

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

3 Electronically Filed
4 Oct 21 2021 08:59 p.m.
5 Elizabeth A. Brown
6 Clerk of Supreme Court

6 CRYSTAL YVONNE AUSTIN

CASE NO.: 83345

7 Appellant,

8 vs.

9 THE STATE OF NEVADA,

10 Respondent,

11 ON APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT IN AND
12 FOR THE COUNTY OF NYE, THE HONORABLE ROBERT LANE,
13 PRESIDING

14 APPELLANT'S APPENDIX ON APPEAL

15 VOLUME II

17 David H. Neely III, Esq.
18 NV Bar No. 3891
19 3520 E. Tropicana Ave., Suite D-1
20 Las Vegas, Nevada 89121
21 Attorney for Appellant

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

21 Chris Arabia, Esq.
22 Nye County District Attorney
23 P.O. Box 39
24 Pahrump, Nevada 89041

1 Appellant, **CRYSTAL YVONNE AUSTIN**, by and through his attorney of
2 record, David H. Neely III, Esq., hereby files the following as his Appendix on
3 Appeal Volume Two, containing the documents deemed pertinent to the issues on
4 appeal.
5

6 Appellant reserves the right to file supplemental appendixes as required in
7 Opening, Answering or Reply Briefs.

8 I hereby certify that I have read this Appendix on Appeal Volume Two and
9 to the best of my knowledge, information, and belief, it is not frivolous or
10 interposed for any improper purpose such as to harass or to cause unnecessary
11 delay or needless increase in the cost of litigation. I further certify that this
12 Appendix complies with all applicable Nevada Rules of Appellate Procedure, in
13 particular NRAP 28(e), which requires every assertion in the Brief regarding
14 matters in the record be supported by a reference to the page and volume number
15 of this appendix where the matter is relied on is to be found. I understand that I
16 may be subject to sanctions in the event that the accompanying Brief is not in
17 conformity with the requirements of the Nevada Rules of Appellate Procedure.
18
19

20 VERIFICATION

21 1. I hereby certify that this Appellant's Appendix on Appeal Volume
22 Two complies with the formatting requirements of NRAP 32(a)(6) because:
23
24
25

1 This Appellant's Appendix on Appeal Volume Two has been prepared in a
2 proportionally spaced typeface using Microsoft Word 2010 in Times New Roman
3 14.

4 2. I further certify that the Appendix on Appeal Volume Two complies
5 with the page limitation of NRAP 32(a)(7).
6

7 DATED this 21 day of October, 2021.

8 
9 DAVID H. NEELY III,
10 NV Bar No. 003891
11 3520 East Tropicana Ave., Ste. D-1
12 Las Vegas, NV 89121
13 Attorney for Appellant
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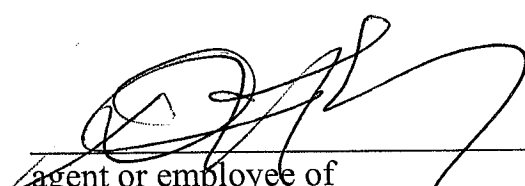
1	DATE	DESCRIPTION	PAGE
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an agent or employee of the above
referenced Nevada licensed attorney, and that on the 21 day of October, 2021, I
served the above and foregoing **APPELLANT'S INDEX TO APPENDIX ON**
APPEAL VOLUME TWO by depositing a copy in the United States mails,
postage prepaid, addressed to counsel for plaintiff at his last known address, as
indicated below:

Chris Arabia, Esq.
District Attorney
100 North Carson Street
Carson City, Nevada 89701-4717

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


agent or employee of
David H. Neely, III, ESQ.

JUN 08 2020

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

Nye County Clerk
Deputy

In the 5TH Judicial District Court of the State of Nevada

In and for the County of NYE

In the matter of:

STATE OF NEVADA

Plaintiff/Petitioner

v.

CRYSTALYVONNE AUSTIN

Defendant/Respondent

Case No: CR8978

Dept No.: 2

MOTION TO WITHDRAW COUNSEL

COMES NOW Defendant, CRYSTALYVONNE AUSTIN, In Proper
Person and hereby moves this Honorable Court for an **ORDER** granting her
permission to withdraw her present counsel of record in the proceeding
action.

This Motion is made and based upon all papers, pleadings, and exhibits
on file with the Court which are hereby incorporated by this reference, the
Points and Authorities herein, and attached Affidavit of Defendant.

Dated this 26 day of MAY, 2020

Respectfully submitted,


Signature

CRYSTAL AUSTIN
Print Name

1 POINTS AND AUTHORITIES

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall
4 upon demand and payment of the fee due from the client,
5 immediately deliver to the client all papers, documents,
6 pleadings and items of tangible personal property which
7 belong to or were prepared for that client.
8 2. ...If the court finds that an attorney has, without just
9 cause, refused or neglected to obey its order given under
10 this section, the court may, after notice and fine or
11 imprison him until contempt purged. If the Court finds
12 that the attorney has, without just cause, withheld the
13 client's papers, documents, pleadings, or other property,
14 the attorney is liable for costs and attorney's fees.

9 Counsel in the above-entitled case was court-appointed due to
10 Defendant's indigence. Defendant does not owe counsel any fees.

11 WHEREFORE, Defendant prays this Honorable Court, **GRANT** her Motion to
12 Withdraw Counsel and that counsel deliver Defendant all papers, documents,
13 pleadings, discovery and any other tangible property which belong to or were
14 prepared for the Defendant to allow Defendant the proper assistance that is
15 needed to insure that justice is served.

16
17 Dated this 26 day of MAY, 2020

18
19 Respectfully submitted,

20
21 
22 Signature

23 CRYSTAL Y. AUSTIN
24 Print Name
25
26
27
28

1 THE PST. HE STATED 2009, 2012¹ 2012 WERE DUI'S
2 2009 WAS THE BEGINNING OF DIVERSION PROGRAM.
3 OCT 2012 WAS THE END OF DIVERSION PROGRAM.
4 DEC 2012 WAS LISTED AS DISCHARGE HONORABLE.
5 I TOLD MR. MARTINEZ WHILE THE D.A. ADDED 3
6 DUI'S THAT ARE NON EXISTENT AND HE TOLD ME
7 TO SHUT UP. HE DID NOT DEFEND ME. I HAD A
8 DUI IN 2008 DID THE DIVERSION PROGRAM
9 SUCCESSFULLY AND HAD A DUI IN 2016. BUT
10 MR. MARTINEZ LET MR VITTO ADD 3 DUI'S. ^{I NEVER GOT TO SEE THE PST.}

11 Dated this 26 day of MAY, 2020.

12 Respectfully submitted

13 Crystal Austin
14 Signature

15 CRYSTAL Y. AUSTIN
Printed Name

16 DECLARATION UNDER PENALTY OF PERJURY

17 I, the undersigned, understand that a false statement or answer to any question in this declaration will
18 subject me to penalties of perjury.

19 I declare, under the penalty of perjury under the laws of the United States of America,
20 that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed
21 within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

22 Dated this 26 day of MAY, 2020

23 Crystal Austin
24 Signature

25 93719
26 Nevada Department of Corrections ID #

27 ¹ NRS 171.102

28 ² NRS 208.165

³ 28 U.S.C.

\$1746. Unsworn declarations under penalty of perjury

18 U.S.C.

§ 1621. Perjury generally

In The 5TH Judicial District Court of the State of Nevada
In and For the County of NYE

JUN 08 2020

[Signature]
Nye County Clerk
Deputy

In the matter of:

STATE OF NEVADA)
Plaintiff/Petitioner)
v.)
CRYSTAL YVONNE AUSTIN)
Defendant/Respondent

Case No: CR 8978

Dept No.: 2

REQUEST FOR RECORDS

COMES NOW CRYSTAL YVONNE AUSTIN, the ☐ Plaintiff/Petitioner ☒ Defendant/Respondent
in the case noted above, and requests that the Court forward copies of the following records filed in this
case to the ☐ Plaintiff/Petitioner ☒ Defendant/Respondent at the above listed address.

☒ Plea Canvas	☒ Judgment of Conviction
☒ Plea Agreement	☒ Copy of All Records in File
☒ Case Index	☒ Other <u>SUBPENAS</u>
☒ Sentencing Minutes	

Dated this 26 day of MAY, 2020

Respectfully submitted,

[Signature]
Signature

CRYSTAL AUSTIN
Print Name

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

JUN 08 2020

In The 5TH Judicial District Court of the State of Nevada
In and for the County of NYE

[Signature] Nye County Clerk
Deputy

In the matter of:

STATE OF NEVADA)
Plaintiff/Petitioner)
v.)
CRYSTAL WYNNE AUSTIN)
Defendant/Respondent)

Case No: CR89178

Dept No.: 2

REQUEST FOR SUBMISSION OF MOTION

It is requested that the Motion for

WITHDRAW COUSSE 1

which was filed on the 26 day of MAY, 2020 in the above-entitled matter be submitted
to the Court for decision.

The undersigned certifies that a copy of this request has been mailed to all counsel of record.

Dated this 26 day of MAY, 2020

Respectfully submitted,

[Signature]
Signature

CRYSTAL AUSTIN
Print Name

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of¹NRS 171.102 and²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 26 day of MAY, 2020


Signature

93718
Nevada Department of Corrections ID #

¹ NRS 171.102

² NRS 208.165

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury

18 U.S.C.

§ 1621. Perjury generally

JUN 10 2020

Nye County Clerk
Deputy

1 APPL

2 CRYSTAL AUSTIN
NAME

3 4370 SMILEY RD
ADDRESS

4 LAS VEGAS, NV 89115
CITY, STATE, ZIP CODE

6 TELEPHONE

7 IN PROPER PERSON

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 STATE OF NEVADA)

12 Plaintiff,)

13 vs.)

14 CRYSTAL AUSTIN)

15 Defendant)

Case No.: CR8970

Dept. No.: 2

16
17 **ORDER TO PROCEED IN FORMA PAUPERIS**

(Filing Fees/Service Only)

18
19 Upon consideration of Crystal Austin's Application to Proceed in Forma
20 Pauperis and it appearing that there is not sufficient income, property, or resources with
21 which to maintain the action and good cause appearing therefore:

22 **IT IS HEREBY ORDERED,**

23 1. That Crystal Austin, Defendant, shall be permitted to proceed In
24 Forma Pauperis with this action as permitted by NRS 12.015.

25 2. That Defendant shall proceed without the prepayment costs or
26 fees or the necessity of giving security, and the Clerk of the Court may file or issue any
27 necessary writ, pleading or paper without charge.

28 3. That the Sheriff or other appropriate officer within this State shall make
personal service of any necessary writ, pleading or paper without charge.

