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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3  
4  
5 WILLIAM JOSEPH MCCAFFREY, )  
6 Appellant, )  
7 v. )  
8 THE STATE OF NEVADA, )  
9 Respondent. )  
10  
11

Electronically Filed  
Mar 03 2022 11:52 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 83388

12  
13 **APPELLANT'S APPENDIX**

14 **VOLUME I**

15  
16  
17 Appeal from Dismissal of Petition for Writ of Habeas Corpus  
18 Second Judicial District Court  
19 District Court Case Number CR09-1325  
20  
21

22 EDWARD T. REED, ESQ.  
23 Edward T. Reed, PLLC  
24 Nevada State Bar No. 1416  
25 P.O. Box 34763  
26 Reno, Nevada 89533-4763  
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Attorney for Appellant

JENNIFER NOBLE, ESQ.  
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P.O. Box 11130  
Reno, Nevada 89520  
(775) 328-3200

Attorney for Respondent

**INDEX TO APPELLANT'S APPENDIX**  
**MCCAFFREY V. STATE**  
**Case no. 83388 [CR09-1325]**

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HOWARD H. CONYERS

BY *[Signature]*  
DEPUTY

DA # 404826

VCSO WC09-003932

CODE 1800

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE.

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR09-1325

Dept. No. 8

WILLIAM JOSEPH MCCAFFREY,

Defendant.

INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the  
County of Washoe, State of Nevada, in the name and by the authority  
of the State of Nevada, informs the above entitled Court that WILLIAM  
JOSEPH MCCAFFREY, the defendant above named, has committed the crime  
of:

PROMOTION OF SEXUAL PERFORMANCE OF A MINOR, a violation of  
NRS 200.720 and NRS 200.750, a felony, in the manner following:

That the said defendant on the 9th day of June A.D., 2009,  
or thereabout, and before the filing of this Information, at and  
within the County of Washoe, State of Nevada, did knowingly and  
unlawfully promote a performance of a minor 14 years of age or older,

1 where the minor engages in or simulates, or assists others to engage in  
2 or simulate, sexual conduct, or where the minor is the subject of a  
3 sexual portrayal, at 2286 Capurro Way, Washoe County, Nevada, to wit:  
4 the said defendant promoted over the Internet multiple images and  
5 videos of female children 14 years of age or older being vaginally and  
6 anally penetrated with an adult male's penis, performing fellatio upon  
7 an adult male's penis, rubbing their vaginas, and/or having their  
8 vaginas touched by an adult male.

9  
10 All of which is contrary to the form of the Statute in such  
11 case made and provided, and against the peace and dignity of the  
12 State of Nevada.

13  
14  
15 RICHARD A. GAMMICK  
16 District Attorney  
17 Washoe County, Nevada

18 By Steven M. Barker  
19 STEVEN M. BARKER  
20 6897  
21 Deputy District Attorney  
22  
23  
24  
25  
26

1           The following are the names and addresses of such witnesses  
2 as are known to me at the time of the filing of the within  
3 Information:

4  
5 WASHOE COUNTY SHERIFF'S OFFICE

6 DEPUTY DENNIS CARRY  
7  
8  
9  
10  
11  
12

13           The party executing this document hereby affirms that this  
14 document submitted for recording does not contain the social security  
15 number of any person or persons pursuant to NRS 239B.230.  
16

17 RICHARD A. GAMMICK  
18 District Attorney  
19 Washoe County, Nevada  
20

21 By Steven M. Barker  
22 STEVEN M. BARKER  
23 6897  
24 Deputy District Attorney

25 PCN WASO0001808C

26 07084048268

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Howard W. Conyers  
Clerk of the Court  
Transaction # 969879

1 CODE 1785  
2 Richard A. Gammick  
3 #001510  
4 P.O. 30083  
5 Reno, NV. 89520-3083  
6 (775) 328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE.

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR09-1325

16 WILLIAM JOSEPH MCCAFFREY,

Dept. No. 8

17 Defendant.

18  
19 \_\_\_\_\_/  
20 GUILTY PLEA MEMORANDUM

21 1. I, WILLIAM JOSEPH MCCAFFREY, understand that I am  
22 charged with the offense(s) of: PROMOTION OF SEXUAL PERFORMANCE OF A  
23 MINOR, a violation of NRS 200.720 and NRS 200.750, a felony.

24 2. I desire to enter a plea of guilty to the offense(s) of  
25 PROMOTION OF SEXUAL PERFORMANCE OF A MINOR, a violation of NRS 200.720  
26 and NRS 200.750, a felony, as more fully alleged in the charge(s)  
filed against me.

3. By entering my plea of guilty I know and understand  
that I am waiving the following constitutional rights:

///  
///  
///

1           A. I waive my privilege against self-incrimination.

2           B. I waive my right to trial by jury, at which trial the  
3 State would have to prove my guilt of all elements of the offense  
4 beyond a reasonable doubt.

5           C. I waive my right to confront my accusers, that is, the  
6 right to confront and cross examine all witnesses who would testify  
7 at trial.

8           D. I waive my right to subpoena witnesses for trial on my  
9 behalf.

10           4. I understand the charge(s) against me and that the  
11 elements of the offense(s) which the State would have to prove beyond  
12 a reasonable doubt at trial are that on June 9, 2009, or thereabout,  
13 in the County of Washoe, State of Nevada, I did, knowingly and  
14 unlawfully promote a performance of a minor 14 years of age or older,  
15 where the minor engages in or simulates, or assists others to engage in  
16 or simulate, sexual conduct, or where the minor is the subject of a  
17 sexual portrayal, at 2286 Capurro Way, Washoe County, Nevada, to wit: I  
18 promoted over the Internet multiple images and videos of female  
19 children 14 years of age or older being vaginally and anally penetrated  
20 with an adult male's penis, performing fellatio upon an adult male's  
21 penis, rubbing their vaginas, and/or having their vaginas touched by an  
22 adult male.

23           5. I understand that I admit the facts which support all  
24 the elements of the offense by pleading guilty. I admit that the  
25 State possesses sufficient evidence which would result in my  
26 conviction. I have considered and discussed all possible defenses

1 and defense strategies with my counsel. I understand that I have the  
2 right to appeal from adverse rulings on pretrial motions only if the  
3 State and the Court consent to my right to appeal. In the absence of  
4 such an agreement, I understand that any substantive or procedural  
5 pretrial issue or issues which could have been raised at trial are  
6 waived by my plea.

7 6. I understand that the consequences of my plea of guilty  
8 are that I may be imprisoned for a period of life in the Nevada State  
9 Department of Corrections with parole eligibility after a minimum of  
10 5 years has been served and that I am not eligible for probation  
11 unless a psychosexual evaluation is completed pursuant to NRS 176.139  
12 which certifies that I do not represent a high risk to reoffend based  
13 upon a currently accepted standard of assessment. I may also be  
14 fined up to \$100,000.00. I further understand that I will be  
15 required to be on lifetime supervision pursuant to NRS 176.0931.

16 7. In exchange for my plea of guilty, the State, my  
17 counsel and I have agreed to recommend the following: The State will  
18 be free to argue for an appropriate sentence. The State will not  
19 file additional criminal charges resulting from the arrest in this  
20 case as to Possession of Child Pornography in violation of NRS  
21 200.730.

22 8. I understand that, even though the State and I have  
23 reached this plea agreement, the State is reserving the right to  
24 present arguments, facts, and/or witnesses at sentencing in support  
25 of the plea agreement.

26 ///



1           9. Where applicable, I additionally understand and agree  
2 that I will be responsible for the repayment of any costs incurred by  
3 the State or County in securing my return to this jurisdiction.

4           10. I understand that the State, at their discretion, is  
5 entitled to either withdraw from this agreement and proceed with the  
6 prosecution of the original charges or be free to argue for an  
7 appropriate sentence at the time of sentencing if I fail to appear at  
8 any scheduled proceeding in this matter OR if prior to the date of my  
9 sentencing I am arrested in any jurisdiction for a violation of law  
10 OR if I have misrepresented my prior criminal history. I represent  
11 that I do not have a prior criminal record. I understand and agree  
12 that the occurrence of any of these acts constitutes a material  
13 breach of my plea agreement with the State. I further understand and  
14 agree that by the execution of this agreement, I am waiving any right  
15 I may have to remand this matter to Justice Court should I later  
16 withdraw my plea.

17           11. I understand and agree that pursuant to the terms of  
18 the plea agreement stated herein, any counts which are to be  
19 dismissed and any other cases charged or uncharged which are either  
20 to be dismissed or not pursued by the State, may be considered by the  
21 court at the time of my sentencing.

22           12. I understand that the Court is not bound by the  
23 agreement of the parties and that the matter of sentencing is to be  
24 determined solely by the Court. I have discussed the charge(s), the  
25 facts and the possible defenses with my attorney. All of the  
26 foregoing rights, waiver of rights, elements, possible penalties, and

1 consequences, have been carefully explained to me by my attorney. I  
2 am satisfied with my counsel's advice and representation leading to  
3 this resolution of my case. I am aware that if I am not satisfied  
4 with my counsel I should advise the Court at this time. I believe  
5 that entering my plea is in my best interest and that going to trial  
6 is not in my best interest.

7 13. I understand that this plea and resulting conviction  
8 may have adverse effects upon my residency in this country if I am  
9 not a U. S. Citizen.

10 14. I offer my plea freely, voluntarily, knowingly and  
11 with full understanding of all matters set forth in the Information  
12 and in this Plea Memorandum. I understand everything contained  
13 within this Memorandum.

14 15. My plea of guilty is voluntary and is not the result  
15 of any threats, coercion or promises of leniency.

16 ///

17 ///

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1 16. I am signing this Plea Memorandum voluntarily with  
2 advice of counsel, under no duress, coercion, or promises of  
3 leniency.


4 AFFIRMATION PURSUANT TO NRS 239B.030

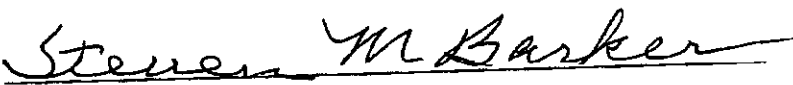
5 The undersigned does hereby affirm that the preceding  
6 document does not contain the social security number of any person.

7 DATED this 14 day of August, 2009.

8   
9 DEFENDANT

10  
11 TRANSLATOR/INTERPRETER

12   
13 Attorney Witnessing Defendant's Signature

14  
15   
16 Prosecuting Attorney

17  
18  
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1 4185  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
8 HONORABLE STEVEN R. KOSACH  
9 THE STATE OF NEVADA,  
10 Plaintiff,  
11 vs. Case No. CR09-1325  
12 WILLIAM MCCAFFREY, Department No. 8  
13 Defendant.  
14 -----/  
15 TRANSCRIPT OF PROCEEDINGS  
16 Arraignment  
August 14, 2009  
17 APPEARANCES:  
18 For the State: Steve Barker  
Deputy District Attorney  
1 South Sierra Street  
19 Reno, Nevada  
20 For the Defendant: Sean Sullivan  
Deputy Public Defender  
21 1 California Avenue  
Reno, Nevada  
22 For the Division of  
Parole and Probation: Anita Pickrell  
23  
24 Reported by: Isolde Zihn, CCR #87

1 RENO, NEVADA, FRIDAY, AUGUST 14, 2009, 8:40 A.M.

2 THE COURT: State versus William McCaffrey.

3 MR. SULLIVAN: Good morning, Your Honor.

4 Sean Sullivan on behalf of William McCaffrey.

5 He's present this morning in custody.

6 THE COURT: Are you William Joseph McCaffrey?

7 THE DEFENDANT: I am, sir.

8 THE COURT: Let the record show that William Joseph  
9 McCaffrey is present with counsel, Mr. Sean Sullivan. The  
10 State is represented by Mr. Steve Barker.

11 This is case number CR09-1325, and we're here for an  
12 arraignment.

13 Let me hand you, Mr. Sullivan, a July 13th, 2009  
14 file-stamped Information in that case number and entitlement  
15 for your review.

16 MR. SULLIVAN: Thank you, Judge.

17 We are in receipt of the Information file-stamped  
18 July 13th, 2009 in case number CR09-1325. We are familiar  
19 with the contents. We're going to waive any formal reading.

20 Your Honor, my client has indicated to me his true  
21 and correct name is listed on line number 12. It is  
22 correctly spelled.

23 Your Honor, it is my understanding that my client  
24 desires to enter a guilty plea to the single count contained

1 in Count I of the Information, promotion of sexual  
2 performance of a minor. This is a felony offense.

3 In exchange for his guilty plea in this matter, Your  
4 Honor, according to paragraph 7, the parties are going to be  
5 free to argue for the appropriate sentence. The State will  
6 not file additional criminal charges resulting from the  
7 arrest in this case as to possession of child pornography in  
8 violation of NRS 200.730.

9 I do have a copy of the executed guilty-plea  
10 memorandum, the original. If I may approach.

11 THE COURT: Is that correct, Mr. Barker?

12 MR. BARKER: It is, Judge.

13 THE COURT: Do you have any questions about the  
14 negotiations, Mr. McCaffrey?

15 THE DEFENDANT: I don't.

16 THE COURT: Do you feel like you've had enough time  
17 to discuss this case with members of the Public Defender's  
18 Office?

19 THE DEFENDANT: I have, sir.

20 THE COURT: Are you satisfied with the legal services  
21 rendered you by the Public Defender's Office?

22 THE DEFENDANT: I am, sir.

23 THE COURT: Do you understand that you do not have to  
24 change your plea from not guilty to guilty?

1 THE DEFENDANT: I believe I'm changing my plea from  
2 not guilty to guilty; is that correct? I believe I am --  
3 THE COURT: That's what I said.  
4 THE DEFENDANT: Okay.  
5 THE COURT: Do you understand that you don't have to  
6 do that?  
7 THE DEFENDANT: Yes, I do understand.  
8 THE COURT: In the eyes of the law you're not guilty.  
9 THE DEFENDANT: Correct.  
10 THE COURT: Unless and until the district attorney  
11 proves this charge against you beyond a reasonable doubt in  
12 front of a jury. I'm pointing to the empty chairs over here  
13 where the jury would be. And so if you change your plea it  
14 would be to guilty. Do you understand that?  
15 THE DEFENDANT: Yes.  
16 THE COURT: Now, that was my question. Do you  
17 understand that you do not have to change your plea to  
18 guilty?  
19 THE DEFENDANT: I do understand that I don't have to  
20 change, yes.  
21 THE COURT: Right?  
22 THE DEFENDANT: I'm --  
23 THE COURT: Now, if you do change your plea to  
24 guilty, you're giving up very important constitutional

1 rights.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You're giving up your right to a jury  
4 trial.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You're giving up your rights to have an  
7 attorney represent you in front of that jury; you're giving  
8 up your rights to confront the persons that are accusing you  
9 of this crime in front of the jury; you're giving up your  
10 rights to have your attorney cross-examine those persons in  
11 front of the jury; you're giving up your rights to use the  
12 Court's power to order witnesses here for your jury trial by  
13 subpoena for your defense; and you're giving up your rights  
14 to a preliminary hearing in Justice Court on this case. A  
15 lower-court judge hears this case, bare bones I would call  
16 it, hears bare bones evidence against you presented by the  
17 State in Justice Court to determine whether or not to even  
18 send it up to District Court for a jury trial. Do you  
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that you don't have to  
22 give up those rights?

23 THE DEFENDANT: I understand that I don't have to  
24 give them up.



1 THE COURT: If you tell me that you're guilty, which  
2 you don't have to do, you are going to be incriminating  
3 yourself. Do you understand that?  
4 THE DEFENDANT: Yes, sir.  
5 THE COURT: Do you have any questions about your  
6 constitutional rights?  
7 THE DEFENDANT: No.  
8 THE COURT: Has anybody made any promises to you  
9 other than what was contained in the negotiations to induce  
10 you to change your plea?  
11 THE DEFENDANT: No, sir.  
12 THE COURT: Anybody make any physical threats against  
13 you to get you to change your plea?  
14 THE DEFENDANT: No, sir.  
15 THE COURT: Do you feel that you're changing your  
16 plea freely and voluntarily?  
17 THE DEFENDANT: Yes, sir.  
18 THE COURT: Do you feel that you have a complete  
19 understanding of your constitutional rights?  
20 THE DEFENDANT: I do, sir.  
21 THE COURT: Do you know that matters of sentencing  
22 are up to me? I don't have to follow the negotiations. Do  
23 you understand that?  
24 THE DEFENDANT: I understand, sir.

1 THE COURT: Now, you do have a right of appeal even  
2 on a guilty plea. Make sure that you talk to Mr. Sullivan  
3 about that, because any appeal must be filed within 30 days  
4 from the date of sentencing, which is the next date I'm going  
5 to give you. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Any questions?

8 THE DEFENDANT: No, sir.

9 THE COURT: Mr. Barker, would you please read the  
10 elements of promotion of sexual performance of a minor to Mr.  
11 McCaffrey and the maximum penalties that he is facing.

12 MR. BARKER: Mr. McCaffrey, if we had proceeded to  
13 trial, we would have gone forward on the original charge of  
14 promotion of a sexual performance of a minor. That minor  
15 would have been under the age of 14 years of age.

16 You're pleading guilty to a fictional offense today.  
17 The fictional component is the age 14 years or older. That  
18 takes the maximum possible sentence from life with 10 down to  
19 life with five. Do you understand that?

20 THE DEFENDANT: I do, sir.

21 MR. BARKER: The elements of the offense are that you  
22 did on June -- excuse me -- June the 9th, 2009, in Washoe  
23 County, Nevada, knowingly and unlawfully promote the  
24 performance of a minor 14 years of age or older, where the

1 minor engages in or simulates or assists others to engage in  
2 or simulate sexual contact -- conduct or where the minor is  
3 the subject of a sexual portrayal. You did that at 2286  
4 Capurro, C-a-p-u-r-r-o, Way, Washoe County, Nevada, in that  
5 you promoted over the internet multiple images and videos of  
6 female children 14 years of age or older being vaginally and  
7 anally penetrated with an adult male's penis, performing  
8 fellatio upon an adult male's penis, rubbing their vaginas  
9 and/or having their vaginas touched by an adult male.

10 Do you understand those elements?

11 THE DEFENDANT: I do.

12 MR. BARKER: Again, as I spoke to you initially, the  
13 maximum possible sentence to the crime you're pleading guilty  
14 to is life in the Nevada State Prison with a minimum parole  
15 eligibility after five years has been served. That you are  
16 not eligible for probation unless the psychosexual evaluation  
17 is completed pursuant to NRS 176.139 which certifies you do  
18 not risk a high risk to reoffend. You're also potentially  
19 looking at a fine up to \$100,000.

20 I will also inform you, sir, that you will be  
21 required to register as a sex offender and that you will be  
22 required to be on lifetime supervision pursuant to NRS  
23 176.0931.

24 Do you understand all of that?

1 THE DEFENDANT: I do, sir.

2 MR. SULLIVAN: Your Honor, Mr. Barker is very  
3 thorough.

4 The only other point I would add is I have discussed  
5 with my client the fact that he must register as a sex  
6 offender, be on lifetime supervision. I've discussed those  
7 requirements.

8 Also, if he violates sex offender registration  
9 requirements or the lifetime supervision requirements, my  
10 client understands that's a separate felony in and of itself  
11 to violate those requirements. My client understands that as  
12 well.

13 Nothing further.

14 THE COURT: Thank you for that.

15 You understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: What is your plea, Mr. McCaffrey, what is  
18 your plea to promotion of sexual performance of a minor?

19 THE DEFENDANT: Guilty, sir.

20 THE COURT: Are you pleading guilty to this charge  
21 because you feel you are guilty and for no other reason?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Let the record show that William Joseph  
24 McCaffrey has entered a plea of guilty to promotion of sexual

1 performance of a minor. I will accept that plea.

2 I'm going to set sentencing for Friday, September  
3 25th. Sentencing will be at 8:30.

4 Bring in \$25 cash. The judge will assess that in  
5 addition to anything else that he or she imposes that day.

6 MR. SULLIVAN: Your Honor, concerning my client's  
7 custody status, there is -- separate and apart from these  
8 negotiations, the district attorney has agreed to reduce the  
9 bail to the standard bail amount for the count which he has  
10 pled guilty to, which is \$25,000 bondable. We're going to  
11 make that request right now.

12 In addition, Your Honor, my client would like you to  
13 consider an O.R. request. I know an O.R. is a stretch on a  
14 Category A felony in which he's just been convicted.  
15 Notwithstanding that, Judge, he has absolutely no criminal  
16 history whatsoever. He's never been arrested save and except  
17 for the instant offense.

18 He's lived here over two years in the community. And  
19 he would be living with his brother, who is present in court,  
20 Kevin McCaffrey. That's his brother, if you have any  
21 questions for Mr. McCaffrey. And Kevin, I've spoken to Kevin  
22 at great length.

23 If you are considering an O.R., we ask for an O.R.  
24 with Court Services, daily Court Services supervision.

1 I'll submit it to you concerning an O.R. or the bail  
2 reduction.

3 MR. BARKER: Judge, the agreement with the State is  
4 that we would have no objection to reducing the bail to the  
5 standard bail of 25,000. We have no agreement as to an O.R.

6 He is potentially a flight risk, although he's got no  
7 criminal history.

8 I'll defer to the Court whether or not you'd be  
9 inclined to give him an O.R.

10 THE COURT: What's bail now?

11 MR. SULLIVAN: Bail is \$75,000 cash.

12 THE COURT: Mr. McCaffrey, I'm just not prone to  
13 reduce the bail even with the State agreeing. I mean, okay,  
14 you don't have a criminal history. Fine. But you could go  
15 to prison. And the judge, me, very easily could send you to  
16 prison for what you just pled guilty to.

17 I think you're wasting your money. I think you're  
18 wasting your brother's money if he wants to bail you out on  
19 something like that. That's just whistling in the dark.

20 I'll reduce the bail to \$50,000 bondable, but I'm  
21 not -- no way am I going to consider an O.R. No way.

22

23

24

1 | STATE OF NEVADA )

2 | COUNTY OF WASHOE )

3 |

4 | I, ISOLDE ZIHN, a Certified Shorthand Reporter of the  
5 | Second Judicial District Court of the State of Nevada, in and  
6 | for the County of Washoe, do hereby certify:

7 | That I was present in Department 8 of the  
8 | above-entitled court on Friday, August 14, 2009 at the hour  
9 | of 8:40 a.m. of said day, and took verbatim stenotype notes  
10 | of the proceedings had upon the matter of THE STATE OF  
11 | NEVADA, Plaintiff, versus WILLIAM MCCAFFREY, Defendant, Case  
12 | No. CR09-1325, and thereafter reduced to writing by means of  
13 | computer-assisted transcription as herein appears;

14 | That the foregoing transcript, consisting of pages 1  
15 | through 12, all inclusive, contains a full, true and complete  
16 | transcript of my said stenotype notes, and is a full, true  
17 | and correct record of the proceedings had at said time and  
18 | place.

19 | Dated at Reno, Nevada, this 7th day of September,  
20 | 2009.

21 |

22 |

23 |

24 |

/s/ Isolde Zihn  
Isolde Zihn, CCR #87

1 **CODE 1850**  
2  
3  
4  
5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**  
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

12 **WILLIAM JOSEPH MCCAFFREY,**

13 **Defendant.**  
14 \_\_\_\_\_ /

**Case No. CR09-1325**

**Dept. No. 8**

15 **JUDGMENT**

16 The Defendant, having entered a plea of Guilty, and no sufficient cause  
17 being shown by Defendant as to why judgment should not be pronounced against him,  
18 the Court rendered judgment as follows:

19 That William Joseph Mccaffrey is guilty of the crime of Promotion of Sexual  
20 Performance of a Minor, a violation of NRS 200.720 and NRS 200.750, a felony, as  
21 charged in the Information, and that he be punished by imprisonment in the Nevada State  
22 Prison for a term of life with parole eligibility after a minimum of five (5) years has been  
23 served, with credit for one hundred twenty (120) days time served. It is further ordered  
24 that the Defendant shall pay the statutory Twenty-Five Dollar (\$25.00) administrative  
25 assessment fee, the One Hundred Fifty Dollar (\$150.00) DNA testing fee, the Nine  
26 Hundred Fifty Dollar (\$950.00) psychosexual evaluation fee and reimburse the County of  
27 Washoe the sum of Two Thousand Five Hundred Dollars (\$2,500.00) for legal  
28 representation. Pursuant to NRS 176.0931, the Court hereby imposes a special



1 sentence of lifetime supervision to commence after any period of probation, or any term  
2 of imprisonment or any period of release on parole.

3 Dated this 7th day of October, 2009.

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7 DISTRICT JUDGE  
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Code: 3585

Name: WILLIAM J. McCAFFREY  
Address: 735 S. CENTER ST. UNIT #4  
YERINGTON, NEVADA 89447  
Telephone: 775-379-6388  
Email: 26ATE102@LIVE.COM  
Self-Represented Litigant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\* \* \* \* \*

WILLIAM J. McCAFFREY, )  
Petitioner, )

Case No. CR09-1325

Dept. No. 2

-VS-

THE STATE OF NEVADA, )  
Respondents. )

**PETITION FOR WRIT OF HABEAS CORPUS**  
(Post-Conviction Relief - NRS 34.735 Petition: Form)

COMES NOW, the Petitioner, William Joseph  
McCauffrey, in Pro Se, and hereby files this Petition  
For Writ of Habeas Corpus (Post-Conviction) (Pursuant  
to NRS 34.726 through NRS 34.830).

This Petition is presented upon the Petitioner's  
and Papers on file, the accompanying Appendix  
of Exhibits, the accompanying Memorandum of  
Points and Authorities, and Attached Points and  
Authorities contained in the instant Petition.

(Name of person who wrote this  
complaint if not Plaintiff )

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: Petitioner is Presently On NEVADA PAROLE

2. Name and location of court which entered the judgment of conviction under attack: Second Judicial District Court, 75 Court St. Reno, NV 89501, Department 8, Hon. Barry Breslow

3. Date of judgment of conviction: October 7th, 2009

4. Case number: CR09-1325, dept 8

5. (a) Length of sentence: Life with Possible Parole  
after 5 Years

(b) 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 ☒

If "yes," list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged:

Promotion of Sexual Performance of a minor  
over 14, a violation of NRS 200.720 and  
NRS 200.750, a felony

1 8. What was your plea? (check one)

- 2 (a) Not guilty \_\_\_\_  
3 (b) Guilty ☒  
4 (c) Guilty but mentally ill \_\_\_\_  
5 (d) Nolo contendere \_\_\_\_

6 9. If you entered a plea of guilty or guilty but mentally ill  
7 to one count of an indictment or information, and a plea of not  
8 guilty to another count of an indictment or information, or if a  
9 plea of guilty or guilty but mentally ill was negotiated, give  
10 details: Petitioner Pled Guilty to the Promotion Charge,  
11 Parties free to argue for Sentencing, State agreed not  
12 to file Possession of Sexual Depiction Charges, NRS 200.730

13 10. If you were found guilty or guilty but mentally ill after  
14 a plea of not guilty, was the finding made by: (check one) N/A

- 15 (a) Jury \_\_\_\_ (b) Judge without a jury \_\_\_\_

16 11. Did you testify at the trial? Yes \_\_\_\_ No \_\_\_\_ N/A

17 12. Did you appeal from the judgment of conviction?

