

Case No. CR-8978
Dept. No. 2

DAVID H. NEELY III
Nev. Bar No. 3891
3520 East Tropicana Ave., Ste. D
Las Vegas, NV 891218
(702) 565-0716
Attorney for Petitioner

ORIGINAL
FIFTH JUDICIAL DISTRICT

AUG - 6 2021

Electronically Filed
Aug 10 2021 10:24 a.m.
Nye County Clerk
Elizabeth A. Brown
Deputy
Clerk of Supreme Court

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

CRYSTAL Y. AUSTIN,
Petitioner,

vs.

STATE OF NEVADA,
Respondent.

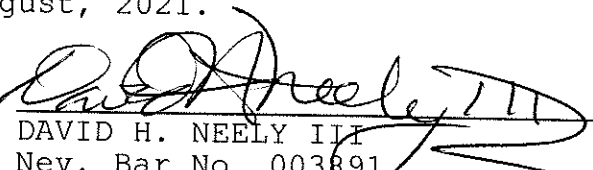
NOTICE OF APPEAL

TO: THE HONORABLE ROBERT LANE,
Fifth Judicial District Court Judge,

AND TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL.

NOTICE IS HEREBY GIVEN that Petitioner, CRYSTAL Y. AUSTIN, by and through her attorney of record, DAVID H. NEELY III, Esq., pursuant to NRS 177.015 and NRAP 3B/3C(fastrack), NRAP 3A(civil), hereby appeals to the Supreme Court of the State of Nevada from the Order Denying Petition for Writ of Habeas Corpus entered in the Fifth Judicial District Court in the above matter on August 4, 2021.

SUBMITTED this 6th day of August, 2021.


DAVID H. NEELY III
Nev. Bar No. 003891
3520 E. Tropicana Ave., #D-1
Las Vegas, NV 89121
Attorney for Petitioner

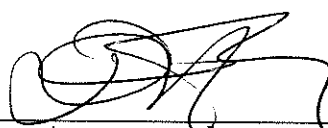
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3 **CERTIFICATE OF MAILING**

4 I HEREBY CERTIFY that I am an agent or employee of the above
5 referenced Nevada licensed attorney, and that on the 6TH day of
6 August, 2021, I served the above and foregoing NOTICE OF APPEAL
7 by depositing a copy in the United States mails, postage prepaid,
8 addressed to counsel for respondent at his last known address, as
9 indicated below:

10 Kirk Vitto, Esq.
11 Chief Deputy
12 Nye County District Attorney
13 P. O. Box 39
14 Pahrump, NV 89041

15 Aaron Ford, Esq.
16 Nevada Attorney General
17 100 North Carson Street
18 Carson City, Nevada 89701-4717

19 Elizabeth Brown
20 Nevada Supreme Court Clerk
21 201 South Carson Street, #300
22 Carson City, NV 89701

23
24
25
26
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28

agent or employee of
DAVID H. NEELY, III, ESQ.

Case No. CR-8978
Dept. No. 2

DAVID H. NEELY III
Nevada State Bar No. 003891
3520 East Tropicana Ave., Ste. D-1
Las Vegas, NV 89121
(702) 565-0716
Attorney for Petitioner

**ORIGINAL
FILED**
FIFTH JUDICIAL DISTRICT

AUG - 6 2021

 Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

CRYSTAL Y. AUSTIN,)	
)	CASE APPEAL STATEMENT
Petitioner,)	
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	

1. Name of appellant filing this case appeal statement:

CRYSTAL Y. AUSTIN.

2. Identify the judge issuing the decision, judgment, or order appealed from: Hon. ROBERT LANE, Judge of the Fifth Judicial District Court, Dept. 2.

3. Identify all parties to the proceedings in the district court: CRYSTAL Y. AUSTIN, Petitioner, and THE STATE OF NEVADA, Respondent.

4. Identify all parties involved in this appeal: CRYSTAL Y. AUSTIN, Appellant, and THE STATE OF NEVADA, Respondent.

5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent: David H. Neely III, Esq., 3520 East Tropicana Ave., Ste. D-1, Las Vegas, Nevada, 89121 (702) 565-0716 represents Petitioner, CRYSTAL Y. AUSTIN and Chris Arabia,

1 Esq., Nye County District Attorney, 101 Radar Rd, P.O. Box 593,
2 Tonopah, Nevada, (775) 482-8166 represents Respondent, **STATE OF**
3 **NEVADA.**


4 6. Indicate whether appellant is represented by appointed
5 or retained counsel in the district court: Appointed Counsel.

6 7. Indicate whether appellant is represented by appointed
7 or retained counsel in this appeal: Appointed counsel.

8 8. Indicate whether appellant was granted leave to proceed
9 in forma pauperis, and the date of entry of the district court
10 Order granting such leave: Request to be filed, no order issued
11 as yet.

12 9. Indicate the date the proceedings commenced in the
13 district court: Writ of Habeas Corpus (Post-Conviction) was filed
14 on July 17, 2020.

15 SUBMITTED this 6th day of August, 2021.

16
17
18 
19 DAVID H. NEELY III
20 Nev. Bar No. 003891
21 3520 E. Tropicana, Ste. D-1
22 Las Vegas, NV 89121
23 Attorney for Petitioner
24
25
26
27
28

CERTIFICATE OF MAILING


I HEREBY CERTIFY that I am an agent or employee of the above referenced Nevada licensed attorney, and that on the 6th day of August, 2021, I served the above and foregoing **CASE APPEAL STATEMENT** by depositing a copy in the United States mails, postage prepaid, addressed to counsel for respondent at his last known address, as indicated below:

Chris Arabia, Esq.
District Attorney
Nye County, Nevada
P. O. Box 593
Tonopah, NV 89049

HON. KIMBERLY WANKER
Fifth Judicial District Court
1520 E. Basin Ave., #105
Pahrump, NV 89060

Clerk, Nevada Supreme Court
201 South Carson Street, #300
Carson City, NV 89701

Aaron Ford, Esq.
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717


agent or employee of
DAVID H. NEELY, III, ESQ.

Fifth Judicial District Court - Nye County
Case Summary

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Case #: CR17-8978
Judge: LANE, ROBERT W
Date Filed: 08/07/2017 **Department:**
Case Type: Motor Vehicle - DUI (Felony)

Defendant	Attorney(s)
AUSTIN, CRYSTAL YVONNE	MARTINEZ, DANIEL
Plaintiff	
STATE OF NEVADA	DISTRICT ATTORNEY'S OFFICE

Fees:

Date Assessed:	Fee	Total	Paid	Waived	Outstanding
01/14/2020	ADMIN	\$5.00	\$0.00	\$0.00	\$5.00
01/14/2020	STADMIN	\$20.00	\$0.00	\$0.00	\$20.00
01/14/2020	DNA	\$150.00	\$0.00	\$0.00	\$150.00
01/14/2020	GENETIC	\$0.00	\$0.00	\$0.00	\$0.00
01/14/2020	PSI	\$400.00	\$0.00	\$0.00	\$400.00
01/14/2020	PUBDEF	\$500.00	\$0.00	\$0.00	\$500.00
01/14/2020	STFINE	2,000.00	\$0.00	\$0.00	\$2,000.00

Charge: NRS 484C.110 DUI W/ PRIORS F/B Count 1
Sent: 7/15/2019 GPA; 48-120 MOS NDC; FEES: \$25 AA, \$3 DNA, \$150 DNA, \$400 PSI, \$500 ATTY, \$2000 FINE TO NC CLERK'S OFFICE DUE BY 3/13/20; 2 DAYS CTS; BOND EXONERATED.