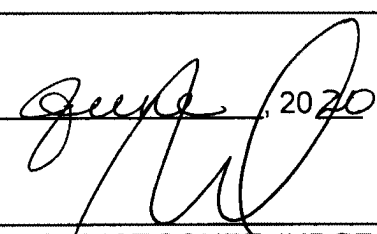
1 4. That if the _____, _____, prevails in this
2 action, the Court shall enter an Order pursuant to NRS 12.015 requiring the opposing
3 party to pay into the court, within five (5) days, the costs which would have been
4 incurred by the prevailing party, and those costs must then be paid as provided by law.

5 ~~IT IS HEREBY ORDERED~~ that _____'s request to waive fees
6 and costs is **DENIED** for the following reason:

7 A. _____ The Party is not indigent.

8 B. _____ Other: _____

9
10 DATED this 10th day of June, 2020

11
12 
13 _____
14 DISTRICT COURT JUDGE

15 Respectfully submitted by:

16 

17 Signature

18 CRYSTAL AUSTIN

19 PRINT NAME

20 4370 SMILEY RD

21 ADDRESS

22 LAS VEGAS NV 89115

23 CITY, STATE, ZIP CODE

24 TELEPHONE

25 **IN PROPER PERSON**

JUN 10 2020

CRYSTAL AUSTIN 93718

Florence McClure Women's Correctional Center
4370 Smiley Rd.
Las Vegas, NV 89115

Nye County Clerk
Deputy

In the 5TH Judicial District Court of the State of Nevada

In and for the County of NYE

In the matter of:

STATE OF NEVADA

Plaintiff/Petitioner

v. CRYSTAL Y. AUSTIN

Defendant/Respondent

Case No: CR 8978

Dept No.: 2

ORDER TO WITHDRAW COUNSEL

The Proper Person Motion of Defendant, requesting an Order to Withdraw Counsel in the above entitled action having moved the Court on this day, and in good cause appearing.

IT IS HEREBY ORDERED, that Defendant's Motion to Withdraw Counsel is GRANTED.

IT IS HEREBY ORDERED that Counsel deliver to Defendant at her address, all documents, papers, pleadings, discovery, and any other tangible property in the above-entitled case.

Dated this 10th day of June, 2020

DISTRICT COURT JUDGE

JUL 17 2020

Florence McClure Women's Correctional Center
4370 Smiley Rd.
Las Vegas, NV 89115

Nye County Clerk
P. Smith Deputy

In The 5TH Judicial District Court of the State of Nevada
In and for the County of NYE

In the matter of:

STATE OF NEVADA) Case No: CR8978
Plaintiff/Petitioner)
v.) Dept No.: 2
CRYSTAL YVONNE AUSTIN)
Defendant/Respondent)

AFFIDAVIT

STATE OF NEVADA)

COUNTY OF NYE)

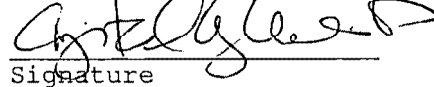
1. I am the ☐ Plaintiff/Petitioner ☒ Defendant/Respondent in the above entitled action. I have personal knowledge of the facts contained in the above-entitled case and am competent to testify to these facts.
2. My personal knowledge or personal observations of the situation is/are as follows:

MY CONSTITUTIONAL RIGHTS TO HAVE AN
ATTORNEY

WITHDREW DANIEL MARTINEZ ON JUNE 10, 2020
FOR INEFFECTIVE COUNSEL

Dated this 9th day of JULY, 2020.

Respectfully submitted,



Signature

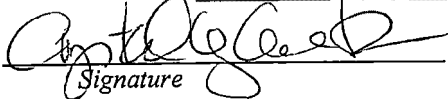
CRYSTAL AUSTIN
Printed Name

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 9th day of JULY, 2020



Signature

93718

Nevada Department of Corrections ID #

¹ NRS 171.102

² NRS 208.165

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury

18 U.S.C.

§ 1621. Perjury generally

JUL 17 2020

CERTIFICATE OF MAILING

STATE OF NEVADA
COUNTY OF CLARK

Nye County Clerk
YBOMETH Deputy

I am the ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

CRYSTAL AUSTIN for Case No: CR8978

On this 9th day of JULY, 2020, I mailed a copy of the

Following document(s):

1. HABEAS CORPUS

2. MOTION TO APPOINT COUNSEL

3. SUBMISSION OF MOTION

4. FINANCIAL CERTIFICATE (COPY)

5. IFP (COPY)

By United States First Class Mail, to the following addresses:

1. <u>NYE COUNTY CLERK'S OFFICE</u>	2. <u>ATTORNEY GENERAL</u>
<u>1520 E. BASIN AVE #105</u>	<u>100 N. CARSON ST</u>
<u>PAHRUMP, NV 89060</u>	<u>CARSON CITY, NV</u>
	<u>89701</u>

3. _____	4. _____
_____	_____
_____	_____
_____	_____

Dated this 9th day of JULY, 2020.

Respectfully submitted,

Crystal Austin
Signature

CRYSTAL AUSTIN
Printed Name

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 9th day of JULY, 2020

[Signature]
Signature

93718
Nevada Department of Corrections ID #

¹ NRS 171.102

² NRS 208.165

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury
18 U.S.C.

§ 1621. Perjury generally

JUL 17 2020

Florence McClure Women's Correctional Center
4370 Smiley Rd.
Las Vegas, NV 89115

Nye County Clerk
Deputy

In the 5TH Judicial District Court of the State of Nevada

In and for the County of NYE

In the matter of:

STATE OF NEVADA
Plaintiff/Petitioner

Case No: CR8978

v. CRYSTAL YVONNE AUSTIN
Defendant/Respondent

Dept No.: 2

MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW Petitioner, _____, In Proper
Person and hereby moves this Honorable Court for an order to Appoint Counsel
in the above-entitled action, pursuant to NRS 34.720, with the Fundamental
Provisions of Art. I., Sec.'s 8 and 10, of the Nevada Constitution, and the
U.S. 1st Amendment (Right to Petition for the Redress of Constitutional
Grievances), and the U.S. 14th Amendment (Right to Due Process Clause) in the
Constitution of these United States.

This Motion is made and based upon all papers, pleadings, and exhibits
within Court records, the Application to Proceed In Forma Pauperis and upon
Oral Arguments, if this Court deems it proper and necessary for the
disposition of the instant Motion.

Dated this 9th day of JULY, 20 20

Respectfully submitted,


Signature

CRYSTAL AUSTIN
Print Name

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 9th day of JULY, 2020


Signature

93718
Nevada Department of Corrections ID Number

CRYSTAL AUSTIN
Print Name

¹ **NRS 171.102** Complaint defined; oath or declaration required. The complaint is a written statement of the essential facts constituting the public offense charged. It must be made upon:

1. Oath before a magistrate or a notary public; or
2. Declaration which is made subject to the penalty for perjury.
(Added to NRS by 1967, 1400; A 1969, 387; 1983, 446)

² **NRS 208.165** Execution of instrument by prisoner. A prisoner may execute any instrument by signing his or her name immediately following a declaration "under penalty of perjury" with the same legal effect as if he or she had acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in this section, "prisoner" means a person confined in any jail or prison, or any facility for the detention of juvenile offenders, in this state.
(Added to NRS by 1985, 1643)

³ **28 U.S.C.**

§1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

- (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".
- (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".
(Added Pub. L. 94-550, §1(a), Oct. 18, 1976, 90 Stat. 2534.)

PRIOR PROVISIONS

A prior section 1746 was renumbered section 1745 of this title.

§ 1621. Perjury generally

Whoever—

- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
- (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.
(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 88-619, § 1, Oct. 3, 1964, 78 Stat. 995; Pub. L. 94-550, § 2, Oct. 18, 1976, 90 Stat. 2534; Pub. L. 103-322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

JUL 17 2020

CRYSTAL AUSTIN # 93718
FLORENCE MCCLURE WOMENS CORRECTIONAL CENTER
4370 Smiley Road
Las Vegas, NV 89115

Nye County Clerk
B. Smith Deputy

IN THE 5TH JUDICIAL DISTRICT COURT of the STATE OF NEVADA

In and for the COUNTY OF NYE

STATE OF NEVADA)
PLAINTIFF/PETITIONER

v.

Case No. CR8978

CRYSTAL YVONNE AUSTIN)
DEFENDANT/RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

1. Name of the institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: FLORENCE MCCLURE WOMENS (CLARK CNTY)
2. Name and location of the court which entered the judgment of conviction under attack:
NYE COUNTY COURT, 1520 E. BASIN, PAHRUMP, NV
89060, # 105
3. Date of Judgment of Conviction: 7/15/2019
4. Case Number: CR8978
5. Length of sentence: 48 MONTHS TO 120 MONTHS
If sentence is death, state any date upon which execution is scheduled: N/A
6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? YES NO X. If "YES", list the crime(s), case number(s) and sentence(s) being served at this time: N/A
7. Nature of offense involved in conviction being challenged: INEFFECTIVE
COUNSEL, DUE PROCESS, CUMULATIVE ERRORS

8. What was your plea? (check one)

a) Not guilty ____ b) Guilty X c) Guilty but mentally ill ____ (d) Nolo contendere ____

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

N/A

10. If you were found guilty after a plea of not guilty, was the finding made by (check one):

a) JURY ____ (b) JUDGE WITHOUT A JURY X

11. Did you testify at the trial? YES ____ NO X

12. Did you appeal from the judgment of conviction? YES ____ NO X

13. If you do appeal, answer the following:

(a) Name of Court: N/A

(b) Case Number/Citation: N/A

(c) Result: N/A

(d) Date of Result: N/A

**** ATTACH A COPY OF ORDER/REMITTITUR/DECISION, IF AVAILABLE ****

14. If you DID NOT appeal, explain briefly why: DID NOT KNOW WHAT I WAS BEING
CHARGED WITH UNTIL ARRIVING AT FM WCC.

15. Other than a direct appeal from a judgment of conviction/ sentence, have you previously filed any petitions, applications or motions with respect to this judgment in state or federal court? YES ____ NO X

16. If you answered YES to question 15, provide the following information:

(a) Name of Court: N/A

(b) Type of proceeding: N/A

(c) Grounds raised: N/A

(d) Did you receive an evidentiary hearing? YES ____ NO X

(e) Result of hearing: N/A Date of result: N/A

(f) Citations of any written opinion, date of orders entered pursuant to result (if known):

N/A

17. **SECOND PETITION FILED/APPLICATION/MOTION** (if filed):

- (a) Name of Court: N/A
- (b) Type of proceeding: N/A
- (c) Grounds raised: N/A
- (d) Did you receive an evidentiary hearing? YES ☐ NO ☒
- (e) Result of hearing: N/A Date of result: N/A
- (f) Citations of any written opinion, date of orders entered pursuant to result (if known):
N/A

18. **THIRD/SUBSEQUENT PETITIONS** – list same information as in # 17 on separate sheet and attach.

19. Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

- 1) **First petition**, application, or motion? YES ☐ NO ☒
Citation or date of decision: _____
- 2) **Second petition**, application, or motion? YES ☐ NO ☒
Citation or date of decision: _____
- 3) **Third petition**, application or motion? YES ☐ NO ☒
Citation or date of decision: _____
- 4) **IF YOU DID NOT APPEAL** from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ x 11 inches, attached to this petition. **Your response may not exceed five (5) handwritten or typewritten pages in length).**

MY LAWYER DANIEL MARTINEZ NEVER FILED A DIRECT APPEAL. I WITHDREW COUNSEL, DATED JUNE 10, 2020.

20. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other post-conviction proceeding? If so, identify:

- A. Which of the grounds is the same: N/A
- B. Proceedings in which these grounds were raised: N/A
- C. Briefly explain why you are raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 ½ x 11 inches, attached to this petition. **Your response may not exceed five (5) handwritten or typewritten pages in length).**

N/A

21. If any of the grounds listed in this petition, OR listed on any additional pages you have attached, were NOT previously presented in any other state court or federal court, list briefly what ground/s were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches, attached to this petition. Your response may not exceed five (5) handwritten or typewritten pages in length).

N/A

22. Are you filing this petition more than ONE (1) YEAR following the filing of the judgment of conviction or the filing of a decision on Direct Appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches, attached to this petition. Your response may not exceed five (5) handwritten or typewritten pages in length).

MY LAWYER, DANIEL MARTINEZ NEVER FILED A DIRECT APPEAL. I WITHDREW COUNSEL, DATED JUNE 10, 2020.

23. Do you have any petition or appeal now pending in any state court or federal court as to the judgment under attack? YES ☐ NO ☒
IF YES, give both court and case number: _____

24. Give the name of EACH/EVERY attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

USA CHUMLEE - 6/14, 8/14 - QUIT

DAVID RICKERT - 8/16, QUIT

DANIEL MARTINEZ - WITHDREW BY COURT ORDER

25. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? YES ☐ NO ☒
IF YES, specify where and when the sentence is to be served (if you know): _____

26. State concisely EVERY ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating grounds and the facts supporting each ground.

A. GROUND ONE:

INEFFECTIVE COUNSEL

SUPPORTING FACTS: (Tell your story briefly, without citing cases or law)

SEE GROUND 1 PAGE 1

B. GROUND TWO:

DOE PROCESS

SUPPORTING FACTS: (Tell your story briefly, without citing cases or law)

SEE GROUND 2 PAGE 1 OF 2
PAGE 2 OF 2

C. GROUND THREE:

CUMULATIVE ERRORS

SUPPORTING FACTS: (Tell your story briefly, without citing cases or law)

SEE GROUND 3 PAGE 1 OF 2
PAGE 2 OF 2

D. GROUND FOUR:

SUPPORTING FACTS: (Tell your story briefly, without citing cases or law)

N/A

Petitioner asks that this court grant Petitioner relief to which s/he may be entitled in this proceeding.

Dated this 9th day of JULY, 2020

Respectfully submitted,



Signature, Pro Se Litigant

CRYSTAL Y. AUSTIN

Print Name

GROUND 1
(continued)

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Amendment Right to INEFFECTIVE COUNSEL, based on these facts:

INEFFECTIVE COUNSEL. I WITHDREW DANIEL MARTINEZ
DUE TO CUMULATIVE ERRORS ON MY PSI ON MY
PLEA DEAL. THE JUSTICE COURT JUDGE SULLIVAN WOULD NOT
ALLOW ME TO PAY TICKETS (IT WAS PUT ON DLEA DEAL) HOWEVER,
IT WAS ADDED TO MY PSI AS UNPAID TICKETS. I HAD ONE
FAILURE TO APPEAR, I BROUGHT A DOCTORS NOTE WHICH
JUDGE SULLIVAN ACCEPTED AND THAT WAS ADDED TO MY
PSI. STATED I DID NOT COMPLY, 3 YEARS AND 7 MONTHS
OF RANDOM URINE ANALYSIS, WHICH I NEVER WAS
DIRTY OR DID NOT PAY. D.A. VITTO ADDED A 2012 DUI
THAT DID NOT EXIST. HE STATED 2009, 2012 + 2012 WERE
DUI'S. I HAD 2 DUI'S IN 2008. BOTH DUI'S WERE
TO BE THROUGH THE DIVERSION PROGRAM. I WAS AN
HONORABLE DISCHARGE OCT 2012 AND DEC 2012 WAS
THE CONCLUSION OF THE NYE COUNTY CASE SINCE I
COMPLETED THE PROGRAM. I WAS UNAWARE OF THE
"ALTERCATION" UNTIL I READ THE PSI. I WAS NOT
GIVEN THE PSI UNTIL 1/13/20 AS I WAS BEING
HAILED OFF. I REACHED OUT TO MR. MARTINEZ
WITH NO RESULTS. MR. MARTINEZ DID NOT DEFEND
ME ON ANYTHING. I WITHDREW COUNSEL ON
JUNE 10, 2020

GROUND 2
(continued)

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my
4,5,6,14 Amendment Right to DUE PROCESS, based on these facts:

ACCIDENT AT 12:06:31 PM (RP) MRS. COX TOOK KEYS AT 12:06:48
17 SECONDS AFTER WRECK BETWEEN MARY KIELY (MINI VAN)
MRS. COX ATTEMPTED TO TAKE MY PURSE OUT OF PASSENGER
SEAT ALONG WITH KEYS. I SNAPPED OUT OF IT AND GRABBED
MY PURSE, FROM MRS. COX. THE DISPATCH SHEET IS LISTED
AS 12:07:12 THEY ARE YELLING / SCREAMING AT EACH
OTHER. DEPUTY DRIVES UP AND SEES A "A HAZARD".
I WAS SEATBELTED IN MY VEHICLE. TOTALLED & NOW
DRIVEABLE. THE DEPUTY PULLS ME OUT OF MY SEATBELTED
CAR & PUTS ME IN POLICE CAR AWAITING EMT'S. (POSSIBLE
HEAD & NECK INJURIES TO ME). MRS. COX CLAIMED TO
HAVE BEEN HIT IN THE FACE & SHOULDER, BUT ALSO
TESTIFIED HER SHOULDER INJURY WAS FROM HITTING
HER BRAKES AT 30 MPH. MRS. COX LIED UNDER OATH
ON ALL ACCOUNTS. MRS. COX CLAIMED TO BE A VICTIM.
MRS. COX WAS ALLOWED TO SUBMIT A LETTER OF LIES
TO PSI^{PNP}, WHICH WAS THE DIRECT RESULT OF MY
LIFELONG SENTENCE. MRS. COX WAS ASKED UNDER
OATH WERE YOU HIT & HE REPLIED "NO". HOWEVER,
MRS COX WAS TRYING TO EXTORT MONEY, HAD FAKE
CLAIMS OF INJURY TO HERSELF & HER MOTHER & HER
SERVICE DOG (NONE TO WHICH WERE IN THE WRECK

GROUND 2
(continued)

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my
456.14 Amendment Right to DUE PROCESS, based on these facts:

WAS WERE THEY INVOLVED IN THE ACCIDENT. MRS.
COX TRIED TO SAY SHE HAD BEEN SUBDUED. BUT
THAT WAS A LIE. I WAS NOT ON TRIAL. THE VICTIM
MARY KLINE HAD BEEN PAID. I WAS BEING MALICIOUS
LY PROSECUTED BY MRS. COX. FALSE TESTIMONY,
LIED ABOUT INJURIES. EACH TIME MRS. COX STORY
CHANGED THAT MR. VIHO THE D.A. EVEN SAID
I THINK YOU'RE STRETCHING THE TRUTH. MRS. COX
WHO WAS NO VICTIM WAS ALLOWED TO TESTIFY EVEN
THOUGH SHE WAS NO VICTIM. LIED UNDER OATH.
PERJURY AND MALICIOUS PROSECUTION. THE
DEPUTY TOOK MRS. COX'S WORD ABOUT BEING HIT.
THE DEPUTY DID NOT SEE ANYTHING BUT MRS.
COX TRYING TO STEAL MY PURSE. SO I AM CHARGED
WITH A SIMPLE BATTERY THAT I FOUND OUT AFTER
1/13/2020. ON THE PSI SYNOPSIS IT STATES
ALTERCATION SO I AM NOW LABELED VIOLENT. I
SIMPLY TRIED TO GET MY OWN PURSE BACK FROM
A STRANGER 17 SECONDS AFTER AN HEAD ON
COLLISION. MRS. COX DICTATED MY SENTENCE OF
4 YEARS. SEE COURT RECORDS. MRS. COX LIED ON
ALL ACCOUNTS AND I SUFFER SINCE MY LAWYER
DID NOT DO HIS JOB.

GROUND 3
(continued)

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 45 U.S.C. Amendment Right to CUMULATIVE ERRORS, based on these facts:

IT STATES I WOULD BE ALLOWED TO REVIEW MY PSI WITH MY ATTORNEYS, I WAS NOT ALLOWED. A LETTER OF LIES FROM MRS. COX, FALSE TESTIMONY AND ERRORS ON MY PSI RESULTED IN MY OVER THE PLEA DEAL AGREEMENT. IF MY LIFE IS DETERMINED FROM A PSI, SHOULD IT NOT BE CORRECT I ASKED DANIEL MARTINEZ. I WROTE TO HIM ON 2 OCCASIONS & SENT ME AN ANXIOUS LETTER STATING HE WAS RIGHT AND I SHOULD FIDE HIM. SO I DID. THE D.A. VITO READS FROM MY PSI, HE STATES I HAVE SEVERAL FAILURES TO APPEAR. (NOT ONLY ONE. I WENT TO COURT AND IT WAS SATISFIED BY A DR. NOTE. JUDGE SULLIVAN ACCEPTED) 2. UNPAID TICKETS YES, I WAS TOLD NOT TO PAY BY JUDGE SULLIVAN SINCE I HAD 3 PSYCH EVALS TO DO & I MIGHT NOT BE IN MY RIGHT MIND (SO IT WAS ADDED TO THE PLEA AGREEMENT). 3. FAILURE TO COMPLY. I DON'T KNOW HOW 3 YRS TMO IS FAILURE TO COMPLY. I DID DIVERSION COURT FOR 3 YEARS 2009 TO 2012 AND RECEIVED AN HONORABLE DISCHARGE. THE D.A. VITO READS DOI'S THAT ARE NON EXISTENT 2012. I HAD 2 DOI'S IN 2008. THEN 6/1/2016, THE PSI STATES THERE MIGHT BE

GROUND 3
(continued)

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Amendment Right to CONSTITUTIONAL ERRORS, based on these facts:

HERESAY. HOW IS THAT EVEN LEGAL. WITH ALL THE ERRORS. THE ALTERCATION NOW READS PHYSICAL. SO, THE ENTIRE NARRATIVE WENT FROM YELLING TO PHYSICAL. KNOWING MRS. COX LIED IN COURT UNDER OATH, STALLED MY CASE FOR A FEW YEARS TRYING TO GET TIME ON HER SIDE IN HOPES OF A PAYOUT EVEN THOUGH IT WAS PROVEN IN COURT SHE LIED, MRS COX TRIED TO FRAUD MY INSURANCE COMPANY, MRS. COX TRIED TO GET THE COURT ON HER SIDE. UNFORTUNATELY FOR ME, JUDGE LANE LET MRS. COX SEND HER LETTER OF LIES TO PNP, LET HER GET ON STAND TWO TIMES AND THE RESULTING IN A HARSHER SENTENCE THEN EVEN PNP RECOMMENDED. THE ALTERCATION HAS BEEN BLOWN UP TO A PHYSICAL ALTERCATION ON THE PSI ALL FROM THE WORD OF A LIAR. I AM AND HAVE BEEN MALICIOUSLY PROSECUTED BY MRS. COX. SHE DID NOT GET RESTITUTION BUT SHE TOLD THE JUDGE HOW LONG I SHOULD SIT IN PRISON. MY LAWYER MR. MARTINEZ SHOULD HAVE SHOT MRS COX DOWN IMMEDIATELY BUT HE DID NOT.

