APPELLENT'S APPENDIX

Electronically Filed
Dec 15 2021 10:15 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	October 27, 2016

C-16-318858-1 State of Nevada
vs
Jeffrey Brown

October 27, 2016 **8:30 AM** **All Pending Motions (10/27/2016)**

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Susan Jovanovich

RECORDER: Debbie Winn

REPORTER:

PARTIES PRESENT:

Brown, Jeffrey	Defendant
Public Defender	
Renteria, Marla	Deputy Public Defender
Rhoades, Kristina A.	Chief Deputy District Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

INDICTMENT WARRANT RETURN...INITIAL ARRAIGNMENT

DEFT. BROWN ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter SET for trial.

CUSTODY

4/04/17 8:30 A.M. CALENDAR CALL

4/11/17 1:30 P.M. TRIAL BY JURY

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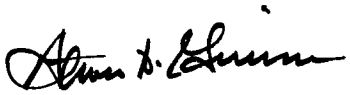
10/31/2016 11:54:56 AM



CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff,	)	
vs.	)	GJ No. 16AGJ114X
JEFFREY BROWN, aka Jeffery Kent Brown, Defendant.	)	DC No. C318858

Taken at Las Vegas, Nevada

Tuesday, October 18, 2016

4:03 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 2

Reported by: Danette L. Antonacci, C.C.R. No. 222

GRAND JURORS PRESENT ON OCTOBER 18, 2016

PAUL MORTALONI, Foreperson
WAYNE CLEVELAND, Deputy Foreperson
MARY ANN GOTHARD, Secretary
DAVID BAX
ARTHUR BYRD
NORMA MARTIN
MELVINA MISSOURI-DONOVAN
KATHERINE MUNIZ
ADRIENNE ODONOGHUE
MARRENA POUNCY
DELORES POWELL
MICHAEL TALKINGTON
DIANA WILSON
GERALDINE WOJNAROWSKI
LAWRENCE WONG

Also present at the request of the Grand Jury:

K. Nicholas Portz, Deputy District Attorney

12:00

INDEX OF EXHIBITS

Grand Jury Exhibits	Identified
1A - AMENDED PROPOSED INDICTMENT	5

LAS VEGAS, NEVADA, OCTOBER 18, 2016

* * * * * * *

DANETTE L. ANTONACCI,

having been first duly sworn to faithfully and accurately transcribe the following proceedings to the best of her ability.

MR. PORTZ: Good afternoon everyone my name is anything ports I'm a deputy district attorney Clark County DA's office prosecuting the case of State of Nevada versus Jeffrey Brown stylized in your Indictment as case 16AGJ114X. This is a continuation of a hearing that took place last week on the 11th. It's my understanding that all members present were either here for the testimony or have read transcript of the testimony and are familiar with what was presented at last week's hearing. Is that correct?

A JUROR: Yes.

A JUROR: Yes.

MR. PORTZ: I'm showing affirmative responses from all the grand jurors. I'm only asking you to deliberate today based on the testimony and the evidence you received at the last hearing. And I just want to note that you'll be deliberating on a second

proposed Indictment that has been marked Grand Jury Exhibit 1A. The only changes in this Indictment, I know you reviewed it the last time, is that Farha Brown, victim Farha Brown's name is spelled correctly. And if you look at Count 1, aggravated stalking, page 2, lines 15 through 16, the State has amended that to read only that with the intent that Farha Brown be placed in reasonable fear of death or substantial bodily harm, not Monequie Short and/or Farha Brown. There's only one victim listed in Count 1. Does everyone understand the amendments?

A JUROR: Yes.

MR. PORTZ: With that all the evidence has been presented. I'll ask that you deliberate and I'll be right outside if you need me. Thank you.

(At this time, all persons, other than members of the Grand Jury, exit the room at 4:04 p.m. and return at 4:07 p.m.)

THE FOREPERSON: Mr. District Attorney, by a vote of 12 or more grand jurors a true bill has been returned against defendant Jeffrey Brown charging the crimes of aggravated stalking, attempt murder with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm constituting domestic violence, battery with use of a deadly weapon

resulting in substantial bodily harm, assault with a deadly weapon, child abuse, neglect or endangerment with use of a deadly weapon, and discharge of a firearm from or within a structure or vehicle, in Grand Jury case number 16AGJ114X. We instruct you to prepare an Indictment in conformance with the proposed Indictment previously submitted to us.

MR. PORTZ: Thank you all.

(Proceedings concluded.)

--oo0oo--

04:07

REPORTER'S CERTIFICATE

STATE OF NEVADA)
: Ss
COUNTY OF CLARK)

I, Danette L. Antonacci, C.C.R. 222, do hereby certify that I took down in Shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated and thereafter said shorthand notes were transcribed at and under my direction and supervision and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had.

Dated at Las Vegas, Nevada, October 31, 2016.

/s/ Danette L. Antonacci

Danette L. Antonacci, C.C.R. 222

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER 16AGJ114X:

_X_ Does not contain the social security number of any person,

-OR-

___ Contains the social security number of a person as required by:

A. A specific state or federal law, to-wit: NRS 656.250.

-OR-

B. For the administration of a public program or for an application for a federal or state grant.

/s/ Danette L. Antonacci
Signature

10-31-16
Date

Danette L. Antonacci
Print Name

Official Court Reporter
Title

Electronically Filed
6/19/2018 2:26 PM
Steven D. Grierson
CLERK OF THE COURT

MEMO

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
K. NICHOLAS PORTZ
Deputy District Attorney
Nevada Bar #12473
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEFFREY BROWN,
#3074249

Defendant.

CASE NO: C-16-318858-1

DEPT NO: XII

SENTENCING MEMORANDUM

DATE OF HEARING: JUNE 21, 2018
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through K. NICHOLAS PORTZ, Deputy District Attorney, and hereby submits this Memorandum for the Court's consideration.

PROCEDURAL HISTORY

On October 19, 2016, the State filed a nine (9) count Indictment charging Jeffrey Brown, aka, Jeffrey Kent Brown ("Defendant"), with the following crimes: AGGRAVATED STALKING (Category B Felony - NRS 200.575 - NOC 50333); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM CONSTITUTING DOMESTIC VIOLENCE

Case Number: C-16-318858-1

(Category B Felony - NRS 200.481; 200.485; 33.018 - NOC 57936); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481 - NOC 50226); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201); CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.508, 193.165 - NOC 55228); and DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287 - NOC 51445). Bail was set at $650,000.00.

Defendant was arraigned on October 27, 2016, wherein Defendant pled Not Guilty and waived his right to a speedy trial. Trial was ultimately set for January 17, 2018.

On January 17, 2018, the morning of trial, Defendant entered into a Guilty Plea Agreement with the State wherein he did plead guilty to the following crimes: ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165 – NOC 50031) and ASSAULT WITH A DEADLY WEAPON (Category B Felony – NRS 200.471 – NOC 50201). A corresponding two (2) count Third Amended Indictment was also filed that day. Sentencing was set for March 8, 2018.

Defendant subsequently sought to withdraw his plea and attorney David Fischer, Esq., was appointed for the purposes of determining whether a motion to withdraw plea was warranted. On June 5, 2018, Mr. Fischer advised the Court that Defendant had no legal basis to withdraw his plea. Sentencing is presently set for June 21, 2018.

The State hereby submits this Memorandum for the Court's consideration.

STATEMENT OF FACTS

Facts Elicited at the Grand Jury

Defendant and Farha Brown ("Farha") have been married twenty-two years and share one child in common. Grand Jury Transcript, October 11, 2016 ("GJT"), pp. 23-24. In July of 2016, Farha and Defendant separated, resulting in Farha moving out of their shared residence and into her own apartment in Henderson. GJT, pp. 24-25. Following their separation, Defendant began texting Farha a number of inappropriate messages, which resulted

in Farha changing her phone number. GJT, p. 31. Defendant also had password access to an e-mail account that Farha used (Defendant had his own separate e-mail account from which he would e-mail Farha from time to time). GJT, p. 28. Also, unbeknownst to Farha, Defendant had access to an OnStar account linked to Farha's 2015 Chevrolet Equinox, which allowed him to locate and access her vehicle – even if it is locked. GJT, pp. 29, 34.

Sometime after Farha had moved out in July, she began dating Monequie Short ("Mo"). GJT, p. 25. Mo was in the process of separating from his wife when he and Farha met. GJT, p. 33. While they were dating, Farha asked Mo for information on filing for divorce on-line and Mo emailed Farha copies of his on-line divorce papers for her to look over. GJT, p. 33. In September of 2016, Mo's sister died and Farha joined Mo and Mekhi (Mo's fifteen year old son) on a trip to Indiana for the funeral. GJT, pp. 26-27, 68. Farha purchased the airline tickets online with her Southwest credit card, which forwarded her travel itinerary – including departure and return dates – to her email account. GJT, p. 27.

On Wednesday, September 14, 2016, Farha drove Mo and Mekhi in her car to McCarran Airport, where she parked on the sixth floor of the long-term parking garage. GJT, pp. 28-29. Farha did not tell Defendant that she was leaving town with Mo. GJT, p. 29. On Friday, September 16, while Farha was in Indiana, she talked to Defendant over the phone and Defendant was immediately hostile. GJT, pp. 30-31. Defendant called Farha names, including a liar, and informed her that he knew she was in Indiana with Mo. GJT, p. 32. When Farha asked Defendant how he knew her location, Defendant told her he had accessed her email and read her flight itinerary. GJT, p. 32. Defendant then began to ask questions about Mo, including what he looked like and whether he was still married. GJT, pp. 32. Defendant told Farha he knew Mo had been married because he had also accessed the divorce papers Mo had emailed Farha. GJT, p. 33.

During that same call, Defendant informed Farha that he had broken into her car at McCarran. GJT, p. 33. Defendant explained that he had located her car both through her email itinerary and by accessing Farha's OnStar account, which he used to locate the vehicle via the GPS location service. GJT, pp. 33-34. Defendant told Farha that once he located the vehicle

and found it locked, he again accessed Farha's OnStar account to unlock the vehicle so that he could get into the car. GJT, pp. 34-35. Defendant told Farha that he searched the car and found a pair of keys that he believed belonged to Mo. GJT, p. 36. Mo had in fact left his keys inside the closed center console of the vehicle. GJT, p. 36. Defendant told Farha that he had removed Mo's keys from her car, drove to her Henderson apartment and tried every single key to see if one fit in Farha's door. GJT, p. 37. Defendant said that one of the keys did fit the lock to Farha's apartment, and Defendant again called Farha a liar and said that she was living with Mo. GJT, p. 37. Defendant then told Farha "don't make me regret what I am going to do or what I am capable of. Or you don't know – [Mo] doesn't know what I'm capable of." GJT, p. 39. Immediately after the phone call, Farha, in tears, told Mo about all of her conversation with Defendant. GJT, p. 54.

Based on that threat and the lengths Defendant had taken to access Farha's car and apartment while she was out of town, Farha testified that she "[a]bsolutely" was in fear for her safety and the safety of Mo. GJT, pp. 39-40. Mo also testified that Defendant's behavior had caused him to concern for both his and Farha's safety. GJT, p. 54. To protect herself, Farah immediately called OnStar to change her passcode to prevent Defendant from being able to track her movements. GJT, p. 40. She also immediately called her apartment complex and asked that her locks be changed. GJT, p. 41.

Farha, Mo and Mekhi returned to Las Vegas on Monday, September 19, 2016. GJT, p. 41. Notably, their arrival date and time was included in the email itinerary she received from Southwest, which Defendant had already accessed. GJT, p. 42. Farha testified that as she packed to leave Indiana that morning, she told Mo about her fear that Defendant may meet them at the airport. GJT, p. 41. She considered calling her son to relay a message to Defendant that her flight would be delayed an extra day. GJT, p. 42. When their plane landed in Las Vegas, Farha again told Mo that she was concerned Defendant might be waiting for them and thought they should get airport security to escort them to the car. GJT, p. 42. Mo responded to Farha that there were a lot of people at the airport and he thought they would be fine without security. GJT, pp. 42-43. During the same time frame, Defendant was recorded on airport

surveillance as having entered the airport parking structure, in a 2007 Ford Escape, three times that day: at approximately 10:42 AM, 11:40 AM, and 12:51 PM.

Farha, Mo and Mekhi got their luggage and walked to Farha's car on the sixth floor of the parking lot. GJT, p. 43. As the elevator door opened, Farha whispered to Mo to look for a red Corvette Defendant is known to drive. GJT, p. 43. Farha whispered this to Mo so as not to startle or scare Mekhi. GHT, p. 43. Farha testified that they walked quickly to the car as she was looking "over [her] shoulders" and remotely started her vehicle, GJT, pp. 43-44.

