is the improper venue to file this motion. Zalyaul does not discuss any particular prejudice he believes he suffered, but instead argues that he is entitled a presumption of prejudice to such a degree that the case should be dismissed.

However, the length of delay is not sufficient for the presumptive prejudice to justify dismissal of the case. Unlike Doggett, wherein *eight-and-a-half years* had passed, Zalyaul was arrested 87 days after the initial Criminal Complaint was filed. The Supreme Court made clear that presumptive prejudice increases over time, and it was only where a significant amount of time had passed that the Court found that presumptive prejudice was sufficient to justify dismissal. Here, half of the time elapsed in Dogget has passed, and Zalyaul has failed to show that the other factors weigh in his favor.

Because the Barker/Doggett analysis was never triggered, and none of the factors weigh in Zalyaul's favor even if it were, the district court correctly denied his speedy trial challenge.

## V. THE DISTRICT COURT PROPERLY DENIED ZALYAUL'S MOTION TO WITHDRAW HIS GUILTY PLEA.

Zalyaul claims the district court erred in denying his oral Motion to Withdraw his Guilty Plea which was brought forward after Zalyaul was sentenced. AOB 23. This Motion was not brought forth or considered by the district court until the court had already pronounced Zalyaul's sentence. AA 034. The district court ultimately found:

> THE COURT: Counsel, counsel, the State doesn't need to make this argument, I'm fully aware. It's not a conditional plea and the Court certainly has the ability to deviate from the agreement. While it's unusual and certainly for myself unusual, in this instance, I find it the appropriate sentence in a rendering of justice given all of the facts and circumstances. I understand that he wishes to withdraw his plea. Your motion is denied. This was not a conditional plea if he was properly canvased which I believe he was. He certainly was asked if he understood that sentencing is solely up to the Court and his acknowledgment to that factor, he was cognizant of that potential possibility that the Court would not sentence within the parameters of the recommendations of the stipulations of the party in this instance. The Court believes it's warranted, given the facts and circumstances and upon the review of the PSI, as well as the psychosexual evaluation, that this Defendant should serve time based on the crime that committed.
> MR. SHEETS: If Your Honor would be inclined to set a briefing schedule, so that the record could be more thorough as to the basis for the motion to withdraw the plea. I think that would be probably more appropriate as this will be a subject on appeal, as well.
> THE COURT: I'm denying the motion. The motion's been denied.

AA 35-36.

Zalyaul's request to withdraw his plea came immediately after sentencing and thus was a post sentencing request. The exclusive remedy to withdraw a plea, post-sentencing, is a post-conviction petition for writ of habeas corpus, Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). See also NRS 34.724. Zalyaul failed to file a post-conviction petition and thus is not entitled to a remedy. If he had filed a petition following sentencing, a guilty plea may be set aside only to correct a manifest injustice. NRS 176.165. A guilty plea will be considered properly accepted if the trial court sufficiently canvassed the defendant to determine whether the defendant knowingly and intelligently entered into the plea. Williams v. State, 103 Nev. 227, 230, 737 P.2d 508, 510 (1987) (*citing* Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986)). Even in a presentencing context, "Determination of whether defendant presented a "fair and just" reason sufficient to permit withdrawal of his guilty plea was not limited to whether plea was knowingly, voluntarily, and intelligently entered, but instead required consideration of the totality of the circumstances" Stevenson v. State, 131 Nev. 598, 354 P.3d 1277 (2015).

Zalyaul failed to file a petition for writ of habeas corpus to set aside his guilty plea after he was sentenced and failed to show manifest injustice, or even a fair just

reason to withdraw his plea. Thus, the district court properly denied his request to withdraw his guilty plea.

Instead, Zalyaul relies on an argument that contract principles apply to Guilty Plea Agreements and these contract principles bind the court as a party to the contract to abide by all conditions of the Guilty Plea Agreement. AOB 23-42. But his argument is flawed for two reasons: (1) Under controlling case law, the court is not bound by Guilty Plea Agreements when sentencing, and (2) even if the court was contractually bound by Guilty Plea Agreements, the court abided by the terms of the agreement, namely that the court has the right to impose any legal sentence. It is now Zalyaul who is attempting to deviate from the terms of the contract.

### i. The Court is Not Bound by Contract Principles As It Relates to Guilty Plea Agreements.

The contract principles outlined in State v. Crockett, 110 Nev. 838, 842-43, 877 P.2d 1077, 1079 (1994), a case which Zalyaul heavily relies upon, *do not apply to the court,* they apply to the defense and the government. Zalyaul provides no controlling case law to support this argument. Instead, Zalyaul makes the leap that because the district court is required to accept the Guilty Plea Agreement in order to bind the parties, this Court should now hold that the district court is a necessary party, and thus bound to the same terms. AOB 27-28.

As Zalyaul correctly states, "the Courts have not formally recognized the trial court as an indispensable party to a plea bargain contract…" AOB 27. Instead,

Zalyaul recognizes that, "Nevada case law currently holds that trial courts are under no obligation to sentence a defendant to the terms agreed upon by the prosecution and defense, as the court retains ultimate discretion in the determination of a final sentence. 'When a defendant pleads guilty pursuant to a plea agreement containing a sentencing recommendation, and the district court accepts the proffered guilty plea, the district court retains wide discretion in imposing sentence.' Stahl v. State, 109 Nev. 442, 444, 851 P.2d 436, 438 (1993); see also, Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987)." AOB 30. Zalyaul provides no reasoning explaining how a defendant and the State *could* bind the district court to accept and agreement, nor any justification for doing so.