18 Yes ☒ No \_\_\_\_

19 13. If you did appeal, answer the following:

- 20 (a) Name of court: Nevada Supreme Court  
21 (b) Case number or citation: Docket NO 54873  
22 (c) Result: Judgment Affirmed  
23 (d) Date of result: August 10, 2010  
(Attach copy of order or decision, if available.)

24 14. If you did not appeal, explain briefly why you did not:

25 Petitioner did appeal.

26 15. Other than a direct appeal from the judgment of conviction  
27 and sentence, have you previously filed any petitions,  
28 applications or motions with respect to this judgment in any  
court, state or federal? Yes ☒ No \_\_\_\_

16. If your answer to No. 15 was "yes," give the following  
information:

(a) (1) Name of court: 2nd Judicial Dist. Court

(2) Nature of proceeding: Petitioner Filed a  
MOTION For Modification of Sentence, June 10th, 2014

(3) Grounds raised: See Next Page

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes \_\_\_ No \_\_\_

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: \_\_\_\_\_

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes \_\_\_ No \_\_\_ N/A

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: N/A

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach. N/A

(d) 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 \_\_\_ N/A

Citation or date of decision: \_\_\_\_\_

(3) Third or subsequent petitions, applications or motions? Yes \_\_\_ No \_\_\_ N/A

Citation or date of decision: \_\_\_\_\_

(e) 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 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

No response is necessary for these questions as they do not apply.

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

16. If your answer to No. 15 was "yes," give the following information:

(a) (1) Name of court:

2nd Judicial District Court,  
dept 8, before the Hon. Lidia Stiglich

(2) Nature of proceeding: Motion For Modification of  
Sentence, filed Jun 10th, 2014.

(3) Grounds raised:

I. MCCAFFREY'S JUDGMENT SHOULD BE VACATED AND  
HIS CASE REMANDED FOR RE-SENTENCING BECAUSE THE  
COURT ERRED IN CONSIDERING MATERIALLY UNTRUE  
ASSUMPTIONS OR MISTAKES AT SENTENCING WHICH  
WORKED TO HIS EXTREME DETRIMENT.

THESE ERRORS RESULTED IN CUMULATIVE CONSTITUTIONAL  
DUE PROCESS VIOLATIONS OF THE NEVADA  
CONSTITUTION (Article I, Sec. 8) AND THE FOURTEENTH  
AMENDMENT BASED ON THE FOLLOWING GROUNDS:

GROUND I

A. THE COURT APPOINTED PSYCHOLOGIST SUBMITTED A PSYCHOSEXUAL  
EVALUATION PRIOR TO SENTENCING THAT FALSELY CHARACTERIZED  
MCCAFFREY'S STATEMENTS WHICH WERE TAKEN OUT OF CONTEXT -  
THAT MCCAFFREY BELIEVED THERE WERE NO VICTIMS.

B. AT SENTENCING THE STATE PROSECUTOR ARGUED FOR A LIFE SENTENCE  
INSTEAD OF PROBATION BASED ON THESE MATERIALLY UNTRUE STATEMENTS.

C. ADDITIONALLY THE DIVISION OF PAROLE AND PROBATION MISSTATED  
THAT MCCAFFREY BELIEVED THERE WERE NO VICTIMS AND THAT HE HAD  
NO EMPATHY FOR THEM.

II. MCCAFFREY SHOULD BE RE-SENTENCED AND HIS JUDGMENT  
VACATED BECAUSE THE SENTENCING COURT CONSIDERED  
MATERIALLY UNTRUE FACTS ABOUT MCCAFFREY'S PARTICIPATION  
IN THE INSTANT OFFENSE.

III. MCCAFFREY SHOULD BE RE-SENTENCED AND HIS JUDGMENT  
VACATED BECAUSE THE SENTENCING COURT CONSIDERED  
MATERIALLY UNTRUE FACTS ABOUT THE AMOUNT OF PHOTO-  
GRAPHS AND VIDEOS ON HIS COMPUTER

1 IV. MCCAFFREY JUDGMENT SHOULD BE VACATED AND HE  
2 SHOULD BE RE-SENTENCED BECAUSE THE COURT CONSIDERED  
3 MATERIALLY UNTRUE FACTS THAT MCCAFFREY REFUSED TO TAKE  
4 RESPONSIBLY FOR THE OFFENSE

5 V. MCCAFFREY JUDGMENT SHOULD BE VACATED  
6 AND HE SHOULD BE RE-SENTENCED BECAUSE  
7 THE COURT CONSIDERED MATERIALLY UNTRUE  
8 AND CONFLICTING FACTS ABOUT HIS FAMILY

9 VI. MCCAFFREY SHOULD BE RE-SENTENCED AND  
10 HIS JUDGMENT VACATED BECAUSE THE  
11 SENTENCING COURT CONSIDERED MATERIALLY  
12 UNTRUE FACTS ABOUT MCCAFFREY PERSONAL  
13 RELATIONSHIPS

14 VII. MCCAFFREY'S SENTENCE SHOULD BE VACATED  
15 AND HE SHOULD BE RE-SENTENCED BECAUSE  
16 THE COURT CONSIDERED MATERIALLY UNTRUE  
17 STATEMENTS THAT MCCAFFREY HAD ADMITTED  
18 TO FILMING CHILDREN AT A PARTY

19 VIII. MCCAFFREY CONVICTION SHOULD BE VACATED  
20 AND HE SHOULD BE RE-SENTENCED BECAUSE THE  
21 COURT CONSIDERED MATERIALLY UNTRUE STATEMENTS  
22 ABOUT HOW MUCH THERAPY MCCAFFREY WOULD  
23 RECEIVE WHILE INCARCERATED VERSUS PROBATION IF  
24 IT WERE GRANTED

25 IX. MCCAFFREY CONVICTION IS INVALID AND HIS JUDGMENT  
26 SHOULD BE REVERSED BECAUSE THE COURT CONSIDERED  
27 MATERIALLY UNTRUE FACTS ABOUT THE DEFINITION OF  
28 "PROMOTION" WHICH WAS AN ELEMENT OF THE OFFENSE  
AND WORKED TO HIS EXTREME DETRIMENT HURTING HIS  
CHANCES AT PROBATION

X. MCCAFFREY SENTENCE IS INVALID AND HIS JUDGMENT  
IN THIS CASE SHOULD BE VACATED BECAUSE OF  
CUMULATIVE DUE PROCESS ERRORS IN VIOLATION OF THE  
NEVADA STATE AND UNITED STATES CONSTITUTIONS

22 The Petitioner presented these grounds in good  
23 faith and under circumstances to be resentenced to  
24 probation and to have appointed counsel draft a  
25 Habeas Corpus Petition to challenge different grounds  
26 to obtain further relief. Counsel did not supplement  
27 the grounds and abandoned the case when the  
28 petitioner was paroled. See more infra.



17. 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 postconviction proceeding? If so, identify: NO

(a) Which of the grounds is the same: NONE

(b) The proceedings in which these grounds were raised:

N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

None of these grounds have been previously Presented in any Petition For Habeas Corpus, Motion, application or any other Post-conviction Petition.

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds 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 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) |

## I. POINTS AND AUTHORITIES

NRS 34.810(2) reads:

" A Second or successive Petition must be dismissed if the judge or justice determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge or justice finds that the failure of the Petitioner to assert those grounds in a prior Petition constituted an abuse of the writ. "

Under State Practices, "[a] Petitioner can overcome the bar to an untimely or successive Petition by showing good cause and prejudice," E.g. Mitchell v. State, 122 Nev. 1269, 149 P.3d 33, 36 (Nev. 2006). In Robinson v. Ignacio, 360 F.3d 1044 (9th Cir. 2004), the 9th Circuit Court of Appeals recognized that "Nevada's Cause and Prejudice analysis and the federal Cause and Prejudice analysis are nearly identical, as both require 'Cause for the default and actual Prejudice as a result,'" 360 F.3d at 1052 n3.

1 The Nevada State courts also recognize the same  
2 exception for a fundamental miscarriage of justice,  
3 such that "[e]ven when a petitioner cannot show  
4 good cause sufficient to overcome the bars to an  
5 untimely or successive petition, habeas relief may  
6 still be granted if the petitioner can demonstrate  
7 that a constitutional violation has probably resulted  
8 in the conviction of one who is actually innocent"  
9 Mitchell v. State, 122 Nev 1269, 149 P.3d at 36  
10 (quoting Murray, 477 U.S. at 496).

11 In noncapital cases, this exception has been  
12 recognized only for prisoners or petitioners who  
13 can demonstrate actual innocence. Eg, Poland v.  
14 Stewart, 117 F.3d 1094, 1106 (9th Cir 1997). In order  
15 to satisfy this actual innocence gateway, a  
16 petitioner must come forward with new reliable  
17 evidence that was not presented at the trial  
18 court level that, together with the evidence adduced  
19 at the trial [in this case to the court during the plea  
20 hearing], that demonstrates that it is more likely  
21 than not that no reasonable juror would have found  
22 the petitioner guilty beyond a reasonable doubt.  
23 See Schlup v. Delo, 513 U.S. 298, 324-27 (1995).

24 The evidence need not be newly discovered,  
25 but it must be "newly presented." See Griffin  
26 v. Johnson, 350 F.3d 956, 961-63 (9th Cir 2003).  
27 If the evidence presented on post-conviction review  
28 cast doubt on the conviction by undercutting

1 the reliability of the "proof of guilt," but not by  
2 affirmatively proving innocence, that can be  
3 enough to pass through the Schlup gateway to  
4 allow consideration of otherwise barred claims,  
5 Lee v. Lampert, 653 F.3d 929, 937 (9th Cir 2011)  
6 (en banc). The court should consider all the  
7 evidence, old and new, incriminating and  
8 exculpatory, whether admissible at trial or not,  
9 Lee, 653 F.3d at 938.

10  
11 **A. FIRST DEFENSE FOR FAILURE TO**  
12 **PRESENT GROUNDS IN PREVIOUS**  
13 **MOTION FOR MODIFICATION**  
14

15 All of the grounds presented here were  
16 not appropriate for a Motion For Modification  
17 of Sentence. A Motion to modify a Sentence is based  
18 on a very narrow Due Process ground(s) and one  
19 cannot use the Motion to attack the validity of a  
20 Sentence. See State v. Eighth Jud. Dist Court,  
21 100 Nev 90, 97 (1984)

22 There for all of the grounds here could not  
23 have been presented in the previous motion  
24 because they involve ineffective assistance  
25 of Counsel claims as well. Therefore, the  
26 previous petition was simply not designed  
27 to present the instant claims, this petition  
28 is the only petition left to consider.

B. SECOND DEFENSE TO FAILURE TO PRESENT  
IN PREVIOUS MOTION FOR MODIFICATION

Shortly after the Petitioner presented the Motion For Modification of Sentence he was then appointed Post-Conviction Counsel. Attorney Mary Lou Wilson was appointed to represent him on the Modification of Sentence Motion and met with the Petitioner in prison to prepare a supplement petition. The Petitioner gave MS Wilson all of his legal paperwork and MS Wilson began work to presumably prepare some kind of a Supplement petition or brief.

Shortly after that the Petitioner saw the Nevada Parole Board ~~shortly~~ Shortly before his P.E.D. date on the 5 To Life. The Petitioner was granted Parole. Shortly after that MS Wilson contacted this Court to Notice the Court of the Petitioner's Parole grant. The Petitioner then left prison on Parole, but sometime either before or after that the Modification of Sentence Motion became moot. That is according to his Counsel the Modification lost its purpose because if granted the Petitioner would simply be "re-sentenced." It is presumed this could only allow the Petitioner to be "released on Probation" say what the Court could have given him at a resentencing hearing. Under these circumstances the Modification of Sentence was Moot.

1 C. THIRD DEFENSE TO FAILURE TO PRESENT GROUNDS  
2 IN PREVIOUS MOTION FOR MODIFICATION  
3

4 After leaving prison the petitioner tried to  
5 contact MS Wilsons office to no avail. He didn't  
6 know what had happened to his case and  
7 had no further contact with her. Mr. McLaffrey  
8 wanted to pursue his actual innocence claims  
9 present here, and could have through MS  
10 Wilson. Sadly she left him with nothing  
11 and she had his paperwork as well.

12 The petitioner claims that his counsel  
13 without cause abandon his case and left  
14 him without a case or cause. Again his claim  
15 here is Attorney Abandonment as a final claim.

16 D. THE PETITIONER PREPARED A PETITION FOR WRIT  
17 OF HABEAS CORPUS AND WAS READY TO FILE IT  
18 AFTER THE MOTION FOR MODIFICATION WAS FILED  
19 BUT WAS APPOINTED COUNSEL AND DEPENDED  
20 ON COUNSEL TO FILE A SUPPLEMENT

21 The Petitioner Prepared a Habeas petition to  
22 present his "Actual Innocence" and Challenge the  
23 guilty plea. However, when counsel was appointed  
24 in the Modification of Sentence he left it up  
25 to appointed counsel to prepare a Supplement  
26 to the Modification of Sentence motion.

27 However, once McLaffrey was pardoned the  
28 appointed counsel withdrew from the case.

1 Approximately One year ago the Petitioner  
2 McCaffrey filed a Motion to Withdraw Counsel  
3 Mary Lou Wilson from the case. Docket at 10.  
4 28.2019. Further, McCaffrey moved to transfer  
5 the case file from Mrs Wilson's office to him  
6 in an effort to get his paperwork to restart  
7 his petition For writ of Habeas Corpus. However,  
8 Mrs Wilson reported she no longer had any  
9 of McCaffrey's paperwork and had quite obviously  
10 lost his petition that he gave her several years  
11 ago.  
12

13 As a final defense to why these grounds  
14 were not previously presented in the prior petition  
15 the Petitioner claims "attorney abandonment,"  
16 "lack of diligent post-conviction counsel," "Official  
17 interference by counsel," and the "loss of his  
18 case file." His petition (habeas petition) was  
19 never filed, simply put, Mrs. Wilson did  
20 nothing to help the petitioner's case. This is  
21 despite the fact that he had a clear path to  
22 an actual Innocence petition.  
23

24 Finally, if the petitioner can use the  
25 provisions on NRS 34.900 through NRS 34.990  
26 to overcome his latencies, he moves for a new  
27 trial on that basis.  
28

19. Are you filing this petition more than 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 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

Even though the petitioner asserts he does not have to demonstrate cause and prejudice for the delay in filing this petition because it is late, he will explain the delay.

The petitioner is a nurse by trade and is unlearned and untrained in law. He depended on counsel, Sean Sullivan, to explain what was the law as it related to the crimes he was accused of. He had no idea that the State fabricated a bogus charge, that they could not prove at all and further could not be found guilty of. He depended on counsel at every stage to help him understand the charges, the proper elements of the offense, and to juxtapose the facts of his case to the law.

It was counsel who crafted the plea bargain and agreed to the charges. It would be years later that the petitioner received his paperwork and with the help of others began to research the law.



1 As Previously discussed the Petitioner was granted  
2 his first Parole on his 5 Year to Life Sentence, but  
3 it was in preparation for his Parole that he had  
4 first discovered Something was wrong with the  
5 Charges. During discussions with Prison Staff  
6 and Preparation of certain Parole Papers he  
7 discovered the State was contending that he  
8 had an actual victim (a minor over 14) that  
9 was harmed in the instant offense. This then  
10 prompted the Petitioner to look into the  
11 "Nexis" of the Charges and read the Police  
12 reports, Complaints, and Probable Cause reports  
13 Submitted to the Court. This was just prior to  
14 June, 2014 and after the Supreme Court's Order  
15 Affirming his Judgment on August 10th, 2010.

16 The Petitioner filed his Motion For Modification  
17 of Sentence shortly after on June 10th, 2014. For the  
18 Purpose of diligence he chose this vehicle for the  
19 best chance of Success and had hoped his  
20 appointed Counsel would "follow through with  
21 the actual innocence petition." Sadly this never  
22 came to be as the Petitioner was granted  
23 Parole. As previously mentioned Ms Wilson,  
24 his Counsel, then stopped pursuing his next  
25 petition and any Supplement. Further, Ms  
26 Wilson never explained any "limits" to her  
27 representation - if there were any. All of  
28 the Post-Conviction litigation ended at that  
Point.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes \_\_\_ No X

If yes, state what court and the case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal:

Sean Sullivan, Washoe Co. P.D. Trial Counsel

John Reese Petty, Washoe Co. Chief P.D., Appellate Counsel

Mary Lou Wilson, Private Counsel, Court Appointed, ADKT 411 (Post Conviction Counsel)

William McCaffrey, Proper Person, instant petition

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack?

Yes \_\_\_ No X

If yes, specify where and when it is to be served, if you know: None

### Introduction

This Petition is prepared under the Nevada Supreme Court's Decision in *Mitchell v. State*, 122 Nev 1269, 149 P.3d 33, 36 (2006). Further, this Petition is prepared pursuant to NRS 34.900 through NRS 34.990 (inclusive). The conviction is quite dated, however the petitioner is still under sentence and on parole. See *Lazaro-Martinez-Hernandez v. State*, 132 Nev 623, 625 (2016). Further, the petitioner asserts cause and prejudice for filing this Petition beyond the one year time limit in NRS 34.726. This Petition is predicated upon the above caption case and the following:

## INTRODUCTION

The case stems from an investigation of the Crimes Against Children Unit from the Washoe County Sheriff's office. Also working with the Sheriff's Office was the Internet Crimes Against Children (ICAC) Task Force. Further, the Federal Bureau of Investigation's Innocent Images Task Force. Detective Carry was the lead investigator. Detective Carry worked with the FBI and the Nevada Attorney General on this Task Force to investigate Child Pornography on the internet. See Exhibit 4, P.2 id. Para 1

On April 7<sup>th</sup>, 2009, Detective Carry identified the I.P. address of a suspected person who was involved with Child Pornography. id. P.3, Para 1<sup>FN2</sup>

After writing down the I.P. address Detective Carry contacted Moudine Armstrong, a Paralegal with Law Enforcement at Charter Communications in St. Louis, MO. She was able to provide Detective Carry with the physical address associated with that specific I.P. address. Charter Communications responded to an "Administrative Subpoena" received from the task force. See Exhibit 4, P.3, Para 1 and Exhibit 1<sup>FN1</sup>

On April 16<sup>th</sup>, 2009, Ms. Armstrong sent Detective Carry the home address of William MCCAFFREY, the defendant in this case. Exhibit 1, P.1

On June 9<sup>th</sup>, 2009, Detective Carry downloaded a child pornography video from a computer located at McCaffrey's address. Exhibit 4, P.3 id. Para 1<sup>FN2</sup>

On June 10<sup>th</sup>, 2009, at about 3:00 pm, Detective Carry and other agents from the Task Force served a search warrant at McCaffrey's residence. They were able to locate the computer in question and seized it. During the search, the agents and Detectives found both adult and child pornography on the computer.

<sup>FN1</sup> The Administrative Subpoena has not yet been provided in Discovery from the State of Nevada, therefore is admitted by reference only.

<sup>FN2</sup> This matter is in dispute as MCCAFFREY has always claimed that his computer was not set up to share. Further Detective Carry did not say "how" he was able to enter said computer.

1 See Exhibit 4 P. 3, at approx Para 7. (Emphasis in Original)

2 Based on the number of images and videos discovered on hard drives, external  
3 media and printed images, they estimated the amount to possibly be between 500,000  
4 and 1,000,000 images and videos. id. P.3 at para 9 (Emphasis added) McCaffrey  
5 contends that most of the images found were legal adult images in nature and that the  
6 number was deliberately exaggerated. Not being computer savvy, every time Mr.  
7 McCaffrey 'backed up' his computer he inadvertently created a redundant file of the  
8 same images in multiple directories. Therefore the exact number of images is highly  
9 inaccurate and prejudicial.

10  
11 During the search, Mr. McCaffrey was interviewed by Investigator Ryan McDonald  
12 of the Nevada Attorney General's office. At that time, the other residents of the  
13 household were also interviewed. However no one else was found to be under  
14 suspicion or handcuffed. There were no uniformed officers were at the scene i.e. no  
15 beat officers. The detectives from the Washoe County Sheriff were dressed in their  
16 identifiable vests. Id. P.3 at Paragraph 10.<sup>FN3</sup>

17  
18 After the search was completed numerous items were seized pursuant to the  
19 warrant. See Exhibit 5

20 Detective Carry asked Mr. McCaffrey if he was willing to come to the Sheriff's  
21 office for an interview. McCaffrey was taken to the Sheriff's office located right next to  
22 the Washoe County Jail. Detective Carry allowed him to ride in the front seat un-  
23 handcuffed and told him he was not under arrest. Id. P.3 at Para12.<sup>FN3</sup>

24 After arriving at the Sheriff's office, Mr. McCaffrey spoke with Police. That statement  
25 has been redacted from this introduction based on Miranda.<sup>FN3</sup>

26  
27 <sup>FN3</sup> McCaffrey was not read his Miranda Rights

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STATEMENT OF THE CASE

On June 10<sup>th</sup>, 2009, William J. McCaffrey was arrested and charged with One Count (1) of Promotion of Sexual Performance of a Minor, a Violation of NRS 200.720 and NRS 200.750, a felony, five Counts (5) of Possession of Visual Presentation Depicting Sexual Conduct of Persons under 16 Years of Age, a Violation of NRS 200.730, a felony.<sup>FN4</sup>

On June 12<sup>th</sup>, 2009, the court reviewed and found Probable Cause. See Exhibit 2. McCaffrey was not arraigned pursuant to NRS 171.196, on the charges. His next appearance was on June 15<sup>th</sup>, 2009. (There was not a Stipulated Continuance because the Public Defender's Office had not yet been assigned).

On June 15<sup>th</sup>, 2009, Mr. McCaffrey was arraigned on the Declaration of Probable Cause. (See Exhibit 2) Later that day, the Formal Complaint was filed with the Charges, Counts I – VI. (See Exhibit 6) The arraignment was rescheduled o June 16<sup>th</sup>.

On June 16<sup>th</sup>, 2009, McCaffrey appeared in Justice Court, advised of his rights, and of the charges. Mr. McCaffrey requested a Public Defender. Sean Sullivan, Esq. was appointed as counsel for him and a Preliminary Hearing was set for July 1<sup>st</sup>, 2009 at 10:30 am.

On July 1<sup>st</sup>, 2009 at 10:30 am, Mr. McCaffrey met his attorney. He signed a Waiver of the Preliminary Examination. Exhibit 7<sup>FN5</sup>

On July 13<sup>th</sup>, 2009, the State Amended the Original Complaint filed on June 15<sup>th</sup> (See Exhibit 6) and charged McCaffrey with an Original Information with One (1) Count of Promotion of Sexual Performance of a Minor [14 years of age or older]

---

<sup>FN4</sup> One of the charges stems from images and videos of female children, the Promotion Charge and the 5 other counts were from videos only.

<sup>FN5</sup> The Waiver had Plea negotiations written on it, Counts II – VI were to be dismissed and the D.A. would agree to reduce the Client's bail to \$25,000. All of the additional language is inappropriate for this document and confused MCCAFFREY.

1 a violation of NRS 200.720 and NRS 200.750, a felony Exhibit 8.

2 Pursuant to a Plea Agreement, McCaffrey pled guilty to the Promotion Charge. In  
3 exchange for his Plea, the State was "free to present Arguments, facts and/or witnesses  
4 at sentencing in support of the Plea Agreement." [See Exhibit 9, P.3 at 22-25]. The State  
5 agreed not to file additional charges resulting from the arrest in this case as to the  
6 Possession of Visual Depictions in Violation of NRS 200.730. "See Guilty Plea Agreement"  
7 Exhibit 9, (Paragraph 7).  
8

9 The Guilty Plea Memorandum also provided that Mr. McCaffrey would be eligible for  
10 probation if "a psychosexual evaluation....certifies that he does not represent a high risk  
11 to re-offend..." Id. at P.6 (Emphasis added)

12 On September 18<sup>th</sup>, 2009, McCaffrey was given a psychosexual evaluation by  
13 Steven Ing, M.A., M.F.T. He passed the evaluation and was certified with a Sonar rating  
14 as a High Moderate and with a Static 99 rating as low.  
15

16 In preparation for sentencing, McCaffrey was also interviewed by Heidi Poe, from  
17 the Nevada Division of Parole and Probation. For various reasons set forth in this Motion  
18 Parole and Probation did not recommend that he receive probation.

19 On October 7<sup>th</sup>, 2009, the District Court held the sentencing hearing. Mr. McCaffrey  
20 was eligible for probation and his counsel argued for probation. In support of  
21 probation, Mr. Sullivan submitted testimony of Mr. McCaffrey's lack of criminal history,  
22 the exact nature of his offense, his character and long employment history and the  
23 strong family support system.  
24

25 The same family support system that was in place and would be in place during the  
26 probation period and continue during his lifetime. Exhibit 14. At sentencing, Mr.  
27 McCaffrey's brother Kevin McCaffrey spoke in favor of his brother and in support of  
28

1 granting probation stating that he was not only prepared to help his brother by  
2 monitoring and supervising his behavior but supporting him through the rehabilitation  
3 process. In addition, the Court received character letters in support of Mr. McCaffrey.

4 The State argued for a sentence of life with the possibility of parole after 5 years  
5 noting that although probation, as the State argued was not "warranted and  
6 appropriate in this case" because "sometimes when people do things that they do, it is  
7 so offensive, it is so heinous, that it deserves prison". Exhibit 14, id. P.18, LL 1-3 <sup>FN6</sup>

8  
9 Ms. Heidi Poe, from Parole and Probation testified to the Court that they would not  
10 recommend probation for McCaffrey.<sup>6</sup>

11 Judge Koasch acknowledged the positive arguments Counsel made in support of  
12 Mr. MCCAFFREY and engaged Mr. McCaffrey's brother Kevin in a positive dialogue --  
13 quoting from a letter he submitted.

14 He even acknowledged all the good and positive things that Mr. McCaffrey had  
15 going for him that would ensure compliance with a period of probation (and ultimately  
16 lifetime supervision). Exhibit 14, id. P.14 at 6-13

17  
18 Finally, Mr. McCaffrey addressed the Court *regarding the question* over his written  
19 answer that there "was no victim" ...he "misunderstood what the P and P question  
20 was." Exhibit 14, id. P.21 at 10-13. (Emphasis added)

21 Mr. McCaffrey argued that he understood the term 'victim' as used by Mr. Ing to  
22 indicate a physical victim, a person or persons he himself had intimate contact with." It  
23 was a context error not an admission. In court McCaffrey stated that he understood the  
24 far reaching implications of this offense and that there were actual 'victims'. Mr.  
25 McCaffrey "completely and sincerely apologized to the victims" (of pornography).  
26

27 <sup>FN6</sup>Additional comments will be provided in the Arguments contained in this Petition.  
28

1 He also apologized to his family. P.21 at LL 18-20.<sup>FN6</sup>

2 Judge Kosach, after hearing from the Defendant and without commenting on  
3 probation as a sentencing option, simply sentenced Mr. McCaffrey to: A \$25  
4 administrative --assessment fee, \$150 DNA testing fee, \$950 psychosexual -- evaluation  
5 fee, \$2,000 attorney's fee." Further "Nevada State Prison, with parole eligibility after a  
6 minimum of five years has been served. One hundred eight days credit for time  
7 served." (Page 22 at lines 4-8).