Disp/Judgment: Guilty Plea Before Date: 01/13/2020
Trial

Hearings:

Date	Time	Hearing	Court Result
12/11/2017	9:00AM	ARRAIGNMENT HEARING	
01/08/2018	9:00AM	ARRAIGNMENT HEARING CONT'D	
01/29/2018	9:00AM	ARRAIGNMENT HEARING CONT'D	
05/14/2018	9:00AM	STATUS CHECK RE: COMPETENCY EVALUATION	
07/16/2018	9:00AM	STATUS CHECK CONT'D	
08/27/2018	9:00AM	STATUS CHECK CONT'D	
12/03/2018	9:00AM	CALENDAR CALL - D2P - 3 DAYS - 01/02-04/19	
12/03/2018	2:30PM	JURY DRAW - FILE TO LOUISE (80 JURORS)	
01/02/2019	8:30AM	PRE-TRIAL MOTIONS	CANC
01/02/2019	9:00AM	JURY TRIAL- D2P- 3 DAYS (01/02-04/19)	CANC
01/14/2019	9:00AM	STATUS CHECK (NEGOTIATIONS/SET TRIAL DATES)	
02/11/2019	9:00AM	STATUS CHECK	

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06/17/2019	9:00AM	CALENDAR CALL (D2P-4 DAYS-07/30/19-08/02/19)	
06/17/2019	9:00AM	DEFT'S MTNS TO COMPEL; EXCLUDE; SUPPRESS	
06/17/2019	2:30PM	JURY DRAW - FILE TO LOUISE	
06/24/2019	9:00AM	CALENDAR CALL CONT(D2P-4 DAYS-7/30/19-8/2/19)	
07/15/2019	9:00AM	ARRAIGNMENT/ CHANGE OF PLEA	
07/30/2019	8:30AM	PRE-TRIAL MOTIONS	CANC
07/30/2019	9:00AM	JURY TRIAL - D2P - 4 DAYS (07/30/19-08/02/19)	CANC
10/28/2019	9:00AM	SENTENCING HEARING	
12/02/2019	9:00AM	(17) SENTENCING HEARING CONT'D	
01/13/2020	9:00AM	54 SENTENCING HEARING CONT'D	
02/24/2020	9:00AM	58 MTN TO RECONSIDER SENTENCE	

Filings:

Date	Filing
08/07/2017	CASE FILED 08/07/2017 CASE NUMBER CR17-8978
08/07/2017	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT CRIMINAL COMPLAINT
08/07/2017	BINDOVER ORDER
08/15/2017	INFORMATION (DUI/FELONY)
08/17/2017	TRANSCRIPT OF: PRELIM HEARING (8/2/17) *****PJC DOC*****
12/11/2017	Court Minutes
01/04/2018	TRANSCRIPT OF: ARRAIGNMENT (CONT'D) (12/11/17)
01/08/2018	Court Minutes
01/08/2018	GUILTY PLEA AGREEMENT
01/24/2018	TRANSCRIPT OF: ARRAIGNMENT (CONT'D) (1/8/18)
01/29/2018	Court Minutes
02/06/2018	TRANSCRIPT OF: ARRAIGNMENT CONT'D/COMPETENCY EVAL. NEEDED (01/29/18)
03/15/2018	ORDER FOR COMPETENCY EVALUATION
03/15/2018	STIPULATION FOR CONTINUANCE
03/15/2018	ORDER ON STIPULATION FOR CONTINUANCE (3/19 TO 5/14/2018)
05/14/2018	Court Minutes
05/24/2018	TRANSCRIPT OF: STATUS CHECK RE: COMPETENCY EVAL(5/17/18)
06/18/2018	ORDER FOR THIRD COMPETENCY EVALUATION
07/16/2018	ORDER FOR COMPETENCY EVALUATION
07/16/2018	Court Minutes
08/01/2018	TRANSCRIPT OF: STATUS CHECK (CONT'D) (7/16/18)
08/27/2018	Court Minutes
08/31/2018	ORDER SETTING JURY TRIAL (D2P- 3 DAYS 01/02/19-01/04/19)
09/19/2018	STATE'S NOTICE OF EXPERT WITNESS(ES)
09/19/2018	NOTICE OF WITNESSES
09/19/2018	REQUEST TO ADMIT DECLARATION(S) AT TRIAL
09/19/2018	REQUEST FOR DISCLOSURE
12/03/2018	Court Minutes
12/19/2018	TRANSCRIPT OF: STATUS CHECK(8/27/18)
01/14/2019	Court Minutes
02/11/2019	Court Minutes

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02/14/2019	ORDER SETTING JURY TRIAL (7/30/2019 9AM)
05/20/2019	TRANSCRIPT OF: CALENDAR CALL(12/3/18)
05/24/2019	MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL
05/24/2019	MOTION TO EXCLUDE BLOOD TEST RESULTS
06/11/2019	OPPOSITION TO MOTION EXCLUDE BLOOD RESULTS
06/17/2019	Court Minutes
06/20/2019	COURT ORDER (DENIED/MTN TO SUPPRESS BLOOD TEST)
06/24/2019	Court Minutes
06/25/2019	VENIRE
07/01/2019	TRANSCRIPT OF:STATUS CHECK(NEGOTIATIONS/TRIAL DATE)(CONT) (1/14/19)
07/15/2019	GUILTY PLEA AGREEMENT
07/15/2019	Court Minutes
09/16/2019	STIPULATION TO CONTINUE
09/18/2019	ORDER TO CONTINUE(10/28/19)
10/18/2019	TRANSCRIPT OF: ARRAIGNMENT/CHANGE OF PLEA (7/15/19)
10/24/2019	TRANSCRIPT: CALENDAR CALL 06/24/19
10/28/2019	Court Minutes
11/04/2019	TRANSCRIPT OF:SENTENCING(CONT)(10/28/19)
12/02/2019	COURT MINUTES
12/23/2019	TRANSCRIPT OF: DEFT'S MTNS TO COMPEL;EXCLUDE;SUPPRESS/CALENDAR CALL(6/17/19)
12/23/2019	TRANSCRIPT OF: SENTENCING(CONT)(12/2/19)
12/31/2019	PRESENTENCE INVESTIGATION REPORT
01/13/2020	MOTION TO RECONSIDER SENTENCE
01/13/2020	COURT MINUTES
01/14/2020	JUDGMENT OF CONVICTION
01/22/2020	TRANSCRIPT OF: SENTENCING(1/13/20)
01/23/2020	OPPOSITION TO MOTION TO RECONSIDER SENTENCE
02/24/2020	COURT MINUTES
02/26/2020	ORDER
03/03/2020	TRANSCRIPT OF: MOTION TO RECONSIDER SENTENCE(2/24/20)
03/05/2020	TRANSCRIPT OF: STATUS CHECK(2/11/19)
06/08/2020	REQUEST FOR RECORDS
06/08/2020	CERTIFICATE OF MAILING
06/08/2020	MOTION TO WITHDRAW COUNSEL
06/08/2020	REQUEST FOR SUBMISSION OF MOTION
06/08/2020	APPLICATION TO PROCEED IN FORMA PAUPERIS
06/10/2020	ORDER TO WITHDRAW COUNSEL
06/10/2020	ORDER TO PROCEED IN FORMA PAUPERIS
07/17/2020	APPLICATION TO PROCEED IN FORMA PAUPERIS
07/17/2020	MOTION FOR APPOINTMENT OF COUNSEL
07/17/2020	AFFIDAVIT
07/17/2020	REQUEST FOR SUBMISSION OF MOTION
07/17/2020	PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) #1
07/17/2020	CERTIFICATE OF MAILING
07/31/2020	ORDER TO PROCEED IN FORMA PAUPERIS
07/31/2020	ORDER APPOINTING COUNSEL

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Case Summary

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07/31/2020	DEFENSE ATTORNEY: NEELY, DAVID H III ASSIGNED
10/23/2020	PETITIONER'S SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF POST-CONVICTION WRIT (SUBMITTED BY DAVID H. NEELY III, ESQ., FOR PETITIONER, CRYSTAL Y. AUSTIN)
10/28/2020	ORDER FOR STATE RESPONSE
12/14/2020	STIPULATION TO CONTINUE (DATE FOR FILING)
12/16/2020	ORDER TO CONTINUE(12/11/20-1/11/21)
01/11/2021	MOTION TO DISMISS AND ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)
01/12/2021	CERTIFICATE OF SERVICE
02/17/2021	PETITIONER'S REPLY TO MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)
02/19/2021	STIPULATION AND ORDER TO ALLOW AN EXTENSION OF TIME TO FILE REPLY
08/04/2021	COURT ORDER
08/06/2021	NOTICE OF APPEAL
08/06/2021	CASE APPEAL STATEMENT

AUG - 4 2021

Case No. CR 8978
Dept. No. 2

 Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR NYE COUNTY

THE STATE OF NEVADA,

Respondent,

v.