As Farha opened her trunk and began to load the luggage, she saw her son's 2007 Ford Escape pull up with Defendant alone in the driver's seat. GJT, p. 44. Defendant confronted Farha about Mo, cursing and ranting at her. GJT, pp. 44, 57. Farha told Defendant "we're not going to do this," then nervously walked away to pack the car so they could "quickly leave" the situation. GJT, p. 44. While Farha was putting suitcases in her car, Mo attempted to intervene and told Defendant that if Defendant had something to say to Mo he should say it directly to him rather than to Farha. GJT, pp. 45, 57-58.

Defendant looked at Mo, reached into his vehicle's center console and pulled out a silver and black revolver. GJT, pp. 58-59. Defendant then pointed the firearm at Mo and, as Mo was backing away, Defendant fired off two shots, with one bullet striking Mo in the hip. GJT, pp. 58-60. Farha began to scream and ran to the passenger side of her vehicle to get away from Defendant. GJT, p. 45. As she ran, Farha heard tires screeching behind her, then the vehicle come to a stop. GJT, p. 45. Defendant fired off two shots at Farha. GJT, pp. 46, 60. After the first shot, Farha screamed "Jeff, no," then the second shot struck her in the lower left part of her back. GJT, pp. 45-46.

Mo screamed for his son Mekhi to run. GJT, p. 61. Mekhi was approximately 7 feet away from Farha when she was shot. GJT, p. 70. Mekhi recalled hearing the gunshots, watching his father and Farha fall to the ground and seeing blood. GJT, pp. 70-71. Before running away, Mekhi saw Defendant point the gun at him from inside the car, from approximately twenty (20) to thirty (30) feet away. GJT, pp. 71-72. Mekhi ran down an on-ramp to the fifth floor of the garage to hide. GJT, pp. 69-71.

Defendant then sped off down the parking garage ramp. GJT, p. 45. Farha eventually called 9-1-1 and police and medical assistance arrived. GJT, p. 62. Detective Verl Conover of the Las Vegas Metropolitan Police Department ("LVMPD") was one of the detectives assigned to investigate the shooting. GJT, pp. 12-14. After responding to McCarran, Detective Conover and his partner Detective Treppis went to Defendant's house. GJT, p. 15. Defendant was not there, but the detectives were able to speak to his son and learned that Defendant may be at a veteran's hospital located at 6900 Pecos in North Las Vegas. GJT, p. 16. Detectives Conover and Treppis arrived at the hospital and found the gray Ford Escape Defendant had been driving during the shooting. GHT, p. 17. From outside the vehicle, Detective Conover could see the handle of a revolver handgun that was covered by a towel positioned in the center console of the vehicle. GJT, pp. 17-18. As the detectives approached the hospital, they encountered Defendant who was being escorted out in a wheelchair by a VA hospital officer. GJT, pp. 18-19. They then took Defendant into custody. GJT, p. 20.

Since the shooting, Farha continues to suffer from severe back pain and numbness of her left leg. GJT, p. 47. The bullet remains in Farha's back to this day. GJT, p. 46. Mo suffered an entry-exit wound that went through his right hip and exited out of his left buttocks. GJT, p. 60. Since being shot, Mo suffers from numbness and prolonged pain in his leg, which prevents him from sleeping for more than two hours at a time. GJT, p. 63. Mo must now walk with the assistance of a cane. GJT, p. 63. Mekhi has had to see a therapist. GJT, p. 65.

Additional Facts Pertinent to Sentencing Memorandum

While in custody, Defendant made a number of phone calls in which he (1) acknowledged he was trying to kill Mo at the time he shot him; (2) asked others to get "dirt" on Farha he could use to "tear her down" at trial; (3) suborn perjury through his son, Faheeb, a witness to the case; and (4) ask his son to destroy what Defendant believed to be incriminating evidence. See **EXHIBIT 1 (Compact Disc)**. As a result of these calls, Defendant's jail phone call privileges were revoked in Justice Court. See **EXHIBIT 2 (Justice Court Minutes, 10/7/2016)**.

///

The State wishes to highlight here the more significant statements made by Defendant in the calls after his arrest:

- **Track 55266279**

  In this call, made on September 22, 2016, Defendant asks the female to "get leverage on Farha" and try to pull up information about her criminal past. Most damning, Defendant discusses portions of the shooting in which he states, while referencing victim Mo Short, "I shot that motherfucker twice... ***I tried to kill that mother fucker.***" Notably, Mo Short was standing only a few steps away from his fifteen year old son when Defendant was trying to kill him.

- **Track 55268389**

  In this call, also made September 22, 2016, Defendant discusses the incident and concludes by telling the female on the phone "***It was worth it.***" Defendant also discusses the fact that he was going through Farha's emails before the incident and had read emails between her and the new boyfriend.

- **Track 55290193**

  In this call, made September 23, 2016, Defendant again asks the female to be a witness for him at trial. He tells the female "***You gonna help me tear Farha down.***" He then asks the female to testify that Farha was allegedly involved in illegal activity years ago in Chicago. When the female response "I don't remember that," Defendant instructs her that regardless of whether or not she remembers, "***you gonna play it like you did.***" Clearly, Defendant is asking this woman to lie on the stand to attack the character of his victim.

- **Track 55290397**

  In this call, made on September 23, 2016, Defendant is talking to his son, and witness in this case, Faheeb Brown. Defendant instructs his son that his mother, Farha, "wants to control you," and that he is to "tell her you gonna be a character witness at my trial... You not there for the people, you there for your dad." When Faheeb informs Defendant that he could not testify to anything that would help

Defendant's case, Defendant responds "Yes you do. One false move and I go to jail for a long time and you never see your daddy again. You don't let Farha do me like that. You get on the stand and you testify." Defendant also brags to his son about shooting Mo, stating "***He got shot in the chest. Yeah, I popped him in the chest. I'm telling you I know where I shot him at.***" Later on Defendant instructs Faheeb to locate evidence unknown to police that he believes would hurt his case, stating "***You have to get the black bag your mom has to get a key to that dude's house – that will prove my premeditation***." Clearly, Defendant is seeking to have others destroy evidence he believed to be incriminating.

CONCLUSION

Defendant systematically stalked, hunted and gunned down his victims. Once he had shot both Farha and Mo he needlessly and cruelly pointed his firearm at Mekhi, who was forced to run away from what he believed to be his dying father. The Defendant's actions the day of the attempted murder constitute the very definition of "lying in wait." Defendant has shown no remorse for his criminal activity and has actively sought to interfere with witnesses and evidence in this case. He should be held to full account.

Based on the foregoing, the State respectfully requests that this Court sentence Defendant for Count 1 to a term of incarceration of 96 – 240 months plus a consecutive term of 96 – 240 months. The state respectfully requests that this Court sentence Defendant for Count 2 to a consecutive term of incarceration of 24 – 72 months.

DATED this 19th day of June, 2018.

Respectfully submitted,

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

BY _____
K. NICHOLAS PORTZ
Deputy District Attorney
Nevada Bar #12473

CERTIFICATE OF ELECTRONIC FILING

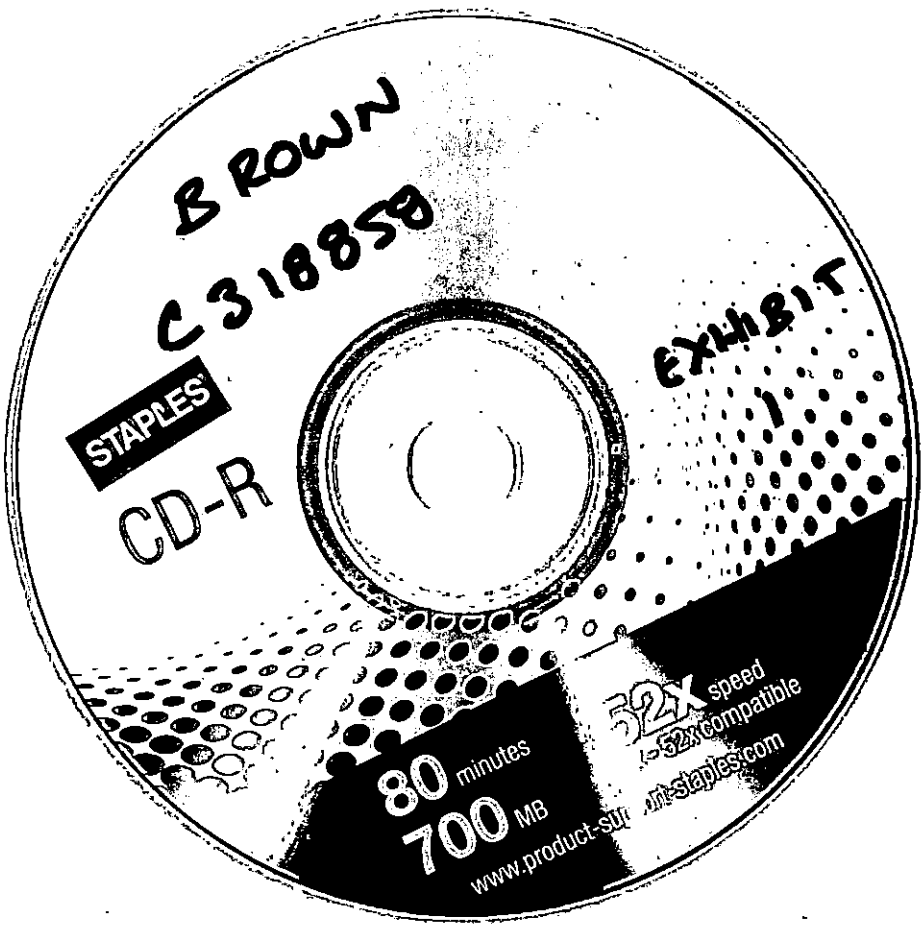
I hereby certify that service of Sentencing Memorandum, was made this 19th day of June, 2018, by Electronic Filing to:

TIMOTHY
attorneytreffinger@gmail.com

Corina Garcia

C. Garcia
Secretary for the District Attorney's Office

KNP/cg/L3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"EXHIBIT 1"

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Steven D. Grierson
CLERK OF THE COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEFFREY BROWN aka
Jeffery Kent Brown
#3074249

Defendant.

CASE NO. C-16-318858-1

DEPT. NO. XII

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.330, 193.165; and COUNT 2 – ASSAULT WITH A DEADLY WEAPON (Category B Felony) in violation of NRS 200.471; thereafter, on the 21st day of June, 2018, the Defendant was present in court for sentencing with counsel TIMOTHY TREFFINGER, ESQ., and good cause appearing,

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THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee, $741.58 Restitution and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA Collection Fee, the Defendant is sentenced to the Nevada Department of Corrections as follows: **COUNT 1** – a MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8) YEARS, plus a CONSECUTIVE term of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8) YEARS for the Use of a Deadly Weapon; and **COUNT 2** - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of SIXTEEN (16) MONTHS, CONCURRENT with COUNT 1; with FIVE HUNDRED THIRTY-SIX (536) DAYS credit for time served.

DATED this 27 day of June, 2018

MICHELLE LEAVITT
DISTRICT COURT JUDGE

SB
pl

JEFFREY K. BROWN
NNRC - 1200568
P.O. BOX 7000
CARSON CITY, NV 89702-7000

FILED
OCT 09 2018
CLERK OF COURT

7

EIGTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA

STATE OF NEVADA,
Plaintiff,
vs.
JEFFREY K. BROWN,
Defendant

Case No.: C-16-318858-1

MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS

DATE OF HEARING: NOVEMBER 13, 2018
TIME OF HEARING: 8:30 AM

NOTICE OF MOTION AND MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS

COMES NOW, JEFFREY K. BROWN, in PRO PER and herein above SUBMIT his Notice of Motion and Motion for withdrawal of Attorney of Record and transfer of records, moving this court to order that TIMOTHY R. TREFFINGER, counsel of record in the above-entitled action, be withdrawn as counsel of record herein, and that said counsel deliver to defendant all documents, pleadings, papers, and tangible personal property in counsel's possession and control to defendant, at counsel's expense, to the above address.

This motion is based upon NRS 7.055, Nevada Supreme Court Rules 46 & 166, and this Courts Local Rule of Practice corresponding to this motion, as well as the attached points and authorities and affidavit supporting same.

RECEIVED
OCT 09 2018
CLERK OF THE COURT

C-16-318858-1
MOT
Motion
4786637

MEMORANDUM OF POINTS AND AUTHORITIES

Although an attorney may not withdraw as counsel of record if doing so would adversely affect the client's interest, Madrid v. Gomez, 150 F.3d 1030, 1038-39 (9th Cir. 1998), the client may terminate his counsel's representation at any time, Kashef-Zihagh v. I.N.S., 791 F.2d 708, 711 (9th Cir. 1986). See NRS 7.055.

Upon being discharged by his client,

> [The] attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, IMMEDIATELY DELIVER TO THE CLIENT all papers, documents, pleadings and items of tangible personal property, which belong to or were prepared for that client. NRS 7.055(1) (emphasis added). See also Nevada Supreme Court Rule (SCR) 16; Second Judicial District Court Rule 23(1); and Eighth Judicial District Court Rule 7.40(b) (2) (ii).