9 McCaffrey filed a Notice of Appeal. John Reese Petty, Chief Deputy Public  
10 Defender represented McCaffrey at that hearing. The issue on appeal was that "The  
11 District Court abused its discretion by failing to articulate the basis for its decision not to  
12 suspend the sentence and place Appellant (sic McCaffrey) "on probation". See Exhibit  
13 22, Supreme Court No. 54873.

14 The State replied to the opening brief and maintained their argument in *Silks vs*  
15 *State*, 92 NEV 91 545 P.2d 1159 (1976) in that the sentence imposed was in the range  
16 allowable for the offense. The State argued the sentence did not rest on the suspect or  
17 highly impalpable evidence.

18 The State continued, commenting on a silent record that the "sentence imposed is  
19 in keeping with the District Judge's perception of Appellant's just desserts'  
20 his prospects for rehabilitation and the facts of this case." See Exhibit 19, P.2, 12-14.

21 The Supreme Court concluded that McCaffrey's contentions were without merit. Ex  
22 22, P.1. Further, the Appellant did not object or ask the District Court to explain its  
23 decision; therefore, he is not entitled to relief absent a demonstration of plain error.  
24 *Green vs State*, 119 Nev. 542, 545, 80, P.3d 93, 95 (2003) also NRS 178.602. The Appellant  
25 did not identify any controlling authority that requires the District Court to further explain  
26  
27  
28



1 its sentencing decision in this case.

2 Secondly, the District Court imposed a lawful sentence pursuant to NRS 200.720  
3 and NRS 200.750 (1), and Appellant has not demonstrated that the District Court  
4 considered "impalpable or highly suspect evidence in imposing that sentence." FN7  
5 Having determined that no relief is warranted, the Nevada Supreme Court affirmed the  
6 sentence imposed on MCCAFFREY. See Exhibit 22, Sup. Ct. No. 54873 and the Remittitur  
7 August 10th, 2010. See Exhibit 23.  
8

9  
10 After the Supreme Court's Remittitur on August  
11 10th, 2010 the Petitioner had no reason to question  
12 the legality of his conviction and with little knowledge  
13 of the law did not undertake Federal Review of the  
14 Order of Affirmance in Case No 54873. Further, Mr.  
15 McCaFFrey did not pursue a timely Post Conviction  
16 which would have been due by August 10th, 2011.  
17 For further discussion about events after the  
18 August 10, 2010 remittitur see Cause and Prejudice  
19 argument Supra. #19 of this petition.  
20  
21

## 22 I. MODIFICATION OF SENTENCE

23  
24 On June 10th, 2014 the Petitioner filed a MOTION  
25 FOR MODIFICATION OF SENTENCE, A MOTION TO PROCEED  
26 INFORMA PAUPERIS, A MOTION FOR APPOINTMENT OF  
27 COUNSEL, AND AN APPENDIX OF EXHIBITS 1 through 23.  
28

1 All of these documents filed on June 10th, 2014  
2 were prepared by an Inmate Paralegal who filed  
3 his Affidavit of assistance on 6.10.2014 as well.

4 On June 23, 2014 the State, by and through  
5 Joseph R. Plater (retired), filed an opposition to  
6 the Motion For Modification of Sentence.  
7

8 On June 23, 2014 this Court GRANTED the Motion  
9 For Appointment of Counsel and application to  
10 proceed in forma pauperis.

11 On July 9, 2014 the Petitioner filed a "Reply"  
12 in support of his Motion For Modification of Sentence.

13 Separately, on July 10th, 2014 the Petitioner filed  
14 a Motion For Remission of Fees and Court Costs.  
15

16 On July 16, 2014 the court ordered Mary Lou  
17 Wilson to be appointed to represent Mr. McCaffrey.

18 Separately, On July 24, 2014 the State filed  
19 an Opposition to Motion For Remission of fees and  
20 Court Costs. On July 31st, 2014 the Petitioner  
21 filed a Reply in support of his Motion For Remission  
22 of fees and Court Costs. On August 1st, 2014 the  
23 matter was submitted for a decision.  
24

25 The Petitioner then had his Parole hearing  
26 on the instant case ON JUNE 23 2014,  
27 and subsequently was granted Parole.  
28

1 In the meantime the petitioner met with  
2 Counsel Mary Lou Wilson at the Lovebeck Correctional  
3 Center and notified her of his Parole grant. Further,  
4 he discussed Challenging his Sentence with a  
5 Writ of Habeas Corpus. McCaffrey had prepared  
6 a Writ of Habeas Corpus Petition "Similar to  
7 this one" and gave it to Mrs Wilson to file. Further,  
8 She said she would file the petition and Supplement  
9 for it. This petition was grounded with the same  
10 complaints McCaffrey presents now. Mrs Wilson  
11 also indicated she could not pursue his Pro Se  
12 Motion For Remission of Fees and fines as she was  
13 not appointed for this.\*  
14

15  
16 After such time the Petitioner's Counsel then  
17 filed on August 13, 2014 Notice of Parole of Petitioner,  
18 (see also exhibit 1 of the Notice) Also Counsel filed  
19 a Notice of Information Regarding Psychosexual  
20 Evaluations.  
21

22 On 9.9.2014 this court denied McCaffrey Motion  
23 For Remission of Fees and Costs (docket Original at  
24 7.10.2014). Mrs Wilson's Office appeal which appeared  
25 to lack jurisdiction. See Supreme Court Docket 66514.

26 \*) McCaffrey then gave Wilson all of his paperwork  
27 that he had regarding his case, the entire file.  
28

1 On 11.12.2014 the Supreme Court dismissed the  
2 appeal regarding the Fees and Costs Remission.  
3 This left the Court with the Motion For Modification  
4 still sub judice in the 2nd Judicial District.

5 On 12.12.2014 the District Attorney moved for the  
6 Submission of the Motion For Modification. On 1.2.15  
7 this Court denied the Motion For Modification in  
8 its entirety. However, McCaffrey had left Prison  
9 and never received a copy of this order. The  
10 docket reflects the Court order was returned  
11 undelivered on 2.12.2015. Mary Lou Wilson's  
12 Office never appealed this denial and did not  
13 contact McCaffrey regarding his case, or the  
14 actual Innocence Petition For Writ of Habeas Corpus.  
15

16 A few years had passed and McCaffrey heard  
17 nothing regarding his case and had assumed the  
18 Court must have denied his Writ of Habeas Corpus  
19 he gave to Mrs Wilson, the Court always denies  
20 everything and this is what he believed happened  
21 without more.  
22

23 However, in 2019 McCaffrey sustained a  
24 Parole Violation and was given 6 months for the  
25 Violation. After returning to Prison McCaffrey filed  
26 a Motion For Withdraw of Attorney and Transfer  
27  
28

1 of records from Mrs Wilson's Office. (This matter  
2 appears to be Subjudice, Sub Judice, before the  
3 Court having never been Submitted.

4 Mrs Wilson's Office wrote Mr. McLaffrey's Office  
5 and informed him she no longer had his files. See  
6 Appendix of Exhibits, Ex 25. Nothing else has  
7 happened with this case since such time.

8  
9 The petitioner was released from prison and  
10 then contacted a friend to prepare a new petition  
11 with the help of his brother. The petitioner's  
12 brother then with the assistance of this writer  
13 prepared this Petition. With careful construction  
14 this petition follows.  
15

16 III

17 III

18 III

19 III

20 III

21 III

22 III

23 III

24 III

25 III

26 III

27 III

## I. PROCEDURAL POSTURING

To file a Petition For Writ of Habeas Corpus a  
Petitioner must be imprisoned OR UNDER SUPERVISION  
AS A PROBATIONER OR PAROLEE in order to obtain relief.

See *Lazaro Martinez-Hernandez V. THE STATE OF  
NEVADA*, 132 Nev 623, 625, 380 P.3d 863 (2016)

The Petitioner, William J. McGeffery is under  
the supervision of Parole and Probation as a  
Parolee thus this petition is available to him  
to seek relief Pursuant to NRS 34.724(2), see  
also e.g. *Coleman V. State*, 130 Nev 190 (2011) and  
*Jackson V. State*, 115 Nev 21 (1999) distinguished  
from *Martinez-Hernandez*.

### POINTS AND AUTHORITIES

NRS 34.724(2) provides that a post-conviction petition for writ of habeas corpus:

(a) Is not a substitute for and does not affect any remedies which are incident to the proceedings in the trial court or the remedy of direct review of the sentence or conviction.

(b) Comprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them.

(c) Is the only remedy available to an incarcerated person to challenge the computation of time that he has served pursuant to a judgment of conviction.

The Sixth Amendment to the United States Constitution guarantees to every criminal defendant a right to the effective assistance of counsel. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Warden v. Lyons*, 100 Nev. 430, 683 P.2d 504 (1984). Normally, to state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must satisfy a two-prong test: he must demonstrate that counsel's performance was deficient and that the deficiency prejudiced him. *Strickland*, 466 U.S. at 687.

1  
2 POINTS AND AUTHORITIES

3 THE LAW:

4 Under *Strickland*, to prevail on a claim of ineffective assistance of trial counsel, a  
5 defendant must establish two elements: (1) that counsel provided deficient performance, and  
6 (2) "that the deficient performance prejudiced the defense." Establishment of deficient  
7 performance requires a showing that counsel's performance fell below an objective standard  
8 of reasonableness. To satisfy the second element, a defendant must demonstrate prejudice  
9 by showing "a reasonable probability that, but for counsel's errors, the result of the trial  
10 would have been different." *Kirksey v. State*, 112 Nev. 980 at 987, 923 P.2d 1102 at 1107  
11 (1996).

12 Even though the *Kirksey* case was decided in 1996, it is routinely cited by the Nevada  
13 Supreme Court. *Strickland v. Washington*, 466 U.S. 668 (1984).

14 The petitioner must demonstrate the underlying facts by a preponderance of the  
15 evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

16 The Nevada Supreme Court "has long recognized a petitioner's right to a  
17 postconviction evidentiary hearing when the petitioner asserts claims supported by specific  
18 factual allegations not belied by the record that, if true, would entitle him to relief." *Mann v.*  
19 *State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002), cited recently in *Berry v. State*, 131  
20 Nev. Adv. Op. 96, decided December 24, 2-15. The *Mann* standard is in place at this point in  
21 time. See also *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) for this  
22 longstanding principle.

23 In the context of appellate counsel, this means that an attorney is not ineffective for  
24 omitting a particular claim—even a claim supported by existing law—to focus on claims  
25 with a better chance of success. *Jones v. Barnes*, 463 U.S. 745, 751-52 (1983) ("Experienced  
26 advocates since time beyond memory have emphasized the importance of winnowing out  
27 weaker arguments on appeal and focusing on one central issue if possible, or at most on a  
28 few key issues."); *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) (recognizing  
that "appellate counsel is most effective when she does not raise every conceivable issue on

1  
2 appeal"). "Generally, only when ignored issues are clearly stronger than those presented, will  
3 the presumption of effective assistance of counsel be overcome." *Smith v. Robbins*, 528 U.S.  
4 259, 288 (2000) (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)); *Mayo v.*  
5 *Henderson*, 13 F.3d 528, 533 (2d Cir. 1994) ("petitioner may establish constitutionally  
6 inadequate performance if he shows that counsel omitted significant and obvious issues  
7 while pursuing issues that were clearly and significantly weaker.").

8 In this case, Petitioner alleges that both trial and appellate counsel were ineffective  
9 under the *Strickland* standard and the 6<sup>th</sup> & 14<sup>th</sup> Amendments to the United States  
10 Constitution.

11 A hearing is not required if factual allegations are belied by the record. A claim is  
12 'belied' when it is contradicted or proven to be false by the record as it existed at the time the  
13 claim was made." *Mann* at 118 Nev. at 354, 46 P.3d 1230.

14 [2] It is well settled that the right to the effective assistance of counsel applies to certain steps  
15 before trial. The "Sixth Amendment guarantees a defendant the right to have counsel present at  
16 all 'critical' stages of the criminal proceedings." *Montejo v. Louisiana*, 556 U.S. 778, 786, 129 S.  
17 Ct. 2079, 173 L. Ed. 2d 955 (2009) (quoting *United States v. Wade*, 388 U.S. 218, 227-228, 87  
18 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967)). Critical stages include arraignments, postindictment  
19 interrogations, postindictment lineups, and the entry of a guilty plea. See *Hamilton v. Alabama*,  
20 368 U.S. 52, 82 S. Ct. 157, 7 L. Ed. 2d 114 (1961) (arraignment); *Massiah v. United States*, 377  
21 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964) (postindictment interrogation); *Wade*, supra  
22 (postindictment lineup); *Argersinger v. Hamlin*, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530  
23 (1972) (guilty plea).

24 With respect to the right to effective counsel in plea negotiations, a proper beginning point is  
25 to discuss two cases from this Court considering the role of counsel in advising a client about a  
26 plea offer and an ensuing guilty plea: *Hill v. Lockhart*, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d  
27 203 (1985); and *Padilla v. Kentucky*, 559 U.S. \_\_\_, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010).

28 [3] *Hill* established that claims of ineffective assistance of counsel in the plea bargain context  
are governed by the two-part test set forth in *Strickland*. See *Hill*, supra, at 57, 106 S. Ct. 366, 88

In *Hill*, the decision turned on the second part of the *Strickland* test. There, a defendant who  
had entered a guilty plea claimed his counsel had misinformed him of the amount of time he  
would have to serve before he became eligible for parole. But the defendant had not alleged that,  
even if adequate advice and assistance had been given, he would have elected to plead not guilty  
and proceed to trial. Thus, the Court found that no prejudice from the inadequate advice had been  
shown or alleged. *Hill*, supra, at 60, 106 S. Ct. 366, 88 L. Ed. 2d 203.



1 2. To establish prejudice from deficient performance of counsel, a defendant must show that  
2 there is a reasonable probability that, but for counsel's unprofessional errors, the result of the  
3 proceeding would have been different. In the context of pleas a defendant must show the  
4 outcome of the plea process would have been different with competent advice. (Kennedy, J.,  
joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

5 9. The benchmark for judging any claim of ineffectiveness of counsel must be whether  
6 counsel's conduct so undermined the proper functioning of the adversarial process that the trial  
7 cannot be relied on as having produced a just result. The goal of a just result is not divorced from  
the reliability of a conviction. (Kennedy, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan,

8 10. The fact that a defendant is guilty does not mean he was not entitled by the Sixth  
9 Amendment to effective assistance or that he suffered no prejudice from his attorney's deficient  
10 performance during plea bargaining. (Kennedy, J., joined by Ginsburg, Breyer, Sotomayor, and  
Kagan, JJ.)

11 i v

12 i v

13 i v

14 i v

15 i v

16 i v

17 i v

18 i v

19 i v

20 i v

21 i v

22 i v

23 i v

24 i v

25 i v

26 i v

27 i v

28 i v

## INCORPORATION OF CLAIMS

The Petitioner incorporates Ineffective assistance of Trial and Appellate Counsel to each of the grounds in this Petition. Trial and Appellate Counsel failed to discover and Present each of the claims in this Petition and raise them in the trial or appellate Court for Proper review.

Therefore, each of the grounds Presented are under the umbrella of either ineffective assistance of Trial or Appellate Counsel as fully set forth in each ground of the Petition.

Finally, because the Petitioner has Presented a Previous Petition to this Court, the State appellate court, and Federal Appellate Court the Petitioner also claims that his Post Conviction Counsel also failed to discover these Claims and Present them.

Before the Petitioner presents his Claims he predicates all of his grounds upon the following Points and Authorities, the State and Federal Standard of Review:

23. 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 additional grounds and facts supporting same.

#### GROUND 1

THE PETITIONER WAS DENIED HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION, ALSO ARTICLE 1, SEC. 2 & 8 OF THE NEVADA STATE CONSTITUTION

#### Supporting FACTS

On October 7<sup>th</sup>, 2009 the Petitioner, William J. McCaffrey was sentenced pursuant to a Plea agreement (see Exhibit 9) to One Count of Promotion of Sexual Performance of a minor over 14. McCaffrey's Counsel Deputy Public Defender Sean Sullivan addressed the Court regarding the Offense in this case. He described the Nexis of the plea negotiations and how Mr. McCaffrey became involved in the instant Offense. It clearly shows that both he and the prosecutor entered into a legal fiction with regard to the instant case and created a bogus charge out of thin air.

1 Mr. Sean Sullivan Stated to the Court:

2 "Your Honor, the first issue I want to address with this Court  
3 is the Plea itself and the charge itself, Promotion of a Sexual  
4 Performance of a Minor. Myself and Mr. Barker, we entered  
5 into this Plea Negotiation. This is what we would consider a  
6 legal fiction in light of the children's on some of the videos  
7 and/or photos." Ex 14, P.3, 15-20.

8 "In addition, your Honor, the Promotion Charge is what I  
9 really want to key in on, because when one hears "Pro-  
10 motion of Sexual Performance", one thinks my client was  
11 actually engaged in filming or producing or just being  
12 involved with touching or filming live children. And I want to  
13 disabuse anyone of that notion. My client simply download-  
14 ed numerous videos and/or photos, child pornography, from  
15 the internet, up to a million according to Detective Dennis  
16 Carry's report, was found on his computer. There was also  
17 some hard copy evidence found in my client's room."  
18 Ex 14, P.3, 21-24, P.4, 1-6.

19 "But at no point in time did my client ever talk to any of  
20 these children or engage in making these movies or mak-  
21 ing these photographs. This was stuff that he simply cap-  
22 tured on the internet and downloaded to his computer."  
23 (Emphasis added) id. P.4, 7-10

24 "Now, Your Honor may be asking yourself: Well why did  
25 he plead to Promotion of a Sexual Performance of a  
26 Minor? What is that charge?" P.4 11-13

27 "The definition of "promotion" pursuant to statute,  
28 NRS 200.720, 200.750, element is applicable when  
anyone either shares this type of information over the  
internet or it could have been shared over the internet."  
(Emphasis added)<sup>FN1</sup>

FN1 McCaffey strongly disagrees with Counsel's argument on the basis of the intent requirement of the Statutes.

1 "And the way my client had captured these images in  
2 those still photographs from the internet, I was put into  
3 a file sharing program unbeknownst to my client. My  
4 client didn't realize he was using LimeWire. He didn't  
5 realize - he had it categorized into four or five separate  
6 folders, but he didn't realize that one of the folders  
7 could have been shared with other persons on the inter-  
8 net. To my knowledge, there is no evidence that my  
9 client actively engaged in sharing these photos or  
10 videos with anyone over the internet.

11  
12 "Quite frankly, it was Detective Dennis Carry who was  
13 able because of his computer savvy skills, Detective  
14 Dennis Carry was able to get online and get into my  
15 client's files. That's how he retrieved the photos and/  
16 or videos in question." P.4, 18-14, P.5 at 1-7 (Emphasis  
17 added)<sup>FN2</sup> See also P.5 at 9-15 for same Argument.

18 The plea agreement is unconstitutional and is  
19 illegal because one of the required elements or  
20 more is missing from the alleged offense. The  
21 State was required to prove there was an actual  
22 minor involved in the offense and there was  
23 not. Further, there is no nexus to a "Sexual  
24 Performance" under NRS 200.720 & 200.750 which  
25 the State was required to prove.

26 Simply put Counsel exposed Mr. McCaffrey  
27 to a Life Sentence for a crime he never  
28 committed and moreover, more severe  
consequences he never should have faced. The  
Category A felony did offer a chance at probation  
but carried the price of a 5 to Life Sentence  
as opposed to a fixed sentence. The other counts  
dismissed in the bargain carried no life sentences.

<sup>FN2</sup> McCaffrey disputes that ANY of his files were set up to share through his LimeWire. Further, he does not know (nor does anyone) how Detective Carry accessed his computer, as Carry was not called to testify ever.

1 Mr. McCaffrey's Conviction and Sentence are  
2 invalid under the 6TH and 14TH federal Constitutional  
3 amendment guarantees of Due Process and Equal  
4 Protection, and effective counsel under the law of  
5 Article 1 of the Nevada Constitution because  
6 Prior Counsel's Performance fell below an objective  
7 Standard of reasonableness as is mandated by  
8 Strickland, 466 U.S. 688, 104 S.Ct. 2052 (1984), by  
9 Coercing the Petitioner into entering a guilty plea.

10 The Sixth Amendment of the U.S. Constitution  
11 guarantees the accused "the Assistance of Counsel  
12 for his defense," "That a person who happens to be  
13 a lawyer is present at trial [Plea hearing] alongside  
14 the accused, however, is not enough to satisfy the  
15 Constitutional Command." Strickland V. Washington,  
16 466 U.S. 668, 685, 104 S.Ct. 2052, 2063 (1984). "[The]  
17 right to counsel is the right to effective assistance  
18 of Counsel." McMann V. Richardson, 397 U.S. 759, 711,  
19 90 S.Ct. 1441, n 14 (1970)

20 Under Strickland V. Washington, a conviction must be  
21 reversed due to ineffective counsel if first, "counsel's  
22 Performance was deficient," and second, "the deficient  
23 Performance prejudiced the defense." Strickland at 687.  
24 The deficient Performance prejudiced the defense if  
25 "there is a reasonable ~~pos~~ probability that, but for  
26 Counsel's errors, the result of the proceeding would have  
27 been different," a reasonable ~~prob~~ probability is a  
28 Probability sufficient to undermine confidence in the  
Outcome." Strickland, 466 at 698. "The ultimate focus  
of the inquiry must be on the fundamental fairness of the  
proceedings. Id at 696

1 Nevada has adopted the Strickland Standard for the  
2 effective assistance of Counsel. See *Hurd v. State*,  
3 114 Nev. 182, 188, 953 P.2d 270, 274 (1998)

4 Mr. McLaffrey's Counsel's assistance was ineffective  
5 because his performance fell below an objective  
6 standard of reasonableness as is mandated by  
7 Strickland by coercing the petitioner into entering  
8 a guilty plea to a crime there was no evidence for.  
9 466 U.S. 668, 104 S.Ct. 2052 (1984) Counsel did this  
10 by cajoling Petitioner to sign the GPA entered in  
11 this case. See GPA, attached Appendix of Exhibits  
12 No. 9.

13 Undue coercion occurs when "a defendant is induced  
14 by promises or threats which deprive the plea of the  
15 nature of a voluntary act." See *Doe v. Woodford*, 508  
16 F.3d 563, 570 (9th Cir. 2007). And this is exactly what  
17 occurred in the case at bar. Mr. McLaffrey asserts  
18 that his Counsel misinformed him about the nature  
19 of the Charge of Sexual performance of a minor  
20 over 14, what the elements of the offense were,  
21 and traded his lower offenses in the information  
22 for the most severe charge and penalty. There  
23 was no factual basis for the plea. There was no  
24 Sexual performance as defined by Statute and  
25 more importantly No victim. See Memorandum  
26 of Points and Authorities for further argument.

27 Because Petitioner's Counsel coerced, tricked, and  
28 cajoled Petitioner into signing the GPA, Petitioner's  
Counsel provided ineffective assistance. As a result,  
Petitioner did not knowingly and voluntarily

1 agree to the GPA (despite any assertions he made in  
2 the Plea Convass) as is required by Nevada law.  
3 Clearly this is also a violation of Strickland and  
4 Hill v. Lockhart in that he wouldn't not have pled  
5 guilty to the Charges had he been fully informed  
6 of Nevada Law. Thus, Counsel made errors which  
7 fell below minimum standards of representation,  
8 undermined confidence in the adversarial outcome,  
9 and deprived Mr. McCaffrey of fundamentally fair  
10 proceedings. His conviction for Sexual Performance  
11 of a Minor over 14, should be reversed and the  
12 matter set for further proceeding or trial, or  
13 what ever relief is appropriate.  
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1 ... "Because a guilty Plea is an admission of all  
2 the elements of a formal charge, it cannot be  
3 truly voluntary unless the defendant possesses an  
4 understanding of the law in relation to the facts,"  
5 See *McCarthy v. U.S.*, 394 U.S. 459, 466 (1969).

6 "Consequently, if a defendant's guilty plea is not  
7 equally voluntary and knowing, it has been obtained  
8 in violation of due process and is therefore void.

9 See, e.g., *Machibroda v. U.S.*, 368 U.S. 487, 493  
10 (1962); *Von Moltke v. Gillies*, 332 U.S. 708 (1948)

11 "A defendant is entitled to Plead anew if a  
12 [District Court] accepts his guilty plea without a  
13 factual basis for the plea." See *McCarthy*

14 In defining innocence, the Supreme Court of the  
15 United States stated in *Sawyer v. Whitley*, 505 U.S.  
16 333, 343 (1992) "that the strictest definition of  
17 actual innocence is one which "Negates an essential  
18 element of the offense." Thus, a Petitioner can  
19 establish actual innocence by demonstrating that no  
20 reasonable ~~and~~ juror would have found an essential  
21 element of the charged offense to exist, by  
22 negating the required element required for a lawful  
23 conviction.

24 Therefore, the Petitioner is not guilty of a  
25 charge of promotion of a Sexual Performance  
26 of a minor over 14 as outlined in the charge.  
27 Moreover, the State did not have any proof that  
28 McCaffrey was doing anything like the charge  
describes.

## CONCLUSION

Accordingly, the Petitioner respectfully requests that this Court:

1. Issue a Writ of Habeas Corpus to have the Petitioner brought before the Court so that he may be discharged from his Unconstitutional Confinement;

2. Conduct an evidentiary hearing at which Proof may be offered concerning the allegations in this Ground and any defenses that may be raised by the Respondents;

3. Appoint Post Conviction Counsel to represent the Petitioner and allow him to received the benefit of a Supplemental Petition to this one (see NRS 34.750) and;

4. Grant such other and further relief as, in the interests of justice, may be appropriate.

GROUND 2

THE PETITIONER WAS DENIED DUE PROCESS OF LAW  
WHERE THE PROSECUTOR KNOWINGLY PRESENTED  
AND RELIED UPON FALSE EVIDENCE TO SECURE  
THE PETITIONER'S CONVICTION THROUGH THE PLEA  
BARGAIN PROCESS IN AND THROUGH THE CHARGES  
IN VIOLATION OF THE 14TH AMENDMENT OF THE  
US CONSTITUTION, ARTICLE 1, SEK 8 OF THE  
NEVADA CONSTITUTION

Supporting FACTS

At Sentencing the Prosecutor commented on the  
Charges and Stated:

"Now, he also made a point to say he didn't know that his  
computer was configured the way it was. What Mr.  
MCCAFFREY admitted to...Dr. Ing was that he downloaded  
that LimeWire software. It's Peer-to-Peer software, which  
means that my computer can talk to your computer. His  
computer was essentially set up as a file server.<sup>FN3</sup>

"That doesn't happen by downloading pornography.  
That happens because somebody downloads LimeWire  
and configures it such so that all of his pedophile friends  
can know and see and do whatever they want on his  
computer because he's got a million images."

"They go out and they look at his stuff. He can go out  
and look at their stuff. Then they swap it back and forth."