CRYSTAL YVONNE AUSTIN

Petitioner.

COURT ORDER

WHEREAS the Court has considered Petitioner's Writ of Habeas Corpus (Post-Conviction) filed pro-se on July 17, 2020, Petitioner's Supplemental Points and Authorities in Support of Post-Conviction Writ filed by her appointed counsel, David H. Neely, III, Esq., on October 23, 2020, the State's Motion to Dismiss and Answer to Petition for Writ of Habeas Corpus (Post-Conviction) filed January 11, 2021, and the Petitioner's Reply to Motion to Dismiss Petition for Writ of Habeas Corpus filed on February 17, 2021. The Court issues the following findings and order:

I. FINDINGS OF FACT

1. On January 8, 2018, the Petitioner, CRYTAL YVONNE AUSTIN, was charged with one count of Driving Under the Influence With Prior Felony DUI conviction, a category 'B' felony, for an offense alleged to have been committed by the Petitioner on June 1, 2016. The allegations were that she caused an accident while operating a motor vehicle with a concentration of approximately 0.382 grams of alcohol





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2 per 100 milliliters of blood. The State had previously convicted the Petitioner of Driving
3 Under the Influence of Alcohol, 3rd Offense, in violation of NRS 484.379, a category 'B'
4 felony, in Fifth Judicial District Court, case number CR5068; and/or Driving Under the
5 Influence of Alcohol, Second Offense, in violation of NRS 484C.110, a misdemeanor,
6 which was reduced from a felony pursuant to NRS 484C.340, in Fifth Judicial District
7 Court, case number CR6341A;

8
9 2. On August 2, 2017, represented by counsel, David Rickert, Esq.,
10 Petitioner unconditionally waived her right to a preliminary hearing in the Pahrump
11 Justice Court with the understanding that in District court, the defendant would plead
12 guilty to 1 count of Driving Under the Influence With Prior Felony DUI, a non-
13 probational category 'D' felony, with possible penalties of 2 - 15 years prison, and with a
14 \$2,000 - \$5,000 fine.

15
16 3. On August 7, 2017, a Bind-over Order was filed in the District Court. On
17 August 15, 2017, an Information was filed. On December 11, 2017, a hearing was held in
18 the District Court. On January 8, 2018, a hearing was held in the District Court. On
19 January 29, 2018, a hearing was held in the District Court. On May 14, 2018 a hearing
20 was held regarding competency evaluation. On June 18, 2018, an Order for Third
21 Competency Evaluation was filed. On July 16, 2018, an Order for Competency
22 Evaluation was filed. On July 16, 2018, a Status Check was held. On August 27, 2018, a
23 Status Check was held and the Court deemed the Petitioner was competent. The Court
24 set a trial date for January 2-4, 2019.
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2 4. On December 3, 2018, a Calendar Call was held and the trial date was
3 continued at counsel's request. Status check hearings were held on January 14, 2019 and
4 February 11, 2019. On May 24, 2019, a Motion to Exclude Blood Test Results was filed
5 by the Defendant. On May 24, 2019, a Motion to Compel Production Of Discovery And
6 Brady Material was filed. On June 11, 2019, a Opposition To Motion Exclude Blood
7 Results was filed by the prosecution. On June 20, 2019, a Court Order was filed denying
8 the Defendant's Motion to Suppress Blood Test Results.
9

10 5. On June 24, 2019, a Calendar Call was held. On July 15, 2019, an
11 arraignment/change of plea hearing was held in District Court and a Guilty Plea
12 Agreement was filed. The Court canvassed the Defendant, stated the offense to which
13 the Defendant was charged and the possible sentence. Defendant entered a plea of guilty
14 to the charge, waiving her constitutional rights to trial and appellate rights. The Court
15 accepted the Defendant's guilty plea and set a sentencing hearing for September 30th,
16 2019.
17

18 6. On October 28, 2019, a Sentencing Hearing was held. Although no PSI
19 report was prepared, the victim was sworn and presented a victim impact statement. The
20 Sentencing was continued to December 2, 2019. At the December 2, 2019, hearing the
21 matter was continued to January 13, 2020. On January 13, 2020, a Sentencing Hearing
22 was held, and Defendant was sentenced to 48-120 months.
23

24 7. On January 13, 2020, a Motion to Reconsider Sentence was filed. On
25 January 14, 2020, a Judgment of Conviction was filed. On January 23, 2020, a
26 Opposition To Motion To Reconsider Sentence was filed. On February 24, 2020, a
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2 hearing was held on the Motion To Reconsider Sentence and the Court took the matter
3 under advisement. On February 26, 2020, the Court filed an Order denying the Motion to
4 Reconsider Sentence.

5 8. On July 17, 2020, a Petition for Writ of Habeas Corpus (Post-Conviction)
6 was filed. On July 31, 2020, an Order Appointing Counsel was filed appointing David H.
7 Neely III, Esq., as Counsel in the above-entitled matter. On October 23, 2020,
8 Petitioner's Supplemental Points and Authorities in Support of Post-Conviction Writ was
9 filed. On January 11, 2021, a Motion to Dismiss and Answer to Petition for Writ of
10 Habeas Corpus (Post Conviction) was filed. On February 17, 2021, the Petitioner's
11 Reply to Motion to Dismiss Petition for Writ of Habeas Corpus was filed.
12

13 II. DISCUSSION

14 Petitioner argues that her Trial Counsel's performance fell below the standard of
15 care in three instances: 1) Trial Counsel failed to inform the Court that the PSI used at her
16 sentencing contained errors which resulted in a longer sentence imposed upon Petitioner;
17 2) Trial Counsel failed to retain an investigator prior to the entry of the guilty plea to
18 investigate Petitioner's case and to interview witnesses; and 3) Trial Counsel failed to
19 impeach the testimony of the victim witness, Ms. Cox, at the sentencing and as a result
20 Petitioner received a harsher sentence due to his ineffective assistance of counsel.
21

22 The State argues that Petitioner's first and third claims must be dismissed
23 pursuant to NRS 38.810(1)(a) as they do not pertain to Petitioner's guilty plea. As for
24 Petitioner's second claim, the State argues that the claim is unsupported by specific facts
25 of what an investigator would have found or how it would have changed the outcome.
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2 **A. Dismissal Pursuant to NRS 38.810(1)(a)**

3 NRS 34.810(1)(a) states that

4 The court shall dismiss a petition if the court determines that:

5 (a) The petitioner's conviction was upon a plea of guilty or guilty but
6 mentally ill and the petition is not based upon an allegation that the plea was
7 involuntarily or unknowingly entered or that the plea was entered without
effective assistance of counsel.

8 NRS 34.810(1)(a) requires a district court to dismiss a petition for a writ of
9 habeas corpus challenging the validity of a judgment of conviction arising from a plea of
10 guilty or guilty but mentally ill, unless it is based on allegations that the plea was not
11 voluntarily and knowingly entered, or it was entered without the effective assistance of
12 counsel. Gonzales v. State, 136 Nev. Adv. Op. 60, 476 P.3d 84, 90 (Nev. App. 2020).
13 Gonzales outlines the types of ineffective-assistance claims that are permitted by NRS
14 34.810(1)(a) and concludes that the plain language of the statute permits only ineffective-
15 assistance claims that challenge the validity of the guilty plea. Id. Thus, the statute
16 excludes claims of ineffective assistance that do not allege a deficiency affecting the
17 validity of the guilty plea, as well as claims that allege deficiencies that occur only after
18 the entry of the guilty plea, such as those related to sentencing. Id.

19
20
21 The plain language of NRS 34.810(1)(a), as a whole, limits cognizable claims to
22 two types, both of which challenge the validity of the guilty plea. See Harris v. State,
23 130 Nev. 435, 438-39, 329 P.3d 619, 621-22 (2014) (citing NRS 34.810(1)(a) for the
24 proposition that "the validity of a guilty plea may be challenged in a post-conviction
25 petition for a writ of habeas corpus" and the proposition that the issues that may be raised
26 are limited).