As the judgment of conviction has been entered in this case, with appeal, if any, having been perfected, counsel's services are no longer required in this criminal matter. Defendant has, pursuant to the mandates of NRS 7.055 (3), directed counsel to forward to him all documentation generated in this action and to withdraw as counsel of record, but counsel has failed to comply. See Affidavit in support of instant motion.

Counsel's refusal to withdraw himself and forward said documentation to Defendant violates the letter and spirit of SCR 46, which directs a discharged attorney to "protect a client's interest" by "surrendering papers and property to which the client is entitled." Id. This rule governing attorney conduct is a basic one of which the American Bar Association has recognized by requiring of all attorneys within canon 2 of the Code of Professional Responsibility, EC2-32, and Disciplinary Rule 2-110 (a) (2).

Counsel herein has no legal basis for withholding Defendant's papers in this matter. As defendant owes counsel NO fees, which would permit counsel to maintain said papers under a general or retaining lien. Figliuzzi v. District Court, 111 Nev. 338, 340-41, 890 P.2d 798, 800-02 (1995).

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Therefore, this Court is moved to exercise its jurisdiction in this matter and ORDER counsel to be withdrawn as counsel of record and deliver to Defendant the entirety of documentation generated in the instant case, as Defendant has no other remedy at law to compel counsel to do so.

Dated this 12 day of SEPTEMBER 2018.

By: JEFFREY K. BROWN

Defendant, in PRO PER

Case No C-16-318858-1
Dept No 12

pp
AA

Jeffrey Brown # 1200868
NNCC
P.O. Box 7000
Carson City, NV 89702

FILED
NOV 19 2018
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT STATE OF NEVADA
CLARK COUNTY

Case No C-16-318858-1

Jeffrey Brown, # 1200868
Defendant,

Dept No 12

v.

January 15 2019
@ 8:30 AM

STATE OF NEVADA,
Plaintiff.

MOTION TO COMPEL PUBLIC DEFENDER DEPARTMENT TO PRODUCE RECORDS

The Defendant proceeds in prose, thus, is held to a less stringent standard than formal pleadings drafted by lawyer's (see) Haines v. Kerner, 404 U.S. § 519, 520, 92 S. Ct 594, 30 L.Ed. 2d 652 (1972).

The Defendant submitts this motion to compel Public Defender's Department to produce records.

I. Procedural History

On 9/19/16 The Defendant was charged with the offense(s) of Attempt Murder with use of a deadly weapon and a number of other charges. (see case summary).

RECEIVED
NOV 19 2018
CLERK OF THE COURT

C-16-318858-1
MCOM
Motion to Compel
4797659

II. Authority/Argument

The motion for records is not a post-conviction discovery request as outlined in NRS 34.780(2). The motion is generalized in accordance to NRS 7.055(2).

First, Defendant approaches this motion with great caution as to not interfere with the integrity of the court.

In accordance to NRS 7.055(1) Defendant has made demands for his complete files generated by Defense counsel during the course of representation, these files usually contain all pretrial motions, inter-office memos, E-Mails, Fax's witness interviews and other evidence obtained through discovery and other documents and evidence obtained during trial preparation, In addition to pretrial and trial, transcripts proceedings. Both the Trial Counsel and Appellate counsel have failed to properly provide Defendant with his trial and Appellate files contrary to NRS 7.055(1), leaving Defendant no readily available remedy other than to make application to this court for records. The records are essential to the effect of presentation and support of claims which will be presented in post-conviction relief. In this case, Defendant believes that his conviction is contrary to law and he was denied his right to effective assistance of counsel in that

(a) contrary to 34.750(1)(b),(c).

(b) Counsel failed to investigate both factual and legal to determine if matters of defense can be developed,

The record being requested were never provided to Defendant and are indispensable to the presentation and support of the claims stated above and for the developement of further claims and are necessary, as not even a seasoned attorney can remember all aspects to a case and all error's which may have occurred both in pretrial and trial proceedings, thus, this is the necessity to have the records in order to have clerity as to the facts and to effectively present the claims to the court, (see) Henderson v. United States, 734 F.2d 483, 484 (9th Cir. 1984) (Showing of particularized need required) In this case, the Defendant has shown such and without the records requested herein the Defendant will be precluded from effective and equal access to the court because [a] person with funds can purchase the records from the court File, here, Defendant is indigent and cannot afford to ~~effective and equal access to the court because~~ purchase the records, see generally the con's; declaration's in Bounds v. Smith, 430 U.S. 817 and Griffin v. Illinois, 351 U.S. 12.

III Conclusion

Because the law is clear under NRS 7.055(1) and the Public Defender's Dept both counsel's Trial and Appellate have failed to provide to produce the files. Defendant request this Court to issue it's order directing them to produce such, as an alternative, for the state to produce the entire court file and the District Attorney's file.

This document do not contain any Social Security numbers of any person.

Respectfully submitted,

Jeffrey Brown Defendant
In pro se

000027

000028

Jeffrey Brown #1200868
NNCC
P.O. Box 7000
Carson City, NV 89702

3763

Hasler
11/13/2018
US POSTAGE
FIRST-CLASS MAIL
$00.47⁰
ZIP 89701
011D12602121

STEVEN D. GRIERSON, Clerk of the COURT
200 LEWIS Ave., 3rd Floor
LAS VEGAS, NV 89155-1160

89101$6300 C075

NORTHERN NEVADA CORRECTIONAL CE

NOV 12

Electronically Filed
11/28/2018 12:41 PM
Steven D. Grierson
CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
AMY FERREIRA
Chief Deputy District Attorney
Nevada Bar #010347
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEFFREY BROWN, aka,
Jeffery Kent Brown, #3074249

Defendant.

CASE NO: C-16-318858-1

DEPT NO: XII

ORDER GRANTING DEFENDANT'S PRO PER MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORD

DATE OF HEARING: November 13, 2018
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 13th day of November, 2018, the Defendant not being present IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through AMY FERREIRA, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

///

///

///

///

RECEIVED
NOV 15 2018
DEPT. 12

IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Withdrawal of Attorney of Record and Transfer of Records, shall be, and it is GRANTED.

DATED this 20 day of November, 2018.

DISTRICT JUDGE

TJ

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

BY
AMY FERREIRA
Chief Deputy District Attorney
Nevada Bar #010347

MEB

CERTIFICATE OF SERVICE

I certify that on the 28th day of November, 2018, I mailed a copy of the foregoing Order to:

JEFFREY BROWN
BAC #1200868
P.O. BOX 7000
CARSON CITY, NV 89702

BY
Secretary for the District Attorney's Office

16F15698X/mlb/dvu

Jeffrey Brown #1200868
P.O. Box 7000
Carson City NV. 89702

FILED
FEB 2 6 2019
CLERK OF COURT

IN THE Eighth JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF Clark.

Jeffrey Brown
Petitioner/Plaintiff,

v.

Atty Timothy Treffinger
Respondent/Defendant

Case No. C-16-318858-1

~~Dept. No.~~ III of XII

March 21, 2019
@ 8:30 AM

PETITION FOR WRIT OF MANDAMUS

Comes now, Petitioner, Jeffrey Brown, pro per, moves this Honorable Court to consider this petition for Writ of Mandamus. This petition is made pursuant to Nev. R. State. 34.160 inclusive to 34.310, and the following points and authorities, papers, pleadings and document on file herein.

RECEIVED
FEB 26 2019
CLERK OF THE COURT

C-16-318858-1
PMAN
Petition for Writ of Mandamus
4818601

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STATEMENT OF FACTS

On November 28th 2018 The District court Via The Dept No XII Judge, did so grant Mr. Browns Pro-per "Motion" For withdrawal of "Attorney of record and did so "order" this Attorney of Record being That of "Attorney Timothy Treffinger"

As This Attorney was ordered to Transfer and to Deliver onto Mr. Jeffrey Brown. his entire case File, "All" papers, pleadings, case-notes, evidence, and Any other documents pertinent and/or related to Mr. Jeffrey Brown's case That "Attorney Treffinger" was in Fact The Attorney of record For case no. C-16-318858-1

whereas to date Mr. Brown has "NOT" received A single document From "Attorney Treffinger" As This Attorney has defiantly ignored to comply and Adhere to this court "order" Filed 11/28/2018.

Therefore This petitioner Mr. Jeffrey Brown hereby respectfully requests This honorable court To enforce said "order" Filed 11/28/18 in no C-16-318858-1 As To compel Attorney Treffinger To Deliver onto Mr. Brown his entire case File in 7 sever Business Days other-wise this Attorney shall be held in Contempt of court - As The name and Address of said Attorney of Record is Timothy R. Treffinger # 12877 - - - 1148 S. MaryLand Parkway Las-vegas NV. 89129

DISCUSSION

When a writ of mandamus is appropriate

"A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion." *International Game Tech. v. Dist. Cr.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (footnote omitted); NRS 34.160. this court has held that the decision to admit or exclude expert opinion testimony is discretionary and is not typically subject to review on a petition for a writ of mandamus. *Walton v. District Court*, 94 Nev. 690, 693, 586 P.2d 309, 311 (1978). Mandamus is also not available when the "petitioner has a plain, speedy, and adequate remedy in the ordinary course of law," *Mineral County v. State, Dep't of Conserv.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001), and the opportunity to appeal a final judgment typically provides an adequate legal remedy, see *Walton*, 94 Nev. At 693, 586 P.2d at 310.

Despite these limitations, we recognize some narrow exceptions when writ relief is appropriate concerning challenges to decisions that admit or exclude evidence. We acknowledge that the ability to appeal a final judgment may not always constitute an adequate and speedy remedy that precludes writ relief, depending on the "underlying proceedings" status, the types of issues raised I the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented." *D.R. Horton v. Dist. Ct.*, 123 Nev. 468, 474-75, 168 P.3d 731, 736 (2007). Thus, we may consider writ petitions challenging the admission or exclusion of evidence when "an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction," *Sonia f. V. Dist. Ct.*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009) (quoting *Mineral County*, 117 Nev. At 243, 20 P.3d at 805), or when the issue is "one of first impression and of fundamental public importance," *County of Clark v. Upchurch*, 114 Nev. 749, 753 961 P.2d 754, 757 (1998). We may also consider whether resolution of the writ petition will mitigate or resolve related or future litigation. *Id.* Ultimately, however, our analysis turns on the promotion of judicial economy. *Smith v. District Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997) ("The interests of judicial economy . . . will remain the primary standard by which this court exercises its discretion.").

II. LEGAL ARGUMENT

Petitions for Extraordinary Writs are addressed to the sound discretion of the Supreme Court of Nevada and may issue when there is no plains, speedy, and adequate remedy at law,. See, State v. Second Judicial District Court ex. Rel. County of Washoe. 116 Nev. 953, 11 P.3d 1209 (2000).

A writ of mandamus is issued to compel performance of an act which the law especially enjoins as a duty resulting from an office, trust or station. See, Lewis v. Stewart , 96 nev. 846, 619 P.2d 1212 (1980).

A writ of mandamus ma issue to control arbitrary or capricious exercise of discretion. See, Barnes v. Eighth Judicial District Court of the State of Nevada, in and for Clark County , 103 Nev. 679, 748 P.2d 483 (1987).

This Court has also held that the action being sought to be compelled must be one already required By law. See, Mineral County v. State Department of Conservation and Natural Resources. 117 Nev. 235 , 20 P.3d 800 (2001).

Mandamus is the appropriate vehicle for challenging contested orders entered by the District Court. See, Angell v. Eighth judicial District Court In and For the County of Clark, 18 Nev. 923, 839 P.2d 1329, (1992).

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding

Petition For Writ of MANDAMUS
(Title of Document)

Filed in District Court Case No. C-16-318858-1

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or

x _____ 2-19-19
(Signature) (Date)

CONCLUSION

Wherefore, all of the above stated reasons, Petitioner/Plaintiff respectfully requests this Honorable Court to Order Attorney To Deliver onTo This petitioner Mr. Brown his entire case file within a reasonable amount of time as required by N.R.S. 34.830.

DATED this 19th day of February 2019

Respectfully submitted,

x [signature]

Petitioner/Plaintiff

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner/Plaintiff in the foregoing Petition for Writ of Mandamus, and that on this 19th day of February, 2019, I did ~~serve~~ a true and correct copy of the above mentioned document, by giving it to a prison official at the x [signature]

To deposit in the U. S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

clerk of The court
200 Lewis Avenue
Las-vegas NEVADA
89155-2311

office of the district Attorney
200 Lewis Avenue
P.O. Box 552212
Las-vegas NV
89155-2212

DATED this 19th day of February, 2019

[signature]

Petitioner/Plaintiff

Attorney Timoth Treffinger # 12877
1176 S. Maryland pkwy
Las-vegas NV
89129

IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Withdrawal of Attorney of Record and Transfer of Records, shall be, and it is GRANTED.

DATED this 20 day of November, 2018.