Essentially his computer was a file server that was being  
used by other people." <sup>FN2/FN3</sup> Id. P.16, LL 8-21

"Dennis Carry didn't have to do anything special to go  
in and look at the porn that was on his computer be-  
cause he downloaded the software that made it  
accessible." <sup>FN2/FN3</sup> [Same Argument] P.16, 22-24.

<sup>FN3</sup> McCaffrey's computer was NOT set up as a file server. The LimeWire software was installed so that MCCAFFREY could "View other people's files,  
but not share his own. No Police or psychological report ever stated he had configured his computer as a file server.

1 "He also admitted to the detectives that as a part of some  
2 function he has done that he has been he has been photo-  
3 graphing or filming children in our area. And he admits to  
4 the detective that where he is focusing his cameras, they're  
5 not naked, they're not doing sex acts or sexual portrayals,  
6 but as he is filming hem it's the areas that apparently excite  
7 him. He admits that those films of the children here, while  
8 they are not child pornography, were done because of his  
9 obsession with children, sexual interests in children." See  
10 T.O.P P.17 at 2-10.<sup>FN4</sup>

11 "That doesn't happen by accident, Judge" (Emphasis  
12 added)P.16-17, LL 2481<sup>FN2/FN3</sup>

13 The petitioner repackages his argument that both  
14 trial counsel and the prosecution stated things that were  
15 not true.

16 McCaffrey's defense counsel and the Prosecutor painted an inaccurate picture of  
17 him. There was no evidence that McCaffrey's computer acted as a file server.  
18 No computer expert testimony was offered substantiate that allegation. Nor was  
19 Detective Carry called by either side to corroborate what the attorneys reported to the  
20 Court.

21 The attorneys' statements about LimeWire are untrue. A person can use  
22 LimeWire and configure it **NOT** to share. McCaffrey is not that computer savvy and as  
23 such did not set up his computer to share. It is possible for a person to download this  
24 software and choose to look at other people's files and not set to share. The way this  
25 program works, one does not even need to have files of his own. The records do not  
26 specify or indicate how Detective Carry was able to obtain McCaffrey's files at all.

27 <sup>FN4</sup> This comment was misleading and out of context and the statement was actually made by Detective Dennis Carry as a leading question. See  
28 Exhibit 3. Page 24-25

1 The Prosecution knew by the Police Reports that  
2 McCaffrey had not admitted to taking pictures of  
3 children or filming them at all. However, this infected  
4 the proceedings. For instance:

5 The Pre-sentence Report it indicated that:

6 "The defendant admitted to filming children at a party..."  
7 Exhibit 12, P.5 at Para 3

8 At sentencing, the Prosecutor made incorrect comments about McCaffrey. He  
9 stated:

10 Mr. Barker

11 "He also admitted to the detectives that as a part of some  
12 function he has done that he has been photographing or  
13 filming children in our area. And he admits to the detectives  
14 that where he is focusing his cameras, they're not naked,  
15 they're not doing acts or sexual portrayals, but as he is film-  
16 ing them, it's the area that apparently excite him. He  
17 admits that those 'films' of the children here, while they're

not child pornography, were inappropriately done because  
of his obsession with children, sexual interest in children."  
Exhibit 14, P.17 at 2-10

18 To the contrary, the police interview provided the following colloquy between  
19 Detective Dennis Carry and McCaffrey:

20 Q: So are we gonna see that in your photos? I...  
21 I think we're gonna see that somewhat ju...  
And I haven't looked at 'em, just experience.

22 A: Photos I've taken?

23 Q: Yeah

24 A: No, I haven't taken any photos of kids like that.

25 Q: So nothing at pool or of...of kids at the pool or...

26 A: Correct  
27  
28

1 Q: ...Uh...Wild Island or whatever its called?

2 A: Right

3 Q: Nothing like that?

4 A: No

5 Q: Kids on trampolines?

6 A: Right

7 Q: Okay, so there's nothing we're gonna find that  
you...you took

8 A: Right

9 Q: That would be concerning to us?

10 A: Right

11 Q: Okay, you... you look like...

12 A: Photos...

13 Q: You know there may have been a...a time where I  
video...videotaping a.. a large area and if I uh...  
uh zoomed in on a kid. (Emphasis added)

14 Q: Okay

15 A: But that's it

16 Q: Like an inap...what would we say inappropriate?

17 A: I... I would suppose yes.

18 Q: Okay anything nu... anything with nudity?

19 A: No

20 Q: Okay

21 A: No, it would be in public.  
See Exhibit 3, PP. 24-25

22  
23 Juxtaposed with what the prosecutor told the  
24 Court during Court Proceedings and the real facts,  
25 this entire case was misrepresented an impermissible  
26 aggravators were used to elevate the charges to  
27 a Life Sentence. Further, it was the State that  
28 added the Promotion Charge, not Police.

1 Detective Carry never charged McCaffrey with the video and as of this moment  
2 no one has ever seen the video, except Mr. McCaffrey. The vague description of the  
3 contents of the video spawned its way somehow into "McCaffrey admitted filming  
4 children". That egregious allegation from the Prosecutor is totally without evidentiary  
5 support.  
6

7 Barker's statement paints a clear and convincing picture of impalpable and  
8 highly suspect evidence. The statement by Mr. McCaffrey that he "suppose(d) yes"  
9 simply meant because he had been arrested for having pictures of children on his  
10 computer. In hindsight taping any child may have been inappropriate given the  
11 present circumstances.  
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## CONCLUSION

Accordingly, the Petitioner respectfully requests that this Court:

1. Issue a Writ of Habeas Corpus to have the Petitioner brought before the Court so that he may be discharged from his Unconstitutional Confinement;

2. Conduct an evidentiary hearing at which Proof may be offered concerning the allegations in this Ground and any defenses that may be raised by the Respondents;

3. Appoint Post Conviction Counsel to represent the Petitioner and allow him to received the benefit of a Supplemental Petition to this one (see NRS 34.750) and;

4. Grant such other and further relief as, in the interests of justice, may be appropriate.



### GROUND 3

PETITIONER'S PLEA AND CONVICTION ARE INVALID AND IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION & ARTICLE 1 OF THE NEVADA STATE CONSTITUTION AS THE PLEA WAS INVOLUNTARILY AND UNKNOWNINGLY ENTERED AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL WHEN ENTERED; NRS 34.810

### Supporting FACTS

Even though the Petitioner signed a Guilty plea agreement in this case and pled guilty to Sexual Performance of a minor over 14, in violation of NRS 200.720 & NRS 200.750, the petitioner could not possibly be guilty of the offense. The guilty plea in this case is predicated upon ineffective assistance of Counsel, and in the instant case his attorney Sean Sullivan.

Of the relevant Arrest Reports and Probable Cause Declaration is the one filed in Justice Court by Retired Detective Dennis Carry, # 1453 of the Washoe County Sheriff's Office. See Appendix of Exhibits, Ex 2-4. McCaffrey now challenges this report and the Nexus of the charges of Promotion of a Sexual Performance of a minor over 14.

1 Right from the beginning of the report Detective  
2 Carry misleads the court by claiming Mr. McCaffrey  
3 had an extensive collection of child pornography, in  
4 fact most of the pornography on his computer was  
5 "legal adult pornography." Detective Carry also claimed:  
6 "McCaffrey was the focus of my investigation after  
7 I downloaded child pornography over the internet from  
8 his computer on 6.9.2009. McCaffrey was sharing  
9 the files over the internet." See Probable Cause Report,  
10 June 11, 2009, Case No. W209-3932. Exhibit 2, p2.

12 Detective Carry opined that "McCaffrey intentionally  
13 downloaded child pornography images and videos of children  
14 believed to be under 12 years of age, often transferring  
15 them to other forms of media on DVD, thumb drives, or  
16 printed copies." id p2. This is consistent with the charges  
17 of "Possession of Child Pornography" codified in NRS  
18 200.730. However, this charge was dismissed pursuant  
19 to the Plea agreement.

21 Instead, McCaffrey pled guilty to an unsupported  
22 charge of Promotion of a Sexual Performance of  
23 a minor over 14, one which carries a life  
24 sentence in violation of NRS 200.720. To  
25 support this charge Detective Carry made the  
26 following declaration in his report:  
27  
28

1 "McCaffrey denies knowingly sharing the files, but  
2 my ability to download files in addition to his knowledge  
3 of the 'settings on his computer and extensive  
4 collection revealed he did in fact likely know, but  
5 limited others access.... McCaffrey 'procured' this  
6 material, (emphasis added) transferred it to various  
7 folders and other media as described, and allowed  
8 for the distribution of this material." Id P 2

10 First, McCaffrey flatly denies sharing this material  
11 with anyone and Detective Carry asserted that Mr.  
12 McCaffrey "did in fact likely know, but limited others  
13 access" is proof that Det. Carry arbitrarily enforced  
14 the statute. Detective Carry's assertion that McCaffrey  
15 had "procured" this material is grossly misrepresented  
16 by the facts. In Criminal Law "Procure" is defined  
17 as: "Provide Prostitutes; to provide somebody for  
18 prostitution. No evidence supports this assertion.

20 Further, McCaffrey has obtained new evidence  
21 to call into question the integrity and his reliability  
22 as a Peace Officer. McCaffrey has discovered  
23 new evidence that Detective Dennis Carry is  
24 involved in a separate case of tampering with  
25 evidence in his own case involving his divorce.  
26 McCaffrey now reasserts Carry tampered with  
27 his evidence too.

1  
2 McCaffrey may impeach the credibility of the  
3 investigating Detective Dennis Carry and does so in  
4 this case. See NRS 50.075 which provides

5 "The credibility of a witness may be attacked  
6 by any party, including the party calling the witness"

7  
8 Additionally, McCaffrey has discovered "new evidence,  
9 or newly presented evidence which relates to this  
10 case" about Detective Dennis Carry's truthfulness  
11 and character. McCaffrey has learned that since his  
12 arrest Detective Carry has been accused of tampering  
13 with evidence in his own personal case which is  
14 presented in this case in EXHIBIT 24. (Please  
15 see the contents of the exhibit and note it is an  
16 ongoing case. The petitioner reserves the right to  
17 judicially notice additional evidence as it becomes  
18 known to him).

19  
20 Specifically, McCaffrey calls this court's attention  
21 to the charge of Promotion of a Sexual Performance  
22 of a Minor and what is required to sustain a  
23 conviction for NRS 200.720 and NRS 200.750. The  
24 charge calls for a performance first. The definition  
25 of "perform" is listed in the definitions for the  
26 crime in NRS 200.700.  
27  
28

1 Having established the Newly discovered evidence the  
2 Petitioner now turns to trial Counsel Sean Sullivan's  
3 assertions about the Statue in question. Only  
4 at Sentencing did Counsel Sullivan Opine on what  
5 "proof" was necessary for the Charge of Promotion  
6 of a Sexual performance of a Minor over 14. At  
7 the Petitioner's plea hearing little was said to  
8 support the factual basis of the Charges. (See  
9 Plea hearings, listed as arraignment.)  
10

11 Instead, trial Counsel Sullivan discussed the  
12 Plea of guilty at McLaffrey's Sentencing hearing.  
13 It appears the entire case hinged on one key  
14 Phrase that Sullivan and presumably the State  
15 also assert.  
16

17 "The element of "Promotion" is applicable  
18 when anyone either Shares this Type of  
19 information over the internet or it could have  
20 been Shared over the internet. Exhibit 14, P.4  
21 at 14-17.  
22

23 Mr. McLaffrey now Challenges this information  
24 provided by his counsel and requests Sue Sponte  
25 review of the two hearings in his case. First,  
26 a quick glance at the Sentencing hearing shows  
27 the defects in the State's theory of the case.  
28

1  
2  
3 A. THE SENTENCING HEARING

4 On October 7<sup>th</sup>, 2009, Sean Sullivan, McCaffrey's counsel made the following  
5 statement to the Court:

6 "Your Honor, the first issue I want to address with this  
7 Court is the Plea itself and the charge itself, Promotion  
8 of a Sexual Performance of a minor. Myself and Mr.  
9 Barker we entered into a Plea negotiation. This is what  
10 we would consider a legal fiction in light of the children's  
11 ages on some of the videos and/or photos."  
12 Exhibit 14 P.3 at 15-20

13 The Court's attention was focused on the 'age' of the children.

14 "In addition, Your Honor, the Promotion Charge is what I  
15 really want to key in on because when one hears "Promotion  
16 of a Sexual Performance", one thinks my client was actually  
17 engaged in filming or producing or just being involved with  
18 touching or filming live children." ID P. 3-4

19 "And I want to disabuse (sic rid) anyone of that notion. My  
20 client simply downloaded numerous videos and/or photos,  
21 child pornography from the internet; (see NRS 200.730) up  
22 to a million, according to Detective Dennis Cary's report  
23 was found on his computer. There was also some hard copy  
24 evidence found in my client's room." ID P.4 at 2-6

25 "But at no point in time did my client ever talk to any of these  
26 children or engage in making theses movies or making these  
27 photographs. This stuff (was) that he simply captured on the  
28 internet and downloaded to his computer."

"Now Your Honor may be asking yourself: Well why did he  
(MCCAFFREY) plead to Promotion of a Sexual Performance of a  
minor? What is the charge?" P.4 at 7-13

"The definition of "Promotion" pursuant to Statutes, NRS 200.720,  
and NRS 200.750, the "Promotion" element is applicable when  
anyone either shares this type of information over the internet

or it could have been shared over the internet."  
(Emphasis added) P.4 at 14-17

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ARGUMENT

The true definition of "Promotion" identified as promote is codified in NRS 200.700  
- (2) which provides that:

2. "Promote" means to produce, direct, procure, manufacture  
sell, give, lend, publish, distribute, exhibit, advertise or possess  
for the purpose of distribution.

The legal definition of "Promote" coupled with Mr. Sullivan's statement of the  
definition, that one who "shares this type of information...or ...could have been shared  
over the internet," is negated by NRS 200.700.

Having declared this information to the court Sullivan went on to say:

"And the way that my client captured these images from the  
internet, it was put into a file-sharing software program, un-  
knownst to my client. My client didn't realize he was using  
LimeWire. He didn't realize - had it categorized into four or  
five separate folders, but didn't realize that one of the folders  
could have shared with other persons on the internet. To my  
knowledge there is no evidence that my client actively engaged  
in sharing these photos or videos with anyone over the inter-  
net." (Emphasis added) ID P. 4-5

---

McClaffrey disputes that he shared anything  
with anyone. Further, the entire case hinges on  
Detective Dennis Carry's personal assertions that  
McClaffrey, with his settings, shared the videos  
and pictures over the internet. McClaffrey now  
asserts that Detective Carry made up this false  
information and claimed, without any proof, that  
the files were set up to share. Now it appears  
his word is not worth two cents.

---

1 The Petitioner was charged in an Information  
2 With one count of Promotion of sexual performance  
3 of a minor, NRS 200.720 reads:

4 **200.720. Promotion of sexual performance of minor unlawful.**

5 A person who knowingly promotes a performance of a minor:

6 1. Where the minor engages in or simulates, or assists others to engage in or simulate,  
7 sexual conduct; or

8 2. Where the minor is the subject of a sexual portrayal,

9 is guilty of a category A felony and shall be punished as provided in NRS 200.750.

10 **HISTORY:**

11 1983, p. 814; 1995, ch. 389, § 6, p. 951; 1995, ch. 443, §§ 76, 388, pp. 1196, 1337.

12 The definitions that apply to this statute are  
13 in NRS 200.700 which reads:

14  
15 **200.700. Definitions.**

16 As used in NRS 200.700 to 200.760, inclusive, unless the context otherwise requires:

17 1. "Performance" means any play, film, photograph, computer-generated image,  
18 electronic representation, dance or other visual presentation.

19 2. "Promote" means to produce, direct, procure, manufacture, sell, give, lend, publish,  
20 distribute, exhibit, advertise or possess for the purpose of distribution.

21 3. "Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio,  
22 cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the  
23 penetration of any part of a person's body or of any object manipulated or inserted by a person  
into the genital or anal opening of the body of another.

24 4. "Sexual portrayal" means the depiction of a person in a manner which appeals to the  
25 prurient interest in sex and which does not have serious literary, artistic, political or scientific  
value.

26 **HISTORY:**

27 1983, p. 814; 1995, ch. 389, § 4, p. 950; 2009, ch. 471, § 2, p. 2662.

28 Page Number

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The Penalties for the Statute are listed in  
NRS 200.750 which reads:

**200.750. Penalties.**

A person punishable pursuant to NRS 200.710 or 200.720 shall be punished for a category A felony by imprisonment in the state prison:

1. If the minor is 14 years of age or older, for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and shall be further punished by a fine of not more than \$100,000.

2. If the minor is less than 14 years of age, for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and shall be further punished by a fine of not more than \$100,000.

**HISTORY:**

1983, p. 815; 1995, ch. 443, § 78, p. 1196; 1997, ch. 455, § 3, p. 1721; 2005, ch. 507, § 30, p. 2876.

Notably in 2011 the Nevada Legislature added  
NRS 200.740 which reads:

**200.740. Determination by court or jury of whether person was minor.**

For the purposes of NRS 200.710 to 200.737, inclusive, to determine whether a person was a minor, the court or jury may:

1. Inspect the person in question;
2. View the performance;
3. Consider the opinion of a witness to the performance regarding the person's age;
4. Consider the opinion of a medical expert who viewed the performance; or
5. Use any other method authorized by the rules of evidence at common law.

**HISTORY:**

1983, p. 814; 1995, ch. 389, § 8, p. 951; 2011, ch. 245, § 2, p. 1062.

**Amendment Notes**

The 2011 amendment, effective July 1, 2011, substituted "200.737" for "200.735" in the introductory language.

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**Produce** - verb [prə dʊss] (past pro-duced, past participle pro-duced, present participle pro-duc-ing, 3rd person present singular pro-duc-es)

1.vti make something: to make or create something

2.vti manufacture something: to manufacture goods for sale

3.vt cause something: to cause something to happen or arise

4.vti yield something: to bring forth or bear something

5.vt offer something: to present or show something

6.vt ARTS organize the making of something: to organize and supervise the making of something

7.vt GEOMETRY extend something in space: to extend the length of a line, area of a plane figure, or volume of a solid

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**Direct** - di-rect [di rékt, dī rékt] verb (past di-rect-ed, past participle di-rect-ed, present participle di-rect-ing, 3rd person present singular di-rects)

1.vt supervise: to organize and control the work of an organization or group of people

2.vt instruct: to tell somebody to do something (formal)

3.vt focus attention on something: to focus attention or concentrate activities on something

4.vt aim: to aim, point, or send something or somebody in a particular direction

5.vt address letter: to write an address on something to be delivered

6.vt give directions: to tell somebody how to get to a place

7.vt address: to say something to somebody specifically  
(adjective)

1.not stopping or deviating: going straight from one place or point to another

2.immediate: lacking the influence of any other factors

3.personal: not having a person, action, or process intervene

4.straightforward: easy to understand or respond to

5.precise: having the characteristics of accuracy and precision

6.immediately related: connected by a straight and unbroken line of descent from parent to child

7.complete or exact: showing complete contradiction or opposition

8.POLITICS directly involving the electorate: involving participation in government from the electorate rather than electoral representatives

9. MATHEMATICS LOGIC working from premise to conclusion: working immediately from the premise to the conclusion in proving something

10.ASTRONOMY moving west to east: moving from west to east as observed from celestial north

(adverb)

1.straight without diversion: straight from one place or person to another, without a stop or diversion

2.directly: by an immediate connection, without somebody or something intervening

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It is not alleged that McLaffrey Produced or Directed anything related to the Charges. The Court Should Not Consider these definitions at all.

1 **Pro-cure** - [prō ky□r, prə ky□r]

2 (past pro-cured, past participle pro-cured, present participle pro-cur-ing, 3rd person present singular pro-cures)

3 (Verb)

4 1.vt acquire something: to obtain something, especially by effort

5 2.vti CRIMANAL LAW provide prostitutes: to provide somebody for prostitution

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7 **Man-u-fac-ture** - [mānnyə fākchər]

8 verb (past man-u-fac-tured, past participle man-u-fac-tured, present participle

9 man-u-fac-tur-ing, 3rd person present singular man-u-fac-tures)

10 1.vti INDUSTRY to produce something industrially: to make something into a finished product using raw materials, especially on a large industrial scale

11 2.vt BIOCHEMISTRY make body chemical: to produce a substance needed by the body

12 3.vt produce mechanically: to produce something in the manner of a machine, without creativity

13 4.vt invent: to invent or make something up

14 (noun - plural man-u-fac-tures)

15 1.Industry production of goods: the production of finished goods from raw materials, especially on a large industrial scale

16 2.COMMERCE product: something that has been produced from raw materials, especially on a large industrial scale

17 3.BIOCHEMISTRY making of body chemical: the production of substance needed by the body

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19 **Sell** - [sel] verb (past sold [söld], past participle sold, present participle sell-ing, 3rd person present singular sells)

20 1. vti exchange something for money: to exchange a product or service for money

21 2.vt offer something for sale: to offer a particular product or range of products for sale

22 3.vt be bought in quantity: to be bought in large numbers

23 4.vt make people want to buy something: to increase the sale of or the demand for a particular product

24 5.vt persuade somebody to accept something: to persuade somebody to accept an idea or proposal

25 6.vt give something up for money: to sacrifice an important personal quality in order to obtain wealth or success

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27 McAffrey did not Procure, that is to provide  
28 Someone for prostitution. He did not Produce any  
of the alleged Videos - nor is it even alleged. He  
did not Manufacture or Sell anything related  
to the charge, nor is it alleged.

**Give** - [giv] (*past* gave [gayv], *past participle* giv-en [givən], *present participle* giv-ing, *3rd person present singular* gives) **CORE-MEANING:** a verb used to indicate that somebody presents or delivers something that he or she owns to another person to keep or use it

1. *transitive verb* pass something to somebody: to place something that you are holding in the temporary possession of another person
2. *transitive verb* grant something to somebody: to allow somebody to have something such as power or right
3. *transitive verb* communicate something: to impact or convey something such as information, advice, or opinions
4. *transitive verb* convey something: to cause somebody to have an idea or impression
5. *transitive verb* impart something: to make somebody experience a particular physical or emotional feeling
6. *transitive verb* perform something: to carry out or perform something in public
7. *transitive verb* make or do something: used with nouns referring to physical actions to indicate that the action is being made or done
8. *transitive verb* provide service: to perform an action or service for somebody
9. *transitive verb* devote something: to devote something such as time or effort, or sacrifice something for somebody
10. *transitive verb* organize something: to spend time organizing a social event
11. *transitive verb* cause somebody to believe something: to lead somebody to have a particular understanding about something
12. *transitive verb* value something: to estimate something at a particular amount or value
13. *intransitive verb* yield: to collapse or break under pressure
14. *transitive verb* concede something: to yield to somebody, or admit that somebody has an advantage or a particular characteristic or ability
15. *transitive verb* toast somebody: to propose a toast to somebody
16. *noun* resilience: the ability or tendency to yield under pressure

Microsoft® Encarta® Reference Library 2005. © 1993-2004 Microsoft Corporation. All rights reserved. *McLaffrey did not give something to anyone.*

**Lend** - [lend] (*past* lent [lent], *past participle* lent, *present participle* lend-ing, *3rd person present singular* lends) *verb*

1. *vt* let somebody borrow something: to allow somebody to take or use something on the understanding that it will be returned later
2. *vt* give somebody money for limited time: to allow a person or business to use a sum of money for a particular period of time, usually on the condition that a charge (interest) is paid in return
3. *vt* add something: to give a certain quality or character to something

Microsoft® Encarta® Reference Library 2005. © 1993-2004 Microsoft Corporation. All rights reserved. *Further, he did not lend somebody anything either.*

**Pub-lish** - [publɪʃ] (*past* pub-lished, *past participle* pub-lished, *present participle* pub-lish-ing, *3rd person present singular* pub-lish-es) *verb*

1. *vt* prepare and produce text or software: to prepare and produce material in printed or electronic form for distribution and, usually, sale
2. *vt* publish the work of an author: to publish the work of a particular author
3. *vt* make something public knowledge: to announce something publicly

Microsoft® Encarta® Reference Library 2005. © 1993-2004 Microsoft Corporation. All rights reserved. *Again, he did not publish the material*

**Dis-trib-ute** - [di stri byut] (past dis-trib-ut-ed, past participle dis-trib-ut-ed, present participle dis-trib-ut-ing, 3rd person present singular dis-trib-utes) verb

1. vt give something out: to deliver or share things out to people

2. vt divide and share something: to divide something into shares and give the shares to a number of people

3. vt spread something: to scatter something or spread it throughout a particular area or place

4. vt divide into classes: to divide something up into different classes or categories

5. vt COMMERCE sell and dispatch goods: to sell and deliver merchandise, especially wholesale goods to a retailer

6. vt LOGIC make term apply to all: to apply a term to all the members of the class it designates

7. vti MATHEMATICS make operation apply throughout: to apply or make an operation, for example, multiplication or division, apply to each part of a mathematical expression

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*McLaffrey disputes that he distributed anything  
Contrary to Detective Carry's assertions.*

**Ex-hib-it** - [ig zibbit]

verb (past ex-hib-it-ed, past participle ex-hib-it-ed, present participle ex-hib-it-ing, 3rd person present singular ex-hib-its)

1. vti display art: to display something, especially a work of art, in a public place such as a museum or gallery

2. vt show something to others: to show something off for others to look at or admire

3. vt reveal a quality: to show the outward signs of something, especially an emotion or a physical or mental condition

4. vt LAW give something as evidence: to present something to be used as evidence in a court of law

(noun plural ex-hib-its)

1. object on display: an object displayed in public, especially in a gallery or museum or for a show or competition

2. act of exhibiting: the act of displaying something

3. LAW piece of evidence: an object or document presented or identified as evidence in a court of law

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*McLaffrey did not exhibit anything - nor is that proven with clear evidence.*

**Ad-ver-tise** [ádver tiz] (past ad-ver-tised, past participle ad-ver-tised, present participle

ad-ver-tis-ing, 3rd person present singular ad-ver-tis-es) verb

1. vti praise commercial product: to publicize the qualities of a product, service, business, or event in order to encourage people to buy or use it

2. vti publicly announce availability or need: to publicize something such as a job opening or item for sale in a newspaper or on the radio, television, or Internet

3. vt tell others about: to make something known to others

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*Finally McLaffrey did not advertise any of the pictures or videos. The entire case rests on the assertions of a now discredited detective who has been accused of breaking into a Court computer to change evidence or alter it.*

## CONCLUSION

Mr. McLaffrey has pled guilty to a crime that he did not commit. No evidence was ever submitted to the court as a factual basis of the charge. Instead, the court was left with the word of a Police Detective and his personal assurances that Mr. McLaffrey had shared the files he had - with him. But not really. The files were "set up to share" according to the detective. No evidence was even hinted at that other individuals had viewed Mr. McLaffrey's files.

With new evidence McLaffrey returns to this court that the Detective lied in his case. Further, that he did not share the files - as he claimed all along. Mr. McLaffrey asserts his counsel had over stated the law and relied on a Police Detective's word that we now know is "less than credible." Pursuant to NRS 50.075, McLaffrey moves to impeach the Probable cause reports in this case by Detective Dennis Carry as incredible. Further, he moves to dismiss the Unproven charge of Promotion of a Sexual Performance of a minor over 14.