1
2 By its plain meaning, “the plea was entered without effective assistance of counsel”
3 permits a petitioner to raise claims of ineffective assistance of counsel that are related to
4 the entry of the plea. Gonzales, 136 Nev. Adv. Op. 60, 476 P.3d at 87. This means that
5 not all claims of ineffective assistance may be raised. Id. Rather, to be cognizable, the
6 ineffective assistance claims that may be raised are limited to those that challenge the
7 *validity* of the guilty plea. See Nollette v. State, 118 Nev. 341, 348-49, 46 P3d 87, 92
8 (2002) (“A defendant who pleads guilty upon the advice of counsel may attack the validity
9 of the guilty plea by showing that he received ineffective assistance of counsel under the
10 Sixth Amendment to the United States Constitution.”). Any ineffective assistance of
11 counsel claims relating to events that do not affect the validity of the guilty plea fall outside
12 the scope of claims permitted.
13

14 **i. Petitioner’s First Ground of Ineffective Assistance of Counsel**

15 Petitioner’s first ground argues ineffective assistance when her trial counsel failed
16 to inform the Court that the PSI used at her sentencing contained errors which resulted in
17 a longer sentence imposed upon Petitioner.
18

19 After review of the pleadings, the Court finds that this ground is not perceivably
20 related to a challenge of entering the guilty plea and it must be dismissed pursuant to
21 NRS 34.810(1)(a) and the logic of Gonzales.
22

23 **ii. Petitioner’s Third Ground of Ineffective Assistance of Counsel**

24 Petitioner’s third ground argues that trial counsel failed to impeach the testimony
25 of the victim witness, Ms. Cox, at the sentencing and as a result Petitioner received a
26 harsher sentence due to his ineffective assistance of counsel.
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1
2 After review of the pleadings, this Court finds that this ground is not perceivably
3 related to a challenge of entering the guilty plea and it must be dismissed pursuant to
4 NRS 34.810(1)(a) and the logic of Gonzales.

5 **B. Petitioner's Second Ground of Ineffective Assistance of Counsel**

6 Petitioner's second ground argues that trial counsel failed to retain an investigator
7 prior to the entry of the guilty plea to investigate Petitioner's case and to interview
8 witnesses.
9

10 The Ninth Circuit acknowledged in Bragg v. Galaza, 242 F.3d 1082, 1088 (9th Cir.
11 2001), a claim of ineffective assistance of counsel for failing to investigate requires proof
12 of what the attorney would have discovered through further investigation before a
13 petitioner can satisfy the Strickland standard. Bragg, at 1088.

14 To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's
15 performance was deficient in that it fell below an objective standard of reasonableness and
16 resulting prejudice such that there is a reasonable probability, but for counsel's errors, the
17 outcome of the proceedings would have been different. Strickland v. Washington, 466
18 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505
19 (1984) (adopting the test in Strickland). An attorney must reasonably investigate in
20 preparing for trial or reasonably decide not to. Strickland, 466 U.S. at 691; Kirksey v. State,
21 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996). To demonstrate prejudice regarding the
22 decision to enter a guilty plea, a petitioner must demonstrate a reasonable probability, but
23 for counsel's errors, petitioner would not have pleaded guilty and would have insisted on
24 going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980,
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2 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown,
3 Strickland, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a
4 preponderance of the evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33
5 (2004). To warrant an evidentiary hearing, a petitioner must raise claims supported by
6 specific allegations not belied by the record, and if true, would entitle him to relief. See
7 Hargrove v. State, 100 Nev. 498, 502-3, 686 P.2d 222, 225 (1984).
8

9 Petitioner's second argument appears to largely focus upon an investigator being
10 an invaluable resource. Petitioner alleges that an investigator could have interviewed
11 witnesses who saw the alleged altercation between the Petitioner and Ms. Cox prior to
12 her arrest and the Petitioner's driving pattern at the time of the alleged incident; that an
13 investigation of the time of her alleged driving prior to the blood draw would have been
14 an invaluable resource in preparation of the Motion to Exclude the Blood Results; and
15 that an investigator would have assisted Trial Counsel into the allegations that as a result
16 of the accident, Ms. Cox's mother suffered an injury that caused her death.
17

18 Petitioner's arguments regarding the hiring of an investigator are bare, largely
19 speculative, and she has not raised specific allegations as to what, if any, evidence that an
20 investigator would have found that could have changed the outcome of the case.
21

22 Further, even if Counsel's actions fell below the objective standard of
23 reasonableness, the Petitioner has not established that she suffered prejudice. While
24 Petitioner claims an investigator would have been a valuable resource, nothing is offered
25 as to how any discovered facts would have affected the outcome of the Motion to
26 Exclude Blood Test Results. Further, to the extent that Petitioner concentrates on the
27
28



1
2 reliability of Ms. Cox as a witness and an investigator would have Petitioner's
3 recollection to be more accurate than Ms. Cox, the Petitioner plead to Driving Under the
4 Influence of Alcohol, With Prior Felony DUI Conviction, which was supported by the
5 record and the outcome of the Motion to Exclude Blood Test Results. The Motion itself
6 did not turn upon Ms. Cox's testimony.

7
8 As such, because the Petitioner's claims are bare and she cannot show that she
9 suffered prejudice, this claim must be dismissed.

10 **III. CONCLUSION**

11 Based upon the above discussion, it is appropriate to dismiss Petitioner's Writ of
12 Habeas Corpus (Post-Conviction). Good cause appearing,

13 **IT IS HEREBY ORDERED** that in the above-entitled case, Petitioner's Writ of
14 Habeas Corpus (Post-Conviction), filed on July 17, 2020, is DENIED.

15 DATED this 4th day of August, 2021.

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District Court Judge



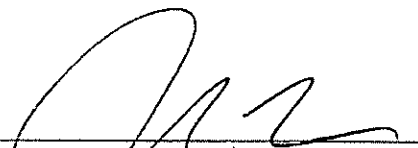
CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 4th day of August, 2021, he mailed
copies of the foregoing COURT ORDER to the following:

CRYSTAL AUSTIN #93718
Florence McClure Women's Correctional Center
4370 Smiley Road
Las Vegas, NV 89115

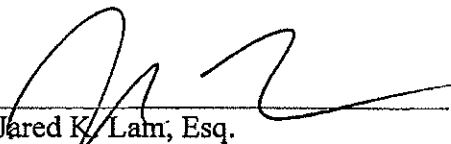
DAVID H. NEELY, III, ESQ.
3520 E TROPICANA, SUITE D-1
LAS VEGAS, NV 89121
(Hand Delivered)

NYE COUNTY DISTRICT ATTORNEY
(Hand Delivered)


Jared K. Lam, Esq.
Law Clerk to Judge Robert W. Lane

AFFIRMATION

The undersigned hereby affirms that this Court Order does not contain the social
security number of any person.


Jared K. Lam, Esq.
Law Clerk to Judge Robert W. Lane

Fifth Judicial District Court - Nye County
Case Summary

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Case #: CR17-8978
Judge: LANE, ROBERT W
Date Filed: 08/07/2017 **Department:**
Case Type: Motor Vehicle - DUI (Felony)

<p>Defendant AUSTIN, CRYSTAL YVONNE</p> <p>Plaintiff STATE OF NEVADA</p>	<p>Attorney(s) MARTINEZ, DANIEL</p> <p>DISTRICT ATTORNEY'S OFFICE</p>
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Fees:

Date Assessed:	Fee	Total	Paid	Waived	Outstanding
01/14/2020	ADMIN	\$5.00	\$0.00	\$0.00	\$5.00
01/14/2020	STADMIN	\$20.00	\$0.00	\$0.00	\$20.00
01/14/2020	DNA	\$150.00	\$0.00	\$0.00	\$150.00
01/14/2020	GENETIC	\$0.00	\$0.00	\$0.00	\$0.00
01/14/2020	PSI	\$400.00	\$0.00	\$0.00	\$400.00
01/14/2020	PUBDEF	\$500.00	\$0.00	\$0.00	\$500.00
01/14/2020	STFINE	2,000.00	\$0.00	\$0.00	\$2,000.00

Charge: NRS 484C.110 DUI W/ PRIORS F/B Count 1

Sent: 7/15/2019 GPA; 48-120 MOS NDC; FEES: \$25 AA, \$3 DNA, \$150 DNA, \$400 PSI, \$500 ATTY, \$2000 FINE TO NC CLERK'S OFFICE DUE BY 3/13/20; 2 DAYS CTS; BOND EXONERATED.