DISTRICT JUDGE

TJ

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

BY
AMY FERREIRA
Chief Deputy District Attorney
Nevada Bar #010347

MLB

CERTIFICATE OF SERVICE

I certify that on the 28th day of November, 2018, I mailed a copy of the foregoing Order to:

JEFFREY BROWN
BAC #1200868
P.O. BOX 7000
CARSON CITY, NV 89702

BY
Secretary for the District Attorney's Office

16F15698X/mlb/dvu

Jeffrey Brown #1200868
P.O. Box 7000
carson city NV
89702

Eight Judicial District Court

200 Lewis Avenue

Las-vegas NEVADA

89155-2311

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7/22/2019
US POSTAGE
$00.80⁰

FIRST-CLASS MAIL

ZIP 89701
011D12602121

Legal Mail/Confidential

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NORTHERN NEVADA CORRECTIONAL CENTER

FEB 22 2019

CASE. NO. C-16-318858-1

DEPT. NO. XII

FILED
MAR 12 2019
CLERK OF COURT

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

STATE OF NEVADA
Plaintiff,

vs

JEFFREY BROWN
Defendant

NOTICE OF MOTION
HEARING DATE: April 6 2019
HEARING TIME: 8:30 AM

TO:

Notice is hereby given pursuant to the Nevada Rules of Criminal Procedure that the above-named Defendant has on this date filed with the Clerk of the District Court in the above-entitled Court in the above-cited case Number a

A MOTION FOR ORDER / CONTEMPT PURSUANT TO NRS 22.010

on _____

Dated this 5th day of MARCH, 2019.

Defendant on Pro Per

RECEIVED
MAR 12 2019
CLERK OF THE COURT

C-16-318858-1
NOTM
Notice of Motion
4821858

000041

JEFFREY BROWN
(Name)
1200868
(I.D. No.)
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Movant, In Proper Person

FILED
MAR 12 2019
CLERK OF COURT

April 6 2019
@ 8:30 AM

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

JEFFERY BROWN
Plaintiff/Movant

vs.

STATE OF NEVADA,
Defendant/Respondent

Case No.: C-16-318858-1

MOTION FOR TRANSCRIPTS AT STATE EXPENSE

COMES NOW, JEFFREY BROWN, in his proper person and requests that this Honorable Court order the Clerk of the Court to prepare a complete transcript of the testimony offered at the hearings held on SENTENCING TRANSCRIPT JULY 21, 2018?, and that Plaintiff / Movant not be held liable for payment of such transcripts.

1. Plaintiff / Movant is currently incarcerated at Northern Nevada Correctional Center, 1721 E. Snyder Avenue, Post Office Box 7000, Carson City, NV 89702.
2. Petitioner is proceeding in proper person.
3. Petitioner is indigent per ADKT 411 and as proof by the accompanying Motion for Leave to Proceed In Forma Pauperis, with attached sworn affidavit of Plaintiff / Movant and Certificate of Inmate Financial status.
4. A transcript of the court proceedings in this matter is necessary to allow Plaintiff / Movant to prepare a Petition for Writ of Habeas Corpus (Post-Conviction) that will rely on the record requested.

RECEIVED
MAR 12 2019
CLERK OF THE COURT

C-16-318858-1
MOT
Motion
4821863

5. Prior counsel of record does not possess the requested transcripts.

Respectfully Submitted this 7th day of March, 2019.

Jeffrey Brown
(Signature)

CERTIFICATE OF SERVICE

I, Jeffrey Brown certify that on this date I did serve a true and correct copy of the foregoing Motion upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

Steve Wolfson, Dist. Attor.
200 Lewis Av.
P.O.B. 552212
Lvnv 89155-2212

Dated this 7th day of March, 2019.

By: Jeffrey Brown
Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any Persons.

3/7/19
(Date)

Jeffrey Brown
(Signature)

JEFFREY BROWN, 1200868
POB 7000
CARSON CITY, NV. 89701

FIRST-CLASS MAIL
03/08/2019
US POSTAGE
$00.65⁰
ZIP 89701
011D12602121

STEVEN D. GRIERSON, COURT CLERK
200 LEWIS AV. 3d FL.
LVNV 89155-1160

CONFIDENTIAL

891013630D C075

000044

JEFFREY BROWN
(Name)
1200868
(I.D. No.)
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Movant, In Proper Person

FILED
MAR 12 2019
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY BROWN,
Plaintiff/Movant

vs.

TIMOTHY TREFFINGER,
Defendant/Respondent

Case No.: C-16-318858-1

MOTION FOR ORDER, OR, IN THE ALTERNATIVE, MOTION FOR CONTEMPT

COMES NOW, JEFFREY BROWN, in proper person and herein above respectfully moves this Honorable Court for a(n) ORDER HOLDING ATTORNEY TIMOTHY TREFFINGER IN CONTEMPT OF THIS COURT'S ORDER DATED NOV. 28, 2018 ORDERING THE TRANSFER OF RECORDS.

The instant motion is made and based upon all papers and pleadings on file herein as well as the following Memorandum of Points and Authorities and attached exhibits (where applicable).

C-16-318858-1
MOT
Motion
4821855

MEMORANDUM OF POINTS AND AUTHORITIES

A. THE COURT SHOULD HOLD ATTORNEY TREFFINGER IN CONTEMPT FOR REFUSING TO TRANSFER THE DEFENDANT'S CRIMINAL RECORD FILE TO HIM.

NRS 22.010(3) CITES:

THE FOLLOWING ACTS OR OMISSIONS SHALL BE DEEMED CONTEMPTS:

(3) DISOBEDIENCE OR RESISTANCE TO ANY LAWFUL WRIT, [ORDER], RULE OR PROCESS ISSUED BY THE COURT OR JUDGE AT CHAMBERS.

ON SEPT. 12, 2018, THE DEFENDANT IN CASE NO. C-16-338858-1 (JEFFREY BROWN) MAILED A NOTICE OF WITHDRAWAL (INFORMAL LETTER) AND A MOTION FOR WITHDRAWAL RE: ATTORNEY TIMOTHY TREFFINGER. ON NOV. 13, 2018, SAID MATTER CAME ON FOR HEARING, AND, WITHOUT ARGUMENT, BASED ON THE PLEADINGS AND GOOD CAUSE APPEARING THEREFOR — WAS GRANTED AND SIGNED BY THE DISTRICT COURT JUDGE ON NOV. 20, 2018. SEE EXHIBIT 1.

BUT, TO DATE, ATTORNEY TREFFINGER THROUGH EITHER BAD FAITH, NEGLECT, INADVERTANCE, ECT., HAS BEEN DISOBEDIENT OR RESISTANT TO THE LAWFUL ORDER AT ISSUE.

ATTORNEY TREFFINGER'S FAILURE OR REFUSAL TO REMIT THE CRIMINAL FILE/RECORDS IS HAVING A DETRIMENTIAL IMPACT UPON MR. BROWN'S ABILITY TO MARSHAL FACTS TO COMPILE HIS POST-CONVICTION PETITION OUTLINING INEFFECTIVE ASSISTANCE OF COUNSEL (IAC).

THE LACK OF THE RECORDS LEAVES MR. BROWN TO GUESS AT WHAT FACTS THEY MAY CONTAIN AND, THUS, UNAWARE OF WHAT ADDITIONAL RECORDS THAT MAY NEED TO BE OBTAINED IN ORDER TO COMPLY WITH NRS 34. AND, HARGROVE V. STATE, 686 P.2d 222 (NV. 1984).

B. CONCLUSION

THE COURT SHOULD GRANT THIS MOTION AND ORDER ATTORNEY TREFFINGER TO PRODUCE THE RECORDS IN QUESTION WITH, A DETAILED TABLE OF CONTENCE WITHIN TEN (10) DAYS.

RESPECTFULLY SUBMITTED, THIS 5th DAY OF MARCH, 2019.

Jeffrey Brown

JEFFREY BROWN,
NDOC # 1200868
CARSON CITY, NV. 89701

PREPARED BY: C.A. JONES, 50600
INMATE LAW LIBRARY WORKER
PURSUANT TO AR 722.04

CERTIFICATE OF SERVICE

I, JEFFREY BROWN certify that on this date I did serve a true and correct copy of the foregoing Motion upon Respondent(s), via U.S. Mail, by placing same in the United States Postal Service (Prison Mail System), postage being fully prepaid, and addressed to:

TIMOTHY R. TREFFINGER
1148 S. MARYLAND PKWY
LVNV 89104

AND

Dated this 5th day of March, 2019.

By: [signature]
Movant, In Proper Person

AFFIRMATION PURSUANT TO NRS 239B.030

** I certify that the foregoing document DOES NOT contain the social security number of any Persons.

3/5/19
(Date)

[signature]
(Signature)

EXHIBIT 1

ORDER GRANTING DEFENDANT'S PRO PER MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORD FILED 11/28/2018

EXHIBIT 1

Electronically Filed
11/28/2018 12:41 PM
Steven D. Grierson
CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
AMY FERREIRA
Chief Deputy District Attorney
Nevada Bar #010347
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEFFREY BROWN, aka,
Jeffery Kent Brown, #3074249

Defendant.

CASE NO: C-16-318858-1

DEPT NO: XII

ORDER GRANTING DEFENDANT'S PRO PER MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORD

DATE OF HEARING: November 13, 2018
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 13th day of November, 2018, the Defendant not being present IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through AMY FERREIRA, Chief Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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2018
DEPT 12

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IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Withdrawal of Attorney of Record and Transfer of Records, shall be, and it is GRANTED.

DATED this 20 day of November, 2018.

DISTRICT JUDGE

TJ

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

BY
AMY FERREIRA
Chief Deputy District Attorney
Nevada Bar #010347

MLB

CERTIFICATE OF SERVICE

I certify that on the 28th day of November, 2018, I mailed a copy of the foregoing Order to:

JEFFREY BROWN
BAC #1200868
P.O. BOX 7000
CARSON CITY, NV 89702

BY
Secretary for the District Attorney's Office

16F15698X/mlb/dvu

JEFFREY BROWN, 1200868
POB 7000
CARSON CITY, NV. 89701

03/08/2019
US POSTAGE
$00.80
ZIP 89701
011D12602121

STEVEN D. GRIERSON, COURT CLERK
200 LEWIS AVE. 3d FL.
LVNV 89155-1160

CONFIDENTIAL

000052

JEFFREY BROWN
(Name)
1200868
(I.D. Number)
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

FILED
APR 11 2019
CLERK OF COURT

Petitioner, In Proper Person

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

JEFFREY BROWN,
Petitioner,

vs.

ISIDRO BACA, WARDEN, NNCC,
Respondent.

Case No.: A-19-793350-W
Dept. XII

Dept. No.

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)
(Non Death Penalty)

EVIDENTIARY HEARING REQUESTED

INSTRUCTIONS:

1. This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
2. Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
3. If you want an attorney appointed, you must complete the Affidavit in Support of Motion for Leave to Proceed In Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
4. You must name as Respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the

RECEIVED
APR 11 2019
CLERK OF THE COURT

institution. If you are not in a specific institution of the department but within its custody, name the director of the department of corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the attorney general's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of you liberty: NORTHERN NV. CORR. CENTER/CARSON CITY

2. Name and location of court which entered the judgment of conviction under attack: 8TH JUD. DIST. CT. CLARK COUNTY, NV.

3. Date of judgment of conviction: JULY 2, 2018

4. Case Number: C-16-318858-1

5. (a) Length of sentence: COUNT 1 - 8-20 FOR ATTEMPTED MURDER, PLUS, CONSECUTIVE TERM OF 8-20 FOR UAW; COUNT 2 - SIXTEEN (16) TO SEVENTY TWO (72) MONTHS FOR ASSAULT WAW TO RUN CONCURRENT WITH COUNT 1.

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No X

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

N/A

7. Nature of offense involved in conviction being challenged: ATTEMPT MURDER AND ASSAULT WITH A DEADLY WEAPON.

8. What was your plea? (check one)

(a) Not guilty X (c) Guilty but mentally ill _____

(b) Guilty _____ (d) Nolo contender _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment of information, or if a plea of guilty was negotiated, give details: ENTERED INTO AN ILL-ADVISED GUILTY PLEA AGREEMENT ON JAN. 17, 2018 PRIOR TO COMPENCY BEING DETERMINED BY THE COMPETENCY COURT ON APRIL 6, 2018.

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

(a) Jury N/A

(b) Judge without a jury N/A

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

12. Did you appeal from the judgment of conviction?

Yes _____ No X

13. If you did appeal, answer the following:

(a) Name of court: _____

(b) Case number or citation: N/A

(c) Result: _____

(d) Date of result: _____

(Attach copy of order or decision, if available)

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

THE PETITIONER'S RIGHT TO A DIRECT APPEAL WAS WAIVED AS PART OF THE PLEA AGREEMENT EXECUTED ON JAN. 17, 2018.