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 9th day of July, 2020

Crystal L. Austin
Signature

93718
Nevada Department of Corrections ID Number

CRYSTAL L. AUSTIN
Print Name

¹ NRS 171.102 Complaint defined; oath or declaration required. The complaint is a written statement of the essential facts constituting the public offense charged. It must be made upon:

1. Oath before a magistrate or a notary public; or
2. Declaration which is made subject to the penalty for perjury.
(Added to NRS by 1967, 1400; A 1969, 387; 1983, 446)

² NRS 208.165 Execution of instrument by prisoner. A prisoner may execute any instrument by signing his or her name immediately following a declaration "under penalty of perjury" with the same legal effect as if he or she had acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in this section, "prisoner" means a person confined in any jail or prison, or any facility for the detention of juvenile offenders, in this state.
(Added to NRS by 1985, 1643)

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

(Added Pub. L. 94-550, §1(a), Oct. 18, 1976, 90 Stat. 2534.)

PRIOR PROVISIONS

A prior section 1746 was renumbered section 1745 of this title.

§ 1621. Perjury generally

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

(June 25, 1948, ch. 645, 62 Stat. 773; Pub. L. 88-619, § 1, Oct. 3, 1964, 78 Stat. 995; Pub. L. 94-550, § 2, Oct. 18, 1976, 90 Stat. 2534; Pub. L. 103-322, title

XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

Florence McClure Women's Correctional Center
4370 Smiley Rd.
Las Vegas, NV 89115

JUL 17 2020

Nye County Clerk

In The 5TH Judicial District Court of the State of Nevada
In and for the County of NYE

B. Smith Deputy

In the matter of:

STATE OF NEVADA)
Plaintiff/Petitioner)
v.)
CRYSTAL KOUNE AUSTIN)
Defendant/Respondent)

Case No: CR8978

Dept No.: 2

REQUEST FOR SUBMISSION OF MOTION

It is requested that the Motion for

MOTION TO ADD COUNSEL

which was filed on the 9TH day of JULY, 2020 in the above-entitled matter be submitted to the Court for decision.

The undersigned certifies that a copy of this request has been mailed to all counsel of record.

Dated this 9TH day of JULY, 2020

Respectfully submitted,

[Signature]

Signature

CRYSTAL AUSTIN

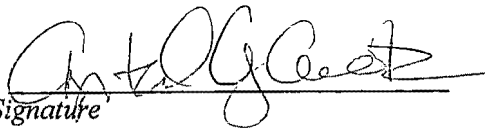
Print Name

DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 9th day of JULY, 2020


Signature

93710
Nevada Department of Corrections ID #

¹ NRS 171.102

² NRS 208.165

³ 28 U.S.C.

§1746. Unsworn declarations under penalty of perjury
18 U.S.C.
§ 1621. Perjury generally

FILED
FIFTH JUDICIAL DISTRICT

JUL 31 2020

Nye County Clerk
Deputy

Case No. CR 8978
Dept. 2P

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

CRYSTAL Y. AUSTIN,
Petitioner,

vs

**ORDER APPOINTING
COUNSEL**

STATE OF NEVADA,
Respondents.

On July 17, 2020, the Court received a Petition for Writ of Habeas Corpus and a Motion for the Appointment of Counsel in the above matter.

After review of the papers and pleadings on file, the Court finds it appropriate to appoint counsel to assist Petitioner with her Petitioner for Writ of Habeas Corpus. Petitioner's new counsel is to review Petitioner's Writ and file supplemental points and authorities clarifying the Petitioner's arguments for the Court's consideration. Good cause appearing

IT IS HEREBY ORDERED that DAVID H. NEELY, III, Esq. shall be appointed to represent the Petitioner in the post-conviction matter

DATED this 31st day of July, 2020

District Court Judge

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES





CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 31st day of July, 2020, he mailed copies of the foregoing Order Appointing Counsel 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)

Nancy A. Cratty for
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.

Nancy A. Cratty for
Jared K. Lam, Esq.
Law Clerk to Judge Robert W. Lane

FILED
FIFTH JUDICIAL DISTRICT

JUL 31 2020

Nye County Clerk

Deputy

1 **APPL**

2 CRYSTAL AUSTIN
NAME

3 4370 SMILEY RD
ADDRESS

4 LAS VEGAS, NV 89115
CITY, STATE, ZIP CODE

6 TELEPHONE

7 **IN PROPER PERSON**

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 STATE OF NEVADA

12 Plaintiff,

13 vs.

14 CRYSTAL AUSTIN

15 Defendant

Case No.: CD9970

Dept. No.: 2

17 **ORDER TO PROCEED IN FORMA PAUPERIS**

(Filing Fees/Service Only)

18 Upon consideration of _____'s Application to Proceed in Forma
19 Pauperis and it appearing that there is not sufficient income, property, or resources with
20 which to maintain the action and good cause appearing therefore:

21 **IT IS HEREBY ORDERED,**

22 1. That _____, shall be permitted to proceed in
23 Forma Pauperis with this action as permitted by NRS 12.015.

24 2. That _____ shall proceed without the prepayment costs or
25 fees or the necessity of giving security, and the Clerk of the Court may file or issue any
26 necessary writ, pleading or paper without charge.

27 3. That the Sheriff or other appropriate officer within this State shall make
28 personal service of any necessary writ, pleading or paper without charge.

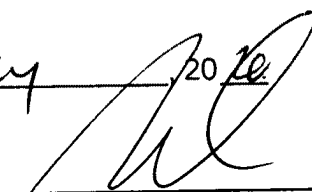
1 4. That if the _____, _____, prevails in this
2 action, the Court shall enter an Order pursuant to NRS 12.015 requiring the opposing
3 party to pay into the court, within five (5) days, the costs which would have been
4 incurred by the prevailing party, and those costs must then be paid as provided by law.

5 **IT IS HEREBY ORDERD** that _____ 's request to waive fees
6 and costs is **DENIED** for the following reason:

7 A. _____ The Party is not indigent.

8 B. _____ Other: _____

9
10 DATED this 31st day of July, 2010

11
12 
13 _____
14 DISTRICT COURT JUDGE

15 Respectfully submitted by:

16 
17 _____
18 Signature

19 CRYSTAL AUSTIN
20 _____
21 PRINT NAME

22 4370 SMILEY RD
23 _____
24 ADDRESS

25 LAS VEGAS NV 89115
26 _____
27 CITY, STATE, ZIP CODE

28 _____
TELEPHONE

IN PROPER PERSON

Case No. CR-8978
Dept. No. 2

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

FILED
FIFTH JUDICIAL DISTRICT
OCT 23 2020

Nye County Clerk
Sarah Westfall Deputy

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

CRYSTAL Y. AUSTIN,
Petitioner,

vs.

THE STATE OF NEVADA,
Respondent.

PETITIONER'S SUPPLEMENTAL
POINTS AND AUTHORITIES IN
SUPPORT OF POST-CONVICTION
WRIT

Petitioner, CRYSTAL Y. AUSTIN, by and through her Attorney, DAVID H. NEELY III, Esq., hereby files the following Supplemental Points and Authorities in support of her Petition for Writ of Habeas Corpus (Post-Conviction), pursuant to NRS 34.750, and in support of her request for an Evidentiary Hearing pursuant to NRS 34.770 in the above captioned matter. The grounds herein are incorporated with the original Petition for Writ of Habeas Corpus (Post-Conviction).

1. FACTS

On August 7, 2017, an Bind-over Order was filed in the District Court. On August 15, 2017, an Information was filed in the District Court. On December 11, 2017, a Hearing was held in the District Court.

On January 8, 2018, a Hearing was held in the District Court. On January 29, 2018, a Hearing was held in the District

1 Court. On March 15, 2018, a Order On Stipulation For Continuance
2 was filed in the District Court. On March 15, a Sipulation For
3 Continuance was filed in the District Court. On March 15, 2018,
4 an Order For Competency Evaluations was filed in the District
5 Court. On May 14, a Hearing was held Re Competency Evaluation in
6 the District Court. On June 18, 2018, an Order For Third
7 Competency Evaluation was filed in the District Court. On July
8 16, 2018, an Order For Competency Evaluation was filed in the
9 District Court. On July 16, 2018, a Status Check was held in the
10 District Court. On August 27, 2018, a Status Check was held in
11 the District Court. On August 31, 2018, an Order Setting Jury
12 Trial was filed in the District Court. On September 19, 2018, a
13 State's Notice of Expert Witness(es) was filed in the District
14 Court. On September 19, 2018, a Request For Disclosure was filed
15 in the District Court. On September 19, 2018, a Notice Of
16 Witnesses was filed in the District Court. On September 19,
17 2018, a Request To Admit Declarations At Trial was filed in the
18 District Court. On December 3, 2018, a Calendar Call was held in
19 District Court.

20 On January 14, 2019, a Hearing was held in District Court.
21 On February 11, 2019, a status Check was held in District Court.
22 On May 24, 2019, a Motion To Exclude Blood Test Results was filed
23 in the District Court. On May 24, 2019, a Motion To Compel
24 Production Of Discovery And Brady Material was filed in the
25 District Court. On June 11, 2019, a Opposition To Motion Exclude
26 Blood Results was filed in the District Court. On June 20, 2019,
27 a Court Order was filed in the District Court. On June 24, 2019,
28 a Calendar Call was held in District Court. On June 25, 2019, a

1 Venire was filed in the District Court. On July 15, 2019, an
2 Arraignment was held in District Court. On July 15, 2019, a
3 Guilty Plea Agreement was filed in the District Court. On October
4 28, 2019, a Sentencing Hearing was held in District Court. On
5 December 2, 2019, a Hearing was held in the District Court.