GROUND 4

PETITIONER'S PLEA, CONVICTION, AND SENTENCE  
ARE ILLEGAL AND IN VIOLATION OF ARTICLE 1  
OF THE NEVADA CONSTITUTION, AND THE 6TH  
AND 14TH AMENDMENTS OF THE US CONSTITUTION  
BECAUSE OF CUMULATIVE ERROR

All of the Grounds, together with facts and the pleadings in this Motion, Mr.  
McCaffrey final claim is Cumulative Constitutional Error. McCaffrey's rights of Due  
Process under the Nevada State and Federal Constitutions were violated.

1  
2 Due Process has never been, and Perhaps never  
3 can be precisely defined. Accordingly, exactly what  
4 Procedure is required in any given case depends upon  
5 the Circumstances. Due process is not a technical  
6 conception with a fixed content unrelated to time,  
7 place and Circumstances. Rather, it is flexible and  
8 calls for such Procedural Protections as the Particular  
9 Situation demands.  
10

11 The most basic requirements of due process,  
12 however, is the opportunity to be heard "at a  
13 meaningful time and in a meaningful manner." See  
14 *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *Lassiter v.*  
15 *Department of Social Services*, 452 U.S. 18, 24 (1981);  
16 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting  
17 *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).  
18

19 Due Process must grow with Society and each case  
20 before the court. In cases like this one with complex  
21 laws that require people trained in law to interpret  
22 which did not happen well in this case when you  
23 juxtapose the facts and the charge. In the instant  
24 case the petitioner pled guilty to a case and charge  
25 that he could not have committed. This case warrants  
26 a hearing to allow the evidence to come out.  
27  
28



## RIGHT TO AN EVIDENTIARY HEARING ON CLAIMS

The Petitioner requests that a hearing be set in this matter to consider these allegations in this Petition. In *Mann v. State*, 118 Nev. 351, 46 P.3d 1228 (2002), the Nevada Supreme Court held that has a right to a Post-Conviction evidentiary hearing when he asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief. *Mann v. State*, 118 Nev. at 354.

The specific grounds for relief enumerated in this Petition are not belied by the record, rather, they are supported by the record. Furthermore, if found true by this court, would entitle him to relief and reversal of his Charges.

## CONCLUSION

Therefore, after reviewing these claims this Court should find the Petitioner is entitled to an evidentiary hearing on the claims he raises. See N.R.S. 34.770

PRAYER FOR RELIEF

1 William J. McCaffrey respectfully requests that this Court:

2 1. Issue a writ of habeas corpus to have Petitioner brought before the  
3 Court so that he may be discharged from his unconstitutional confinement;

4 2. Conduct an evidentiary hearing at which proof may be offered  
5 concerning the allegations in this amended petition and any defenses that may be  
6 raised by respondents; and

7 3. Grant such other and further relief as, in the interests of justice, may  
8 be appropriate.

9 4. Appoint Counsel to the petitioner pursuant to  
10 NRS 34.750 so that Counsel may Supplement this  
11 Petition.

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20  
21 WHEREFORE, petitioner prays that the court grant petitioner  
relief to which he may be entitled in this proceeding.

22 EXECUTED at <sup>city</sup> 735 S. CENTER ST. <sup>VERMONT, NY 89977</sup> on the 19 day of  
23 the month of October of the year 2020.

24 William J. McCaffrey  
25 #  
26

27 Petitioner In Pro Se

**CERTIFICATE OF SERVICE BY MAIL**

I do certify that I mailed a true and correct copy of the foregoing Writ of Habeas Corpus to the below address(es) on this 19 day of October, 2020, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Christopher J. Hicks, Esq  
Washoe County District Attorney  
1 S. Sierra Street  
Reno, NV 89501

(Electronic Service Provided)

William J. McCaffrey

Petitioner In Pro Se

**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding Writ of Habeas Corpus filed in District Court Case No. CR09-1325 does not contain the social security number of any person.

Dated this 19 day of October, 2020.

William J. McCaffrey

Petitioner, In Pro Se

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VERIFICATION

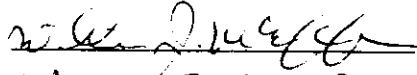
STATE OF NEVADA )  
COUNTY OF LYON )

I, William J. McCaffrey, bring first duly sworn, under penalties of perjury, deposes and says:

I am the Plaintiff / Petitioner in the above-entitled action, that I have read the foregoing document and am competent to testify as to the contents of my own knowledge and the contents are true of my own knowledge, except for those matters stated therein on information and belief, and, as to those matters, I believe them to be true.

This document does not contain the Social Security Number of any person.

I declare under penalty of perjury, under the law of the State of Nevada, that the foregoing statements are true and correct.

Signature: 

Date: 10-19-2020

Print Your Name: William J. McCaffrey

1 CODE: \_\_\_\_\_

2  
3  
4 PETITIONER In Pro Se

5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \* \* \*

9 WILLIAM J. McCAFFREY, )

Case No. CR09-1325

10 PETITIONER , )

Dept. No. 8

11 -VS-

12 THE STATE OF NEVADA, )

13 Respondents. )

14 APPENDIX OF EXHIBITS

15 IN SUPPORT OF

16 PETITION FOR WRIT OF HABEAS CORPUS

(Post-Conviction Relief - NRS 34.735 Petition: Form)

17  
18 COMES NOW, the Petitioner, William J. McCaffrey,  
19 In Pro Se, and hereby files this Appendix of Exhibits  
20 Volume 1 in support of Petition For Writ of Habeas  
21 Corpus (Post-Conviction)  
22  
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Exhibit Description Arrest Report and Declaration of Probable Cause

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Exhibit Description News Report of Criminal Investigation of Reno  
Police Detective Dennis Carry

Exhibit Number 25 Number of Pages 1

Exhibit Description Official Response from Attorney Wilson stating she had  
Lost my complete file.

Exhibit Number \_\_\_\_\_ Number of Pages \_\_\_\_\_

Exhibit Description \_\_\_\_\_

Exhibit Number \_\_\_\_\_ Number of Pages \_\_\_\_\_

Exhibit Description \_\_\_\_\_



1 CODE No. 2300  
CHRISTOPHER J. HICKS  
2 #7747  
One South Sierra Street  
3 Reno, Nevada 89501  
(775) 328-3200  
4 districtattorney@da.washoecounty.us  
Attorney for Respondent

5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
7  
8 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 WILLIAM J. MCCAFFREY,

10 Petitioner,

Case No. CR09-1325

11 v.

Dept. No. 8

12 THE STATE OF NEVADA,

13 Respondent.  
14 \_\_\_\_\_/

15 **MOTION TO DISMISS POST-CONVICTION PETITION**

16 COMES NOW, the State of Nevada, by and through Marilee Cate, Appellate  
17 Deputy, and hereby files its Motion to Dismiss Post-Conviction Petition, filed by  
18 Petitioner William Joseph McCaffrey ("Petitioner") on October 20, 2020. This Motion  
19 is based on the pleadings and papers on file with this Court, and the following points  
20 and authorities.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 Petitioner pleaded guilty to promotion of sexual performance of a minor and was  
23 sentenced to a minimum of five years in prison and lifetime supervision thereafter. See  
24 Judgment of Conviction, filed herein October 9, 2009. Petitioner unsuccessfully

1 appealed his sentence. *See* Order of Affirmance, filed herein August 9, 2010. Remittitur  
2 was issued on August 10, 2010.

3 On June 10, 2014, Petitioner filed a Motion to Modify Sentence, as well as a  
4 Motion for Appointment of Counsel and related documents. The State opposed  
5 Petitioner's Motion to Modify Sentence. On July 16, 2014, the Court ordered that  
6 Petitioner be appointed counsel. The Court treated Petitioner's motion as a post-  
7 conviction petition, appointed counsel, and permitted counsel to supplement the  
8 petition if it determined such a supplement was necessary. On December 10, 2014,  
9 Petitioner's appointed counsel notified the Court that no supplement would be filed. On  
10 January 21, 2015, the Court denied Petitioner's Motion to Modify Sentence. Petitioner  
11 filed the Post-Conviction Petition at issue here, as well as a motion for appointment of  
12 counsel,<sup>1</sup> on October 20, 2020.

13 Petitioner acknowledges that he delayed filing his Petition and attempts to  
14 explain his delay. Petitioner appears to assume the State would argue his Petition was  
15 successive and abusive under NRS 34.810(2)-(3). While the Court allowed counsel to be  
16 appointed and provided the opportunity to supplement, as if his previous motion for  
17 modification was a habeas petition, the Court did not ultimately decide or analyze the  
18 motion as a post-conviction petition. *See* Order Denying Motion, filed herein January  
19 21, 2015. Petitioner raises many of the same arguments from his Motion to Modify  
20 Sentence again in his current petition, but the State submits that there are more  
21 applicable procedural bars.

22 NRS 34.726(1) requires a post-conviction petition to be filed within 1 year of  
23

24 <sup>1</sup> The State is separately filing an Opposition to the Motion for Appointment of Counsel.

1 remittitur, absent a showing that the delay was not the fault of the petitioner and that  
2 dismissal of the petition as untimely will unduly prejudice the petitioner. The Petition  
3 at issue here was filed over ten (10) years after remittitur. As such, the Petition must be  
4 dismissed unless Petitioner has been able to show that the delay was not his fault *and*  
5 dismissal will unduly prejudice Petitioner. NRS 34.726(1). Petitioner has not met his  
6 burden here.

7       Petitioner attempts to explain his delayed filing by pointing to alleged  
8 deficiencies or failures of prior post-conviction counsel, Mary Lou Wilson, and to the  
9 fact that he is unlearned and untrained in the law. These explanations are insufficient to  
10 overcome the time bar. Petitioner's grounds for relief stem from his plea counsel's  
11 negotiations and performance at sentencing. Petitioner fails to explain how those  
12 claims were unknown to him at the time remittitur was issued. *See Hathaway v. State*,  
13 119 Nev. 248, 253-254 (2003) (holding that all claims reasonably available must be  
14 made within the one-year period). The fact that Petitioner is not trained in the law is  
15 not an excuse to overcome the procedural bar. *See Phelps v. Director of Prisons*, 104  
16 Nev. 656, 660 (1988) (*overruled on other grounds as recognized in Gallimort v. State*,  
17 476 P.3d 435 (2020)). Further, the fact that Petitioner may not have all of his files or did  
18 not at the time his Petition was due also does not overcome the procedural bar. *See*  
19 *Hood v. State*, 111 Nev. 335, 338 (1995). Petitioner's explanations for his delayed filing  
20 are attributable to him or his agents. As such, Petitioner has failed to show that the  
21 delayed filing was not his fault. NRS 34.726(1)(a). The Petition must be dismissed  
22 because it is untimely, and Petitioner has not met his burden to show that he meets the  
23  
24

1 statutorily provided exception to the time bar. *See State v. Dist. Ct. (Riker)*, 121 Nev.  
2 225, 231 (2005) (procedural bars are mandatory).<sup>2</sup> Petitioner's sentencing related  
3 claims are also barred by the plain language of NRS 34.810(1)(a), which limits post-  
4 conviction claims after a plea to those claiming that counsel was ineffective at the plea  
5 stage or that the plea was entered involuntarily and unknowingly.

6 Finally, the Petition in this case should also be barred due to the doctrine of  
7 laches. *See* NRS 34.800. More than five years has elapsed since the judgment of  
8 conviction was filed and there is a rebuttable presumption of prejudice to the State in  
9 having to respond to the petition and/or conduct a trial if the plea is unwound. This  
10 Court should dismiss the Petition on the basis of laches as well.

11 AFFIRMATION PURSUANT TO NRS 239B.030

12 The undersigned does hereby affirm that the preceding document does not  
13 contain the social security number of any person.

14 DATED: February 4, 2021.

15 CHRISTOPHER J. HICKS  
District Attorney

16 By /s/ MARILEE CATE  
17 MARILEE CATE  
Appellate Deputy

18 <sup>2</sup> Petitioner places blame on Mary Lou Wilson for his failure to file his Petition. Initially,  
19 he did not seek appointment of counsel or file his prior Motion to Modify within one year  
20 of remittitur, so it would have been difficult for her to overcome the time bar even if his  
21 prior Motion were treated as a post-conviction petition. *See* NRS 34.726(1). In addition,  
22 this is not a capital case; therefore, any deficient performance by Ms. Wilson does not  
23 constitute good cause to excuse Petitioner's procedural default. *See Brown v. McDaniel*,  
24 130 Nev. 565, 569 (2014) ("We have consistently held that the ineffective assistance of  
post-conviction counsel in a noncapital case may not constitute 'good cause' to excuse  
procedural defaults."). Even assuming some blame for the delay could be placed upon  
Ms. Wilson, Petitioner still waited over five years after his Motion to Modify was denied  
to assert his current claims. *See also Pellegrini v. State*, 117 Nev. 860, 874-878 (2001)  
(once a claim becomes available a one-year deadline applies). As a result, the Petition is  
untimely in all respects and must be dismissed.

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**William J. McCaffrey**  
735 S. Center St. Unit 4  
Yerington, Nevada 89447

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1 William J. McCaffrey  
2 735 S. Center St. Unit 4  
3 Yerington, Nevada 89447

4 Telephone Number: 775-379-6388  
5 Email: Zgate102@Live.com  
6 Appearing in Proper Person

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE

9 WILLIAM JOSEPH MCCAFFREY,  
10  
11 Petitioner,

Case No. CR09-1325

Dept. No. 8

12 vs.

13 THE STATE OF NEVADA,

14 Respondent.  
15  
16

17 EX PARTE EMERGENCY MOTION

18 COMES NOW, the above-named Defendant,  
19 William Joseph McCaffrey, Appearing in Proper Person,  
20 and with NOTICE to all Parties hereby files this  
21 EX PARTE EMERGENCY MOTION and this NOTICE  
22 OF ERRATUM and other omnibus requests.

23 This Motion is predicated on the Writ of  
24 Habeas Corpus (Post-conviction) now sub judice,  
25 the docket in the instant matter, and the Pleadings  
26 and Papers on file and the Attached Points and  
27 Authorities herein.

28 A Hearing on this matter has been scheduled  
on 5-18-2021 by a zoom conference.

1 Dated this 3rd day of May, 2021

2  
3  
4 ~~William J. McCaffrey~~  
5 William G. McCaffrey  
6 735 S. Center Street, #4  
7 Yerington, NV 89447  
8 Petitioner, Proper Person  
9  
10  
11

12 Prepared by:

13 Richard A. Brawner, C.P.

14 Paralegal  
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## I. FACTS AND PROCEDURAL HISTORY

The Petitioner filed a Petition For Writ of Habeas Corpus (Post-Conviction) pursuant to NRS 34.724- through NRS. 34.990 (inclusive). Along with the Petition he filed an Application To Proceed Informa Pauperis and a Motion For Appointment of Counsel. See Docket at Oct. 20th, 2020.

On November 23rd, 2020 this Court Set a hearing on the Application To Proceed Informa Pauperis Via Zoom and the Petitioner along with the State were directed to appear at the hearing. The hearing was scheduled on or about ~~the~~ January 05, 2021.

On Jan 05, 2021 this Court held a hearing via Zoom with the Petitioner and opposing State Counsel. The Court granted the Application to Proceed Informa Pauperis and directed State Counsel to file a response to the Petition. The Court held the Motion For Appointment of Counsel until the reply was filed.

On February 4th, 2021 the State filed a Motion To Dismiss the Habeas Petition and an Opposition To the Motion For Counsel.

Next the Petitioner did file an Opposition To The Motion To Dismiss along with a Request For Submission. Both the Opposition to the Motion To Dismiss Petition and Request for Submission were filed on 2.4.2021. However, the two documents appear to be "Entangled" and were filed as "one document." ~~FN1~~ (emphasis)

FN-1 Both the "Opposition to the State's Motion to Dismiss" and the "Request For Submission" were timely submitted and filed on 2-19-2021. See Docket sheet and Exhibit # 1 contained here-in.



1 On 2-19-2021 the Petitioner filed a Reply  
2 in Support of his Motion For Appointment of  
3 Counsel. That same day the Petitioner filed  
4 a 2nd Request For Submission for the Habeas  
5 Petition. Docket at 2-19-2021.

6 On 3-31-2021 McLaffrey (the Petitioner)  
7 filed a Request For Judicial Action on Petition  
8 and a Copy of the Opposition To Motion to  
9 Dismiss (filed 2-9-2021) and attached it as  
10 Exhibit 1. See Docket at 3-31-2021. ALSO  
11 On 4-2-2021 McLaffrey Submitted the Motion  
12 For Judicial Action on Petition. (The Clerk noted  
13 there was no Order provided with the Request  
14 For Judicial Action, however no order was  
15 Proposed or needed to be attached).

16 On April 5th, 2021 this Court issued an  
17 Omnibus Order on all matters. First, the  
18 Court appointed counsel. Second, the Court noted  
19 it could not find the "Opposition To Motion to  
20 Dismiss" filed by the Petitioner McLaffrey  
21 anywhere on record. Further, this Court ordered  
22 the "Request For Submission" "Stricken" from  
23 record. This would include the Opposition  
24 To Motion To Dismiss which was again  
25 "attached" to this. The Court has now nothing  
26 in response from the Petitioner on the Motion  
27 To Dismiss filed by the State. Additionally, it  
28 is noted that the State was mailed a copy  
of this Opposition To Motion to Dismiss by the

1 Petitioner himself.

2 As if the Problem could not get any worse  
3 Counsel Scott W. Edwards appeared on behalf  
4 of the Petitioner. Further, he has made contact  
5 with Mr. McLaffrey the Petitioner through  
6 his brother Kevin McLaffrey. Mr. Edwards  
7 indicated that he wanted McLaffrey to respond to  
8 the State's Motion To Dismiss in that he wanted his  
9 "position in writing." <sup>FN 2</sup> As previously indicated Mr.  
10 McLaffrey already sent his position to the State  
11 and filed the Opposition with the Court. In light  
12 of that McLaffrey sought to meet with Mr. Edwards  
13 in person but he has not yet set up a face to  
14 face.

15 Another Problem is Mr. Edwards is located  
16 in Reno and this is quite a drive from rural  
17 Yerington, NV. In light of all of this Mr.  
18 McLaffrey presents this Emergency EX PARTE  
19 MOTION and NOTICE OF ERRATUM to this Court.  
20 This Motion follows:

21  
22 FN-2 On 4-21-21, Mr. Edwards contacted  
23 Petitioner by E-mail (see Exhibit #2) and wanted Petitioner  
24 to write by E-mail his response to the State's motion to  
25 Dismiss. In-fact the Petitioner's position/response has  
26 already been submitted to the Court (see Exhibit #1)  
27  
28

1 II. THE OPPOSITION TO MOTION TO DISMISS WAS  
2 FILED ON 2.4.2021 IS ENTAGLED WITH THE  
3 REQUEST FOR SUBMISSION AND IS ERRATUM

4  
5 The Petitioner's Opposition To Motion To Dismiss  
6 is attached to the "REQUEST FOR SUBMISSION" and  
7 should not be Stricken. The Opposition To Motion  
8 To Dismiss was filed timely and in good faith  
9 and should be a part of the record. Striking  
10 the document is Erratum / Errata.

11  
12 III. COUNSEL OF RECORD AND STATE COUNSEL  
13 SHOULD TAKE NOTICE OF THE OPPOSITION  
14 TO MOTION TO DISMISS

15  
16 Both Mrs Cate and Mr. Edwards are asked  
17 to take judicial notice of the said motion and  
18 take steps to correct the record.

19  
20 IV. SUBSTITUTION OF COUNSEL

21  
22 The Petitioner lives in Yerington, NV and is  
23 requesting to meet with his present Counsel  
24 Scott W. Edwards and discuss a potential  
25 Supplement Petition to his own. Further,  
26 based on Mr. Edwards location in Reno  
27 perhaps a Substitution of Counsel is in order  
28 due to McCaffrey's location.

1 Mr. McCaffrey is aware of several Counsel  
2 involved in ADKT 411 (Post Conviction) and who  
3 are located in nearby Carson City.

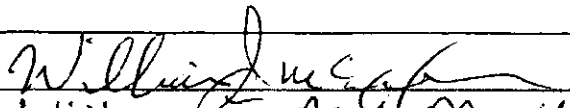
4  
5 Kay Ellen Armstrong  
6 Carson City, NV

7  
8 and

9  
10 Tracie K. Lindeman  
11 Carson City, NV.

12  
13 Perhaps the court could appoint someone  
14 closer in the event Mr. Edwards can't meet with  
15 him. Further, the petitioner is aware that  
16 Mr. Edwards is an experienced trial lawyer  
17 and former deputy Nevada Attorney General.  
18 There is no question he could handle this  
19 case, the Counsel substitution is based  
20 only on his location.

21  
22  
23 Respectfully Submitted,

24  
25   
26 William J. McCaffrey,  
27 Petitioner  
28

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

William J. McCaffrey  
William J. McCaffrey

Petitioner In Pro Se

PROOF OF SERVICE

I served a true and correct copy of Motion "Ex Parte Emergency Motion"  
(Name of document(s) served)  
upon the following people:

1. Name: Clerk of the Court Date: 3 May 2021

By: ☐ Service by eFlex

☐ Personal Service

☐ Certified mail, return receipt attached

☐ U.S. Mail, postage prepaid

☒ Other: Walk-in

Address where service occurred, if applicable: \_\_\_\_\_

If more room is needed, attach additional sheets.

A copy of this Proof of Service has been electronically served, mailed, or personally delivered to all parties or their lawyer.

This document does not contain the personal information of any person as defined by NRS 603A.040.

Date: 3 May 2021

Your Signature: William J. McCaffrey

Print Your Name: William J. McCaffrey

**INDEX OF EXHIBITS**

**Exhibit Number** 1      **Number of Pages** 35

**Exhibit Description** Opposition to the State's Motion to Dismiss

**Exhibit Number** 2      **Number of Pages** 1

**Exhibit Description** Emails between Scott Edwards Esq and  
Petitioners.

**Exhibit Number** \_\_\_\_\_ **Number of Pages** \_\_\_\_\_

**Exhibit Description** \_\_\_\_\_

**Exhibit Number** \_\_\_\_\_ **Number of Pages** \_\_\_\_\_

**Exhibit Description** \_\_\_\_\_

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**Exhibit Description** \_\_\_\_\_

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CR09-1325  
2021-05-03 04:02:24 PM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 8425028 : bblough

# Exhibit Cover Page

EXHIBIT NUMBER 1

1 Code: 2645  
2 Name: William J. McCaffrey  
3 Address: 735 S. Center St. #4  
Yerington, NV 89447  
4 Telephone: 775-374-6362  
Email: zgate123@live.com  
Self-Represented Litigant

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7  
8 IN AND FOR THE COUNTY OF WASHOE

9 WILLIAM J. MCCAFFREY,

10 Plaintiff / Petitioner / Joint Petitioner,

Case No. CR09-1325

11 vs.

Dept. No. 8

12 THE STATE OF NEVADA,

13 Defendant / Respondent / Joint Petitioner.

OPPOSITION TO STATE'S  
MOTION TO DISMISS

16 COMES NOW, the Petitioner, William Joseph  
17 McCaffrey, in Proper Person, and hereby files this  
18 OPPOSITION TO STATE'S MOTION TO DISMISS his Petition  
19 For Writ of Habeas Corpus (Post-Conviction) pursuant  
20 to NRS 34.724 - through NRS 34.990.

21 This Opposition is made and based upon the  
22 Pleadings and Papers on file in the instant case,  
23 the instant Petition and accompanying exhibits, the  
24 Attached Points and Authorities herein, and any  
25 Oral arguments at a hearing on this matter  
26 if this Court deems appropriate.

27 NOTICE IS HEREBY GIVEN that a hearing is  
28

Page number 1



1 requested on this matter, by what ever means  
2 this Court deems suitable, prior to the disposition  
3 of the State's Motion To Dismiss. (1)

4  
5 DATED this 12<sup>th</sup> day of Feb. , 2021

6  
7 William J. McCaffrey  
8 by: William J. McCaffrey  
9 Petitioner, Proper Person  
10 735 S. Center St. #4  
11 Yerington, NV 89447

12  
13 Richard A. Brawner

14 Prepared by:

15 Richard A. Brawner

16 Legal Assistant / Paralegal

17 In Pro Bono

18  
19  
20  
21  
22  
23  
24  
25  
26 FN1) The Previous hearing was held via Zoom

NRS 34.810(1)(a)

GONZALES, vs. THE STATE OF NEVADA, 136 Nev., Advance Opinion 60

Beginning in 1967, offenders could collaterally challenge their convictions through either the postconviction relief provisions of NRS Chapter 177 or the habeas corpus provisions of NRS Chapter 34. See *Pellegrini*, 117 Nev. at 870-73, 34 P.3d at 526-28 (setting forth an in-depth history of the evolution of Nevada's postconviction remedies). Although this dual-remedy system lasted for more than 20 years, "the Legislature incrementally amended Chapters 34 and 177 to curtail the ability to alternatively use the two remedies and to limit the filing of successive or delayed applications for post-conviction or habeas relief." *Id.* at 871, 34 P.3d at 527.

Initially, neither Chapter 34 nor Chapter 177 contained any specific limitation regarding the claims that could be raised when the petitioner's conviction was the result of a guilty plea. This changed in 1973 when Chapter 177 was amended in an effort to limit the relief available in all postconviction petitions to those instances where "*the court finds that there has been a specific denial of the petitioner's constitutional rights with respect to his conviction or sentence.*" 1973 Nev. Stat., ch. 349, § 8, at 439. For petitioners convicted pursuant to a guilty plea, NRS 177.375(1) limited the available claims even further: "*If the petitioner's conviction was upon a plea of guilty, all claims for post-conviction relief are waived except the claim that the plea was involuntarily entered.*" 1973 Nev. Stat., ch. 349, § 7(1), at 438. With this amendment, it is clear that the Legislature intended to limit the scope of cognizable claims to those that challenged the validity of a guilty plea.

It was not until 1985 that Chapter 34 was also amended to include a similar limitation on the scope of claims that could be raised when the petitioner's conviction was the result of a guilty plea. See 1985 Nev. Stat., ch. 435, § 10(1), at 1232. This amendment was codified as NRS 34.810(1)(a). As enacted, NRS 34.810(1) stated the following:

1 The court shall dismiss a petition if the court  
2 determines that:

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

8 NRS 34.810(1)(a) has been in substantially the same form since its  
9 enactment.

10 The legislative history for the 1985 amendments to Chapter 34  
11 is silent as to why the language in the newly enacted NRS 34.810(1)(a) was  
12 different than the language used in NRS 177.375(1). We do know, however,  
13 that the 1985 amendments to Chapter 34 were intended to consolidate  
14 procedures between the habeas corpus provisions in Chapter 34 and the  
15 postconviction relief provisions in Chapter 177. See Hearing on A.B. 517  
16 Before the Assembly Judiciary Comm., 63d Leg. (Nev., May 7, 1985).  
17 Decisions of the United States and Nevada Supreme Courts leading up to  
18 the amendment offers further insight into understanding the change in  
19 language.