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 X No ____

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

(a) (1) Name of court: EIGHTH JUD. DIST. CT

(2) Name of proceeding: PETITION FOR WRIT OF HABEAS CORPUS

(3) Grounds raised: INSUFFICIEN EVIDENCE TO SUBMIT THE CASE TO THE GRAND JURY FOR THE CHARGES OF AGGRAVATED STALKING AND TWO(2) COUNTS OF DISCHARGING A FIREARM FROM STRUCTURE OR VEHICLE.

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

(5) Result: PETITION GRANTED

(6) Date of result: DEC. 6, 2016

(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: ____

(3) Grounds raised: ____

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

(5) Result: N/A

(6) Date of result: ____

(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.

(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 X

(2) Second petition, application or motion?

Yes N/A No N/A

(3) Third or subsequent petitions, applications or motions?

Yes N/A 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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length)

THE PETITION WAS GRANTED THUS, NO ADVERSE ACTION EXISTED FOR AN APPEAL OF THAT PARTICULAR ISSUE.

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 post-conviction proceeding? If so, identify: NO —

(a) Which of the grounds is the same: N/A

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

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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

THE GROUNDS ARE BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL (IAC) THAT MUST BE BROUGHT ON POST-CONVICTION.

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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

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:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: MARLA RENTERIA (HABEAS PETITION), TIMOTHY R. TREFFINGER; DAVID FISCHER

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

Yes _____ No X

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.

(a) Ground One:

DEFENSE COUNSEL FAILED TO INFORM THE PETITIONER THAT THE DISTRICT ATTORNEY INTENDED ON SEEKING A GRAND JURY INDICTMENT, RESPOND TO ANY SUCH NOTICE OR ADVISE PETITIONER OF HIS RIGHT TO APPEAR VIOLATING THE RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL AND THE 6TH AND 14TH AMENDMENTS.

Supporting Facts:

A.

DEFENSE COUNSEL FAILED TO PROTECT THE PROCEDURAL DUE PROCESS RIGHT OUTLINED IN NRS 172.241 AND 172.095(1)(d) AS, DEFENSE COUNSEL KNEW, OR SHOULD HAVE KNOWN THAT THE DISTRICT ATTORNEY INTENDED TO SEEK AN INDICTMENT BEFORE THE GRAND JURY BUT — SUCH NOTWITHSTANDING, DID NOT INFORM THE PETITIONER OF HIS RIGHT TO APPEAR AND TESTIFY TO EXPLAIN AWAY CHARGES OR, INFORM HIM ABOUT SUBMITTING A REQUEST TO SO DO AND EXECUTE A WAIVER OF SELF-INCRIMINATION TO EXERCISE THE RIGHT.

DEFENSE COUNSEL WAS INEFFECTIVE FOR WITHHOLDING ALL SUCH PROCEDUAL INFORMATION THAT WOULD HAVE HAD AN IMPACT ON FINDING A TRUE BILL ON SEVERAL CHARGES.

ALTHOUGH THE PROSECUTING ATTORNEY HAD PLANNED TO USE SEVERAL EXCITED UTTERANCES AND EMOTIONALLY AND OR MENTALLY QUESTIONABLE STATEMENTS MADE BY THE PETITIONER [PRIOR] TO AND AT THE TIME OF HIS ARREST

Ground: ONE CONTINUED

DEFENSE COUNSEL FAILED TO TAKE SUCH INTO CONSIDERATION AND PROPERLY INFORM THE PETITIONER OF HIS RIGHT TO APPEAR AND TESTIFY. SEE GJ WITNESS LIST NAMING SGT. AMY WILLIAMS AS WELL AS LVMPD DETECTIVES. (RE PREARREST STATEMENTS).

SAID STATEMENTS WERE USED/PRESENTED TO THE GRAND JURY AS WELL AS, THE ONE SIDED TESTIMONY OF THE VICTIMS THAT WERE ARTFULLY SOLICITED BY THE PROSECUTOR. THE PETITIONER'S SIDE OF THE STORY WAS **NOT** HEARD.[1]

AS THE RECORD SUPPORTS, SEVERAL OF THE VICTIM STATEMENTS AS TO WHAT TRANSPIRED IN THE WAY OF THE SHOOTING ARE IN CONFLICT ON WHAT CONSTITUTES ATTEMPT MURDER AS TO MS. BROWN. EVIDENCE SUPPORTS THAT MS. BROWN WAS IN FACT AN UNINTENDED VICTIM OF COLLATERAL DAMAGE, I.E. A STRAY BULLET FIRED AT HER BOYFRIEND (MR SHORT) WHEN HE PUT HANDS ON THE PETITIONER (APPROACHED HIM IN A THREATENING MANNER WHILE PETITIONER WAS IN HIS VEHICLE AND STRUCK HIM) SEE FAHA BROWN GJT p. 45, ll 3-4.

THE PETITIONER FURTHER CHARGES THAT HAD HE BEEN GIVEN TIMELY NOTICE OF THE GRAND JURY INVESTIGATION, HE COULD HAVE SOUGHT DISMISSAL OF THE INDICTMENT OF THE AGGRAVATED STALKING CHARGE (COUNT 1) AND DISCHARGE OF FIREARM FROM OR WITHIN STRUCTURE OR VEHICLE (COUNTS 6-9) DUE TO THE PARTICULAR FACTUAL CIRCUMSTANCES AND NOT HAVE HAD THEM HANG OVER HIS HEAD AS LATER LEVERAGE FOR THE PROSECUTING ATTORNEY'S USE FOR THE PLEA DEAL.

THE DEFENSE ATTORNEY'S ACTIONS WERE IN CONFLICT WITH HUMBOLDT COUNTY V. MALCUM, 783 P.2d 1389 (1989) AND RAMIREZ V. 8TH JUD. DIST CT., 913 P.2d 1293 (1996).

1. THE GRAND JURY WAS DEPRIVED OF TESTIMONY RE WHY THE PETITIONER ACTUALLY APPEARED AT THE AIRPORT AT THE TIME THE ALLEGED VICTIMS ARRIVED AND, THAT HE WAS PHYSICALLY ATTACKED WHILE SITTING IN HIS VEHICLE

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Ground: ONE CONCLUDED

THE GRAND JURY RETURNED A TRUE BILL ON NINE(9) COUNTS ON OCT. 18, 2016 WITH A WARRENT / INDICTMENT WARRENT ISSUING ON SAID SAME DATE, FOLLOWED BY, THE INDICTMENT WARRENT RETURN ON OCT. 20, 2016.

B.

DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO BRING THE INADEQUATE GRAND JURY PROCEEDINGS IN THE PRETRIAL HABEAS CORPUS PETITION FILED NOV. 17, 2016, IN VIOLATION OF PETITIONER'S 6TH AND 14TH AMEND.

ASSUMING ARGENDO — THAT DEFENSE ATTORNEY WAS NOT PROVIDED WITH THE MANDATORY NOTICE PURSUANT TO NRS 172.241 (THE "MARCUM" NOTICE), DEFENSE COUNSEL WAS LAX IN REPRESENTATION FOR NOT CHALLENGING SAID DEFECT IN THE PETITION FOR WRIT OF HABEAS CORPUS FILED ON NOV. 17, 2016.

THE CASE LAW WAS CLEARLY ESTABLISHED IN MARCUM, SUPRA AND RAMIREZ, SUPRA THAT NOTICE IS A REQUIRED PREREQUISITE IN GRAND JURY PROCEEDINGS OF THIS NATURE AS, THERE IS NO RECORD OR FACTS TO SUPPORT A SECRET INDICTMENT.

ALTHOUGH DEFENSE COUNSEL ADMITS TO BEING AWARE THAT THE STATE PRESENTED THE CASE TO THE GRAND JURY ON OCT. 11, 2016, (HABEAS PETITION P. 7, LL 24-25), COUNSEL DOES NOT MENTION ANYTHING ABOUT THE MANDATORY NOTICE OR, INFORMING THE PETITIONER ABOUT SUCH OR, OTHERWISE COUNSEL HIM CONCERNING THAT PROCESS.

(b) Ground Two:

DEFENSE COUNSEL WAS INEFFECTIVE FOR NOT REQUESTING ANY COMPETENCY HEARING TO STAY ALL PROCEEDINGS AND, ALLOWING AND OR ASSISTING THE PETITIONER TO ENTER INTO A GUILT PLEA PRIOR TO THE COMPETENCY HEARING ORDERED BY THE COURT IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS

Supporting Facts:

DEFENSE COUNSEL[S] WERE AWARE OF THE PETITIONER'S FRAGILE MENTAL AND OR CONFUSED STATE BY WAY OF SEVERAL PREARREST STATEMENTS AND OBSERVATIONS MADE BY THE VA POLICE OFFICER - SGT AMY WILLIAMS ON SEPT. 19, 2016 ("LOOKING CONFUSED . . .").

DEFENSE COUNSEL WAS ALSO ON ADEQUATE NOTICE OF THE PETITIONER'S QUESTIONABLE/VULNERABLE MENTAL STATE BY WAY OF THE STATEMENTS MADE TO LUMP ON SEPT. 19, 2016, ALONG WITH, STATEMENTS MADE TO COUNSEL THAT EVIDENCED DEEP DEPRESSION, SELF-PUNISHING AND OR, SEVERE ABBETATION THAT IMPACTED SOUND JUDGMENT.

THE ABOVE NOTWITHSTANDING, DEFENSE COUNSEL REFUSES TO BRING THESE EARLY CONCERNS TO THE COURT'S ATTENTION PRIOR TO MAR 15, 2018 WHEN, THE DISTRICT JUDGE REFERRED THE DEFENDANT TO THE COMPETENCY COURT [AFTER], DEFENSE COUNSEL ALLOWED, RECOMMENDED, OR MISLED THE PETITIONER TO ENTER INTO GUILTY PLEA NEGOTIATIONS ON JAN. 17, 2018.

AT THE TIME THE PETITIONER ENTERED INTO A GUILTY PLEA AGREEMENT OF (COUNT 1) ATTEMPT MURDER WITH USE OF DEADLY WEAPON AND (COUNT 2) ASSAULT WITH A DEADLY WEAPON — HE HAS NOT BEEN FOUND COMPETENT, ALTHOUGH, EVIDENCE SUGGEST THAT HIS COMPETENCY WAS IN QUESTION.

Ground: TWO CONTINUED

MOREOVER, DEFENSE COUNSEL (MR. TREFFINGER) DID NOT EVEN HAVE GOOD CONTACT INFORMATION TO ALLOW THE COURT TO CONTACT HIM ... AND THE COMPETENCY COURT REFERRAL MATTER HAD TO BE CONTINUED.

AT THE COMPETENCY COURT HEARING ON APRIL 6, 2018, DEFENSE COUNSEL (TREFFINGER) LODGED **NO** OBJECTIONS; DID NOT PROPERLY DEFEND THE PETITIONER AT THE COMPETENCY HEARING BY [NOT] CHALLENGING THE COMPETENCY REPORT BY WAY OF AN EXPERT FOR THE DEFENSE, AND OR, ANY SUCH EVALUATION. COUNSEL DID NOTHING!

THE LAW IS CLEAR AS TO THE DETERMINATION OF COMPETENCY OF AN ACCUSED BEFORE HE OR SHE STANDS TRIAL. PATE V. ROBINSON, 383 U.S. 375, 377, 86 S.CT. 836, 838 (1966); DROPE V. MISSOURI, 420 U.S. 162, 171, 95 S.CT. 896, 903 (1975) ALSO, MELCHOR-GLORIA V. STATE OF NEVADA, 660 P.2d 109 (1983). THUS, IN THE SAME LINE OF THINKING/RATIONALE, IT APPEARS THAT DUE PROCESS REQUIRES A DETERMINATION OF COMPETENCY [PRIOR], TO AN ACCUSED ENTERING INTO A PLEA AGREEMENT WHICH HAS A SENTENCE THAT OPERATES AS A FUNCTIONAL EQUIVALENT OF A LIFE SENTENCE FOR A SEVENTY-EIGHT (68) YEAR OLD MAN, . I.E. [TWO (2) AGGREGATED 8-20 YEAR SENTENCES, WHICH MEANS — SIXTEEN (16) YEARS BEFORE HE IS ELIGIBLE FOR PAROLE] AT EIGHTY-FOUR (84).

THE FACT THAT A QUESTIONABLE AND UNCHALLENGED FINDING OF COMPETENCY WAS LATER FOUND ON APRIL 6, 2018, STILL DOES NOT CURE THE OVER-ALL INEFFECTIVENESS OF COUNSEL, THE TOTAL BUTCHERY OF THE SPIRIT OF THE "COMPETENCY" STATUTE AND THE "CART BEFORE THE HOURSE" POST-HOC PROCESSES.