6 On January 13, 2020, a Sentencing Hearing was held in the
7 District Court. On January 13, 2020 a Motion To Reconsider
8 Sentence was filed in the District Court. On January 14, 2020, a
9 Judgment of Conviction was filed in the District Court. On
10 January 23, 2020, a Opposition To Motion To Reconsider Sentence
11 was filed in the District Court. On February 24, 2020, a Motion
12 To Reconsider Sentence was held in the District Court. On
13 February 26, 2020, an Order was filed in the District Court. On
14 June 8, 2020, a Motion To Withdraw Counsel was filed in the
15 District Court. On June 10, 2020, an Order To Withdraw Counsel
16 was filed in the District Court. On July 17, 2020, a Petition for
17 Writ of Habeas Corpus (Post-Conviction) was filed in the District
18 Court. On July 31, 2020, an Order Appointing Counsel was filed in
19 the District Court appointing David H. Neely III, Esq., as
20 Counsel in the above-entitled matter.

21 2. STANDARD UPON REVIEW OF PETITION

22 NRS 34.770 sets forth the Standard for this Court's review
23 of the instant Petition and supporting documentation. NRS 34.770
24 states:

25 1. The judge or justice, upon review of the return,
26 answer and all supporting documents which are filed,
27 shall determine whether an evidentiary hearing is
28 required. A petitioner must not be discharged or
committed to the custody of a person other than the
respondent unless an evidentiary hearing is held.

1 2. If the judge or justice determines that the
2 petitioner is not entitled to relief and an evidentiary
3 hearing is not required, he shall dismiss the petition
4 without a hearing.

5 3. If the judge or justice determines that an
6 evidentiary hearing is required, he shall grant the
7 writ and shall set a date for the hearing.

8 Where as here, the Petition sets forth specific allegations
9 in the Petition or accompanying brief which if true, would
10 entitle the petitioner to an evidentiary hearing unless those
11 claims are repelled by the record. Hargrove v. State, 100 Nev.
12 498, 686 P.2d 222, (1984); Marshall v. State, 110 Nev 1328, 885
13 P.2d 603 (1994). As stated in Drake v. State, 108 Nev. 523, 836
14 P.2d 52 (1992):

15 The question in this case is not whether appellant proved
16 his counsel was ineffective, but whether appellant made
17 allegations which entitled him to an evidentiary hearing. See
18 Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); Grondin v.
19 State, 97 Nev. 454, 634 P.2d 456 (1981). [emphasis added]

20 3. INEFFECTIVENESS OF COUNSEL UNDER STRICKLAND

21 To state a claim of ineffective assistance of counsel that
22 is sufficient to invalidate a judgment of conviction, a defendant
23 must demonstrate that counsel's performance fell below an
24 objective standard of reasonableness, and that counsel's errors
25 were so severe that they rendered the jury's verdict unreliable.
26 Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons,
27 100 Nev 430, 683 P.2d 504 (1984), cert. denied, 471 U.S. 1004
28 (1985)

29 In Strickland v. Washington, 466 U.S.668, 692, 104 S.Ct.
30 2052, 2067, 8L.Ed.2d 674 (1984) the United States Supreme Court
31 reaffirmed the "Actual or constructive denial of the assistance
32 of counsel altogether is legally presumed to result in

1 prejudice". The Supreme Court further reaffirmed this ruling in
2 Penson v. Ohio, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300,
3 (1988).

4 Counsel must adequately prepare the case at all levels,
5 including preliminary matters in Justice Court. Sanborn v.
6 State, 107 Nev. 856, 822 P.2d 11 (1991).

7 Here, as in Marshall v. State, 110 Nev. 1328, 885 P.2d 603
8 (1994), the Petitioner alleged acts which, if true, entitle him
9 to relief as ineffective assistance of counsel.

10 **4. COUNSEL'S CONSTITUTIONALLY DEFECTIVE PERFORMANCE AFFECTED**
11 **THE OUTCOME OF THE PLEA PROCESS.**

12 In United States V. Arvantis, 902 F.2d 489, 494-495 (7th
13 Cir. III. 1990), the Supreme Court stated:

14 To establish prejudice in the guilty plea context, a
15 defendant must show that 'counsel's constitutionally defective
16 performance affected the outcome of the plea process. In other
17 words, the defendant must show that there is a reasonable
18 probability that, but for counsel's errors, the defendant would
19 not have pleaded guilty and would have insisted on going to
20 trial'. Hill v. Lockhart, 474 U.S. 59, 106 S. Ct. 366, 88 L.Ed.
21 2d 203 (1985).

22 The United States Supreme Court in Hill, 474 U.S. 58,
23 stated that, "the two part Strickland v. Washington test applies
24 to challenges to guilty pleas on ineffective assistance of
25 counsel. In the context of guilty pleas, the first half of the
26 Strickland v. Washington test is nothing more than a restatement
27 of the standard of attorney competence already set forth... The
28 second, or prejudice requirement, on the other hand, focuses on

1 whether counsel's constitutionally ineffective performance
2 affected the outcome of the plea process. In other words, in
3 order to satisfy the prejudice requirement, the defendant must
4 show that there is a reasonable probability that, but for
5 counsel's errors, he would have insisted on going to trial.

6 In many guilty plea cases, the "prejudice" inquiry will
7 closely resemble the inquiry engaged in by courts reviewing
8 ineffective-assistance challenges to convictions obtained through
9 a trial. For example, where the alleged error of counsel is a
10 failure to investigate or discover potentially exculpatory
11 evidence, the determination whether the error "prejudiced" the
12 defendant by causing him to plead guilty rather than go to trial
13 will depend on the likelihood that discovery of the evidence
14 would have led counsel to change his recommendation as to the
15 plea. This assessment, in turn, will depend in large part on a
16 prediction whether the evidence likely would have changed the
17 outcome of the trial. Hill, 474 U.S. 59.

18 When a Petitioner alleges ineffective assistance of
19 counsel, he must establish the factual allegations which form the
20 basis for his claim of ineffective assistance by a preponderance
21 of the evidence. Next, as stated in Strickland, the petitioner
22 must establish that those facts show counsel's performance fell
23 below a standard of objective reasonableness, and finally the
24 petitioner must establish prejudice by showing a reasonable that,
25 but for counsel's deficient performance, the outcome would have
26 been different. Means v. State of Nevada, 120 Nev. 1001, 103 P.3d
27 25 (2004).

28 In Hodges v. State, 119 Nev. 479, 482 (Nev.2003), the

1 Nevada Supreme Court stated:

2 NRS 34.810(1)(a) provides that a court shall dismiss a
3 post-conviction habeas petition challenging a conviction based on
4 a guilty plea unless the petition alleges 'that the plea was
5 involuntary or unknowingly entered without effective assistance
6 of counsel.' A petitioner is entitled to an evidentiary hearing
7 only if he supports his claims with specific allegations that if
8 true would entitle him to relief. The petitioner is not entitled
9 to an evidentiary hearing are belied or repelled by the record.

10 Petitioner alleges that her attorney has fallen below that
11 standard in the following three (3) instances which if, taken on
12 their own may not be enough to render the Petitioner's guilty
13 plea unreliable but when taken together, this attorney believes,
14 and I hope this Court agrees, that taken together, the
15 Petitioner's guilty plea is unreliable. The three (3) instances
16 are as follows:

17 1. TRIAL COUNSEL FAILED TO INFORM THE COURT THAT THE PSI
18 USED AT HER SENTENCING CONTAINED ERRORS WHICH RESULTED IN A
19 LONGER SENTENCE IMPOSED UPON PETITIONER.

20 In the Supreme Court Case of Sanborn v. State, 107 Nev. 399,
21 812 P.2d 1279, 1283, the Court held:

22 Focusing on counsel's performance as a whole, and with due
23 regard for the strong presumption of effective assistance
24 accorded counsel by this court and > Strickland, we hold
25 that Sanborn's representation indeed fell below an objective
26 standard of reasonableness. Trial counsel did not
27 adequately perform pretrial investigation, failed to pursue
28 evidence supportive of a claim of self-defense, and failed
to explore allegations of the victim's propensity towards
violence. Thus, he "was not functioning as the 'counsel'
guaranteed the defendant by the Sixth Amendment." >
Strickland, 466 U.S. at 687, 104 S.Ct. at 2064.

In Petitioner's own words, "Ineffective Counsel. I withdraw

1 Daniel Martinez due to cumulative errors on my PSI on my plea
2 deal. The Justice Court Judge Sullivan would not allow me to pay
3 tickets(It was put on plea deal) However, it was added to my PSI
4 as unpaid tickets. I had one failure to appear. I brought a
5 doctors note which Judge Sullivan accepted and that was added to
6 my PSI stated I did not comply, 3 years and 7 months of random
7 urine analysis, which I never was dirty or did not pay. DA Vitto
8 added a 2012 DUI that did not exist. He stated 2009, 2012. 2012
9 were DUI's. I had 2 DUI's in 2008. Both DUI's were to be through
10 the Diversion Program. I was an Honorable Discharge Oct. 2012 and
11 Dec. 2012 was the conclusion of the Nye County case since I
12 completed the Program."

13 "The word "altercation" keeps me from doing house arrest on
14 the 305 program, 185 program. I never was allowed to review the
15 PNP with my attorney. I did not know about the simple battery. I
16 was told to squash your 2 traffic tickets the malicious
17 prosecution for telling the accounts of an event at Saddle West
18 to the best of my knowledge was going to bite me I had to sign
19 the plea deal. So I did. Unknown to me the "simple battery" was
20 hidden in there to be dropped. It was dropped. But, doing 4 years
21 with the word "altercation" being the nail in my coffin."

22 "I was never given the report to review for errors. I
23 received the report on 1/13/2020 as I was being handcuffed. I
24 reviewed it noticed many errors . I contacted Mr. Martinez. He
25 said no errors. You do not like it fire me. So I fired him."

26 "It states I would be allowed to review my PSI with my
27 attorney. I was not allowed. A letter of lies from Mrs. Cox,
28 false testimony and errors on my PSI. Resulted in my over the

1 plea deal agreement. If my life is determined from a PSI. Should
2 it not be correct. I asked Danial Martinez. I wrote to him on 2
3 occasions. Sent me an away letter stating it was right and I
4 should fire him. So I did.”:

5 Trial Counsel failed to adequately prepare for Sentencing
6 and that failure caused his client to receive a more severe
7 sentence than what was agreed to in the Guilty Plea Agreement.
8 Trial Counsel had a duty to inform the Trial Court that the PSI
9 contained errors and have them corrected before going forward at
10 the Sentencing.