Disp/Judgment: Guilty Plea Before Date: 01/13/2020
Trial

Hearings:

Date	Time	Hearing	Court Result
12/11/2017	9:00AM	ARRAIGNMENT HEARING	
01/08/2018	9:00AM	ARRAIGNMENT HEARING CONT'D	
01/29/2018	9:00AM	ARRAIGNMENT HEARING CONT'D	
05/14/2018	9:00AM	STATUS CHECK RE: COMPETENCY EVALUATION	
07/16/2018	9:00AM	STATUS CHECK CONT'D	
08/27/2018	9:00AM	STATUS CHECK CONT'D	
12/03/2018	9:00AM	CALENDAR CALL - D2P - 3 DAYS - 01/02-04/19	
12/03/2018	2:30PM	JURY DRAW - FILE TO LOUISE (80 JURORS)	
01/02/2019	8:30AM	PRE-TRIAL MOTIONS	CANC
01/02/2019	9:00AM	JURY TRIAL- D2P- 3 DAYS (01/02-04/19)	CANC
01/14/2019	9:00AM	STATUS CHECK (NEGOTIATIONS/SET TRIAL DATES)	
02/11/2019	9:00AM	STATUS CHECK	

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06/17/2019	9:00AM	CALENDAR CALL (D2P-4 DAYS-07/30/19-08/02/19)	
06/17/2019	9:00AM	DEFT'S MTNS TO COMPEL; EXCLUDE; SUPPRESS	
06/17/2019	2:30PM	JURY DRAW - FILE TO LOUISE	
06/24/2019	9:00AM	CALENDAR CALL CONT(D2P-4 DAYS-7/30/19-8/2/19)	
07/15/2019	9:00AM	ARRAIGNMENT/ CHANGE OF PLEA	
07/30/2019	8:30AM	PRE-TRIAL MOTIONS	CANC
07/30/2019	9:00AM	JURY TRIAL - D2P - 4 DAYS (07/30/19-08/02/19)	CANC
10/28/2019	9:00AM	SENTENCING HEARING	
12/02/2019	9:00AM	(17) SENTENCING HEARING CONT'D	
01/13/2020	9:00AM	54 SENTENCING HEARING CONT'D	
02/24/2020	9:00AM	58 MTN TO RECONSIDER SENTENCE	

Filings:

Date	Filing
08/07/2017	CASE FILED 08/07/2017 CASE NUMBER CR17-8978
08/07/2017	DOCUMENTS RECEIVED FROM PAHRUMP JUSTICE COURT CRIMINAL COMPLAINT
08/07/2017	BINDOVER ORDER
08/15/2017	INFORMATION (DUI/FELONY)
08/17/2017	TRANSCRIPT OF: PRELIM HEARING (8/2/17) *****PJC DOC*****
12/11/2017	Court Minutes - ARRAIGNMENT HEARING JUDGE: ROBERT W. LANE; CLERK: VERONICA AGUILAR; COURT REPORTER: CECILIA THOMAS; BAILIFF: JAMELE TAYLOR; APP: MICHEAL VIETA-KABELL, ESQ., IS PRESENT FOR THE STATE; LISA THELANER IS PRESENT FOR P&P; DAVID RICKERT, ESQ., IS PRESENT WITH DEFENDANT, WHO IS AT LIBERTY. MR. RICKERT REQUESTS THAT THE MATTER CONTINUED, SO HE CAN DISCUSS THE DEFENDANT CRIMINAL WITH HER. THE COURT CONTINUES THE MATTER TO 1/8/18 @ 9 AM.
01/04/2018	TRANSCRIPT OF: ARRAIGNMENT (CONT'D) (12/11/17)
01/08/2018	Court Minutes - ARRAIGNMENT HEARING CONT'D JUDGE: ROBERT W LANE CLERK: JUANITA L TORRES REPORTER: CECILIA THOMAS BAILIFF: JAMELE TAYLOR APPEAR: DEPUTY DISTRICT ATTORNEY DANIEL PRESENT ON BEHALF OF THE STATE; LISA THELANDER ON BEHALF OF P&P; ATTORNEY DAVID RICKERT PRESENT WITH DEFENDANT WHO IS PRESENT LIBERTY. GUILTY PLEA AGREEMENT SUBMITTED TO THE COURT. RICKERT OUTLINES CASE HISTORY AND REVIEWS THE GUILTY PLEA AGREEMENT FOR THE RECORD. COURT PROCEEDS TO CANVASS THE DEFENDANT. COURT INQUIRES IF THE DEFENDANT IS LUCID. RICKERT TALKS TO DEFENDANT OFF THE RECORD AND REQUEST A CONTINUANCE. COURT CONTINUES THE MATTER TO 1/29/2018 9:00, TO ALLOW DEFENDANT TO FURTHER REVIEW THE GPA.
01/08/2018	GUILTY PLEA AGREEMENT
01/24/2018	TRANSCRIPT OF: ARRAIGNMENT (CONT'D) (1/8/18)

01/29/2018 Court Minutes - ARRAIGNMENT HEARING CONT'D

JUDGE: ROBERT W. LANE;
CLERK: VERONICA AGUILAR;
COURT REPORTER: CECILIA THOMAS;
BAILIFF: JAMELE TAYLOR;
APP: PATRICK FERGUSON, ESQ., IS PRESENT FOR THE STATE; LISA THELANER IS PRESENT FOR P&P; DAVID RICKERT, ESQ., IS PRESENT WITH DEFENDANT, WHO IS AT LIBERTY.

MR. RICKERT ADDRESSES THE DEFENDANT COMPETENCY AND REQUESTS AN EVALUATION. MR. FERGUSON SUBMITS. THE COURT GRANTS THE COMPETENCY EVALUATION. MR. RICKERT INFORMS THE COURT THAT HE WILL SUBMIT AN ORDER FOR SIGNATURE. THE COURT SET A STATUS CHECK FOR MARCH 19, 2018 @ 9:00 AM.

02/06/2018 TRANSCRIPT OF: ARRAIGNMENT CONT'D/COMPETENCY EVAL. NEEDED (01/29/18)

03/15/2018 ORDER FOR COMPETENCY EVALUATION

03/15/2018 STIPULATION FOR CONTINUANCE

03/15/2018 ORDER ON STIPULATION FOR CONTINUANCE (3/19 TO 5/14/2018)

05/14/2018 Court Minutes - STATUS CHECK RE: COMPETENCY EVALUATION

JUDGE: ROBERT W. LANE;
CLERK: VERONICA AGUILAR;
COURT REPORTER: CECILIA THOMAS;
BAILIFF:
APP: PATRICK FERGUSON, ESQ., IS PRESENT FOR THE STATE; LISA THELANER IS PRESENT FOR P&P; DAVID RICKERT, ESQ., IS PRESENT WITH THE DEFENDANT, WHO IS AT LIBERTY.

MR. RICKERT INFORMS THE COURT THAT THE COMPETENCY EVALUATIONS CONTRADICT EACH OTHER AND REQUESTS A THIRD EVALUATION FOR THE DEFENDANT. THE COURT CONTINUES THE STATUS CHECK TO JULY 16, 2018 @ 9:00 AM.