Ground: TWO CONCLUDED

AS CITED / HELD IN NRS 178.405 - REQUIRES COMPETENCY AS A LEGAL PREREQUISITE TO [ANY] COURT PROCEEDING. THUS, A HEARING TO DETERMINE DEFENDANT'S COMPETENCY IS CONSTITUTIONALLY, AND STATUTORILY REQUIRED WHERE REASONABLE DOUBT EXISTS ON ISSUE. MELCHOR-GLORIA, SUPRA. PRIOR TO, SIGNING ANY BINDING AGREEMENT. AND, ANY ERROR RELATING THERETO IS NOT HARMLESS (WHEN VIEWED IN CONJUNCTION TO THE CUMULATIVE ERRORS ASPECT RELATING TO THE NUMEROUS PROCEDURAL AND OTHER DEFICIENCIES IN THIS MATTER PREMISED UPON, COUNSEL'S INEFFECTIVENESS.

BASED UPON THE ABOVE FACTS, THE PETITIONER'S GUILTY PLEA AND CONVICTION / SENTENCE SHOULD BE SET ASIDE.

(c) Ground Three:

DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY COMMUNICATE WITH THE PETITIONER; MISLEADING OR ILL ADVISING TO ENTER INTO A GUILTY PLEA AGREEMENT AND IMPEDING DEFENSE OF REPLACEMENT COUNSEL VIOLATING THE 6TH AND 14TH AMEND.

Supporting Facts:

THE PRECEEDING COUNTS AND THEIR EXAMPLES OF (IAC) ARE INCORPORATED HEREAFTER.

ON APRIL 12, 2018, THE MINUTES DOCUMENT THAT THE PETITIONER IS SO DISSATISFIED WITH COUNSEL TREFFINGER UNTIL HE WANTS TO WITHDRAW HIS GUILTY PLEA (PRE SENTENCING); WANTS TO DISMISS HIS ATTORNEY; AND, REPRESENT HIMSELF (ALTHOUGH IT IS NOTED THAT A FARETTA CANVASS WILL BE CONDUCTED, NO TRANSCRIPTS OF SAID CANVASS WERE PRODUCED OR AVAILABLE AT THE TIME THIS PETITION WAS DRAFTED).

WHAT IS EVIDENT, IS A COMPLETE DISCONNECT BETWEEN THE PETITIONER AND MR. TREFFINGER TO THE POINT THAT, NO WORKING RELATIONSHIP IS LEFT AND ANY ADEQUACY IS QUESTIONABLE AT BEST.

DEFENSE COUNSEL INFORMED THE COURT THAT THE PETITIONER NO LONGER WANTED TO REPRESENT HIMSELF DESPITE, THE OBVIOUS DISCONNECT. THEN, MOVES TO WITHDRAW FROM THE CASE, WHICH, IS GRANTED BY THE COURT. THE COURT THEN APPOINTS ATTORNEY DAVID FISCHER, WHICH, HAS CONSIDERABLE DIFFICULTIES GETTING DISCOVERY FROM MR. TREFFINGER BUT WITH NO RESPONSE, HAS TO ATTEMPT TO COMPILE SOME INFORMATION ON HIS OWN AND REQUESTED THE STATE TO PRODUCE A COPY OF THE DISCOVERY THAT WAS MET WITH AN OBJECTION FROM MS. CLOWERS ARGUING, HAVING TO RE-PRODUCE

Ground: THREE CONCLUDED

THE DISCOVERY ALL OVER AGAIN AFTER ALREADY PRODUCING IT TO PRIOR DEFENSE COUNSEL [NUMEROUS TIMES] IS RIDICULOUS. THE COURT ORDERED THE SENTENCING MATTER CONTINUED AND MR. TREFFINGER IS ORDERED TO PROVIDE ALL DISCOVERY TO MR. FISCHER

THERE IS NO INDICATION THAT ATTORNEY TREFFINGER EVER TIMELY PRODUCED THE CASE FILE TO MR. FISCHER (PUBLIC DEFENDER) BY MAY 15, 2018, AS, THE DOCUMENTS PRODUCED BY MR. FISCHER PURSUANT TO THE WITHDRAW OF COUNSEL GRANTED ON NOV. 13, 2018, CONTAINED NO DISCOVERY NOR: THE JAVS VIDEO OF DEF'S PLEA; THE NRS 178.420 COMPETENCE REPORT; NOR, THE SENTENCING RECOMMENDATIONS JUST TO NAME A FEW; INCLUDING, NO SENTENCING RECOMMENDATIONS OR EVEN A COPY OF PETITIONER'S MOTION TO WITHDRAW FROM THE GUILTY PLEA AGREEMENT.

BASED UPON THE ABOVE FACTS, THE PETITIONER'S GUILTY PLEA AND CONVICTION/SENTENCE SHOULD BE SET ASIDE.

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(d) Ground Four:

ALLOWED, ILL ADVISED, OR MISLED PETITIONER INTO SIGNING A GUILTY PLEA AGREEMENT WHEN A VIABLE DEFENSE EXISTED THAT IN FACT, DEFENSE COUNSEL FILED NOTICE OF SAID AFFIRMATIVE DEFENSE ON OCT. 26, 2017 IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS.

Supporting Facts:

PETITIONER TOLD COUNSEL THAT THE ALLEGED VICTIM "MONEQUE SHORT" APPROACHED THE DRIVER'S SIDE OF HIS VEHICLE IN AN AGGRESSIVE MANNER AND SAID: "DO YOU HAVE A PROBLE WITH ME MUTHAFUCKA"?! SEE GJT P. 45, LL 3-4 (THE CLEANED UP VERSION) STATING:

"... ALL I HEAR IS "MO" WALKING TOWARDS HIM SAYING DO YOU HAVE A PROBLEM WITH ME, MAN" (FARAH BROWN) ALSO;

GJT 57; 21-25; 58:1 - MONEQUE SHORT'S TESTIMONY ABOUT CONFRONTING THE PETITIONER BY APPROACHING HIM AND IN AN AGGRESSIVE MANNER ——— STATING: "IF YOU HAVE SOMETHING TO SAY, SAY IT TO ME"! THIS LANGUAGE INFERS A CONFRONTATIONAL STANCE ON PART OF MR. SHORT.[2]

THE PETITIONER GOES ON TO INFORM DEFENSE COUNSEL THAT "SHORT" WENT ON TO GRAB HIM BY THE COLLAR AT THE HEIGHT OF HIS STATEMENTS / AGGRESSIVE AND ASSAULTIVE ACTIONS. AT THAT POINT — THE PETITIONER DREW / RETRIEVED HIS **LEGALLY OWNED WEAPON** AND, IN A NOW EXTREMELY EXCITED EMOTIONAL STATE, STARTED TO FIRE THE WEAPON IN A DOWNWARD MANNER **STRIKING "SHORT" IN THE LOWER RIGHT SIDE OF HIS BACK TRACKING DOWNWARD TO SHORT'S UPPER LEFT BUTTOX.**

THESE CIRCUMSTANCES SUGGEST AN ADEQUATE PROVOCATION

[2] A REASONABLE INFERENCE CAN BE DRAWN THAT MR. SHORT WAS BACKING UP AND TURNED TO RUN AFTER SEEING PETITIONER DRAW HIS WEAPON [AFTER] BEING ASSAULTED BY HIM.

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Ground: FOUR CONTINUED

IN THAT, THE PETITIONER DID NOT ARRIVE WITH THE INTENTIONS OF HARMING / SHOOTING ANYONE AS HIS WEAPON WAS NOT INITIALLY DRAWN BUT PUT AWAY AND NOT PRODUCED [UNTIL] "HE" WAS PHYSICALLY ATTACKED AFTER BEING APPROACHED IN A THREATENING MANNER BY "SHORT".

THE ALLEGED VICTIMS, ESPECIALLY MR. SHORT, COULD HAVE SIMPLY CONTINUED TO LOAD THE LUGGAGE AND LEAVE, AS, **AT NO TIME DID THE PETITIONER EVER EXIT HIS VEHICLE NOR, DID HE IMPEDE THEIR EGRESS FROM THE PARKING SPACE.**

THE ABOVE NOTWITHSTANDING — THE PETITIONER **(A SIXTY-EIGHT (68) YEAR OLD MAN)** WITH, NUMEROUS HEALTH ISSUES, e.g. **(CCDC MEDICAL EXAM RECORDS WILL SUPPORT THAT PETITIONER WAS CATHERIZED AT THE TIME)** — AND UNDER CONSIDERABLE STRESS AND OR EMOTIONAL UPHEAVAL DUE TO MARITAL ESTRANGEMENT FROM A WIFE OF TWENTY-TWO (22) YEARS, [IS] APPROACHED ON THE DRIVER'S SIDE OF HIS VEHICLE IN AN AGRESSIVE AND CHALLENGING MANNER, **BY, THE WIFE'S BOYFRIEND** (A YOUNGER AND LARGER MAN) AND IN FACT, (ACCORDING TO INFORMATION GIVEN TO DEFENSE ATTORNEY) IS PHYSICALLY ATTACKED OR BATTERED.

THE ABOVE PLEADINGS MAKE A FACIAL SHOWING OF ADEQUATE PROVOCATION THAT, INFERREDLY, PROMPTED DEFENSE COUNSEL TO FILE THE NOTICE OF THE SELF-DEFENSE ALTERNATIVE DEFENSE ON OCT. 26, 2017 BUT, SUCH INFORMATION AND FILING NOTWITHSTANDING, LED THE PETITIONER TO ENTER INTO A GUILTY PLEA FOR ATTEMPT MURDER OF MS. FARA BROWN AND MONEQUIE SHORT AS TO COUNT I.

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Ground: FOUR CONTINUED

THE ADEQUATE PROVOCATION DEFENSE WOULD HAVE HAD A MAJOR IMPACT, WHEN PROVEN, UPON EACH AND EVERY COUNT OF ATTEMPT MURDER; ASSAULT WITH A DEADLY WEAPON; DISCHARGING A FIREARM FROM A VEHICLE OR WITHIN A STRUCTURE; BATTERY WITH HARM; AND, CHILD ABUSE, NEGLECT, OR ENDANGERMENT — AS, THE STATE COULD NOT HAVE MADE A CASE IF THE PETITIONER WAS DEFENDING HIMSELF FROM OR REACTING TO, AN UNPROVOKED ATTACK. (NRS 200.275).

THE PROSECUTING ATTORNEY INSTRUCTED THE GRAND JURY, THAT:

> MALICE AFORETHOUGHT MEANS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT LEGAL CAUSE OR EXCUSE OR WHAT THE LAW CONSIDERS ADEQUATE PROVOCATION.

SEE, PARAGRAPHS 1-5, PP 15-16 ABOVE IN SUPPORT OF THE ADEQUATE PROVOCATION. THE STATE OF NEVADA'S ADEQUATE PROVOCATION DOCTRINE ("STAND YOUR GROUND") IS SET OUT IN NRS 200.120 "UNDER JUSTIFIABLE HOMICIDE" THAT IS IN FACT, ADOPTED IN NRS 200.275 "JUSTIFIABLE INFLICTION OR THREAT OF BODILY INJURY NOT PUNISHABLE". EVEN THOUGH — **NO** DEATH OCCURED IN THIS MATTER, THE PROVOCATION DOCTRINE THAT IS PREMISED ON THE ASSUMPTION THAT ONE WHO KILLS WHILE IN A HIGHLY EMOTIONAL STATE MAY NOT ACT FROM "ANY WICKEDNESS OF HEART OR CRUELTY OR RECKLESSNESS OF DISPOSITION", BUT RATHER AS "[A] RESULT OF THE TEMPORARY EXCITEMENT, BY WHICH THE CONTROL OF REASON WAS DISTURBED", **APPLIES HERE.**

Ground: FOUR CONTINUED

THERE IS ADEQUATE EVIDENCE WITHIN THE EXISTING RECORD THAT SUPPORTS THAT THE PETITIONER WAS ACTUALLY SETTING IN HIS VEHICLE WHEN HE WAS ACCOSTED BY THE BOYFRIEND OF HIS ASTRANGED WIFE (MR. SHORT), P. 15 AT PARAGRAPH #1, SUPRA. AND, THE PETITIONER ACTUALLY SUCCUMBS TO AND SUSTAINED AN UNWANTED BATTERY AS DEFINED IN NRS 200.400 AND OR, AN ASSAULT AS DEFINED IN NRS 200.471.

ALL THE WHILE, THE PETITIONER WAS NOT REQUIRED TO RETREAT BEFORE USING FORCE TO REPELL HIS ATTACKER AS: (1) HE WAS NOT THE ORIGINAL AGGRESSOR (WAS ACTUALLY SEATED IN HIS VEHICLE AND SIMPLY SPEAKING WITH HIS LAWFUL WIFE ALTHOUGH, ASTRANGED); (2) HAD A RIGHT TO BE PRESENT AT THE LOCATION, A PUBLIC PLACE (AS NO RESTRAINING ORDER HAD ISSUED); AND (3) THE PETITIONER WAS [NOT] ACTUALLY ENGAGED IN CONDUCT IN FURTHERANCE OF CRIMINAL ACTIVITY (THE AGGREVATED STALKING CHARGES WERE UNFOUNDED AND INVALIDATED BY A PRETRIAL HABEAS).