11 Counsel's performance fell below an objective standard of
12 reasonableness, and their errors were so severe that it caused
13 their client to plead guilty in the instant case in violation of
14 STRICKLAND since there was a reasonable probability that she
15 would have chosen to go trial if she had known that Trial Counsel
16 would fail to adequately prepare fo sentencing.

17 2. TRIAL COUNSEL FAILURE TO RETAIN AN INVESTIGATOR PRIOR TO
18 THE ENTRY OF THE GUILTY PLEA TO INVESTIGATE PETITIONER'S CASE AND
19 TO INTERVIEW WITNESSES, WAS INEFFECTIVE ASSISTANCE OF COUNSEL
20 PURSUANT TO STRICKLAND.

21 Trial Counsel failed to request fees for appointment of an
22 investigator to investigate the facts and circumstances that led
23 to the Petitioner's arrest on Count 1:DUI Alcohol With Prior
24 Felony Conviction, in violation of NRS 484C.110.1D. An
25 investigator would been an invaluable resource to interview
26 witnesses who saw the alleged altercation between the Petitioner
27 and Ms. Cox prior to her arrest and the Petitioner's driving
28 pattern at the time of the alleged incident. In addition, an

1 investigation of the time of her alleged driving prior to the
2 blood draw would have been an invaluable resource in preparation
3 of the Motion to Exclude the Blood Results.

4 Finally, an investigator would have assisted Trial Counsel
5 into the allegations that as a result of the accident, Ms. Cox's
6 mother suffered an injury that caused her death.

7 Trial Counsel did not adequately perform pretrial
8 investigation pursuant to Sanborn v. State, 107 Nev. 399, 812 P.
9 2d 1279, 1283. Thus, he was "not functioning as the 'counsel'
10 guaranteed the defendant by the Sixth Amendment." Strickland, 466
11 U.S. at 687, 104 S. Ct. at 2064.

12 Counsel's performance fell below an objective standard of
13 reasonableness, and their errors were so severe that it caused
14 their client to plead guilty in violation of Strickland since
15 there was a reasonable probability that she would have chosen to
16 go to trial if a proper investigation had been conducted.

17 3. TRIAL COUNSEL FAILED TO IMPEACH THE TESTIMONY OF THE
18 VICTIM WITNESS, MS. COX, AT THE SENTENCING AND AS A RESULT
19 PETITIONER RECEIVED A HARSHER SENTENCE DUE TO HIS INEFFECTIVE
20 ASSISTANCE OF COUNSEL PURSUANT TO STRICKLAND.

21 In Petitioner's own words, "I signed a 2 to 5 plea deal.
22 However, I was double sentenced due to Ms. Cox's lies. If you
23 read through the testimony she (Ms. Cox) said I was out 4 years.
24 I should be sentenced 4 years. This was all done before Mr.
25 Martinez and the DA could Ms. Cox on her over dramatization of
26 things that did not exist."

27 "Ms Cox was allowed Oct. 28, 2019 to read a "story" of her
28 unfactual accounts. To which Judge Lane allowed to be submitted

1 to PNP. Ms. Cox was trying to get restitution and blame me for
2 the death of her mother all the while not involved in the wreck."

3 "Ms. Cox lied under oath. I was maliciously prosecuted by
4 Ms. Cox. Ms. Cox submitted receipts for 4 new tires. Her mother's
5 medical proved no injuries, her service dog- no proof no receipts
6 nor were they listed as being involved. Ms. Cox's mother wrote a
7 statement submitted 1 year later which claimed I had open
8 container on the floorboard. A complete lie. Malicious
9 prosecution. That's what Nye County charged me with when making a
10 police statement to the best of my knowledge."

11 "Ms. Cox stalled my case for 4 years trying to pin the blame
12 of her mother's death, which was I'm sure natural causes 2 years
13 after June 1, 2106."

14 "DA Vitto told Ms Cox she was stretching the truth. But the
15 "story" was already incorporated in my report. PNP Pahrum
16 started it, Clark County finished my report."

17 "Ms Cox is a fraud and a liar. Ms. Cox submitted receipts
18 for 4 new tires? She claims a ditch. She claims trees, her car
19 was a sports car type (4 door Kia Optima) is no sports car. Not
20 involved in a wreck. Merely a Golddigger."

21 "With Ms. Cox perjuring herself, malicious prosecuting me
22 with her personal vendetta of me, stalking my residence all last
23 year, manipulation of the truth, the letter of lies, her trying
24 to blame a natural COD of her mother on me. Trying to snow over
25 the Judge controlling the courtroom telling the judge what my
26 sentence should be. Meanwhile, Mr. Martinez let her do whatever
27 with no objection. Told me all victims have a right to speak. I
28 said she is no victim, Mr Martinez told me to shut up."

1 "The DA is the only one who basically called Ms. Cox a liar.
2 But damage was done."

3 Trial Counsel had a duty to defend his client at the
4 Sentencing by objecting to testimony that included falsehoods
5 from Ms. Cox, the victim witness. Thus, he was "not functioning
6 as the 'counsel' guaranteed the defendant by the Sixth
7 Amendment," Strickland, 466 U.S. at 87, 104 S. Ct. at 2064.

8 Counsel's performance fell below an objective standard of
9 reasonableness, and their errors were so severe that it caused
10 their client to plead guilty in violation of Strickland since
11 there was a reasonable probability that she would have chosen to
12 go to trial if she knew she would be sentenced without her Trial
13 Counsel defending her by objecting to falsehoods uttered by the
14 victim witness.

15 CONCLUSION

16 As stated above, all of the above, and some standing alone,
17 add up to ineffective assistance of counsel which makes the
18 Petitioner's guilty plea unreliable in violation of Strickland.
19 Counsel's performance fell below an objective standard of
20 reasonableness, and their errors were so severe that it caused
21 their client to plead guilty in violation of Strickland since
22 there was a reasonable probability that she would have gone to
23 trial.

24 I ask this Court to set an evidentiary hearing in this
25 matter, and I believe that after said hearing, this Court will
26 order a new trial.

27 SUBMITTED this ____ day of October, 2020.
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DAVID H. NEELY III
Nev. Bar No. 003891
3520 E. Tropicana Ave., #D-1
Las Vegas, NV 89121
Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I HEREBY CERTIFY that I am an agent or employee of the above attorney, and that on the 23 day of October, 2020, I served the above and foregoing PETITIONER'S SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF POST-CONVICTION WRIT by depositing a copy in the United States mails, postage prepaid, addressed to the following persons or parties at their last known addresses as indicated below:

Kirk Vitto, Esq.
Chief Deputy District Attorney
P.O. Box 39
Pahrump, NV 89041


EMPLOYEE OR AGENT

OCT 28 2020

Case No. CR 8978
Dept. 2P

Nye County Clerk
Juanita Torres Deputy

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

CRYSTAL Y. AUSTIN,

Petitioner,

vs.

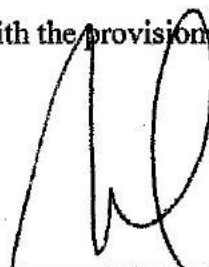
STATE OF NEVADA,

Respondent.

ORDER FOR STATE RESPONSE

On July 17, 2020, a Petition for Writ of Habeas Corpus and a Motion for the Appointment of Counsel was filed. Counsel was appointed and filed a Supplemental Points and Authorities in Support of Post-Conviction Writ on October 23, 2020. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether petitioner is illegally imprisoned and restrained of petitioner's liberty. Respondent shall, within 45 days after the date of this order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

DATED this 28th day of October, 2020



District Court Judge



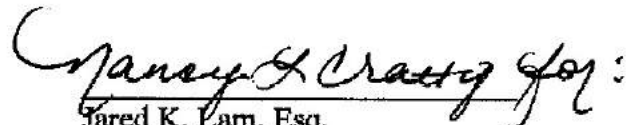
CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 28th day of October, 2020, he mailed copies of the foregoing Order Appointing Counsel to the following:

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

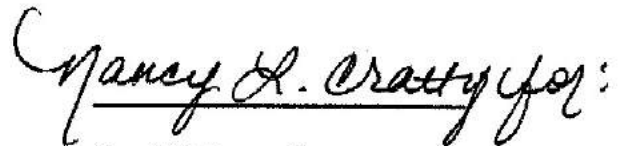
DAVID H. NEELY, III, ESQ.
3520 E TROPICANA, SUITE D-1
LAS VEGAS, NV 89121
(Hand Delivered)

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

NILE COUNTY DISTRICT ATTORNEY
P.O. BOX 593
TONOPAH, NEVADA 89049
(775) 482-8166

1 Case No. CR8978

2 Department 2

3 *The undersigned affirms that*
4 *this document does not contain*
5 *the social security number of*
6 *any person.*

FILED
FIFTH JUDICIAL DISTRICT

DEC 16 2020
Nye County Clerk
Deputy

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

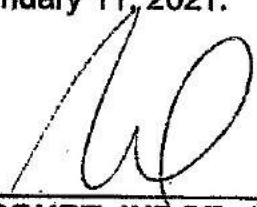
ORDER TO CONTINUE

12 CRYSTAL YVONNE AUSTIN,

13 Defendant.

14 Upon stipulation of the parties herein, and good cause appearing therefor,

15 IT IS HEREBY ORDERED that the above entitled matter be, and the same
16 hereby is, continued from December 11, 2020. to January 11, 2021.

17
18 
19 DISTRICT COURT JUDGE
20 12-16-2020
21
22
23
24

FILED
FIFTH JUDICIAL DISTRICT
JAN 11 2021

Nye County Clerk
Deputy

Case No. CR8978

Dept. No. 2

*The undersigned affirms that
this document does not contain
the social security number of
any person.*

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

CRYSTAL Y. AUSTIN,

Petitioner,

vs.

**MOTION TO DISMISS AND
ANSWER TO PETITION FOR WRIT
OF HABEAS CORPUS (POST CONVICTION)**

THE STATE OF NEVADA,
Respondent. /

COMES NOW THE STATE OF NEVADA ("State"), by and through CHRIS ARABIA, Nye County District Attorney, by JOHN J. FRIEL, JR., Deputy District Attorney, and files the instant Motion to Dismiss and Answer to Petition for Writ of Habeas Corpus.

The Petitioner Crystal Austin entered a Guilty Plea Agreement to Driving Under the Influence of Alcohol, with Prior Felony DUI.

Both parties agreed to recommend a sentence of 24-60 months in the Nevada Department of Corrections.

The Guilty Plea Agreement stated that Austin shall be imprisoned for not less than 2 years but not more than 15 years. The Guilty Plea Agreement also stated that Austin was not guaranteed any particular sentence, and that Austin knew her sentence

1 would be determined by the Court, regardless of any recommendations by the
2 attorneys. Austin was ultimately sentenced to a maximum term of 15 years and a
3 minimum of 4 years.