05/24/2018 TRANSCRIPT OF: STATUS CHECK RE: COMPETENCY EVAL(5/17/18)

06/18/2018 ORDER FOR THIRD COMPETENCY EVALUATION

07/16/2018 ORDER FOR COMPETENCY EVALUATION

07/16/2018 Court Minutes - JUDGE: ROBERT W. LANE; CLERK: VERONICA AGUILAR; COURT REPORTER: CECILIA THOMAS; BAILIFF: JAMELE TAYLOR; APP: DANIEL YOUNG, ESQ., IS PRESENT FOR STATE; LISA THELANER IS PRESENT FOR P&P; DANIEL MARTINEZ, ESQ., IS PRESENT WITH DEFENDANT, WHO IS AT LIBERTY. MR. MARTINEZ ADDRESSES THE DEFENDANT'S COMPETENCY EVALUATIONS WHICH CONTRADICT EACH OTHER AND REQUESTS A THIRD EVALUATION. THE COURT CONTINUES THE MATTER FOR AUGUST 27, 2018 @ 9:00 AM. MR. YOUNG INFORMS THE COURT THE DEFENDANT HAS A NEW CHARGE IN JUSTICE COURT AND REQUESTS THE DEFENDANT BE REMANDED INTO CUSTODY. MR. MARTINEZ OBJECTS AND ARGUES THE DEFENDANT SHALL REMAIN OUT OF CUSTODY. THE COURT CONFIRMS THE DEFENDANT WILL REMAIN OUT OF CUSTODY WITHOUT PREJUDICE SHALL THE STATE PERUSE THEIR MOTION.

08/01/2018 TRANSCRIPT OF: STATUS CHECK (CONT'D) (7/16/18)

08/27/2018 Court Minutes - STATUS CHECK CONT'D

JUDGE: ROBERT W. LANE;
CLERK: VERONICA AGUILAR;
BAILIFF: JAMELE TAYLOR;
APP: DANIEL YOUNG, ESQ., IS PRESENT FOR THE STATE; LISA THELANER IS PRESENT FOR P&P; DANIEL MARTINEZ, ESQ., IS PRESENT WITH DEFENDANT WHO IS AT LIBERTY.

MR. MARTINEZ STATES THE DEFENDANT HAS COMPLIED WITH ALL REQUIRED EVALUATIONS AND IT HAS BEEN DETERMINED THAT SHE IS COMPETENT. MR. MARTINEZ PROCEEDS TO REQUESTS A TRIAL DATE. THE COURT SETS CALENDAR CALL ON DECEMBER 3, 2018 @ 8:30 AM AND TRIAL FOR JANUARY 2-4, 2018 @ 8:30 AM.

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08/31/2018 ORDER SETTING JURY TRIAL (D2P- 3 DAYS 01/02/19-01/04/19)
09/19/2018 STATE'S NOTICE OF EXPERT WITNESS(ES)
09/19/2018 NOTICE OF WITNESSES
09/19/2018 REQUEST TO ADMIT DECLARATION(S) AT TRIAL
09/19/2018 REQUEST FOR DISCLOSURE
12/03/2018 Court Minutes - CALENDAR CALL - D2P - 3 DAYS - 01/02-04/19/ JURY DRAW -
FILE TO LOUISE (80 JURORS)

JUDGE: ROBERT W. LANE
CLERK: SARAH WESTFALL
COURT REPORTER: CECILIA THOMAS
BAILIFF: JAMELE TAYLOR
APPS: PATRICK FERGUSON, DDA, FOR THE STATE; LISA THELANER FOR P&P;
DANIEL MARTINEZ WITH DEFENDANT, AT LIBERTY.

COURT CALLS THE MATTER ON FOR CALENDAR CALL. MARTINEZ DECLARES NOT READY
TO PROCEED TO TRIAL AT THIS TIME AS THE STATE HAS BECOME PRIVY TO NEW
INFORMATION PERTINENT TO THIS CASE AND ASKS THE COURT RE-SET TRIAL.
FERGUSON CONCURS. COUNSEL REQUEST ONLY A STATUS CHECK BE SET AT THIS TIME.
COURT VACATES UPCOMING JANUARY 2019 TRIAL DATES AND SETS THE MATTER ON
CALENDAR FOR A STATUS CHECK ON JANUARY 14, 2019 AT 0900.
12/19/2018 TRANSCRIPT OF: STATUS CHECK(8/27/18)
01/14/2019 Court Minutes - STATUS CHECK (NEGOTIATIONS/SET TRIAL DATES)

JUDGE: ROBERT W. LANE
CLERK: SARAH WESTFALL
COURT REPORTER: CECILIA THOMAS
BAILIFF: JAMELE TAYLOR
APPS: DANIEL YOUNG, DDA, FOR THE STATE; LISA THELANER FOR P&P; DANIEL
MARTINEZ WITH DEFENDANT, AT LIBERTY.

COURT CALLS THE MATTER. MARTINEZ BRIEFS THE RECORD, NOTES THE REASON FOR
LAST CONTINUANCE OF THE MATTER TO TODAY, AND REQUESTS ANOTHER STATUS CHECK
BE SET IN 30 DAYS. WITHOUT OBJECTION, COURT SETS THE MATTER ON CALENDAR
FOR ANOTHER STATUS CHECK ON FEBRUARY 11, 2019 AT 0900.
02/11/2019 Court Minutes - STATUS CHECK

JUDGE: ROBERT W. LANE
CLERK: SARAH WESTFALL
COURT REPORTER: CECILIA THOMAS
BAILIFF: JAMELE TAYLOR
APPS: DANIEL YOUNG, DDA, FOR THE STATE; LISA THELANER FOR P&P; DANIEL
MARTINEZ WITH DEFENDANT, AT LIBERTY.

COURT CALLS THE MATTER ON CALENDAR FOR STATUS CHECK. MARTINEZ BRIEFS CASE
HISTORY AND ASKS THE COURT SET TRIAL DATES AT THIS TIME. YOUNG CONCURS.
COURT SETS TRIAL FOR JULY 30, 2019 - AUGUST 2, 2019; CALENDAR CALL JUNE 17,
2019.
02/14/2019 ORDER SETTING JURY TRIAL (7/30/2019 9AM)
05/20/2019 TRANSCRIPT OF: CALENDAR CALL(12/3/18)
05/24/2019 MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL
05/24/2019 MOTION TO EXCLUDE BLOOD TEST RESULTS
06/11/2019 OPPOSITION TO MOTION EXCLUDE BLOOD RESULTS

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06/17/2019 Court Minutes - CALENDAR CALL (D2P-4 DAYS-07/30/19-08/02/19)/ DEFT'S MTNS TO COMPEL; EXCLUDE; SUPPRESS/ JURY DRAW - FILE TO LOUISE

JUDGE: ROBERT W. LANE
CLERK: SARAH WESTFALL
COURT REPORTER: CECILIA THOMAS
BAILIFF: DEPUTY A. WILLIAMSON (NCSO)
APPS: DANIEL YOUNG, DDA, FOR THE STATE; LISA THELANER FOR P&P; DANIEL MARTINEZ WITH DEFENDANT, AT LIBERTY.

COURT CALLS THE MATTER. MARTINEZ WITHDRAWS HIS MOTION TO SUPPRESS BLOOD TEST RESULTS, STATING MOTION NOW MOOT. FURTHER, MARTINEZ REFERS TO HIS MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL, NOTES ITEMS REMAINING THAT WERE REQUESTED FROM THE STATE. MARTINEZ THEN PROCEEDS ON HIS MOTION TO EXCLUDE BLOOD TEST RESULTS, OUTLINES THE CONTENTS OF SAID MOTION AND REQUESTS PETROCELLI HEARING. YOUNG RESPONDS, OUTLINES THE STATE'S OPPOSITION AND ASKS THE COURT DENY DEFENDANT'S MOTION. MARTINEZ PRESENTS REBUTTAL, RENEWS REQUEST FOR PETROCELLI HEARING. YOUNG REPLIES. COURT HOLDS RULING, TO REVIEW BRIEFS AN ADDITIONAL TIME, AND WILL ISSUE AN ORDER IN A FEW DAYS. COURT PROCEEDS WITH CALENDAR CALL. MARTINEZ DECLARES READY ON BEHALF OF THE DEFENSE. YOUNG IS UNSURE AS TO WHETHER THE STATE IS READY FOR TRIAL, NAMING ISSUE WITH OUTSTANDING SERVICE OF WITNESSES. WITHOUT OPPOSITION, COURT CONTINUES CALENDAR CALL, DATE TO BE DETERMINED BY COURT STAFF AND COUNSEL. YOUNG ADDRESSES REMAINING ISSUE WITH ITEMS REQUESTED IN DEFENDANT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL. MARTINEZ ARGUES IT AS THE STATE'S DUTY TO TURNOVER ALL POSSIBLE IMPEACHMENT INFORMATION TO THE DEFENSE, STATES ITEMS REQUESTED FALL UNDER THAT PURVIEW. YOUNG RESPONDS, ARGUES INFORMATION MADE AVAILABLE TO THE DEFENSE WITHIN THE STATE'S DUTY. COURT FINDS THAT IF THE STATE IS AWARE OF ANY EXCULPATORY EVIDENCE, IT IS TO BE PROVIDED TO THE DEFENSE. MARTINEZ SO ACKNOWLEDGES.