20 Prior to the amendment of NRS 177.375(1), "it was the law [in  
21 Nevada] that when a guilty plea is not coerced, and the defendant was  
22 represented by competent counsel, at the time it was entered, the  
23 subsequent conviction is not open to collateral attack and any errors are  
24 superseded by the plea of guilty." *Mathis v. Warden*, 86 Nev. 439, 441, 471  
25 P.2d 233, 235 (1970). In 1970, the United States Supreme Court issued a  
26 series of cases (the *Brady* trilogy) in which the Court set forth the general  
27 rule governing federal collateral attacks on convictions based on a guilty  
28 plea. See *Parker v. North Carolina*, 397 U.S. 790 (1970); *McMann v.*  
*Richardson*, 397 U.S. 759 (1970); *Brady v. United States*, 397 U.S. 742  
(1970). In the *Brady* trilogy cases, each defendant "alleged some  
deprivation of constitutional rights that preceded his decision to plead  
guilty." *Tollett v. Henderson*, 411 U.S. 258, 265 (1973). The Court held that

1 the entry of a guilty plea foreclosed direct inquiry into the merits of  
2 constitutional violations that occurred prior to entry of the plea and  
3 "concluded in each case that the issue was not the merits of [the]  
4 constitutional claims as such, but rather whether the guilty plea had been  
5 made intelligently and voluntarily with the advice of competent counsel."  
6 *Id.* Thus, inquiry into constitutional violations that preceded entry of the  
7 plea was relevant, but only to the extent it implicated the voluntary and  
8 intelligent nature of the guilty plea. The 1973 amendment to NRS  
9 177.375(1) reflected both the law in Nevada and the general rule established  
10 in the *Brady* trilogy because it limited the scope of cognizable claims to  
11 those challenging the voluntariness of the plea.

12 Days after the amendment of NRS 177.375(1), the United  
13 States Supreme Court issued the opinion in *Tollett*. In *Tollett*, the Court

14 reaffirm[ed] the principle recognized in the *Brady*  
15 trilogy: a guilty plea represents a break in the chain  
16 of events which has preceded it in the criminal  
17 process. When a criminal defendant has solemnly  
18 admitted in open court that he is in fact guilty of  
19 the offense with which he is charged, he may not  
20 thereafter raise independent claims relating to the  
21 deprivation of constitutional rights that occurred  
22 prior to the entry of the guilty plea. He may only  
23 attack the voluntary and intelligent character of  
24 the guilty plea by showing that the advice he  
25 received from counsel was not within the [range of  
26 competence demanded of attorneys in criminal  
27 cases].

28 *Id.* at 267. The *Tollett* Court made it clear that an ineffective-assistance  
claim that challenges the voluntary and intelligent nature of a guilty plea  
is a constitutional claim that is an exception to the general rule that a  
criminal defendant who pleads guilty "may not thereafter raise independent  
claims relating to the deprivation of constitutional rights that occurred  
prior to the entry of the guilty plea." *Id.* In the years between the  
amendment of NRS 177.375(1) and the enactment of NRS 34.810(1)(a), the

1 Nevada Supreme Court applied the general rule and the ineffective-  
2 assistance exception as set forth in *Tollett* in several cases. See *Bounds v.*  
3 *Warden*, 91 Nev. 428, 429-30, 537 P.2d 475, 476 (1975); *Bacon v. State*, 90  
4 Nev. 368, 370, 527 P.2d 118, 119 (1974); *Cline v. State*, 90 Nev. 17, 18-19,  
5 518 P.2d 159, 159-60 (1974).

6 In 1984, the United States Supreme Court first announced the  
7 test for determining whether counsel was ineffective in *Strickland v.*  
8 *Washington*, 466 U.S. 668 (1984). The Nevada Supreme Court quickly  
9 adopted the *Strickland* test the same year. See *Warden v. Lyons*, 100 Nev.  
10 430, 432, 683 P.2d 504, 505 (1984). Both *Strickland* and *Lyons* involved  
11 convictions obtained pursuant to pleas. See *Strickland*, 466 U.S. at 672;  
12 *Lyons*, 100 Nev. at 431, 683 P.2d at 504. The Legislature added NRS  
13 34.810(1)(a) during the legislative session following the issuance of the  
14 opinion in *Lyons*. Thus, it appears that "the plea was entered without the  
15 effective assistance of counsel" was added to enshrine in Nevada law the  
16 principle first suggested in the *Brady* trilogy: a petitioner may challenge the  
17 voluntary and intelligent nature of a guilty plea through a claim that  
18 counsel was ineffective.

19 In 1987, NRS 177.375(1) was amended to substantively mirror  
20 the language in NRS 34.810(1)(a).<sup>2</sup> See 1987 Nev. Stat., ch. 539, § 45(1), at  
21 1231. Effective January 1, 1993, the postconviction provisions in Chapter  
22 177 were repealed and the current single postconviction remedy under  
23 Chapter 34 was created. 1991 Nev. Stat., ch. 44, §§ 31, 33, at 92.

24 In summary, both the plain language of the statute and the  
25 legislative and statutory history of NRS 34.810(1)(a) demonstrate that the

---

26 <sup>2</sup>NRS 177.375(1) was amended to read, "If the petitioner's conviction  
27 was upon a plea of guilty, all claims for post-conviction relief are waived  
28 except the claim that the plea was involuntarily or unknowingly entered or  
that the plea was entered without the effective assistance of counsel."

1 scope of claims that may be raised in a postconviction petition challenging  
2 a conviction entered as a result of a guilty plea are limited to claims that  
3 challenge the validity of the guilty plea. These claims may be raised either  
4 directly, i.e., a claim asserting the plea was not voluntarily or knowingly  
5 entered, or indirectly, i.e., a claim asserting the plea was entered without  
6 the effective assistance of counsel.

7 *Application of NRS 34.810(1)(a) to ineffective-assistance claims*

8 Generally, to demonstrate ineffective assistance of counsel, a  
9 petitioner must show both that counsel's performance was deficient in that  
10 it fell below an objective standard of reasonableness and that petitioner was  
11 prejudiced in that there was a reasonable probability of a different outcome  
12 absent counsel's errors. *Strickland*, 466 U.S. at 687-88, 697. Because  
13 counsel must be effective during the plea negotiation process, *Missouri v.*  
14 *Frye*, 566 U.S. 134, 144 (2012), the test for deficiency focuses on the course  
15 of counsel's legal action that preceded the plea to determine whether  
16 counsel's advice, or failure to give advice, regarding the plea "was within  
17 the range of competence demanded of attorneys in criminal cases," *Hill v.*  
18 *Lockhart*, 474 U.S. 52, 56 (1985) (quoting *McMann*, 397 U.S. at 771); see,  
19 e.g., *Frye*, 566 U.S. at 145 (holding counsel was deficient for allowing a plea  
20 "offer to expire without advising the defendant or allowing him to consider  
21 it"); *Tollett*, 411 U.S. at 267-68 (describing attorney competence when  
22 conviction is the result of a guilty plea). Because the deficiency being  
23 evaluated is the advice rendered by counsel, claims relating to  
24 constitutional deprivations occurring prior to entry of the plea are only  
25 pertinent in the context of evaluating counsel's advice. See *Tollett*, 411 U.S.  
26 at 266 ("The focus of federal habeas inquiry is the nature of the advice and  
27 the voluntariness of the plea, not the existence as such of an antecedent  
28

3 constitutional infirmity.”). And when evaluating whether counsel’s advice  
4 was objectively reasonable, the court should “look beyond the plea canvass  
5 to the entire record.” *Rubio v. State*, 124 Nev. 1032, 1040, 194 P.3d 1224,  
6 1229 (2008).

7 “[T]he . . . ‘prejudice,’ requirement, on the other hand, focuses  
8 on whether counsel’s constitutionally ineffective performance affected the  
9 outcome of the plea process.” *Hill*, 474 U.S. at 59. That is, it focuses on  
10 whether counsel’s deficient performance affected the petitioner’s acceptance  
11 or rejection of the guilty plea offer. For example, where a petitioner claims  
12 that counsel’s improper advice “led him to accept a plea offer as opposed to  
13 proceeding to trial, the [petitioner] will have to show ‘a reasonable  
14 probability that, but for counsel’s errors, he would not have pleaded guilty  
15 and would have insisted on going to trial.” *Frye*, 566 U.S. at 148 (quoting  
16 *Hill*, 474 U.S. at 59). Or where a petitioner claims that counsel’s improper  
17 advice led him or her to reject an earlier, more favorable plea offer, the  
18 petitioner will have to show a reasonable probability that “he would have  
19 accepted the offer to plead pursuant to the terms earlier proposed” and that,  
20 if it was within their discretion, neither the prosecution nor the trial court  
21 would have prevented the offer’s acceptance. *Id.*

22 As discussed above, to fall within the scope of NRS 34.810(1)(a),  
23 an ineffective-assistance claim must challenge events that affected the  
24 validity of the guilty plea. The familiar standard for whether a petitioner  
25 is entitled to an evidentiary hearing on an ineffective-assistance claim  
26 provides a useful framework for determining whether an ineffective-  
27 assistance claim is sufficiently pleaded to come within the scope of claims  
28 permitted by NRS 34.810(1)(a). To come within the scope, a petitioner must  
raise claims supported by specific factual allegations that are not belied by

1 the record and, if true, would entitle him or her to relief. *See Hargrove v.*  
2 *State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Thus, a petitioner  
3 must allege specific facts demonstrating both that counsel's advice (or  
4 failure to give advice) regarding the guilty plea was objectively  
5 unreasonable and that the deficiency affected the outcome of the plea  
6 negotiation process. Any claim that does not satisfy this standard is outside  
7 the scope of permitted claims and must be dismissed. *Cf. Ripppo*, 134 Nev.  
8 at 426, 423 P.3d at 1100 (concluding a petitioner who has not satisfied the  
9 *Hargrove* standard is not entitled to relief). Because events occurring after  
10 the entry of the plea cannot have affected either counsel's advice regarding  
11 entering the guilty plea or the outcome of the plea negotiation process,  
12 ineffective-assistance claims relating to post-plea proceedings necessarily  
13 fall outside the scope of claims permitted by NRS 34.810(1)(a).<sup>3</sup>

14 <sup>3</sup>The exclusion of these claims does not abrogate a defendant's right  
15 to the effective assistance of counsel in post-plea proceedings. It merely  
16 highlights that the Nevada Legislature has not provided petitioners a  
17 means of collaterally challenging counsel's efficacy in post-plea proceedings  
18 at the state level. Offenders remain free to seek redress of constitutional  
19 deprivations in federal courts in the first instance.

20 A guilty plea is presumed to be valid. *Rubio*, 124 Nev. at 1038, 194  
21 P.3d at 1228. And while a coerced guilty plea is invalid, *see North Carolina*  
22 *v. Alford*, 400 U.S. 25, 31 (1970) (reiterating the standard for a valid guilty  
23 plea is whether it "represents a voluntary and intelligent choice among the  
24 alternative courses of action open to the defendant"); *accord Stevenson v.*  
25 *State*, 131 Nev. 598, 604-05, 354 P.3d 1277, 1281 (2015), a guilty plea is not  
26 involuntary simply "because [it is] motivated by a desire to avoid the  
27 possibility of a higher penalty" or habitual criminal treatment, *Whitman v.*  
28 *Warden*, 90 Nev. 434, 436, 529 P.2d 792, 793 (1974).

29 NRS 34.810(1)(a) limits the scope of cognizable ineffective-  
30 assistance claims to those that challenge the validity of the guilty plea. A  
31 sufficiently pleaded claim must allege specific facts demonstrating both that  
32 counsel's advice (or failure to give advice) regarding the guilty plea was  
33 objectively unreasonable and that the deficiency affected the outcome of the  
34 plea negotiation process.



1 IN order to ensure the Petitioner has addressed  
2 every issue in the State's MOTION TO DISMISS  
3 POST-CONVICTION PETITION, the Petition will now  
4 memorialize the State's motion in a "Tit for Tat"  
5 or "blow by blow" (don't worry its four pages).

6 The Petitioner begins with their Memorandum  
7 of Points and Authorities.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 Petitioner pleaded guilty to promotion of sexual performance of a minor and was  
10 sentenced to a minimum of five years in prison and lifetime supervision thereafter. <sup>1.</sup> See  
11 Judgment of Conviction, filed herein October 9, 2009. Petitioner unsuccessfully  
12 appealed his sentence. See Order of Affirmance, filed herein August 9, 2010. Remittitur  
13 was issued on August 10, 2010.

14 FNI) The petitioner was given a Life Sentence  
15 with possible parole after 5 years. The petitioner  
16 did gain parole after the minimum period.  
17

18 The State goes on to allege:

19 On June 10, 2014, Petitioner filed a Motion to Modify Sentence, as well as a  
20 Motion for Appointment of Counsel and related documents. The State opposed  
21 Petitioner's Motion to Modify Sentence. On July 16, 2014, the Court ordered that  
22 Petitioner be appointed counsel. The Court treated Petitioner's motion as a post-  
23 conviction petition, appointed counsel, and permitted counsel to supplement the  
24 petition if it determined such a supplement was necessary. On December 10, 2014,  
25 Petitioner's appointed counsel notified the Court that no supplement would be filed.  
26  
27  
28

1 Not so fast! The Motion For Modification was  
2 treated as a Motion For Modification NOT a Habeas  
3 Petition. Indeed Counsel was appointed, but Counsel  
4 can be appointed in two ways for a Motion For  
5 Modification. First, Counsel could be appointed by  
6 the District Court by reassigning the Public Defender's  
7 Office (see Example the case of Paul Moek who  
8 was reassigned his same counsel). Next, if the  
9 Defendant filed a Modification Motion and made  
10 claims against his Public Defender conflict AOR  
11 411 Counsel could be appointed.

12 In the instant case Wilson was appointed  
13 but never filed anything after she was appointed.  
14 Thus, since no Supplement was filed - No Habeas  
15 Petition exists and thus this Petition is not  
16 Successive. Indeed, it is ten years late give or  
17 take. However, the State cannot claim the  
18 Petition is Successive. NRS 34.510 (2)-(3) (2)

19 The State then continues on page 2 : On

20 January 21, 2015, the Court denied Petitioner's Motion to Modify Sentence. Petitioner  
21 filed the Post-Conviction Petition at issue here, as well as a motion for appointment of  
22 counsel,<sup>1</sup> on October 20, 2020.

23  
24 The state has filed a separate opposition  
25 to the instant Motion For appointment of Counsel.  
26 The State doesn't want the Petitioner to have help.  
27 FN 2) The petitioner will remind the court that the  
28 State always uses this defense and it is sad.

1           Petitioner acknowledges that he delayed filing his Petition and attempts to  
2 explain his delay. Petitioner appears to assume the State would argue his Petition was  
3 successive and abusive under NRS 34.810(2)-(3). While the Court allowed counsel to be  
4 appointed and provided the opportunity to supplement, as if his previous motion for  
5 modification was a habeas petition, the Court did not ultimately decide or analyze the  
6 motion as a post-conviction petition. See Order Denying Motion, filed herein January  
7 21, 2015. Petitioner raises many of the same arguments from his Motion to Modify  
8 Sentence again in his current petition, but the State submits that there are more  
9 applicable procedural bars.  
10

11           This is factually inaccurate! The Petition was  
12 styled around the events at sentencing and WHAT  
13 THE COURT CONSIDERED THAT WAS MATERIALLY UNTRUE  
14 THAT WORKED TO HIS EXTREME DETRIMENT. See  
15 State vs. 8th Judicial District Court, 100 Nev. 90  
16 (1984) (Husney case). Not one thing in that  
17 Motion challenged the guilty plea. The petitioner  
18 is upset at the state's "characterization of the  
19 Motion."

20           Furthermore, the petitioner used the State-  
21 ment of the case because it was well prepared and  
22 facts from the motion. None of these arguments  
23 in this petition were ever presented in the  
24 Modification Motion regarding actual innocence  
25 or trying to withdraw his plea. The only pleading  
26 that has duplication is facts that McCaffrey, the  
27 petitioner, did not share his files. This Modification  
28 Motion and facts are now supplemented in this  
petition by "Newly discovered evidence."

## The State Claims:

NRS 34.726(1) requires a post-conviction petition to be filed within 1 year of remittitur, absent a showing that the delay was not the fault of the petitioner and that dismissal of the petition as untimely will unduly prejudice the petitioner. The Petition at issue here was filed over ten (10) years after remittitur. As such, the Petition must be dismissed unless Petitioner has been able to show that the delay was not his fault and dismissal will unduly prejudice Petitioner. NRS 34.726(1). Petitioner has not met his burden here.

Before The Petitioner addresses the Cause and Prejudice above mentioned by State Counsel he will remind the Court that he has made a Claim of actual innocence under Berry v. State, 131 Nev 957, 363 P.3d 1148 (2015). See Petition. Further, the Petitioner, with the help of Counsel, can present a Claim of Factual Innocence pursuant to NRS 34.900 through 34.990.

With these principles in mind the Petitioner only needs to show that the conviction resulted in a Manifest Injustice and that he is actually innocent of the charges. Further, the Petitioner has newly discovered evidence that the Police Detective who arrested him is not credible based on "recent Criminal charges.

These charges are "Propensity evidence" that impugn the character of the State's primary witness in the case." Further, the Petitioner can reasonably reopen his case based on the conduct of Detective Dennis Carry in this new case. See attached Exhibit 1.

1 However, the petitioner will repeat and he  
2 will clarify his "Cause and Prejudice Statement"  
3 in the Petition - even given he doesn't need to  
4 do so. The petitioner takes on the state's assertions  
5 and reminds opposing counsel we don't live in a  
6 perfect world. The State writes in its opposition:

7 Petitioner attempts to explain his delayed filing by pointing to alleged  
8 deficiencies or failures of prior post-conviction counsel, Mary Lou Wilson, and to the  
9 fact that he is unlearned and untrained in the law. These explanations are insufficient to  
10 overcome the time bar. Petitioner's grounds for relief stem from his plea counsel's  
11 negotiations and performance at sentencing. Petitioner fails to explain how those  
12 claims were unknown to him at the time remittitur was issued. *See Hathaway v. State*,  
13 119 Nev. 248, 253-254 (2003) (holding that all claims reasonably available must be  
14 made within the one-year period). The fact that Petitioner is not trained in the law is  
15 not an excuse to overcome the procedural bar. *See Phelps v. Director of Prisons*, 104  
16 Nev. 656, 660 (1988) (overruled on other grounds as recognized in *Gallimort v. State*,  
17 476 P.3d 435 (2020)). Further, the fact that Petitioner may not have all of his files or did  
18 not at the time his Petition was due also does not overcome the procedural bar. *See*  
19 *Hood v. State*, 111 Nev. 335, 338 (1995). Petitioner's explanations for his delayed filing  
20 are attributable to him or his agents. As such, Petitioner has failed to show that the  
21 delayed filing was not his fault. NRS 34.726(1)(a). The Petition must be dismissed  
22 because it is untimely, and Petitioner has not met his burden to show that he meets the  
23 statutorily provided exception to the time bar. *See State v. Dist. Ct. (Riker)*, 121 Nev.  
24 225, 231 (2005) (procedural bars are mandatory).<sup>2</sup> Petitioner's sentencing related  
25 claims are also barred by the plain language of NRS 34.810(1)(a), which limits post-  
26 conviction claims after a plea to those claiming that counsel was ineffective at the plea  
27  
28

1 - stage or that the plea was entered involuntarily and unknowingly.

2 - Finally, the Petition in this case should also be barred due to the doctrine of  
3 - laches. See NRS 34.800. More than five years has elapsed since the judgment of  
4 - conviction was filed and there is a rebuttable presumption of prejudice to the State in  
5 - having to respond to the petition and/or conduct a trial if the plea is unwound. This  
6 - Court should dismiss the Petition on the basis of laches as well.

7 -  
8 - Footnote p. 4

9 - <sup>2</sup> Petitioner places blame on Mary Lou Wilson for his failure to file his Petition. Initially,  
10 - he did not seek appointment of counsel or file his prior Motion to Modify within one year  
11 - of remittitur, so it would have been difficult for her to overcome the time bar even if his  
12 - prior Motion were treated as a post-conviction petition. See NRS 34.726(1). In addition,  
13 - this is not a capital case; therefore, any deficient performance by Ms. Wilson does not  
14 - constitute good cause to excuse Petitioner's procedural default. See *Brown v. McDaniel*,  
15 - 130 Nev. 565, 569 (2014) ("We have consistently held that the ineffective assistance of  
16 - post-conviction counsel in a noncapital case may not constitute 'good cause' to excuse  
17 - procedural defaults."). Even assuming some blame for the delay could be placed upon  
18 - Ms. Wilson, Petitioner still waited over five years after his Motion to Modify was denied  
19 - to assert his current claims. See also *Pellegrini v. State*, 117 Nev. 860, 874-878 (2001)  
20 - (once a claim becomes available a one-year deadline applies). As a result, the Petition is  
21 - untimely in all respects and must be dismissed.

22 - First, the Petitioner asks the Court to start  
23 - from the beginning and reminds the Court that  
24 - there was NO TIMEBAR to a Motion For Modification  
25 - of Sentence. See *Edwards v. State* (Citation omitted)  
26 - The Motion was filed because it was the  
27 - Petitioner's "best chance of success and not  
28 - subject to time bar or laches. The State simply  
overlooks this concept.

The State's assertion that the Petitioner  
fails to explain how his claims were unknown  
to him at the time of the remittitur was issued.

1 This is nonsense. The petitioner explain that he  
2 did not think anything was wrong until he came  
3 up close to his parole date. His caseworker in  
4 prison asserted on a report that he had a  
5 physical victim (a person). The petitioner then  
6 sent for his file from Counsel Sullivan and got  
7 the police reports that showed "how the  
8 Police Detective arrived at the charges."

9 Further, he began a review of his case,  
10 With the help of a Jailhouse paralegal he  
11 was able to file a Motion For Modification and  
12 Motion For Counsel. Mary Lou Wilson was assigned.  
13 Further, his paralegal prepared a Habeas  
14 Corpus (Post-conviction), pursuant to his claim  
15 of actual innocence. He then gave the petition  
16 to Wilson for the potential Supplemental  
17 Petition. The Petition was Never filed. The  
18 Petitioner had "no idea Wilson had not filed his  
19 Petition - Not the Supplement - his Petition."

20 The State cites Hathaway v. State, 119 Nev.  
21 248, 253-254 (2003) (holding that all claims that  
22 are reasonably available must be presented in one-  
23 year time period) The petitioner did not discover  
24 his claims until much later in his incarceration  
25 when he sent for his file on other grounds. He  
26 had no idea of what his claims were until he  
27 received assistance from Counsel Substitute,  
28 a paralegal, in prison. This was when he was  
able to go over his case.

1 The petitioner could not have discovered his  
2 claims sooner, he had no idea that his counsel  
3 had misled him so badly.

4 Further, the state cites Phelps v. Director,  
5 104 Nev. 656, 660 (1988). This citation is misstated  
6 and is distinguished in this case, and from  
7 this case. The fact that McCaffrey is not  
8 trained in law is exactly why things took  
9 so long initially. To claim otherwise is simply  
10 nonsense. Non lawyers are untrained in law.  
11 He cannot be expected to find errors in a  
12 prep memorandum when he doesn't know  
13 the law. Research is needed with a trained  
14 eye. To say that McCaffrey's ignorance of  
15 the law is not cause and prejudice for delay  
16 is nonsense. The Petitioner STANDS BY THIS  
17 PRINCIPLE - PERIOD.

18 The petitioner stands by his claim that he  
19 gave his Prepared Habeas Petition to Mary  
20 Lou Wilson at the time of her appointment.  
21 He was assured by Wilson that she would  
22 file it. She took it. It was already made.  
23 Later she did not file her supplemental  
24 petition. Furthermore, she didn't file  
25 the petitioner's Pro Se petition either.  
26 The state's position here is completely  
27 conflated. Later Mrs Wilson claimed she  
28 lost all of the paperwork.



1 After he was paroled the petitioner did not  
2 receive any paperwork from the courts. In  
3 fact the record shows legal documents from  
4 the court were returned to the court from  
5 the prison. Not one legal document came to  
6 McCaffrey's residence. Nothing. McCaffrey  
7 was in the dark as to what was happening  
8 with his case. Further, he had lost the legal  
9 help of this writer who prepared most of  
10 McCaffrey's pleadings. The state will likely  
11 reject these arguments and put McCaffrey  
12 in the arena with Perry Mason, he is  
13 not a lawyer. He is a nurse.

14 The State's citation of Brown v. McDaniel  
15 and Pellegrini v. State are distinguished  
16 from this case. Neither of those case have  
17 the current conditions, nor the newly discovered  
18 evidence the petitioner presents. The state  
19 has misused these two cases and routinely  
20 rely on them.

21 The petitioner supported his claims about  
22 Counsel Wilson with evidence that shows she  
23 was not the best lawyer and frequently was  
24 negligent with her clients. The petitioner  
25 is requesting a hearing and his case to be  
26 reopened to explore the cause and prejudice  
27 argument he has presented about Counsel  
28 Mary Lou Wilson.

1 THE PRIOR MOTION FOR MODIFICATION WAS NOT  
2 TREATED AS A HABEAS CORPUS PETITION AS THE  
3 STATE ALLEGES IN THEIR MOTION TO DISMISS  
4

5 AS indicated in the Petitioner's Procedural History  
6 Mr. McCaffrey previously filed a MOTION FOR MODIFICATION  
7 OF SENTENCE. After filing the petition the District Court  
8 appointed Counsel to the Petitioner (Defendant) by  
9 and through Mary Lou Wilson. Wilson did not amend  
10 or otherwise Supplement the Motion in anyway. In  
11 effect her representation was titular in nature.

12 The District Court treated the Motion For  
13 Modification Pursuant to State v. Eighth Jud. Dist. Ct.,  
14 100 Nev. 90 (1984). Counsel Wilson did nothing to  
15 further the Motion therefore, the state's argument  
16 is belied by the record.

17  
18 EVEN THOUGH THE PETITIONER ARGUED CAUSE AND  
19 PREJUDICE IN HIS PETITION HE ALSO MAKES THE  
20 CLAIM THAT HE IS ACTUALLY INNOCENT AS AN  
21 EXCEPTION TO THE PROCEDURAL BAR  
22

23 The Petitioner is asking this case to be reopened  
24 Pursuant to Berry v. State, 131 Nev. 957, 363 P.3d  
25 1148 (2015). See also Mitchell v. State, 122 Nev. 1269,  
26 149 P.3d 33 (2006). [Overruled in part by Nika v. State,  
27 124 Nev. 1272 (2008). With the help of appointed counsel  
28 and an evidentiary hearing the petitioner feels he

1 Can better present this claim. In addition to  
2 actual Innocence the Petitioner also presents this  
3 petition under a dual claim of factual Innocence  
4 pursuant to NRS. 34.900 through 34.990 (inclusive),  
5 this argument is *infra*.

6 First, Pursuant to *Barry v. State*, *supra*. the  
7 Petitioner recently discovered that the detective  
8 who arrested him was investigated for, *inter alia*,  
9 Bigamy, Burglary, and more importantly forgery.  
10 See Attached EXHIBIT 1 (Docket Sheet and other  
11 evidence of Dennis Barry's arrest). This evidence is not  
12 ONLY Newly discovered but it is "Material to the  
13 Petitioner's case." Evidence is material if there is  
14 a reasonable probability that the result would have  
15 been different if the evidence had not been disclosed.  
16 See example *Lay v. State*, 116 Nev. 1185, 1194 (2000).