4 Petitioner alleges three instances of ineffective counsel.

5 The first claim is that trial counsel failed to inform the court of errors in the pre-
6 sentence report that resulted in a longer sentence for Austin.

7 The second claim is that trial counsel failed to retain an investigator to
8 investigate the case and interview witnesses.

9 The third claim is that trial counsel failed to impeach the victim witness at
10 sentencing, resulting in a harsher sentence.

11 The first and third claims must be disregarded because they occurred after the
12 plea was entered.

13 The only claim left is that trial counsel failed to retain an investigator that could
14 of prepared counsel for the Motion to Exclude Blood Test Results. Petition offers no
15 specific facts that hiring an investigator could have changed the outcome of the
16 Motion. Petitioner merely concludes that the investigator would have been an
17 invaluable resource.

18 The court order denying that motion concluded the dispatcher logs showed the
19 time of the accident was within two hours of the relevant blood draw.

20 Despite many pages of case law, Petitioner has failed to support her claims with
21 any specific allegations that if true would entitle her to relief, none.

22 Pursuant to Gonzales v. State, 136 Nev, Advanced Opinion 60 (2020). NRS
23 34.810(1)(a) requires a district court to dismiss a petition for a writ of habeas corpus
24 challenging the validity of a judgement of conviction arising from a plea of guilty or

1 guilty but mentally ill, unless it is based on allegations that her plea was not voluntarily
2 and knowingly entered, or it was entered without the effective assistance of counsel.
3 In this opinion, we outline the types of ineffective-assistance claims that are permitted
4 by NRS 34.810(1)(a) and conclude that the plain language of the statute permits only
5 ineffective-assistance claims that challenge the validity of the guilty plea. Thus, the
6 statute excludes claims of ineffective assistance that do not allege a deficiency
7 affecting the validity of the guilty plea, as well as claims that allege deficiencies that
8 occur only after the entry of the guilty plea, such as those related to sentencing.

9 NRS 34.810(1) states:

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

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

16 The plain language of NRS 34.810(1)(a), as a whole, limits cognizable
17 claims to two types, both of which challenge the validity of the guilty plea. See
18 Harris v. State, 130 Nev. 435, 438-39, 329 P.3d 619, 621-22 (2014) (citing
19 NRS 34.810(1)(a) for the proposition that "the validity of a guilty plea may be
20 challenged in a post-conviction petition for a writ of habeas corpus" and the
21 proposition that the issues that may be raised are limited). The first acceptable
22 challenge is a direct attack against the validity of a guilty plea on the basis that
23 the plea was not voluntarily or knowingly entered. See Bradshaw v. Stumpf,
24 545 U.S. 175, 183 (2005) ("A guilty plea operates as a waiver of important
rights, and is valid only if done voluntarily, knowingly, and intelligently, 'with
sufficient awareness of the relevant circumstances and likely consequences.'")

1 (quoting Brady v. United States, 397 U.S. 742, 748 (1970)); State v Freese
2 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000) ("This court will not invalidate a
3 plea as long as . . . the plea was knowingly and voluntarily made . . . "). The
4 second acceptable challenge is an indirect attack against the validity of a guilty
5 plea on the basis that "the plea was entered without effective assistance of
6 counsel."

7 By its plain meaning, "the plea was entered without effective assistance of
8 counsel" permits a petitioner to raise claims of ineffective assistance of counsel that
9 are related to the entry of the plea. This means that not all claims of ineffective
10 assistance may be raised. Rather, to be cognizable, the ineffective assistance claims
11 that may be raised are limited to those that challenge the *validity* of the guilty plea.
12 See Nollette v. State, 118 Nev. 341, 348-49, 46 P3d 87, 92 (2002) ("A defendant who
13 pleads guilty upon the advice of counsel may attack the validity of the guilty plea by
14 showing that he received ineffective assistance of counsel under the Sixth
15 Amendment to the United States Constitution."). Any ineffective assistance of counsel
16 claims relating to events that do not affect the validity of the guilty plea fall outside the
17 scope of claims permitted.

18 To prove ineffective assistance of counsel, a petitioner must demonstrate
19 counsel's performance was deficient in that it fell below an objective standard of
20 reasonableness and resulting prejudice such that there is a reasonable probability, but
21 for counsel's errors, the outcome of the proceedings would have been different.
22 Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev.
23 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). To
24 demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must

1 demonstrate a reasonable probability, but for counsel's errors, petitioner would not
2 have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474
3 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107
4 (1996). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697,
5 and the petitioner must demonstrate the underlying facts by a preponderance of the
6 evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give
7 deference to the district court's factual findings if supported by substantial evidence
8 and not clearly erroneous but review the court's application of the law to those facts de
9 novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). To warrant
10 an evidentiary hearing, a petitioner must raise claims supported by specific allegations
11 not belied by the record, and if true, would entitle him to relief. See Hargrove v. State,
12 100 Nev. 498, 502-3, 686 P.2d 222, 225 (1984).

13 CONCLUSION

14 Petitioner has failed to raise claims supported by specific allegations not belied
15 by the record, and if true, would entitle her to relief. Therefore the State respectfully
16 requests that this Court deny the Petitioner any relief, that an evidentiary hearing is not
17 required, and the Petition for Writ of Habeas Corpus be dismissed.

18 DATED this 11 day of January 2021.

19 CHRIS ARABIA
20 NYE COUNTY DISTRICT ATTORNEY

21 By 

22 JOHN J. FRIEL, JR.
23 Deputy District Attorney
24

CERTIFICATE OF SERVICE

I, Ronald D. Kipp, Executive Legal Secretary III, Office of the Nye County District Attorney, P.O. Box 593, Tonopah, Nevada 89049, do hereby certify that I have served the following:

**MOTION TO DISMISS AND ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) in
5JDC Case No(s). CR8978
CRYSTAL Y. AUSTIN v. STATE OF NEVADA**

upon said Defendant(s) herein by mailing a true and correct copy postage prepaid thereof on January 11, 2021 to the following:

DAVID H. NEELY, ESQ.
3520 E. TROPICANA AVENUE
SUITE D1
LAS VEGAS, NEVADA 89121


Ronald D. Kipp

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 596
TONOPAH, NEVADA 89049
(775) 482-8166

Case No. CR8978

*The undersigned affirms that
this document does not contain
the social security number of
any person.*

FILED
FIFTH JUDICIAL DISTRICT

JAN 12 2021

Nye County Clerk
C. Freidhof Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

v.

CERTIFICATE OF SERVICE

CRYSTAL YVONNE AUSTIN,

Defendant. /

I, Ronald D. Kipp, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 593, Tonopah, Nevada 89049, do hereby certify that I have served the following:

**MOTION TO DISMISS and ANSWER TO PETITION OG WRIT OF
HABEAS CORPUS (POST CONVICTION) in
CASE No(s). CR8978
THE STATE OF NEVADA v. CRYSTAL YVONNE AUSTIN**

upon Defendant herein by mailing a true and correct copy postage prepaid thereof on January 12, 2021 to the following:

DAVID H. NEELY III
3520 E. Tropicana Ave. Ste. D1
Las Vegas, NV 89121


Ronald D. Kipp

Case No. CR-8978
Dept. No. 2

FILED
FIFTH JUDICIAL DISTRICT

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

COPY
FEB 17 2011
Nye County Clerk
Terri Pemberton Deputy

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

CRYSTAL Y. AUSTIN,	)	PETITIONER'S REPLY TO
	)	MOTION TO DISMISS PETITION
Petitioner,	)	FOR WRIT OF HABEAS CORPUS
	)	(POST-CONVICTION)
vs.	)	
STATE OF NEVADA,	)	
	)	
Respondents.	)	

Petitioner, CRYSTAL Y. AUSTIN, by and through her attorney, DAVID H. NEELY III, Esq., hereby files the following Petitioner's Reply To Motion To Dismiss Petition for Habeas Corpus (Post-Conviction), pursuant to NRS 34.750, and in support of her request for an Evidentiary Hearing pursuant to NRS 34.770 in the above captioned matter. The grounds herein are incorporated with the original Petition for Writ of Habeas Corpus (Post-Conviction).

REPLY

Petitioner, CRYSTAL Y. AUSTIN, denies that this Court must dismiss Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction). The original Petition for Writ of Habeas Corpus (Post-Conviction) and the Supplemental Points and Authorities contain instances of ineffective assistance of counsel in violation of Strickland v. Washington, 466 U.S. 668, 685-86

1 (1984). These instances of ineffective assistance of counsel are
2 deserving of an evidentiary hearing.

3 Trial Counsel failed to inform the Court that the PSI used
4 at her sentencing contained errors which resulted in a longer
5 sentence imposed upon Petitioner than should have been was
6 ineffective assistance of counsel. As a result, she is doing much
7 more time that she had agreed to in her Guilty Plea Agreement
8 with the State of Nevada. Trial Counsel failed to retain an
9 investigator prior to the entry of the guilty plea to investigate
10 Petitioner's case and to interview witnesses prior to entry of
11 plea and at her sentencing was ineffective assistance of counsel.
12 Finally, Trial Counsel failed to impeach the testimony of the
13 victim witness, Ms. Cox, at the Sentencing and as a result
14 Petitioner received a harsher sentence due to his ineffective
15 assistance of counsel.

16 Petitioner has legitimate claims of ineffective assistance
17 of counsel pursuant to STRICKLAND that deserve to be brought to
18 the Court's attention. In response, we offer the following:

19 **STANDARD UPON REVIEW OF PETITION**

20 NRS 34.770 sets forth the Standard for this Court's review
21 of the instant Petition and supporting documentation. NRS 34.770
22 states:

23 1. The judge or justice, upon review of the return,
24 answer and all supporting documents which are filed,
25 shall determine whether an evidentiary hearing is
26 required. A petitioner must not be discharged or
committed to the custody of a person other than the
respondent unless an evidentiary hearing is held.

27 2. If the judge or justice determines that the
28 petitioner is not entitled to relief and an evidentiary
hearing is not required, he shall dismiss the petition
without a hearing.

1 3. If the judge or justice determines that an
2 evidentiary hearing is required, he shall grant the
3 writ and shall set a date for the hearing.

4 Where as here, the Petition sets forth specific allegations
5 in the Petition or accompanying brief which if true, would
6 entitle the petitioner to an evidentiary hearing unless those
7 claims are repelled by the record. Hargrove v. State, 100 Nev.
8 498, 686 P.2d 222, (1984); Marshall v. State, 110 Nev 1328, 885
9 P.2d 603 (1994). As stated in Drake v. State, 108 Nev. 523, 836
10 P.2d 52 (1992):

11 The question in this case is not whether appellant proved
12 his counsel was ineffective, but whether appellant made
13 allegations which entitled him to an evidentiary hearing. See
14 Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); Grondin v.
15 State, 97 Nev. 454, 634 P.2d 456 (1981). [emphasis added]

16 **INEFFECTIVENESS OF COUNSEL UNDER STRICKLAND**

17 To state a claim of ineffective assistance of counsel that
18 is sufficient to invalidate a judgment of conviction, a defendant
19 must demonstrate that counsel's performance fell below an
20 objective standard of reasonableness, and that counsel's errors
21 were so severe that they rendered the jury's verdict unreliable.
22 Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons,
23 100 Nev 430, 683 P.2d 504 (1984), cert. denied, 471 U.S. 1004
24 (1985).