06/20/2019 COURT ORDER (DENIED/MTN TO SUPPRESS BLOOD TEST)

06/24/2019 Court Minutes - CALENDAR CALL CONT(D2P-4 DAYS-7/30/19-8/2/19)

JUDGE: ROBERT W. LANE;
CLERK: VERONICA AGUILAR;
COURT REPORTER: CECILIA THOMAS;
BAILIFF: JAMELE TAYLOR;
APP: DANIEL YOUNG, ESQ., IS PRESENT FOR THE STATE; DANIEL MARTINEZ, ESQ., IS PRESENT WITH DEFENDANT, WHO IS AT LIBERTY.

MR. MARTINEZ DECLARES READY FOR TRIAL. MR. YOUNG DECLARES READY AND NOTES THE TRIAL DATES ARE JULY 30TH THROUGH AUGUST 2ND. THE COURT CONFIRMS JURY WILL BE PULLED FOR JULY 30TH.

06/25/2019 VENIRE

07/01/2019 TRANSCRIPT OF:STATUS CHECK(NEGOTIATIONS/TRIAL DATE)(CONT) (1/14/19)

07/15/2019 GUILTY PLEA AGREEMENT

07/15/2019 Court Minutes - ARRAIGNMENT/ CHANGE OF PLEA

JUDGE: ROBERT W. LANE
CLERK: SARAH WESTFALL
COURT REPORTER: CECILIA THOMAS
BAILIFF: JAMELE TAYLOR
APPS: MICHAEL VIETA-KABELL, DDA, FOR THE STATE; LISA THELANER FOR P&P;
DANIEL MARTINEZ WITH DEFENDANT, AT LIBERTY.

COURT CALLS THE MATTER. MARTINEZ BRIEFS THE NEGOTIATIONS FOR THE RECORD. VIETA-KABELL NOTES THE DEFENDANT HAS EXPRESSLY STIPULATED TO THE EXISTENCE OF A CONSTITUTIONALLY VALID PRIOR CONVICTION, AS FURTHER DETAILED IN THE WRITTEN GUILTY PLEA AGREEMENT. COURT CANVASSES THE DEFENDANT, STATES THE OFFENSE TO WHICH THE DEFENDANT IS CHARGED AND THE POSSIBLE SENTENCE. DEFENDANT ENTERS A PLEA OF GUILTY TO THE CHARGE, WAIVING HER CONSTITUTIONAL RIGHTS TO TRIAL AND APPELLATE RIGHTS. COURT ACCEPTS THE DEFENDANT'S GUILTY PLEA AND SETS SENTENCING HEARING FOR SEPTEMBER 30TH, 2019 AT 0900. MARTINEZ WAIVES THE 14-DAY RULE WITH REGARD TO THE PRESENTENCE INVESTIGATION REPORT. COURT ORDERS JURY TRIAL DATES VACATED.

09/16/2019 STIPULATION TO CONTINUE

09/18/2019 ORDER TO CONTINUE(10/28/19)

10/18/2019 TRANSCRIPT OF: ARRAIGNMENT/CHANGE OF PLEA (7/15/19)

10/24/2019 TRANSCRIPT: CALENDAR CALL 06/24/19

10/28/2019 Court Minutes - SENTENCING HEARING

JUDGE: ROBERT W. LANE
CLERK: SARAH WESTFALL
COURT REPORTER: CECILIA THOMAS
BAILIFF: JAMELE TAYLOR
APPS: KIRK VITTO, CDDA, FOR THE STATE;
DANIEL MARTINEZ WITH DEFENDANT, AT LIBERTY.

COURT CALLS THE MATTER. MARTINEZ NOTES NO PRESENTENCE INVESTIGATION REPORT; REQUESTS THE MATTER BE CONTINUED TO A DATE IN DECEMBER. COURT CONCURS AND CONTINUES SENTENCING HEARING TO DECEMBER 2ND, 2019 AT 0900. VITTO NOTES VICTIM PRESENT IN THE COURTROOM TODAY; INQUIRES WHETHER ANY HARDSHIP TO VICTIM SINCE THE MATTER IS BEING CONTINUED. VICTIM ADDRESSES THE COURT FROM THE GALLERY; ASKS TO PRESENT HER VICTIM IMPACT STATEMENT TODAY. COURT CONCURS. VICTIM, ALICE COX, IS SWORN AND PRESENTS A VICTIM IMPACT STATEMENT. VITTO INFORMS VICTIM THAT THE DIVISION WILL BE IN CONTACT IN REGARDS TO RESTITUTION. VICTIM IS EXCUSED. COURT CONFIRMS MATTER CONTINUED TO DECEMBER 2ND, 2019 AT 0900.

11/04/2019 TRANSCRIPT OF:SENTENCING(CONT)(10/28/19)

12/02/2019 COURT MINUTES - SENTENCING HEARING CONT'D

JUDGE: ROBERT W. LANE
CLERK: SARAH WESTFALL
COURT REPORTER: CECILIA THOMAS
BAILIFF: JAMELE TAYLOR
APPS: KIRK VITTO, CDDA, FOR THE STATE;
DANIEL MARTINEZ WITH DEFENDANT, AT LIBERTY.

COURT CALLS THE MATTER. COURT STAFF ADVISES PARTIES THAT A PRESENTENCE INVESTIGATION REPORT HAS NOT YET BEEN PREPARED OR FILED BY THE DIVISION OF PAROLE AND PROBATION. WITHOUT OPPOSITION, COURT CONTINUES SENTENCING HEARING TO JANUARY 13TH, 2020 AT 0900.

12/23/2019 TRANSCRIPT OF: DEFT'S MTNS TO COMPEL;EXCLUDE;SUPPRESS/CALENDAR CALL(6/17/19)

12/23/2019 TRANSCRIPT OF: SENTENCING(CONT)(12/2/19)

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12/31/2019 PRESENTENCE INVESTIGATION REPORT
01/13/2020 MOTION TO RECONSIDER SENTENCE
01/13/2020 COURT MINUTES - SENTENCING HEARING
JUDGE: ROBERT LANE;
CLERK: JUANITA TORRES;
BAILIFF: JAMELE TAYLOR;
REPORTER: CECILIA THOMAS;
APPEAR: KIRK VITTO ON BEHALF OF THE STATE;
ATTORNEY DANIEL MARTINEZ, ON BEHALF OF THE DEFENDANT, WHO IS PRESENT AT
LIBERTY;
BRIAN GENTRY ON BEHALF OF THE DIVISION OF P&P.
COURT CALLS THE MATTER.

12/18/2019 24-60 MO 2 DAYS CREDIT FOR TIME SERVED

MARTINEZ BRIEFS THE RECORD; OUTLINES NEGOTIATIONS, CRIMINAL HISTORY;
REQUEST THE RECOMMENDATIONS OF THE DIVISIONS; OUTLINES DEFENDANT'S RESULTS
IN DRUG COURT; VICTIM MADE ERRORS IN HER STATEMENT, NO EVIDENCE TO SUPPORT
THE VICTIMS CLAIMS, NO INJURY CLAIMS MADE TO THE INSURANCE COMPANY, NO
PASSENGER LISTED IN HER STATEMENT, DEFENDANTS 4TH DUI CONVICTION.
DEFENDANT READS HER PREPARED LETTER TO THE COURT, ON THE RECORD.
VITTO STANDS BY THE RECOMMENDATIONS OF THE DIVISION; OUTLINES THE PRIOR
DUI'S; REQUEST \$2K FINE; VICTIM HAS TESTIFIED AT A PRIOR HEARING ON
10/28/2019, THE VICTIM IS PRESENT TODAY AND SHE MAY TESTIFY.
MARTINEZ ADVISES THE COURT HE HAS STIPULATED TO THE PRIORS; DEFENDANT HAS
COMPLETED THE PRIOR PROGRAMS; ARGUES THERE WERE NO SERIOUS INJURIES THAT
THE VICTIM TESTIFIED TO.