Both the State (who is bound to contract principles related to a Guilty Plea Agreement under Crockett) and the district court (who is not bound under any case law to contract principles related to Guilty Plea Agreements) abided by the terms of the Guilty Plea Agreement.

First, while Zalyaul is not alleging the State violated the terms of the negotiation, it should be noted that the district court's decision in sentencing was not due to any deviation by the State. The State stood by the negotiations at sentencing:

> MS. MOORS: Yes, Your Honor, the State is also ready to proceed. I would point out that I have two victim speakers and I would request that they go last pursuant to statute.
> THE COURT: Thank you, Counsel. All right. Mr. Zalyaul, by virtue of your plea of guilty, you're hereby adjudged guilty of the offense of an attempt sexual assault. The State can proceed with its argument.

> MS. MOORS: Your Honor, the State had agreed to have no opposition to probation with a dropdown to a gross a misdemeanor if the Defendant were honorably discharged, we would stand by those negotiations.
> THE COURT: All right. Thank you.

AA 022-023.

Second, even if this Court did bind the district court to the terms of the agreement, the district court did abide by the terms of the agreement as the terms of the agreement state the district court can impose any legal sentence. AA 002-003. The Guilty Plea Agreement, which Zalyaul freely and voluntarily directed his attorney to sign on his behalf, explicitly laid out the range of punishment:

> CONSEQUENCES OF THE PLEA
>
> I understand that by pleading guilty I admit the facts which support all the elements of the offense to which I now plead as set forth in Exhibit "1".
> I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than TWO (2) years and a maximum term of not more than TWENTY (20) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment.
> …
> I understand that I am not eligible for probation pursuant to NRS 176A.110 unless the psychosexual evaluation certifies that I do not represent a high risk to reoffend based upon a currently accepted standard of assessment, I understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge.

AA 002-003

At Zalyaul's arraignment, the district court then orally canvassed Zalyaul

regarding the possible range of punishment:

> THE COURT: And do you understand that in this case you're facing a range of punishment in the Nevada Department of Corrections not less than 2 years and not more than 20 years and that you could be facing a fine of up to $10,000?
> THE DEFENDANT: Yes, Your Honor.
> THE COURT: Do you understand that this offense may not be probationable?
> THE DEFENDANT: Yes, Your Honor.

Zalyaul affirmed with both his signature that he directed his attorney to affix to the written Guilty Plea Agreement and in his oral canvas with the district court that he understood that he could receive a sentence of 2- 20 years for the crime he was pleading guilty to. Accordingly, any argument that Zalyaul did not understand his possible range of punishment is belied by the record.

The Guilty Plea Agreement also contained language that explicitly stated that sentencing is determined by Court within the statutory guidelines.

> I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.
> I understand that information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.
> *I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute.*
> *I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.*

AA 003-004. (emphasis added). The district court imposed a legal sentence. AA 032. Zalyaul understood from his GPA and oral canvas that he could face two (2) to twenty (20) years. AA 002-003. The district court sentenced him to four (4) to ten (10) years, an obviously legal sentence. AA 032. Now Zalyaul is attempting to deviate from the contract that he is bound by.

Zalyaul was asked during his oral canvas at arraignment if he understood that his sentence is solely up to the district court, and no one could promise that he would receive probation:

> THE COURT: Do you understand that this offense may not be probationable?
> THE DEFENDANT: Yes, Your Honor.
> THE COURT: Okay. All right. Do you understand that sentencing is solely up to the Court, including whether the count would run consecutive or concurrent?
> THE DEFENDANT: Yes, Your Honor.
> THE COURT: Do you also understand that no one can promise you probation, leniency, or any special treatment?
> THE DEFENDANT: Yes, Your Honor.

AA 016.

Accordingly, any argument that Zalyaul did not know that despite any agreement he had with the State, sentencing was solely within the discretion of the district court, and that the district court could sentence Zalyaul to any legal sentence is belied by the record. Zalyaul does not argue that his plea was not freely and voluntarily entered into, and the district court found that it was. AA 019. He recognized that the district court could impose any legal sentence, as demonstrated

by both the canvass and the written GPA and is simply unhappy with the sentence he received. This is neither a "fair and just reason" nor "manifest injustice."

The district court correctly denied the oral Motion to Withdraw Zalyaul's Plea. Zalyaul's argument that the district court did not abide by the terms of the agreement is belied by the record. Zalyaul freely and voluntarily entered his plea, he knew sentencing was up to the district court, he knew the sentencing range he was facing, he knew the district court was not required to impose and specific sentence, and the State upheld his end of the bargain. Because Zayaul demonstrated neither a fair and just reason to withdraw his plea, nor manifest injustice, this Court should affirm the district court's denial of his oral motion to withdraw his plea.

## CONCLUSION

For the foregoing reasons, this Court should AFFIRM Zalyaul's Judgement of Conviction.

Dated this 18th day of February, 2022.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the type-volume limitations of NRAP 32(a)(8)(B) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 8,964 words.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 18th day of February, 2022.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 18, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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