25 In Strickland v. Washington, 466 U.S. 668, 692, 104 S.Ct.
26 2052, 2067, 8L.Ed.2d 674 (1984) the United States Supreme Court
27 reaffirmed the "Actual or constructive denial of the assistance
28 of counsel altogether is legally presumed to result in
prejudice". The Supreme Court further reaffirmed this ruling in
Penson v. Ohio, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300,
(1988).

1 In Nevada, to state a claim of ineffective assistance of
2 counsel sufficient to invalidate a judgment of conviction based
3 on a guilty plea, a defendant must demonstrate a reasonable
4 probability that, but for counsel's errors, a different outcome
5 would have resulted. Hill v. Lockhart, 474 U.S. 52 (1985); Warden
6 v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984), cert. Denied, 471
7 U.S. 1004 (1985). The facts of this case clearly demonstrate that
8 a different outcome would have resulted if counsel had been
9 effective.

10 Counsel must adequately prepare the case at all levels,
11 including preliminary matters in Justice Court. Sanborn v.
12 State, 107 Nev. 856, 822 P.2d 11 (1991).

13 An attorney must make reasonable investigation in
14 preparation for trial, or make a reasonable decision not to
15 investigate. Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (Nev.
16 1996).

17 Here, as in Marshall v. State, 110 Nev. 1328, 885 P.2d 603
18 (1994), the Petitioner alleged acts which, if true, entitle him
19 to relief as ineffective assistance of counsel.

20 When a Petitioner alleges ineffective assistance of counsel,
21 he must establish the factual allegations which form the basis
22 for his claim of ineffective assistance by a preponderance of the
23 evidence. Next, as stated in Strickland, the petitioner must
24 establish that those facts show counsel's performance fell below
25 a standard of objective reasonableness, and finally the
26 petitioner must establish prejudice by showing a reasonable
27 probability that, but for counsel's deficient performance, the
28 outcome would have been different. Means v. State of Nevada, 120

1 Nev. 1001, 103 P.3d 25 (2004).

2 In the Supreme Court Case of Sanborn v. State, 107 Nev. 399,
3 812 P.2d 1279, 1283, the Court held:

4 Focusing on counsel's performance as a whole, and with due
5 regard for the strong presumption of effective assistance
6 accorded counsel by this court and > Strickland, we hold that
7 Sanborn's representation indeed fell below an objective standard
8 of reasonableness. Trial counsel did not adequately perform
9 pretrial investigation, failed to pursue evidence supportive of a
claim of self-defense, and failed to explore allegations of the
victim's propensity towards violence. Thus, he "was not
functioning as the 'counsel' guaranteed the defendant by the
Sixth Amendment." > Strickland, 466 U.S. at 687, 104 S.Ct. at
2064.

10 Therefore, Petitioner's claims of ineffective assistance of
11 counsel are not belied by the record and should not be subject to
12 summary dismissal. Petitioner's claims are not belied by the
13 record, her plea was entered involuntarily and that plea was
14 entered without effective assistance of counsel pursuant to
15 Strickland. An Evidentiary Hearing is required in this matter.

16 Petitioner opposes State's request for dismissal of the
17 Petition. Counsel's performance fell below an objective standard
18 of reasonableness, and their errors were so severe that it caused
19 their client to plead guilty in the instant case in violation of
20 Strickland since there was a reasonable probability that she
21 would have chosen to go to trial.

22 CONCLUSION

23 In this matter, counsel's performance fell below an
24 objective standard of reasonableness, and that counsel's errors
25 were so severe that it caused their client to plead guilty in the
26 instant case in violation of Strickland since there was a
27 reasonable probability that she would have chosen to go to trial
28 if counsel was functioning as 'counsel'. Trial Counsel is not

1 functioning as 'counsel' as guaranteed by the 6th Amendment.
2 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064.

3 I ask this Court to set an evidentiary hearing in this
4 matter on Petitioner's claims of ineffective assistance of
5 counsel pursuant to Strickland.

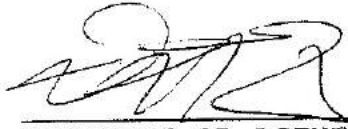
6 SUBMITTED this 16th day of February, 2021.

7 
8 DAVID H. NEELY III
9 Nev. Bar No. 003891
3529 East Tropicana Ave.,
Ste. D-1
Las Vegas, NV 89121
Attorney for Petitioner

10
11
12
13 **CERTIFICATE OF SERVICE BY MAIL**

14 I HEREBY CERTIFY that I am an agent or employee of the above
15 attorney, and that on the 16th day of February, 2021, I served
16 the above and foregoing PETITIONER'S REPLY TO MOTION TO DISMISS
17 FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) by depositing a copy
18 in the United States mails, postage prepaid, addressed to the
19 following persons or parties at their last known addresses as
20 indicated below:

21 Kirk Vitto, Esq.
22 Chief Deputy District Attorney
23 P.O. Box 39
Pahrump, NV 89041

24 
25 EMPLOYEE OR AGENT
26
27
28

AUG - 4 2021

Case No. CR 8978
Dept. No. 2

Nye County Clerk
Brittani Smith 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.

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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).



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

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

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

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

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

To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness and resulting prejudice such that there is a reasonable probability, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). An attorney must reasonably investigate in preparing for trial or reasonably decide not to. Strickland, 466 U.S. at 691; Kirksey v. State, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must demonstrate a reasonable probability, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on 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
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1 reliability of Ms. Cox as a witness and an investigator would have Petitioner's
2
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.

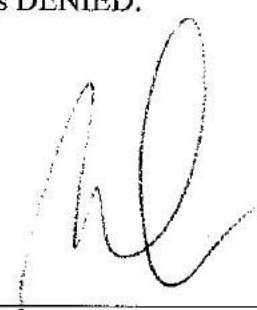
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8 As such, because the Petitioner's claims are bare and she cannot show that she
9 suffered prejudice, this claim must be dismissed.

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

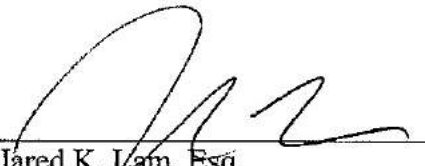
1
2 **CERTIFICATION OF SERVICE**

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

5 CRYSTAL AUSTIN #93718
6 Florence McClure Women's Correctional Center
7 4370 Smiley Road
8 Las Vegas, NV 89115

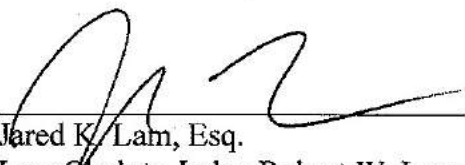
9 DAVID H. NEELY, III, ESQ.
10 3520 E TROPICANA, SUITE D-1
11 LAS VEGAS, NV 89121
12 (Hand Delivered)

13 NYE COUNTY DISTRICT ATTORNEY
14 (Hand Delivered)

15 
16 Jared K. Lam, Esq.
17 Law Clerk to Judge Robert W. Lane

18 **AFFIRMATION**

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

21
22
23 
24 Jared K. Lam, Esq.
25 Law Clerk to Judge Robert W. Lane
26
27
28



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

COPY
FILED
FIFTH JUDICIAL DISTRICT

AUG - 6 2021

Alva County Clerk
Brittani Smith 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 DAVID H. NEELY III
19 Nev. Bar No. 003891
20 3520 E. Tropicana, Ste. D-1
21 Las Vegas, NV 89121
22 Attorney for Petitioner
23
24
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27
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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.

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

FILED
FIFTH JUDICIAL DISTRICT
COPY
AUG - 6 2021
Nye County Clerk
Brittani Smith Deputy

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.

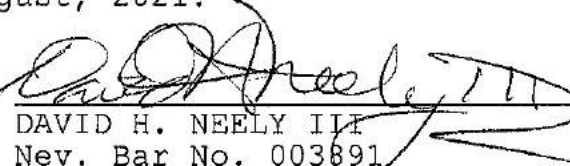
NOTICE OF APPEAL

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

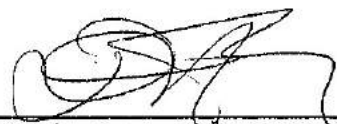
CERTIFICATE OF MAILING

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 NOTICE OF APPEAL by depositing a copy in the United States mails, postage prepaid, addressed to counsel for respondent at his last known address, as indicated below:

Kirk Vitto, Esq.
Chief Deputy
Nye County District Attorney
P. O. Box 39
Pahrump, NV 89041

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

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


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

COPY

FILED
FIFTH JUDICIAL DISTRICT

AUG 12 2021

Brittany Smith
County Clerk
Deputy

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

STATE OF NEVADA,)
Plaintiff,) Case No. CR-8978
) Dept. No. 2
vs.)
CRYSTAL Y. AUSTIN,)
Defendant.)

REQUEST FOR NO TRANSCRIPT OF PROCEEDINGS

TO: CECILIA D. THOMAS, Court Reporter
Fifth Judicial District Court, Dept. 2

Appellant requests no preparation of a transcript of the
proceedings before the district court as follows:

Judge or officer hearing the proceeding: ROBERT LANE, Fifth
Judicial District Court, Dept. 2.

Specific individual dates of proceedings for which
transcripts are being requested (a range of dates is not
acceptable): No Transcripts are required in this matter.

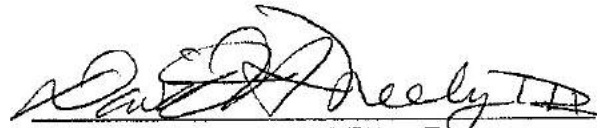
Specific portions of the transcript being requested (e.g.,
suppression hearing, trial, closing argument, etc.): No
transcripts are required in this matter.

Number of Copies Required: 0

I hereby certify that on the 12th day of August, 2021, I did
order the transcript(s) listed above from the court reporter

1 named above, and did not pay required deposit on the 12th day of
2 August, 2021.

3
4 DATED this 12th day of August, 2021.

5
6
7 

8 DAVID H. NEELY III, Esq.

9 Nevada Bar No.: 03891

10 DAVID H. NEELY III Attorney At
11 Law

12 3520 E. Tropicana Ave., #D-1

13 Las Vegas, NV 89121

14 (702) 565-0716
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