17  
18 THIS NEW EVIDENCE IS FAVORABLE TO THE ACCUSED

19  
20 The attached Exhibit 1 is imbued with legal  
21 significance and is favorable to the petitioner  
22 "the accused." The Nevada Supreme Court has  
23 spoken directly to what is considered "favorable  
24 to the accused." In *Mazzon v. Warden*, 116 Nev.  
25 48, 67 (2000) the court stated:

26  
27 "Due Process does not require simply the disclosure  
28 of "exculpatory" evidence. Evidence also must be

1 disclosed if it provides grounds for the defense to  
2 attack the reliability, thoroughness, and good  
3 faith of the Police investigation, to impeach the  
4 credibility of the state's witnesses, or to bolster  
5 the defense case against prosecutorial attacks...  
6 ... Furthermore, "discovery in a criminal case is  
7 not limited to investigative leads or reports that  
8 are admissible in evidence... Evidence "need not  
9 have been independently admissible to have been  
10 material... (emphasis added) Mazzoni at 67.

11 Material favorable to the accused is defined  
12 broadly and would include any inconsistent statements  
13 by victims or witnesses, any pending charges or benefits  
14 or promises made to anyone material to the case, any  
15 leads or information not followed up, any criminal  
16 history of any witness or victim, any forensic  
17 testing done on any evidence, any medical or  
18 psychological treatment of any witness or victim.  
19 Further, this would include any information relating  
20 to the credibility of any witness to include law  
21 enforcement officers or other agents of the  
22 State. (emphasis is original)

23  
24 THE PETITIONER AVERS THAT HIS PLEA WAS ALSO  
25 NOT KNOWING, VOLUNTARY, OR INTELLIGENTLY  
26 MADE ON AUGUST 14TH, 2009 AND HIS TRIAL  
27 COUNSEL MISLEAD HIM ABOUT THE ELEMENTS  
28 OF HIS CHARGED OFFENSE

1 NRS 34.810(1) provides that the court shall  
2 dismiss a petition if the court determines that:

3  
4 (a) The Petitioner's conviction was upon a  
5 plea of guilty... and the petition is not based  
6 upon an allegation that the plea was involuntarily  
7 or unknowingly entered or that the plea was  
8 entered without effective assistance of counsel.

9  
10 This petition is well grounded in this principal  
11 and the state did not even mention this in their  
12 Motion to Dismiss. Thus the state concedes  
13 the point. The Nevada Rules of Civil Procedure  
14 Rule 8(d) reads:

15  
16 "Effect of failure to deny. Averments in a  
17 pleading to which the responsive pleading is  
18 required, other than those as to the amount  
19 of damage, are admitted when not denied in  
20 a responsive pleading.

21  
22 The petitioner not only made the claims  
23 that he is not subject to procedural bars under  
24 34.800, 34.810 of the NRS, he made claims  
25 that his plea was unknowing and involuntary.  
26 Since the state did not address his affidavit,  
27 grounds in the petition, the pleadings are  
28 conceded by the state's failure to respond.

1 THE PETITIONER'S PLEA IS ALSO INVALID BECAUSE  
2 HIS "PLEA MEMORANDUM" IS NOT IN CONFORMITY  
3 WITH NRS 174.063 AND HIS TRIAL AND APPELLATE  
4 COUNSEL WERE INEFFECTIVE FOR FAILING TO  
5 CORRECT THESE DEFICIENCIES IN VIOLATION OF  
6 THE 6TH AND 14TH AMENDMENTS TO THE U.S.  
7 CONSTITUTION AND ARTICLE I OF THE NEVADA  
8 CONSTITUTION, THUS HIS PLEA AGREEMENT IS  
9 FACIALLY ILLEGAL

10  
11 NRS 174.063 reads:

12 N.R.S. 174.063

13 174.063. Written plea agreement for plea of guilty or guilty but mentally ill: Form; contents

14 Effective: October 1, 2007

15 Currentness

16 1. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be substantially in the  
17 following form:

18 Case No. \_\_\_\_\_

19 Dept. No. \_\_\_\_\_

20 IN THE \_\_\_\_\_ JUDICIAL DISTRICT COURT OF THE  
21 STATE OF NEVADA IN AND FOR THE COUNTY OF \_\_\_\_\_,

22 The State of Nevada,

23 PLAINTIFF,

24 v.

25 (Name of defendant),

26 DEFENDANT.  
27  
28

Page Number 23

1  
2 **GUILTY OR GUILTY BUT MENTALLY ILL PLEA AGREEMENT**

3 I hereby agree to plead guilty or guilty but mentally ill to: (List charges to which defendant is pleading guilty or guilty but  
4 mentally ill), as more fully alleged in the charging document attached hereto as Exhibit 1.

5 My decision to plead guilty or guilty but mentally ill is based upon the plea agreement in this case which is as follows:

6 (State the terms of the agreement.)

7 **CONSEQUENCES OF THE PLEA**

8 I understand that by pleading guilty or guilty but mentally ill I admit the facts which support all the elements of the offenses  
9 to which I now plead as set forth in Exhibit 1.

10 See NRS 174.063 (1)

11  
12 The Petitioner's Plea Memorandum is not  
13 in Substantial Compliance with NRS 174.063(1)  
14 and because it reads it is a Plea Memorandum.  
15 A Plea Memorandum is not a Plea Agreement  
16 or Subject to Contract law. The Petitioner avers  
17 that the agreement is not enforceable as  
18 a plea agreement would be.

19 The Petitioner also has filed an affidavit  
20 Challenging other things about the Plea memo-  
21 randum. See Affidavit of William McCaffrey  
22 in support of Petition.

23 Other problems exist as well. The Plea  
24 Memorandum is not in compliance with NRS  
25 174.063(2), because it does not contain the  
26 required "Certificate of Counsel." See Plea  
27 Memorandum, Petitioner's Appendix of Exhibits  
28 Exhibit 9.

1 NRS 174.063 (2) reads

2 2. If the defendant is represented by counsel, the written plea agreement must also include a certificate of counsel that is  
3 substantially in the following form:

4  
5 **CERTIFICATE OF COUNSEL**

6 I, the undersigned, as the attorney for the defendant named herein and as an officer of the court hereby certify that:

7 1. I have fully explained to the defendant the allegations contained in the charges to which guilty or guilty but mentally  
8 ill pleas are being entered.

9 2. I have advised the defendant of the penalties for each charge and the restitution that the defendant may be ordered to pay.

10 3. All pleas of guilty or guilty but mentally ill offered by the defendant pursuant to this agreement are consistent with all  
the facts known to me and are made with my advice to the defendant and are in the best interest of the defendant.

11 4. To the best of my knowledge and belief, the defendant:

12 (a) Is competent and understands the charges and the consequences of pleading guilty or guilty but mentally ill as provided  
13 in this agreement.

14 (b) Executed this agreement and will enter all guilty or guilty but mentally ill pleas pursuant hereto voluntarily.

15 (c) Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution  
16 of this agreement.

17 Dated: This \_\_\_\_\_ day of the month of \_\_\_\_\_ of the year \_\_\_\_\_

18  
19 Attorney for defendant.

20  
21 Simply put the Petitioner's plea Memorandum  
22 is devoid of this Statutory requirement and  
23 thus the plea can be voided under this Principle.  
24 The Petitioner avers this is "Newly Presented  
25 Evidence" and is admissible under NRS  
26 34.960 (4)(b)(2). The Petitioner asks the  
27 Court to consider the plea agreement void  
28 for lack of Certificate of Counsel. See plea  
Memorandum, Ex 9

Page Number 25



1 THE PETITIONER'S CONVICTION IS INVALID AND  
2 IS DERIVED FROM THE "FRUIT OF THE POISONOUS  
3 TREE AND ORIGINATED FROM AN ILLEGAL  
4 SEARCH, INTERROGATION, AND SUBSEQUENT  
5 ARREST BY DETECTIVE DENNIS CARRY AND  
6 HIS TRIAL AND APPELLATE COUNSEL FAILED  
7 TO DEFEND HIM WITH A MOTION TO SUPPRESS  
8 THE EVIDENCE IN HIS CASE

9  
10 The Petitioner avers that all of the evidence  
11 in his case was illegally obtained from a Police  
12 Detective now accused of multiple crimes listed  
13 in Exhibit 1. The Petitioner has newly discovered  
14 evidence that Dennis Carry has a Propensity  
15 for fabricating evidence and did so in the  
16 instant case as well. This new evidence shows  
17 how Carry for his own personal gain forged  
18 evidence to a lawful court to obtain a bogus  
19 Order for his own case.

20 This Court cannot rely on evidence from  
21 Mr. Carry in the instant case either. The  
22 Petitioner avers he was the subject of an  
23 illegal search which was applied for under  
24 false allegations that he had shared Pornography  
25 with him over the internet. Further, Carry's  
26 application for the search warrant can  
27 now be questioned with the newly discovered  
28 evidence in Exhibit 1. McCaffrey avers that

1 Detective Carry fabricate this evidence and  
2 Presented it to a magistrate Judge for an  
3 illegal Search Warrant. This Court should not  
4 allow the current Search Warrant to stand  
5 given this new evidence presented by the  
6 Petitioner in Exhibit 1.

7 Moreover, McLaffrey now claims that  
8 Detective Dennis Carry detained him illegally in  
9 his home for several hours (beyond the one  
10 hour allowed by law) and questioned without  
11 the reading of his rights. Although this is not  
12 the proper petition to raise this claim given  
13 the newly discovered evidence the State  
14 cannot rely on its "old evidence" to convict  
15 McLaffrey nor use this evidence in the future.

16 The Petitioner asks this Court to reopen  
17 this case and grant the Petitioner's request  
18 for Counsel.

19  
20 THE PETITIONER ALSO COMPLAINS THAT STATE  
21 COUNSEL IN THIS CASE POSSESS A CONFLICT  
22 OF INTEREST IN MAINTAINING DUAL  
23 PROSECUTIONS OF BOTH DENNIS CARRY  
24 AND HIS PROSECUTION BECAUSE CARRY  
25 IS THE PETITIONER'S ACCUSER

26  
27 Recently the Washoe County District Attorney's  
28 Office by and through Christopher Hicks, brought

1 a Criminal Complaint against Det. Sergeant  
2 Dennis Carry (Retired). This creates a conflict of  
3 interest with the Washoe County District Attorney  
4 to proceed with this case. The conflict exists because  
5 in prosecuting Carry for Bigamy, Burglary, and  
6 Forgery the State is alleging in his case that  
7 he offered fraudulent document to a court of  
8 law. However, in the instant case they are  
9 alleging the reports (Police and Probable Cause  
10 declarations are valid). Their office is playing  
11 a dual role as his prosecutor, but in this case  
12 they must advocate for him as upright and  
13 honest.

14 Therefore, the State should conflict this case  
15 to another agency.

16 Wherefore, the Petitioner prays this petition  
17 is granted, and appoints counsel for the  
18 Petitioner.

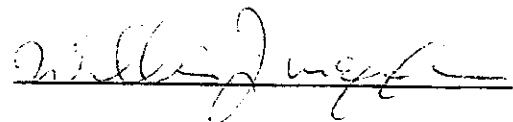
19 If more room is needed, attach additional sheets.

20  
21 This document does not contain the personal information of any person as defined by  
22 NRS 603A.040.

23 I declare under penalty of perjury under the law of the State of Nevada that the foregoing  
24 is true and correct.

25  
26 Date: Feb 12, 2021

Your Signature:



27  
28 Print Your Name: William J. McLaffrey

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Opposition to the State's Motion to Dismiss to the below address(es) on this 12<sup>th</sup> day of February, 2021, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Washoe County District Attorney  
1 South Sierra Street, 4th Floor  
Reno, Nevada 89501

Service By E Flex  
ATTN: Appellate Division

William J. McCaffrey  
Name: William J. McCaffrey  
Address: 235 S. Center St. #4  
Yerington, NV 89447  
Telephone: 775-329-6322  
Email: zack103@live.com  
Self-Represented Litigant

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Opposition To Motion To Dismiss by State filed in District Court Case No. CR09-1325 does not contain the social security number of any person.

Dated this 12<sup>th</sup> day of February, 2021.

William J. McCaffrey  
Filed by: WILLIAM JOSEPH MCCAFFREY  
Petitioner, In Pro Se

FILED  
Electronically  
CR09-1325  
2021-05-03 04:02:24 PM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 8425028 : bblough

## Exhibit Cover Page

EXHIBIT NUMBER 2



34°

39°

39°

Search Uts



## Former WCSO sergeant married to two women at once arrested on multiple charges

by News 4-Fox 11 Digital Team  
Wednesday, January 27th 2021

AA



Dennis Carry (Courtesy: Washoe County Sheriff's Office)

lev. (News 4 & Fox 11) — A former Washoe County Sheriff's Office sergeant is behind multiple charges including bigamy - meaning he was married to two women at once.



Department



Carry is accused of entering the courthouse after hours to alter documents after it was discovered that he was married to two women at the same time, one of whom is a federal judge in Reno.

Carry retired from the sheriff's office before the investigation concluded.

The former sergeant was arrested on Jan. 26 on seven felony counts including bigamy, burglary and forgery.

Carry's attorney declined comment to News 4's Joe Hart when last contacted about this case.

## REGISTER OF ACTIONS

CASE No. RCR2021-111229

The State of Nevada vs. Dennis Bryan Carry

11/25/2021 11:13 AM

Case Type: Felony  
 Date Filed: 01/25/2021  
 Location: RJC Criminal  
 Judicial Officer: Pearson, Scott  
 Agency Number: RP18-026148  
 RP19-006812  
 District Attorney Number: 21-1113

## PARTY INFORMATION

Defendant Carry, Dennis Bryan

Attorneys  
 Thomas E. Vitoria  
*Retained*  
 775-284-8888(V)

Public Defender:  
*Court-Appointed*  
 775-337-4800(W)

Plaintiff The State of Nevada

## CHARGE INFORMATION

## Charges: Carry, Dennis Bryan

	Statute	Level	Date
1. Burglary, 1st	NRS 205.060.2	Felony - Category B	05/19/2018
2. Forgery	NRS 205.090	Felony - Category D	05/19/2018
3. Bigamy	NRS 201.160	Felony - Category D	05/24/2018
4. Burglary, 1st	NRS 205.060.2	Felony - Category B	02/10/2019
5. Monitor or att to monitor private conversation	NRS 200.650	Felony - Category D	01/20/2018
6. Offer false written evidence	NRS 199.210	Felony - Category D	02/13/2019
7. Perjury	NRS 199.120	Felony - Category D	03/01/2019

## EVENTS &amp; ORDERS OF THE COURT

## OTHER EVENTS AND HEARINGS

- ✓ 01/25/2021 Criminal Complaint Filed
- ✓ 01/25/2021 Affidavit in Support of Warrant Filed
- 01/25/2021 Clerk Review, Forwarded to Judge
- 01/26/2021 Warrant of Arrest Issued
- 01/26/2021 Warrant Cancelled
- 01/27/2021 Arraignment (9:30 AM) (Judicial Officer Dreiling, Derek)  
Result: Held
- ✓ 01/27/2021 Probable Cause Affidavit Reviewed by Judge (Judicial Officer: Dreiling, Derek)
- 01/27/2021 Nevada Pre-trial Risk Assessment Low
- 01/27/2021 Washoe County Pretrial Services Assessment Report
- ✓ 01/27/2021 Probable Cause Findings/Hearings (12:00 PM) (Judicial Officer Judge, Probable Cause)  
Result: Held
- 01/27/2021 Bail Set (Judicial Officer: Dreiling, Derek)
- ✓ 01/27/2021 Court Found Probable Cause
- 01/27/2021 Defendant Indicated Intent to Retain Private Counsel
- 01/27/2021 Notice of Appearance Filed
- 01/29/2021 CANCELED Bail Hearing (9:30 AM) (Judicial Officer Dreiling, Derek)  
Vacated
- 01/29/2021 Bail Hearing (8:00 AM) (Judicial Officer Pearson, Scott)
- 02/10/2021 Mandatory Status Conference (1:30 PM)



FILED  
Electronically  
CR09-1325  
2021-05-03 04:02:24 PM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 8425028 : bblough

## Exhibit Cover Page

EXHIBIT NUMBER 2

## Exhibit #2

Richard, here are All the texts so far, as Joe dictated to me answering Scott Edwards. Scott never called.

Start

Scott 04/20/21 11:12 am

Please send me your email address. My email address is [nvlaw@aol.com](mailto:nvlaw@aol.com).

Kevin 04/20/21 11:22 am

Williams can only receive text messages on his phone. My name is Kevin, Williams brother and live with him. I can receive emails for him. My email is [zgate102@live.com](mailto:zgate102@live.com), thank you and we look forward to working with you.

Scott 04/21/21 11:25 am

Does William Mccaffrey have an email address?

Kevin 04/21/21 11:23 am

William is not allowed to have any email or access to internet except through me. So we use my email for all legal purposes also if you need it, I am his power of. Attorney, but you will have access to William any time and we look forward to or first in office meeting. We will be fully vaccinated after may 5th. Thank you, Kevin and William.

Scott 04/21/21 11:39 am

His petition appears procedurally barred. I would be interested in his response to the State's motion to dismiss filed I Feb this year. If permitted and possible I would like him to communicate his position to me in writing via email to [nvlaw@aol.com](mailto:nvlaw@aol.com).

Kevin 04/21/21 11:45 am

Were on the road right now, if your available between 2 and 2:30 for a phone call we can discuss the case for a few minutes.

Scott 04/21/21 11:46 am

I take it he doesn't agree to communicate in writing.

Kevin 04/21/21 11:51 am

So, what you mean is you can't speak to William on the phone for an initial discussion about his case.

Scott 04/21/21 11:58 am

I didn't say that.

Kevin 04/21/21 12:07 am

Were on the road and our texts are mixing, we can talk between 2 and 2:30 today on the phone to discuss an initial consultation.

Stop.

1 CODE: 2010  
2 Scott W. Edwards  
3 Bar Number 3400  
4 561 Keystone, #322, Reno, NV 89503  
5 (775) 530-1876  
6 Attorney for Defendant

7 IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA  
8  
9 IN AND FOR THE COUNTY OF WASHOE

10 WILLIAM J. MCCAFFREY,

11 Petitioner,

Case No. CR09-1325

12 VS.

Dept. No. 8

13 THE STATE OF NEVADA,

14 Respondent.

15  
16 **RESPONSE TO MOTION TO DISMISS POST-CONVICTION PETITION**

17 COMES NOW, SCOTT W. EDWARDS, appointed counsel for Petitioner WILLIAM J.  
18 MCCAFFREY, and hereby submits a response to the State's motion to dismiss Mr. McCaffrey's post-  
19 conviction petition. This response is based upon the following points and authorities and the record in  
20 this case.

21 **POINTS AND AUTHORITIES**

22 Following Zoom consultation and exchange of documentation, undersigned counsel has come to  
23 understand the Petitioner's post-conviction claims and his position regarding the procedural bars set  
24 forth in the State's motion to dismiss. This pleading will convey the Petitioner's positions to the Court.  
25 For the most part, the Petitioner's responses will be repeated verbatim as conveyed to undersigned  
26 counsel.  
27  
28

1 THE PETITIONER'S CLAIMS:

- 2 1. The Guilty Plea Memorandum used in his case was defective. According to the Petitioner: "This  
3 is not a Guilty Plea Agreement. The plea memorandum is a Nullity-it is Legally Void-Which  
4 means I've been in illegal custody ever since. Also, everything agreed to in the memorandum is  
5 void." The apparent defect in the plea memorandum identified by Petitioner is that it did not  
6 contain a proper certification by his counsel.
- 7 2. The 48-hour rule was violated. The Petitioner relates: "I was arrested at 8:50 p.m. on 6-10-2009.  
8 I was arraigned on the probable cause declaration on 6-15-2009, which was 5 days after my  
9 arrest. The State had no jurisdiction over me. I should have been released."  
10
- 11 3. Miranda Rights Violation. As related by the Petitioner: " When (Detective) Carry and persons  
12 came to my house with a Search Warrant note: I never saw a search warrant. Carry was required  
13 to read me the Miranda Warning. He did not. Carry was still required to inform me of my  
14 rights. See Ecobedo Rule of 1964."  
15
- 16 4. Petitioner would not have pled guilty if he had known Detective Carry was a bad cop.  
17
- 18 5. Attorney John Petty had no discussions with him about his appeals.  
19
- 20 6. Time lost due to Attorney Wilson's abandonment of his case. "She wasted years of my time."  
21
- 22 7. 60 minute rule was violated. "When Carry interrogated me in my home (no Miranda), the  
23 interrogation went beyond 60 min. allowed in NRS 171.123. Carry should have arrested me  
24 before the 60 min were up. Everything obtained after the 60 min, limit is to be suppressed.  
25 Note: I was detained for at least 2 hours. The police indicated that these 2 hrs. were recorded.  
26 However, there is no transcript of those 2 hrs. in the Continuation Report."  
27  
28

1 8. Defense Counsel Sean Sullivan and District Attorney Sean Sullivan colluded against him.

2 "Barker and Sullivan appeared in court while I was locked in a cell at the Sparks Justice Court.  
3 This was a Due Process violation"

4 9. The Search warrant was illegal. "Carry fabricated evidence and lied to the magistrate to obtain  
5 the illegal search warrant. We may need to motion the court for a Franks hearing to determine  
6 its validity. Otherwise, suppress it completely and everything found at our home."  
7

8 REMEDIES SOUGHT BASED UPON THE ABOVE CLAIMS:  
9

- 10 1. "I want to be released from this illegal detention (parole) while this case is being adjudicated."  
11 2. "We need everything the State has on Carry, i.e his arrest and all evidence the state has. We  
12 need this evidence to compare to what he did to fabricate and manipulate evidence in my case."  
13 3. "We need an alternate venue to adjudicate my case because of conflict of interest the state has  
14 because of Carry. Note: If Judge Breslow will vacate my conviction and dismiss my case with  
15 prejudice this would end these proceedings here and now in his Court."  
16

17 RESPONSE TO THE STATE'S MOTION TO DISMISS.

18 The Petitioner perceives there to be 7 arguments for dismissal raised by the State. The State's  
19 arguments will be set forth below in bold, followed by the Petitioner's verbatim response.  
20

21 First argument:

22 **Petitioner raises many of the same arguments from his Motion to Modify Sentence again**  
23 **in his current petition, but the State submits there are more applicable procedural bars.**

24 Response:

25 *Directly from their argument on Page 3 line 2. From NRS 34.726(1)....and that dismissal of the*  
26 *Petition as untimely will unduly prejudice the Petitioner.*  
27  
28

1       My case is a "Life" sentence case. No Time bar or Procedure Bars or latches. I have several  
2 arguments that are pertinent, and all arguments relate to the Plea memoranda (not a Plea Agreement)  
3 and that lead up to it. All relate of Attorney Sean Sullivan's "ineffective Assistance of Counsel" under  
4 *Stricklin (sic) v. Washington*. Also, this is an "Actual Innocence" Petition.

5  
6       Argument 2:

7       Petitioner's grounds for relief stem from his plea counsel's negotiations and performance  
8 at sentencing. Petitioner fails to explain how those claims were unknown to him at the time the  
9 remittitur was issued.

10  
11       Response:

12       From "Opposition to States Motion to Dismiss" p.13 None of the grounds in the "Opposition to  
13 State's motion to Dismiss" related to Defense Attorney Sean Sullivan's sentencing arguments save one,  
14 which was that Petitioner "did not share" anything with anyone.

15  
16       Attorney Mary Lou Wilson was to file a Post-Conviction Habeas Petition on the grounds of  
17 Actual Innocence. When she failed to supplement the "Modification of Sentence" petition, she also  
18 stopped all communication with the Petitioner. McCaffrey tried multiple times to make contact with  
19 Wilson, no success. The petitioner felt he was abandoned and without counsel and not know how to  
20 proceed further. It was not until in August of 2019 that he was informed by another Inmate how to  
21 proceed when McCaffrey submitted a motion to fire attorney Wilson and have her turn over his case, it  
22 was then that he learned that Wilson had lost his entire case. And we have since learned that she has  
23 been censored for failing to diligently pursue her clients cases.

24  
25       Arguments 3 and 4:

26       The fact Petitioner is not trained in the law is not an excuse to overcome the procedural  
27 bar.  
28

1           Response:

2           *To overcome the bars, petitioner claims, "Actual Innocence" as well as "ineffective Assistance*  
3 *of Counsel" in the "Instant offense" allegedly committed on June on June 9, 2009 there are, "there are*  
4 *no Elements of a Criminal Act in the instant offense. Former Detective Dennis Carry alleges that he*  
5 *downloaded video from Petitioners Computer. This is a Fabricated Lie (an unsubstantiated accusation*  
6 *with-out the basis of fact.) We must subpoena all the programs Carry used to Push any inappropriate*  
7 *data onto Petitioners Computer.*

9           Arguments 6 and 7:

10           **Petitioner's sentencing related claims are also barred by the plain language of NRS**  
11 **34.810(1)(a), which limits post-conviction claims after a plea to those claiming that counsel was**  
12 **ineffective at the plea stage or that the plea was entered involuntarily or unknowingly.**

13           Response:

14           *Since this is a Life Sentence Case, we claim this is an Ineffective Assistance of Counsel case and*  
15 *Actual and factual innocence case along with issues of due Process Violations, plain, manifest, and*  
16 *structural error. Also, violations including manifest injustice and the fairness doctrine of the US*  
17 *Constitution.*

18           *Just one of the many issues is "The Plea" which was written as a Plea Memorandum and I was*  
19 *coerced to sign. The document is not a Plea Agreement, no certificate of counsel. It is legally Void a*  
20 *Nullity which is a Fraud on the Court which means I've been in illegal custody now for 12 years.*

21           //

22           //

23           //

1           **CONCLUSION:** After review of the pleadings and record in this case, undersigned counsel did  
2 identify any issues of merit warranting supplementation.  
3

4  
5           **Affirmation Pursuant to NRS 239B.030**

6           The undersigned does hereby affirm that this document does not contain the Social  
7 Security Number of any person.

8 Dated this   9th   day of  June, 2021 .  
9

10                               /s/ Scott Edwards

11                               SCOTT W. EDWARDS  
12                               Attorney for Petitioner  
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1 CODE No. 3790  
2 CHRISTOPHER J. HICKS  
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6 (775) 328-3200  
7 districtattorney@da.washoecounty.us  
8 Attorney for Respondent

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

10 IN AND FOR THE COUNTY OF WASHOE

11 \* \* \*

12 WILLIAM J. MCCAFFREY,

13 Petitioner,

Case No. CR09-1325

14 v.