AS SUCH, THE ABOVE FACTUAL UNDERPINNINGS WOULD EVEN HAVE SUPPORTED JUSTIFIABLE HOMICIDE UPON (MR. SHORT) HAD, HIS LIFE BEEN TAKEN AFTER ASSAULTING AND BATTERING THE PETITIONER IN HIS VEHICLE.

MOREOVER, IN ADDITION TO ANY OTHER CIRCUMSTANCES RECOGNIZED AS JUSTIFICATION AT COMMON LAW (NRS 200.275), SUPRA, THE INFLICTION OR THREAT OF BODILY INJURY IS JUSTIFIED, AND DOES NOT CONSTITUTE MAYHEM, BATTERY, OR ASSAULT, IF DONE UNDER CIRCUMSTANCES WHICH WOULD JUSTIFY HOMICIDE.

Ground: FOUR CONTINUED

AS FOR THE INJURIES SUSTAINED BY THE ASTRAINED WIFE (MS. BROWN) THERE WAS "INSUFFICIENT EVIDENCE", AS A MATTER OF LAW, TO PROVE ATTEMPTED MURDER AS, UNDER STATE LAW, A CONVICTION OF ATTEMPTED MURDER REQUIRES, AMONG OTHER THINGS, PROOF OF AN INTENT TO KILL.

THE ADMISSIBLE EVIDENTIARY FACTS/EVIDENCE CLEARLY SHOW THAT (MS. BROWN'S) INJURIES WERE TO THE LOWER PART OF HER BACK TRACKING IN A CROSSWISE MOTION. THE INJURIES WERE **NOT** IN AN UPWARDS TRAJECTORY AND, AS ARGUED ABOVE, WERE THE RESULT OF ADEQUATE PROVOCATION BY HER NEW BOYFRIEND.

THE PETITIONER SIMPLY LAPSED INTO A HIGHLY EMOTIONAL STATE (IF NOT ALREADY PRONED TO SUCH) THAT CAUSED HIM TO REACT AND BEHAVE IN A WAY THAT HE WOULD OTHERWISE FEEL IS MORALLY AND OR LAWFULLY UNACCEPTABLE.

THE EVIDENCE OF ATTEMPT MURDER WAS LAWFULLY NONEXISTANT AS, THE TYPICAL COMMON LAW STANDARD ON PROVOKING EVENTS IS STRUCTURED SUCH THAT ANY NUMBER OF CIRCUMSTANCES MIGHT CONSTITUTE ADEQUATE PROVOCATION SO LONG AS THE/A DEFENDANT CAN SHOW: (1) THAT A REASONABLE PERSON IN THE DEFENDANT'S SITUATION WOULD HAVE BEEN ADEQUATELY PROVOKED, (2) THAT THE DEFENDANT WAS IN-FACT PROVOKED AND BECAME EMOTIONALLY CHARGED TO AN EXTENT THAT HE LOST SELF-CONTROL, (3) THAT A REASONABLE PERSON IN THE DEFENDANT'S SITUATION WOULD NOT HAVE HAD SUFFICIENT TIME TO "COOL OFF" BETWEEN PROVOCATION AND THE INSUING AGGRESSIVE REACTIVE RESPONSE, AND (4) THAT THE DEFENDANT DID NOT, IN-FACT, COOL OFF BEFORE HE ACTED.

Ground: FOUR CONTINUED

TODAY, IN COMMON LAW JURISDICTIONS, PASSION IS OFTEN BROAD ENOUGH TO INCLUDE EMOTIONS LIKE FEAR OR RESENTMENT NOTING THAT "PASSION NEED NOT MEAN 'RAGE OR ANGER' BUT MAY BE ANY '[V]IOLENT, INTENSE, HIGHWROUGHT OR ENTHUSIASTIC EMOTION'") PEOPLE V. WU, 286 CAL RPTR. 868, 884 (CAL. CT. APP. 1991).

NOT ONLY WAS THE PETITIONER SHOULDERING THE MENTALLY STRESSING FACT THAT HE WAS ACTUALLY SEEING HIS ESTRANGED WIFE WITH THE MAN SHE WAS NOW SLEEPING WITH — THAT SAME MAN GOES ON TO GET IN HIS FACE AND PUT HANDS ON HIM. THIS WOULD CAUSE OVERWHELMING ANGER IN ANY REASONABLE MAN.' (NRS 200.275).

THUS, THE INJURIES TO THE WIFE (MS. BROWN) ARE NOT UPON THE LEVEL OF ATTEMPTED MURDER.

DEFENSE COUNSEL [WAS] AWARE OF THE CIRCUMSTANCES AND THE ADEQUATE PROVOCATION RELATED THERETO WHICH, EXPLAINS THE FILING OF THE NOTICE OF AFFIRMATIVE DEFENSE: SELF-DEFENSE ON OCT. 26, 2017.

BUT, ALL OF THE ABOVE FACTS NOTWITHSTANDING, DEFENSE COUNSEL DID NOT PURSUE SAID DEFENSES BUT INSTEAD, GETS THE PETITIONER TO SIGN HIS LIFE AWAY IN A GUILTY PLEA AGREEMENT. DISPITE —

SHORT EXPLAINED THAT AFTER BROWN PULLED UP, SHORT INTERVENED IN THEIR CONVERSATION BY APPROACHING THE FORD ESCAPE AND TELLING HIM "IF YOU WANT TO SAY ANYTHING TO ME, YOU CAN SAY SOMETHING TO ME." GJT 57:21-25; 58:1. MR. SHORT SEEMED TO EXCERBATE AN ALREADY TENSE SITUATION BY WAY OF HIS OWN BRAVADO.

Ground: FOUR CONCLUDED

AT THE GRAND JURY PROCEEDING (AGAIN, FOR WHICH THE PETITIONER WAS NOT PRESENT) THE STATE PROSECUTOR INSTRUCTED SAID GRAND JURY (AS NOTED AT PAGE 17 ABOVE) ON MALICE AFORETHOUGHT BUT — AS THOROUGHLY ADDRESSED ABOVE IN PAGES 15-20, THAT ELEMENT MUST FAIL AS THERE IS INSUFFICIENT EVIDENTIARY AND FACTUAL SUPPORT IN LIGHT OF AN ADEQUATE PROVOCATION EXISTING.

THE INSTRUCTION [EVEN] RECOGNIZES THAT MALICE IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT LEGAL CAUSE OR EXCUSE OR WHAT THE LAW CONSIDERS ADEQUATE PROVOCATION.

BUT, CONSIDERING THE FACTUAL CIRCUMSTANCES OF THIS MATTER (TAKEN UPON THE WHOLE) ADEQUATE PROVOCATION EXISTED WHICH, WERE SUFFICIENT TO EXCITE FEAR IN A REASONABLE PERSON AND — THAT THIS PETITIONER ACTUALLY ACTED UNDER INFLUENCE OF THOSE FEARS AND OR EMOTION AND [NOT], IN SPITE OR REVENGE. IT WAS PURE EMOTIONAL REACTIVENESS THAT STEERED THE PETITIONERS BEHAVIOR.

MALICE AFORETHOUGHT COULD HAVE NEVER BEEN PROVEN BEYOND A REASONABLE DOUBT, AND AS SUCH, DEFENSE COUNSEL'S PERFORMANCE WAS TOTALLY DEFICIENT IN LIGHT OF THE FACT THAT HE WAS TOTALLY AWARE OF THE EMOTIONALLY FED CONFRONTATIONAL CIRCUMSTANCES, TO THE POINT, OF FILING THE AFFIRMATIVE DEFENSE, BUT, BACKED AWAY/ABANDONED IT FOR A GUILTY PLEA AGREEMENT.

BASED UPON THE ABOVE FACTS AND LAW, THE PETITIONER'S GUILTY PLEA AND CONVICTION/SENTENCE SHOULD BE SET ASIDE.

(e) Ground Five:

ADVISING OR MISLEADING THE PETITIONER TO ENTER INTO AN ILL ADVISED GUILTY PLEA AGREEMENT THAT WAS NOT IN PETITIONER'S BEST INTEREST CONSTITUTING INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS

Supporting Facts:

THE PETITIONER INCORPORATES GROUND FOUR ABOVE AS THOUGH FULLY SET OUT HEREIN AS ADDITIONAL SUPPORT FOR THIS GROUND.

DEFENSE COUNSEL, TIMOTHY R. TREFFINGER, MISLED AND OR WRONGLY ADVISED AND OR INFLUENCED (BY WAY OF OFF THE RECORD COERSION) THE PETITIONER TO ENTER INTO A DEFECTIVE GUILTY PLEA AGREEMENT. COUNSEL KNEW THAT A VALID DEFENSE EXISTED (COUNT 4 ABOVE) BUT, LED THE PETITIONER TO ENTER INTO THE PLEA AGREEMENT THAT CARRIED A SENTENCE THAT WAS AN OPERATIONAL FUNCTIONAL EQUIVOLENT OF LIFE FOR A SIXTY-EIGHT (68) YEAR OLD MAN, I.E., THE PETITIONER WOULD BE EIGHTY-FOUR (84) YEARS OLD AT THE TIME OF PAROLE ELIGIBILITY.

LIKEWISE, THE CHARGES WERE PROBATIONABLE BUT, COUNSEL FAILED TO PROPERLY ADVOCATE FOR SUCH. DISPITE — THE PETITIONER BEING/WAS A DECORATED VETERAN; WAS AN OTHERWISE LAW ABIDING CITIZEN WITH **NO** PRIORS; AND, AS OUTLINED IN GROUND 4, THE INCIDENT WAS EMOTIONALLY CHARGED ALONG WITH, ADEQUATE PROVOCATION / SUFFICIENT PROVOCATION EVEN UNDER NRS 200.120 TO UNDERMINE THE CHARGES HE FACED. ALSO, THE PLEA AGREEMENT INCLUDED: (a) AN ENHANCEMENT PENALTY THAT WAS [NOT] MANDATORY CONSIDERING, **NO** JURY

Ground: FIVE CONTINUED

FOUND THE USE OF A DEADLY WEAPON (WHICH COULD HAVE BEEN NULLIFIED DUE TO ADEQUATE PROVOCATION, GROUND 4, SUPRA);

(b) THE TWO(2) ALLEGED VICTIMS HAS BEEN MERGED INTO A SINGLE COUNT OF ATTEMPT MURDER (COUNT 1) WHEN IN FACT, THEY WERE SEPERATE COUNTS BEFORE THE GRAND JURY (WHICH AGAIN, COULD HAVE BEEN NULLIFIED DUE TO ADEQUATE PROVOCATION, GROUND 4, Id.);

(c) DEFENSE COUNSEL FAILED TO ABIDE BY THE STANDARDS SET OUT IN ADKT. #411 (DISSENT MAUPIN, SAITTA, AND CHERRY) REGARDING ADVISING THE PETITIONER OF THE COLLATERAL CONSEQUENSES OF THE GUILTY PLEA UPON HIS PENDING DIVORCE PROCEEDINGS THAT, COUNSEL TREFFINGER, WAS IN FACT HANDLING.

THE ALLEGED FACTUAL DETERMINATIONS ESTABLISHED BY WAY OF SAID GUILTY PLEA HAD A MONUMENTAL IMPACT UPON SAID DIVORCE PROCEEDS AND, SUBSEQUENTLY, A MONETARY ASPECT IN THE FORM OF THE PETITIONER'S PENSION BEING AWARDED TO HIS ESTRANGED WIFE ALONG WITH, EXTREAM PUNITIVE AWARDS.

SUCH A FAILURE IMPLICATES A LAWYER'S GENERAL DUTY OF CARE TOWARD THE CLIENT;

(d) DID NOT EXPLAIN THE ADVANTAGES OF A TRIAL AND OR A DIRECT APPEAL INCLUDING, ANY ADDITIONAL INVESTIGATION OR LEGAL CHALLENGES TO THE ARGUMENTS THAT FAILED IN THE PRETRIAL HABEAS CORPUS PETITION RE: COUNTS 8 AND 9;

Ground: FIVE CONCLUDED

(e) FAILED TO PRESERVE THE PETITIONER'S RIGHTS AND PREPARE THE DEFENSE IN RELATION TO ADVISING PETITIONER TO ENTER INTO A GUILTY PLEA AGREEMENT, PRIOR, TO COMPETENCY BEING ESTABLISHED EVEN THOUGH, COUNSEL HAD CONCERNS ABOUT MENTAL STABILITY/COMPETENCY BUT NEVER, BROUGHT ANY SUCH CONCERNS TO THE COURT'S ATTENTION AND, KNOWING THAT AN ADEQUATE PROVOCATION DEFENSE EXISTED;

(F) FAILED TO DEVELOPE ANY NEGOTIATION STRATEGY DISPITE THE EMOTIONALLY CHARGED CIRCUMSTANCES OF THE CASE AND THE ASPECT OF ADEQUATE PROVOCATION;

(g) AFTER THE PETITIONER GAINED SOME ADDITIONAL INFORMATION AND OR INSIGHT AS TO THE GUILTY PLEA AGREEMENT NOT BEING IN HIS BEST INTEREST, HE WANTED TO WITHDRAW IT [PRIOR] TO SENTENCING BUT, DEFENSE COUNSEL GAVE HIM INACCURATE AND MISLEADING INFORMATION TO INFLUENCE HIM TO RETRACT HIS MOTION TO WITHDRAW, e.g. DEFENSE COUNSEL TOLD THE PETITIONER THAT THERE WAS NO BASIS IN LAW TO WITHDRAW THE GUILTY PLEA. (DAVID FISCHER APPOINTED 4/17/2018); AND,

(h) THE PETITIONER WAS SO DISSATISFIED WITH DEFENSE COUNSELS THAT HE WANTED TO REPRESENT HIMSELF AND CONTINUE WITH WITHDRAWING HIS PLEA BUT, COUNSEL NEVER GOT A MERITS RULING ON THE MOTION.