COURT REVIEWS THE 10/28/2019 TRANSCRIPT.
VITTO CALLS WITNESS ALICE DENISE COX TO THE STAND, WITNESS SWORD AND
TESTIFIES TO: SHE HAS APPEARED SEVERAL TIMES ON THIS MATTER; THERE WERE
12-20 VEHICLES INVOLVED; SHE HAD NO COLLISION WITH THE DEFENDANT, SHE HIT
THE DITCH; HER MOTHER INJURED HER BACK, FROM THE SEATBELT, OUTLINES HER
MOTHER'S MEDICAL ISSUES PRIOR TO THE INCIDENT; WITNESS CALLED 911, STATING
SHE HAD HER MOTHER AND DOG IN HER VEHICLE; SHE WAS DOING APPROXIMATELY 30
MPH AT THE TIME OF THE INCIDENT.
COURT READS PAGES 6 OF THE 11/4/2019 TRANSCRIPT ON THE RECORD.
MARTINEZ CROSS-EXAMINES THE WITNESS; WITNESS HAS HAD CONTACT WITH THE DA'S
OFFICE; STATES SHE GAVE HER MOTHER'S MEDICAL RECORDS TO THE DA; SHE GAVE A
STATEMENT AT THE HOSPITAL; VIDEO FROM HER VEHICLE WAS DOWNLOAD AND GIVEN TO
NCSO. COPY OF WITNESS' STATEMENT GIVEN TO THE WITNESS FOR REVIEW. WITNESS
STATES SHE DID NOT STATE HER MOTHER WAS IN THE VEHICLE WITH HER, BECAUSE
HER MOTHER GAVE HER OWN STATMENT.
WITNESS EXCUSED.

VITTO OUTLINES PAGES 24, 25, 71, 72, 73 & 74 OF THE STATEMENT, AS THE
MOTHER OF THE WITNESS STATING "I WAS A PASSENGER IN MY DAUGHTER'S CAR".
COURT SENTENCES THE DEFENDANT TO 48-120 MONTHS NDC; 2 DAYS CTS; ALL THE
STANDARD FINES AND FEES;
DEFENDANT REMANDED INTO CUSTODY.

01/14/2020 JUDGMENT OF CONVICTION
01/22/2020 TRANSCRIPT OF: SENTENCING(1/13/20)
01/23/2020 OPPOSITION TO MOTION TO RECONSIDER SENTENCE

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02/24/2020 COURT MINUTES - MOTION TO RECONSIDER SENTENCE HEARING
JUDGE: ROBERT LANE;
CLERK: JUANITA TORRES;
BAILIFF: JAMELE TAYLOR;
REPORTER: CECILIA THOMAS;
APPEAR: KIRK VITTO ON BEHALF OF THE STATE;
ATTORNEY DANIEL MARTINEZ, ON BEHALF OF THE DEFENDANT, WHO IS NOT PRESENT IN
CUSTODY OF THE STATE;
BRIAN GENTRY ON BEHALF OF THE DIVISION OF P&P.
COURT CALLS THE MATTER.
MARTINEZ BRIEFS THE RECORD; STATE HAD AGREED TO 24-60 MONTHS NDC, BUT THE
COURT SENTENCED THE DEFENDANT TO 18-130 MONTHS; REQUEST AMENDED JUDGMENT OF
CONVICTION.
STATE ARGUES 24-60 MONTHS WAS ONLY A RECOMMENDATION, THERE WAS NO CLERICAL
ERROR, THE SENTENCE IS NOT ILLEGAL, OBJECTS TO AN AMENDED J.O.C.
COURT TAKES THE MATTER UNDER SUBMISSION.

02/26/2020 ORDER

03/03/2020 TRANSCRIPT OF: MOTION TO RECONSIDER SENTENCE(2/24/20)

03/05/2020 TRANSCRIPT OF: STATUS CHECK(2/11/19)

06/08/2020 REQUEST FOR RECORDS

06/08/2020 CERTIFICATE OF MAILING

06/08/2020 MOTION TO WITHDRAW COUNSEL

06/08/2020 REQUEST FOR SUBMISSION OF MOTION

06/08/2020 APPLICATION TO PROCEED IN FORMA PAUPERIS

06/10/2020 ORDER TO WITHDRAW COUNSEL

06/10/2020 ORDER TO PROCEED IN FORMA PAUPERIS

07/17/2020 APPLICATION TO PROCEED IN FORMA PAUPERIS

07/17/2020 MOTION FOR APPOINTMENT OF COUNSEL

07/17/2020 AFFIDAVIT

07/17/2020 REQUEST FOR SUBMISSION OF MOTION

07/17/2020 PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) #1

07/17/2020 CERTIFICATE OF MAILING

07/31/2020 ORDER TO PROCEED IN FORMA PAUPERIS

07/31/2020 ORDER APPOINTING COUNSEL

07/31/2020 DEFENSE ATTORNEY: NEELY, DAVID H III ASSIGNED

10/23/2020 PETITIONER'S SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF
POST-CONVICTION WRIT (SUBMITTED BY DAVID H. NEELY III, ESQ., FOR
PETITIONER, CRYSTAL Y. AUSTIN)

10/28/2020 ORDER FOR STATE RESPONSE

12/14/2020 STIPULATION TO CONTINUE (DATE FOR FILING)

12/16/2020 ORDER TO CONTINUE(12/11/20-1/11/21)

01/11/2021 MOTION TO DISMISS AND ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS (POST
CONVICTION)

01/12/2021 CERTIFICATE OF SERVICE

02/17/2021 PETITIONER'S REPLY TO MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS
(POST CONVICTION)

02/19/2021 STIPULATION AND ORDER TO ALLOW AN EXTENSION OF TIME TO FILE REPLY - NO
COPIES

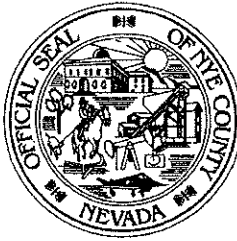
08/04/2021 COURT ORDER

08/06/2021 NOTICE OF APPEAL

08/06/2021 CASE APPEAL STATEMENT

**OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO**

Tonopah Office
Nye County Courthouse
P.O. Box 1031
101 Radar Road
Tonopah, Nevada 89049
Phone (775) 482-8127
Fax (775) 482-8133



Pahrump Office
Government Complex
1520 East Basin Avenue
Pahrump, Nevada 89060
Phone (775) 751-7040
Fax (775) 751-7047

CERTIFICATION OF COPY

**STATE OF NEVADA
COUNTY OF NYE**

I, **SANDRA L. MERLINO**, the duly elected, qualifying and acting Clerk of Nye County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original documents in the action entitled:

CRYSTAL Y. AUSTIN

Petitioner,

vs.

STATE OF NEVADA

Respondent.

Case No. CR8978

now on file and of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Court at my office, Pahrump, Nevada, this 6th day of August 2021.

**SANDRA L. MERLINO
NYE COUNTY CLERK**

By: _____

Brittani K. Smith
Deputy Clerk, Pahrump

**OFFICE OF THE NYE COUNTY CLERK
SANDRA L. MERLINO**

Tonopah Office
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Friday August 6, 2021

SENT VIA E-FILE

Supreme Court Clerk
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: CR8978
CRYSTAL Y. AUSTIN, Petitioner,
vs.
STATE OF NEVADA, Respondent.


Dear Clerk of Court:

I am submitting an appeal packet for an appeal received by Attorney David Neely, III, Esq on behalf of the Defendant. The appeal was filed August 6, 2021 in the above referenced matter. As this is a criminal matter, no fees were collected.

Please feel free to contact me should you have any questions with regard to the foregoing.

Sincerely,

**SANDRA L. MERLINO
NYE COUNTY CLERK**

By 
Brittani K. Smith
Deputy Clerk, Pahrump

cc: David Neely III -Defendant's Counsel
Nye County District Attorney
Honorable Robert W. Lane