Dept. No. 8

15 THE STATE OF NEVADA,

16 Respondent.  
17 \_\_\_\_\_/

18 **REPLY IN SUPPORT OF THE STATE'S**  
19 **MOTION TO DISMISS POST-CONVICTION PETITION**

20 COMES NOW, the State of Nevada, by and through Marilee Cate, Appellate  
21 Deputy, and hereby files its Reply in Support of the State's Motion to Dismiss Post-  
22 Conviction Petition. This Reply is based on the pleadings and papers on file with this  
23 Court, and the following points and authorities.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

A. Petitioner failed to overcome the procedural bars and his Petition must be dismissed.

NRS 34.726(1) requires a post-conviction petition to be filed within 1 year of  
remittitur, absent a showing that the delay was not the fault of the petitioner and that  
dismissal of the petition as untimely will unduly prejudice the petitioner. The Petition

1 at issue here was filed over ten (10) years after remittitur. As such, the Petition must be  
2 dismissed unless Petitioner has been able to show that the delay was not his fault *and*  
3 dismissal will unduly prejudice Petitioner. NRS 34.726(1). With respect to good cause,  
4 a petitioner must demonstrate some obstacle external to the defense prevented him  
5 from filing his claims within one year. *Pellegrini v. State*, 117 Nev. 860 (2001). To show  
6 undue prejudice “a petitioner must show that errors in the proceedings underlying the  
7 judgment worked to the petitioner’s actual and substantial disadvantage.” *Harris v.*  
8 *State*, 113 Nev. 683, 688 (2017). Petitioner has not met his burden here.

9 Petitioner attempts to explain his delayed filing by pointing to alleged  
10 deficiencies or failures of prior post-conviction counsel, Mary Lou Wilson, the fact that  
11 he is unlearned and untrained in the law, and based on his theory that former Detective  
12 Dennis Carry fabricated evidence. The grounds for relief asserted in the Petition stem  
13 from Petitioner’s plea counsel’s negotiations and performance at sentencing. Petitioner  
14 fails to explain how those claims were unknown to him at the time remittitur was  
15 issued.<sup>1</sup> See *Hathaway v. State*, 119 Nev. 248, 253-254 (2003) (holding that all claims  
16 reasonably available must be made within the one-year period). Even his new assertion  
17

---

18 <sup>1</sup> Petitioner places blame on Mary Lou Wilson for his failure to file his Petition.  
19 Initially, he did not seek appointment of counsel or file his prior Motion to Modify  
20 within one year of remittitur, so it would have been difficult for her to overcome the  
21 time bar even if his prior Motion were treated as a post-conviction petition. See NRS  
22 34.726(1). In addition, this is not a capital case; therefore, any deficient performance by  
23 Ms. Wilson does not constitute good cause to excuse Petitioner’s procedural default. See  
24 *Brown v. McDaniel*, 130 Nev. 565, 569 (2014) (“We have consistently held that the  
ineffective assistance of post-conviction counsel in a noncapital case may not constitute  
‘good cause’ to excuse procedural defaults.”). Even assuming some blame for the delay  
could be placed upon Ms. Wilson, Petitioner still waited over five years after his Motion  
to Modify was denied to assert his current claims. See also *Pellegrini v. State*, 117 Nev.  
860, 874-878 (2001) (once a claim becomes available a one-year deadline applies). As a  
result, the Petition is untimely in all respects and must be dismissed.

1 that a detective fabricated evidence would have been known to Petitioner at the time of  
2 his plea. In fact, Petitioner was in the unique position of knowing exactly what he did  
3 and did not do, but made the choice to plead guilty after negotiations. In other words, if  
4 Petitioner believed there was fabricated evidence he could have and should have raised  
5 the issue at the time and/or proceeded to trial. Thus, Petitioner has failed to  
6 demonstrate that his claims were unavailable to him within one year.

7 The fact that Petitioner is not trained in the law is not an excuse to overcome the  
8 procedural bar. *See Phelps v. Director of Prisons*, 104 Nev. 656, 660 (1988) (*overruled*  
9 *on other grounds as recognized in Gallimort v. State*, 476 P.3d 435 (2020)). Further,  
10 the fact that Petitioner may not have all of his files or did not at the time his Petition was  
11 due also does not overcome the procedural bar. *See Hood v. State*, 111 Nev. 335, 338  
12 (1995). Petitioner's explanations for his delayed filing are attributable to him or his  
13 agents. As such, Petitioner has failed to show that the delayed filing was not his fault.  
14 NRS 34.726(1)(a).

15 To the extent that Petitioner claims he satisfies the standard because he got a  
16 "life" sentence,<sup>2</sup> and he is innocent of the charges, Petitioner still cannot overcome the  
17 procedure bar. Petitioner's sentence was upheld on direct appeal and falls within the  
18 statutory range. Thus, the fact that his sentence included lifetime supervision does not  
19 provide a basis for ignoring the procedural bars. Petitioner's claim of innocence is also a  
20 nonstarter. As noted in the waiver of preliminary examination filed in this case,  
21 Petitioner pleaded guilty to a legal fiction in order to receive a reduced sentence on the  
22 charge and the dismissal of two related charges. *See Waiver of Preliminary*

---

23  
24 <sup>2</sup> Petitioner was not sentenced to life in prison and is currently on parole, so  
Petitioner may mean he is subject to lifetime supervision.

1 Examination, filed herein on July 13, 2009. Put differently, he agreed to plead to a  
2 crime he did not commit—as a legal fiction—to secure a benefit and cannot now claim he  
3 was innocent of the crime he plead guilty to because that was known at the time of his  
4 plea. As such, Petitioner’s claim of innocence does not represent a basis to overcome the  
5 procedural bar. *See Hargrove v. State*, 100 Nev. 498, 503 (1984) (examining an  
6 innocence claim in a post sentence motion to withdraw a plea, and finding that the claim  
7 was without merit and academic because the defendant pleaded guilty to a lesser offense  
8 to receive a benefit). Therefore, the Petition must be dismissed because it is untimely,  
9 and Petitioner has not met his burden to show that he meets the statutorily provided  
10 exception to the time bar. *See State v. Dist. Ct. (Riker)*, 121 Nev. 225, 231 (2005)  
11 (procedural bars are mandatory).

12 Petitioner’s sentencing related claims are also barred by the plain language of  
13 NRS 34.810(1)(a), which limits post-conviction claims after a plea to those claiming that  
14 counsel was ineffective at the plea stage or that the plea was entered involuntarily and  
15 unknowingly. Petitioner claims that “this is a life case” so the bar does not apply. NRS  
16 34.810(1)(a) does not contain such an exception and procedural bars are mandatory.  
17 *See Riker*, 121 Nev. at 231.

18 Finally, the Petition in this case should also be barred due to the doctrine of  
19 latches. *See NRS 34.800*. More than five years has elapsed since the judgment of  
20 conviction was filed and there is a rebuttable presumption of prejudice to the State in  
21 having to respond to the petition and/or conduct a trial if the plea is unwound.  
22 Petitioner did not provide a legal basis to overcome the doctrine of latches in his  
23 Opposition and there is none. This Court should dismiss the Petition on the basis of  
24 latches as well.

1 B. Petitioner's new "claims" are procedurally barred and do not present a basis for relief.

2 Petitioner begins his opposition with a series of nine "claims," which are not  
3 responsive to the State's motion and do not assist him to overcome the procedural bars  
4 already asserted. If these are viewed as expansions on his Petition, they do not warrant  
5 relief for several reasons. Initially, these claims would be subject to the same procedural  
6 bars discussed above and the doctrine of laches. *See* NRS 32.726(1); NRS 34.810(1)(a);  
7 NRS 34.800.

8 In addition, each of the nine claims is nothing more than a conclusory assertion  
9 with no factual specificity or legal authority to demonstrate how each claim overcomes  
10 the procedural bar and entitles Petitioner to relief. For example, Petitioner asserts that  
11 his appellate counsel did not discuss his appeal with him, his defense attorney colluded  
12 with the district attorney, and Dennis Carry was a bad cop.<sup>3</sup> No additional factual  
13 allegations are included to connect the allegation to the relief Petitioner claims he is  
14 entitled to. Nor has Petitioner explained why it has taken so long to assert his claims.  
15 All of the claims asserted in the Opposition are bare, naked, conclusory, and/or are  
16 belied by the record and do not present a basis for a hearing or discovery. *See*  
17 *Hargrove*, 100 Nev. at 502 (providing that where claims are bare, naked, or belied by  
18 the record, and do not include specific allegations that show a petitioner is entitled to  
19 relief, no evidentiary hearing is required); *see also* NRS 34.780(2) (discovery in a post-

---

20  
21 <sup>3</sup> Another example appears in claim 1 of the Opposition, where Petitioner asserts  
22 that his guilty plea memorandum is defective because it was not certified by his counsel.  
23 It is unclear what "certification" requirement Petitioner is referring to, but Petitioner's  
24 guilty plea memorandum was signed by counsel. *See* Guilty Plea Memorandum, filed  
herein on Aug. 14, 2009, pg. 6. Petitioner's claim fails because it is not only bare and  
naked, but also belied by the record. *See Hargrove*, 100 Nev. at 502 ("A defendant  
seeking post-conviction relief is not entitled to an evidentiary hearing on factual  
allegations belied or repelled by the record.").

1 conviction proceeding is only available after an evidentiary hearing is set and upon a  
2 showing of good cause).

3 In addition, five of the claims asserted in Petitioner's Opposition—2 (48-hour  
4 rule violation), 3 (*Miranda* violation), 4 (Detective Dennis Carry is a "bad cop"),<sup>4</sup> 8  
5 (collusion between the State and his attorney),<sup>5</sup> and 9 (illegal search warrant)—concern  
6 events that occurred before the plea was entered. By pleading guilty, Petitioner waived  
7 those claims. *Kirksey v. State*, 112 Nev. 980, 923 P.2d 1102 (1996) (explaining that  
8 "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact  
9 guilty of the offense with which he is charged, he may not thereafter raise independent  
10 claims relating to the deprivation of constitutional rights that occurred prior to the entry  
11 of the guilty plea.").

12 In conclusion, none of Petitioner's claims in his Opposition overcome the  
13 procedural bars or present a cognizable basis for relief. The Petition must be dismissed  
14 in its entirety, and this Court should also dismiss any claims Petitioner has attempted to  
15

---

16 <sup>4</sup> This claim is not fleshed out, but later in Petitioner's Opposition he suggests  
17 that Dennis Carry planted certain material on his computer during the investigation.  
18 See Opposition, pg. 5. As such, this claim involves events that allegedly occurred prior  
19 to the entry of Petitioner's plea and would be waived by his choice to move forward with  
20 a plea at the time. In addition, Petitioner presents no evidence, let alone specific  
21 allegations, showing that Dennis Carry acted improperly in Petitioner's case, which was  
22 resolved over 12 years before Dennis Carry's recent arrest. Further, the current  
23 allegations against Detective Carry are connected to his personal life, not falsifying  
24 evidence in his cases. Moreover, Dennis Carry has not been adjudicated for his alleged  
crimes and remains innocent until he either pleads guilty or is proven guilty. The mere  
arrest of Dennis Carry does not create an avenue for relief for Petitioner, particularly  
when Petitioner has not alleged specific facts to support his theory that Dennis Carry  
falsified evidence in this case or to explain why he chose to enter a plea if he believed his  
charges were based on false evidence.

<sup>5</sup> For claim 8, Petitioner asserts collusion between the prosecutor and his  
attorney, but he specifically refers to an event in justice court. Thus, it occurred before  
entry of plea and is a waived claim.

1 add via his Opposition because the same procedural bars apply and his claims are bare,  
2 naked, conclusory, and/or belied by the record.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding document does not  
5 contain the social security number of any person.

6 DATED: June 21, 2021.

7 CHRISTOPHER J. HICKS  
8 District Attorney

9 By /s/ MARILEE CATE  
10 MARILEE CATE  
11 Appellate Deputy

12  
13 CERTIFICATE OF SERVICE

14 I hereby certify that this document was filed electronically with the Second Judicial  
15 District Court on June 21, 2021. Electronic Service of the foregoing document shall be  
16 made in accordance with the Master Service List as follows:

17 Scott W. Edwards, Esq.

18 /s/ Tatyana Kazantseva  
19 TATYANA KAZANTSEVA  
20  
21  
22  
23  
24

1 **CODE 2540**

2  
3  
4  
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
6 **IN AND FOR THE COUNTY OF WASHOE**  
7

8 **STATE OF NEVADA,**

9 **Plaintiff,**

**Case No: CR09-1325**

10 **vs.**

**Dept. No: 8**

11  
12 **WILLIAM JOSEPH MCCAFFREY,**

13 **Defendant.**  
14 \_\_\_\_\_/

15 **NOTICE OF ENTRY OF ORDER**  
16

17 PLEASE TAKE NOTICE that on August 9, 2021, the Court entered a decision or  
18 order in this matter, a true and correct copy of which is attached hereto.

19 Dated August 10, 2021.  
20

21 \_\_\_\_\_  
22 **ALICIA LERUD**  
23 **Clerk of the Court**

24 \_\_\_\_\_  
25 **/s/N. Mason**  
26 **N. Mason-Deputy Clerk**  
27  
28



1 **CERTIFICATE OF SERVICE**

2 Case No. CR09-1325

3 Pursuant to NRCP 5 (b), I certify that I am an employee of the Second  
4 Judicial District Court; that on August 10, 2021, I electronically filed the Notice of Entry of  
5 Order with the Court System which will send a notice of electronic filing to the following:

6  
7 REBECCA DRUCKMAN, ESQ. for STATE OF NEVADA  
8 SCOTT W. EDWARDS, ESQ. for WILLIAM JOSEPH MCCAFFREY  
9 MARILEE CATE, ESQ. for STATE OF NEVADA  
10 DONALD K. WHITE, ESQ. for WILLIAM JOSEPH MCCAFFREY  
11 DIV. OF PAROLE & PROBATION  
12 KRISTA D. MEIER, ESQ.  
13 MARY LOU A. WILSON, ESQ. for WILLIAM JOSEPH MCCAFFREY

14 I further certify that on August 10, 2021, I deposited in the Washoe  
15 County mailing system for postage and mailing with the U.S. Postal Service in Reno,  
16 Nevada, a true copy of the attached document, addressed to:

17 Attorney General's Office  
18 100 N. Carson Street  
19 Carson City, NV 89701-4717

20 William J. McCaffrey (#91477)  
21 735 S. Center St., #4  
22 Yerington, NV 89447

23 The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the  
24 preceding document does not contain the personal information of any person.

25 Dated August 10, 2021.

26 /s/N. Mason  
27 N. Mason- Deputy Clerk  
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

WILLIAM J. MCCAFFREY, Case No. CR09-1325  
Petitioner, Dept. No. 8  
vs.  
THE STATE OF NEVADA,  
Respondent.

**ORDER GRANTING MOTION TO DISMISS POST-CONVICTION PETITION**

Before the Court is a *Motion to Dismiss Post-Conviction Petition* (“*Motion to Dismiss*”) filed by Respondent THE STATE OF NEVADA (the “State”) on February 4, 2021. On June 9, 2021, Petitioner WILLIAM J. MCCAFFREY (“Petitioner”) filed a *Response to Motion to Dismiss Post-Conviction Petition*, to which the State replied on June 21, 2021.

Having reviewed the briefing, the record, and the applicable authorities, the Court **GRANTS** the State’s *Motion to Dismiss* for the reasons set forth below.

**BACKGROUND**

According to the record, a *Guilty Plea Memorandum* was filed in this case on August 14, 2009. Therein, Petitioner pled guilty to Promotion of Sexual Performance of a Minor, a violation of NRS 200.720 and NRS 200.750, a felony. The *Judgment of Conviction* was filed on October 9, 2009. Petitioner appealed, and the Supreme Court of the State of Nevada affirmed Petitioner’s conviction. *See Order of Affirmance*, filed July 15, 2010. The remittitur was issued on August 10, 2010, and filed with this Court on August 19, 2010. On

1 October 20, 2020, Petitioner filed a *Petition for Writ of Habeas Corpus* (the “*Petition*”). The  
2 State subsequently filed a *Motion to Dismiss*, in which the State argues that the *Petition* must be  
3 dismissed as Petitioner failed to overcome the procedural bars set forth in NRS 34.726. The  
4 Court agrees.

## 5 DISCUSSION

### 6 I. The One-Year Procedural Bar

7 Pursuant to NRS 34.726(1), a post-conviction petition must be filed within one-year of  
8 remittitur, absent a demonstration of good cause for the delay. For the purposes of  
9 NRS 34.726(1), good cause exists if Petitioner demonstrates, to the satisfaction of this Court, the  
10 two following prongs: (1) that the delay was not the fault of the petitioner; and (2) dismissal of  
11 the petition as untimely will unduly prejudice the petitioner. *Id.* The Nevada Supreme Court has  
12 explained good cause that requires a petitioner to demonstrate some obstacle external to the  
13 defense prevented him from filing his claims within one year. *Pellegrini v. State*, 117 Nev. 860  
14 (2001). To show undue prejudice, “a petitioner must show that errors in the proceedings  
15 underlying the judgment worked to the petitioner’s actual and substantial disadvantage.” *Harris*  
16 *v. State*, 113 Nev. 683, 688 (2017).

17 Here, the *Petition* is untimely as it was filed more than ten years after the Nevada  
18 Supreme Court issued remittitur. Thus, this Court turns to whether Petitioner has demonstrated  
19 good cause for the delay and undue prejudice.

20 In an attempt to demonstrate good cause for the delay, Petitioner asserts three main  
21 grounds as to why he failed to timely file the *Petition*: (1) because he is untrained in the law;  
22 (2) due to alleged deficiencies of his prior post-conviction counsel; and (3) based on the theory  
23 that former Detective Dennis Carry fabricated evidence in this case. None of these reasons are  
24 sufficient to overcome Petitioner’s burden under Nevada law.

25 First, our appellate courts have reiterated that being untrained in the law is not a sufficient  
26 excuse to overcome the procedural bar. *See Phelps v. Nev. Dep’t of Prisons*, 104 Nev. 656, 660  
27 (1988) (*overruled on other grounds as recognized in Gallimort v. State*, 476 P.3d 435 (2020));  
28

1 See also *Boney v. State*, 484 P.3d 280 (Nev. App. 2021). Thus, Petitioner’s claim that he is  
2 unlearned in the law fails to meet a sufficient demonstration of adequate cause for the delay.

3 Second, Petitioner asserts that he was unable to timely file the Petition because he was  
4 unable to obtain his files from his post-conviction counsel, Mary Lou Wilson.

5 The governing jurisprudence holds that a claim of ineffective assistance of counsel may  
6 constitute adequate cause if the claim is not procedurally defaulted. *Hathaway v. State*, 119 Nev.  
7 248, 252–53 (2003). The Supreme Court has explained: “[i]n other words, a petitioner must  
8 demonstrate cause for raising the ineffective assistance of counsel claim in an untimely fashion.  
9 In terms of a procedural time-bar, an adequate allegation of good cause would sufficiently  
10 explain why a petition was filed beyond the statutory time period.” *Id.*

11 Here, placing blame on Ms. Wilson is insufficient to meet adequate cause because  
12 Ms. Wilson was not appointed as counsel to Petitioner’s case until July 16, 2014—about four  
13 years after the Nevada Supreme Court issued remittitur. Even if a post-conviction petition were  
14 filed at that time, it would have been difficult for Ms. Wilson to overcome the time bar as  
15 Ms. Wilson’s appointment occurred well over the one-year procedural bar.

16 Additionally, the Nevada Supreme Court has “consistently held that the ineffective  
17 assistance of post-conviction counsel in a noncapital case may not constitute “good cause” to  
18 excuse procedural defaults.” *Brown v. McDaniel*, 130 Nev. 565, 569 (2014). Because this is a  
19 noncapital case, any deficient performance by Ms. Wilson does not constitute adequate cause to  
20 excuse Petitioner’s procedural default.

21 Finally, Petitioner fails to explain how his theory that a former detective fabricated  
22 evidence was unknown to him at the time remittitur was issued. The Nevada Supreme Court has  
23 clarified that all claims reasonably available must be made within the one-year period for filing a  
24 post-conviction habeas petition:

25 In order to demonstrate good cause, a petitioner must show that an  
26 impediment external to the defense prevented him or her from  
27 complying with the state procedural default rules. An impediment  
28 external to the defense may be demonstrated by a showing “that the  
factual or legal basis for a claim was not reasonably available to  
counsel, or that ‘some interference by officials,’ made compliance

1 impracticable.”... Thus, a claim or allegation that was reasonably  
2 available to the petitioner during the statutory time period would not  
constitute good cause to excuse the delay.

3 *Hathaway v. State*, 119 Nev. 248, 252–53 (2003).

4 As the State points out, when Petitioner pled guilty, he was in the unique position of  
5 knowing which offenses he did or did not commit. Thus, Petitioner should have been reasonably  
6 alerted at that time if he believed evidence was fabricated. Instead of raising that issue at the  
7 time, Petitioner decided to plea guilty. Because such a claim was reasonably available to  
8 Petitioner, it is subject to the one-year statutory period. Thus, Petitioner’s claim that a detective  
9 fabricated evidence fails to demonstrate good cause.<sup>1</sup>

10 In sum, the Court finds that Petitioner’s allegations of good cause lack merit to  
11 demonstrate to the Court’s satisfaction that adequate cause to excuse his delay. Therefore, the  
12 *Petition* is dismissed as procedurally time-barred.

## 13 **II. Petitioner’s New Claims**

14 In the *Response to Motion to Dismiss Post-Conviction Petition*, Petitioner asserts nine  
15 new claims, which are not responsive to the State’s *Motion to Dismiss*. Rather, they are an  
16 expansion to the *Petition* and thus subject to the same procedural bars set forth in  
17 NRS 32.726(1). The claims, as asserted by Petitioner, include:

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18  
19 <sup>1</sup> In addition to the three main grounds discussed above, Petitioner contends that adequate cause  
20 exists because he received a life sentence and by asserting a claim of innocence. The Court has  
21 reviewed the record, and Petitioner was not sentenced to life in prison. Rather, Petitioner is  
22 subject to lifetime supervision. The Court is unaware of any authority that suggests that lifetime  
23 supervision constitutes good cause. Furthermore, Petitioner’s claim of innocence is not  
24 sufficient to meet adequate cause because he pled guilty to a legal fiction—a crime he did not  
25 commit—to secure the benefit of a reduced sentence on the charge and the dismissal of two  
charges. *See Hargrove v. State*, 100 Nev. 498, 503 (1984) (examining an innocence claim in a  
post sentence motion to withdraw a plea and finding that the claim was without merit and  
academic because the defendant in that case pleaded guilty to a lesser offense to receive a  
benefit). Therefore, both of these grounds fail to meet adequate cause.

26 More generally, Petitioner’s underlining grounds for relief stem from his plea counsel’s  
27 negations and performance at sentencing. Petitioner fails to explain how these claims were  
28 unknown to him at the time remitter was issued. *See Hathaway v. State*, 119 Nev. 248, 252–53  
(2003).

1       **Claim 1:** the guilty plea memorandum was defective because it did not contain a proper  
2       certification by Petitioner's counsel.

3       **Claim 2:** the 48-hour rule was violated.

4       **Claim 3:** Petitioner's *Miranda* Rights were violated.

5       **Claim 4:** Petitioner would not have pled guilty if he had known Detective Carry was a  
6       "bad cop."

7       **Claim 5:** counsel for Petitioner, John Petty, had no discussion with Petitioner about  
8       appeals.

9       **Claim 6:** time was lost due to Attorney Wilson's abandonment of this case.

10       **Claim 7:** the 60-minute rule was violated.

11       **Claim 8:** defense counsel and the district attorney colluded against Petitioner.

12       **Claim 9:** the search warrant was illegal.

13       The Nevada Supreme Court has explained that no evidentiary hearing is required where  
14       claims are bare, naked, or belied by the record and do not include specific allegations that show a  
15       petitioner is entitled to relief. *See Hargrove*, 100 Nev. at 502. The Court has thoroughly  
16       reviewed each of the nine claims in Petitioner's *Response* and finds them to be nothing more  
17       than mere conclusory assertions with no factual specificity or legal authority to demonstrate how  
18       each claim overcomes the procedural bar. For instance, Petitioner asserts that his appellate  
19       counsel did not discuss his appeal, his defense attorney conspired with the district attorney, and  
20       former Detective Carry was a "bad cop." No additional factual allegations are included to  
21       connect the allegation to the relief Petitioner claims he is entitled to relief. Nor has Petitioner  
22       explained why it has taken so long to assert his claims pursuant to NRS 34.726(1). Because the  
23       claims are bare, naked, conclusory and/or are belied by the record, they do not present a  
24       cognizable basis for relief, and thus fail to overcome the procedural bars.<sup>2</sup>

25       

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26       <sup>2</sup> The Court notes that five of the claims asserted in Petitioner's *Response*—Claim 2 (the 48-hour  
27       rule violation); Claim 3 (*Miranda* violation); Claim 4 (Detective Dennis Carry is a "bad cop");  
28       Claim 8 (collusion between the State and his attorney); and Claim 9 (illegal search warrant)—  
      concern events that occurred before the plea was entered. By pleading guilty, Petitioner waived  
      those claims. *Kirksey v. State*, 112 Nev. 980 (1996) (explaining that "[w]hen a criminal  
      defendant has solemnly admitted in open court that he is in fact guilty of the offense with which

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**CONCLUSION**

For the foregoing reasons, the Court **GRANTS** the State's *Motion to Dismiss*  
*Post-Conviction*

**IT IS SO ORDERED.**

**DATED** this 9 day of August, 2021.



BARRY L. BRESLOW  
District Judge

\_\_\_\_\_ he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”).

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REBECCA DRUCKMAN, ESQ. for STATE OF NEVADA  
SCOTT EDWARDS, ESQ. for WILLIAM MCCAFFREY  
MARILEE CATE, ESQ. for STATE OF NEVADA  
DONALD WHITE, ESQ. for WILLIAM MCCAFFREY  
DIV. OF PAROLE & PROBATION  
KRISTA MEIER, ESQ.  
MARY LOU WILSON, ESQ. for WILLIAM MCCAFFREY

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FILED

AUG 16 2021

ALICIA L. VERUB, CLERK  
By: [Signature]  
DEPUTY CLERK

CODE §2515

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\* \* \* \* \*

WILLIAM J. MCCAFFREY,

Case No. CR09-1325

Petitioner,

Dept. No. 8

-vs-

THE STATE OF NEVADA,

Respondent.

NOTICE OF APPEAL

NOTICE IS GIVEN that Petitioner, WILLIAM J. MCCAFFREY  
in pro se, hereby appeals to the Nevada Supreme Court the  
Findings of Fact, Conclusions of Law and Order denying /  
dismissing Petition for Writ of Habeas Corpus, which was filed /  
entered on the 9<sup>th</sup> day of August, 2021.

Dated this 16<sup>th</sup> day of August, 2021.

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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 16<sup>th</sup> day of August, 2021, by placing same in the U.S. Mail

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. CR091325 does not contain the social security number of any person.

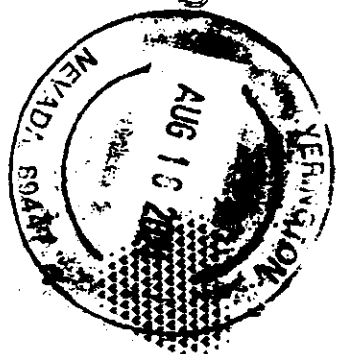
Dated this 16<sup>th</sup> day of August, 2021.

William J. McCaffrey  
William J. McCaffrey

Petitioner In Pro Se

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