BASED UPON THE ABOVE FACTS, THE PETITIONER'S GUILTY PLEA AND CONVICTION/SENTENCE SHOULD BE SET ASIDE.

(F) Ground SIX

DEFENSE COUNSELS WERE INEFFECTIVE IN RELATION TO THE MANNER THEY HANDLED, MISLED, AND OR ILL ADVISED THE PETITIONER REGARDING HIS PRESENTENCING MOTION TO WITHDRAW FROM THE GUILTY PLEA AGREEMENT VIOLATING THE 6TH AND 14TH AMENDMENTS

Supporting Facts:

AS EARLY AS APRIL 12, 2018, THE PETITIONER HAD BEEN INFORMING BOTH DEFENSE COUNSELS (TREFFINGER AND FISCHER) THAT HE WANTED TO WITHDRAW HIS PLEA AND, ATTEMPTED TO FILE/SUBMIT A MOTION IN PROPER PERSON.

ON SAID SAME DATE, ATTORNEY TREFFINGER STATED THAT HE WOULD BE MOVING TO WITHDRAW AS ATTORNEY OF RECORD. THE COURT ADVISED MR. TREFFINGER IT WOULD NOT ALLOW HIM TO WITHDRAW UNTIL THE COURT GETS THROUGH THE "FARETTA" CANVASS. AFTER THE FARETTA HEARING, THE COURT GRANTS ATTORNEY TREFFINGER'S MOTION TO WITHDRAW AND APPOINTS ATTORNEY DAVID FISCHER AND SETS A STATUS CHECK ON PETITIONER'S MOTION TO WITHDRAW GUILTY PLEA FOR APRIL 17, 2018 AT 8:30 A.M..

ON APRIL 12, 2018, THE COURT SET A STATUS CHECK FOR PETITIONER'S MOTION TO WITHDRAW GUILTY PLEA AND CONFIRMATION OF NEWLY APPOINTED COUNSEL FOR APRIL 17, 2018.

ON APRIL 17, 2018, COUNSEL FISCHER CLAIMS TO HAVE REVIEWED THE CASE FILE INCLUDING PLEA CANVASS AND GUILTY PLEA AGREEMENT AND, TO HAVE MET WITH THE PETITIONER THEN NOTES, THAT PETITIONER HAS NO LEGAL BASIS TO WITHDRAW THE PLEA, AND, MOVES TO WITHDRAW FROM THE CASE (WHICH WAS GRANTED), AND THE CASE IS REFERRED BACK

Ground: SIX CONTINUED

TO COUNSEL TREFFINGER IN WHICH, THE PETITIONER INITIALLY HAD SO MUCH CONFLICT WITH AS TO MOVE THEM TO ATTEMPT TO PROCEED PRO SE. (MINUTES DATE APRIL 12, 2018).

DESPITE COUNSEL FISCHER'S CLAIMS TO HAVE REVIEWED CERTAIN DOCUMENTATION TO SUPPORT HIS CLAIM THAT THE PETITIONER HAS "NO LEGAL BASIS TO WITHDRAW HIS PLEA" — HE ADMITS THAT HE WAS HAVING DIFFICULTIES GETTING DISCOVERY FROM COUNSEL TREFFINGER. THE STATE AGAIN OBJECTS TO RE-PRODUCING THE DISCOVERY ALL OVER AGAIN / NUMEROUS TIMES STATING SUCH IS RIDICULOUS.

THERE WAS **NO** RULING UPON PETITIONER'S MOTION TO WITHDRAW FROM HIS GUILTY PLEA AGREEMENT AND THE COURT WENT ON TO SET ANOTHER STATUS CHECK ON SAID MOTION FOR JUNE 5, 2018 AND, "JEA" NOTIFIED AND LEFT MESSAGE VOICEMAIL FOR ATTORNEY TREFFINGER, REGARDING THE CASE AND [COURT'S ORDER] REGARDING DISCOVERY ON MAY 15, 2018.

THE MATTER CONTINUED TO BE SHUFFLED BACK AND FORTH BETWEEN TWO(2) ATTORNEYS (NEITHER OF WHICH WANTED THE CASE), ONE NEVER OBTAINED THE ENTIRE CASE FILE (DISCOVERY); AND ONE HAD NOT PROTECTED THE PETITIONER'S INTERESTS TO THE POINT, THE PETITIONER WANTED TO REPRESENT HIMSELF.

NO ACTUAL RULING IS MADE BY THE COURT ON THE MOTION TO WITHDRAW FROM THE GUILTY PLEA AGREEMENT AS REFLECTED IN THE CASE SUMMARY AND MINUTES.

Ground: SIX CONCLUDED

ON JUNE 21, 2018, **NO** DECISION UPON THE PETITIONER'S MOTION TO WITHDRAW FROM HIS PROBLEMATIC / ILL ADVISED GUILTY PLEA AGREEMENT NOTWITHSTANDING — THE COURT CONDUCTS A SENTENCING HEARING AND SENTENCES THE PETITIONER IN ACCORDANCE WITH THE PLEA AGREEMENT.

GRANTING OF A MOTION TO WITHDRAW ONE'S PLEA [BEFORE] SENTENCING IS THE PROPER WAY FOR ANY SUBSTANTIAL REASON. BUT, SUCH CANNOT BE SAID TO HAVE EVEN HAD A FAIR PROCEDURAL OPPORTUNITY IN [THIS] MATTER AS, **NO** ACTUAL ADJUDICATION OCCURRED ONE WAY OR, THE OTHER ON SAID MOTION.

THUS, THE COURT'S DISCRETION TO DENY SUCH A MOTION NOT BEING REVERSED UNLESS THERE HAS BEEN A CLEAR ABUSE OF DISCRETION IS [NOT] IN PLAY AS THE COURT MADE **NO** DOCUMENTED RULING AT ALL BUT SIMPLY NOTED: "COURT STATED IT WILL MAKE IT PART OF THE RECORD".

SUCH IS FAR FROM AN ACTUAL ADJUDICATION UPON THE MERITS OR, RULING AS A MATTER OF PROCEDURAL LAW.

THE [ONLY] MATTERS THAT THE COURT ACTUALLY ADDRESSED AND MADE DOCUMENTED RULINGS UPON WERE "COUNSELS" MOTIONS TO WITHDRAW AS COUNSELS OF RECORD.

THE PETITIONER HAS NOW IDENTIFIED CREDIBLE AND SUBSTANTIAL REASONS (RELATING TO THE VALIDITY OF THE PLEA AND OR HOW HE WAS OTHERWISE MISLED)[3] TO SET ASIDE THAT GUILTY PLEA AGREEMENT.

THE PRECEDING GROUNDS ARE INCORPORATED IN SUPPORT OF THIS FACTUAL POSITION. THE PETITIONER'S GUILTY PLEA AND SENTENCE SHOULD BE SET ASIDE.

3 COUNSEL DID NOT ACTUALLY EXPLAIN THAT THE PETITIONER WOULD BE 84 YEARS OLD PRIOR TO EVEN ELIGIBLE TO BE CONSIDERED FOR PAROLE, JUST AS AN EXAMPLE.

(9) Ground SEVEN

THE NUMEROUS EXAMPLES OF INEFFECTIVENESS OF COUNSELS CULMINATED IN "CUMULATIVE ERRORS" THAT VIOLATED THE 6TH, 5TH AND 14TH AMENDMENTS

Supporting Facts:

THE OPERATIVE FACTS AND STATEMENTS SET OUT ABOVE IN GROUNDS 1-6 ARE INCORPORATED HEREATIN AS THOUGH FULLY SET FORTH IN SUPPORT OF THIS GROUND.

DEFENSE COUNSELS ASSIGNED TO THE CASE OR RETAINED — FAILED TO:

1. NOT PROTECTING PETITIONER'S GRAND JURY RIGHTS

A. INFORM THE PETITIONER THAT HE WAS THE SUBJECT OF THE STATES INTENT TO SEEK AN INDICTMENT BY WAY OF THE GRAND JURY;

B. DID NOT CHALLENGE THE GRAND JURY PROCEEDINGS IN REGARDS TO LACK OF ADEQUATE / MANDATORY NRS 172.241 NOTICE;

2. NOT RECOGNIZING A COMPETENCY HEARING AND ALLOWING PETITIONER TO ENTER INTO A GUILTY PLEA AGREEMENT PRIOR TO THE COMPETENCY HEARING ORDERED BY THE COURT;

3. NOT PROPERLY COMMUNICATING WITH PETITIONER, MISLEADING OR ILL ADVISING TO ENTER INTO A GUILTY PLEA AGREEMENT AND, IMPEDING DEFENCE OF REPLACEMENT COUNSEL;

4. ILL ADVISED OR MISLED PETITIONER TO SIGN A GUILTY PLEA AGREEMENT WHEN A VIABLE DEFENSE EXISTED RE: MITIGATE PROVOCATION;

Ground: SEVEN CONTINUED

5. ADVISING OR MISLEADING THE PETITIONER TO ENTER INTO AN ILL ADVISED GUILTY PLEA AGREEMENT THAT WAS NOT IN PETITIONER'S BEST INTEREST;

(a) AN ENHANCEMENT PENALTY THAT WAS NOT MANDATORY CONSIDERING NO JURY FOUND THE USE OF A DEADLY WEAPON;

(b) THE TWO (2) ALLEGED VICTIMS HAD BEEN MERGED INTO A SINGLE COUNT OF ATTEMPT MURDER (COUNT 1) WHEN INITIALLY WERE SEPERATE COUNTS BEFORE THE GRAND JURY;

(c) DEFENSE COUNSEL FAILED TO ADVISE THE PETITIONER ABOUT THE COLLATERAL CONSEQUENCES THE GUILTY PLEA COULD HAVE UPON HIS PENDING DIVORCE PROCEEDINGS;

(d) DID NOT EXPLAIN THE ADVANTAGES OF A TRIAL AND OR A DIRECT APPEAL INCLUDING ANY ADDITIONAL INVESTIGATION OR LEGAL CHALLENGES TO ARGUMENTS THAT FAILED IN THE PRETRIAL HABEAS CORPUS PETITION RE: COUNTS 8 AND 9.

(e) DID NOT PRESERVE PETITIONER'S RIGHTS AND PREPARE A DEFENSE RE PLEA AGREEMENT, COMPETENCY HEARING, AND, ADEQUATE PROVOCATION DEFENSE COUNSEL WAS AWARE OF;

(F) DID NOT DEVELOPE ANY NEGOTIATION STRATEGY DESPITE THE EMOTIONALLY CHARGED CIRCUMSTANCES OF THE CASE AND THE ASPECT OF ADEQUATE PROVOCATION;

Ground: SEVEN CONCLUDED

(g-h) DID NOT PROPERLY ASSIST THE PETITIONER IN EXECUTING HIS PRESENTENCING WITHDRAWAL FROM THE GUILTY PLEA AGREEMENT INCLUDING, GIVING PETITIONER INACCURATE AND MISLEADING INFORMATION TO INFLUENCE HIM TO RETRACT THE MOTION AND — NOT ACTUALLY OBTAINING A RULING UPON SAID MOTION.

THE ABOVE EXAMPLES ARE NOT AN EXHAUSTIVE LIST AS THIS PETITION WAS DRAFTED WITHOUT THE BENEFIT OF A COMPLETE JUDICIAL RECORD INCLUDING TRANSCRIPTS. THUS, SAID DOCUMENTATION MAY YIELD NEW OR ADDITIONAL FACTS TO SUPPORT THESE CLAIMS OR, AN AMENDMENT TO BRING ADDITIONAL GROUNDS.

DUE TO THE ABOVE CUMULATIVE ERRORS, THE PETITIONER'S GUILTY PLEA — CONVICTION AND SENTENCE SHOULD BE SET ASIDE.

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

EXECUTED at NNCC, CARSON CITY, Nevada on the 8th Day of April, 2019.

JEFFREY BROWN, 1200868
PETITIONER PRO SE

PREPARATION OR PREPARED/ASSISTED
BY: C.A. JONES, 50600
LAW LIBRARY WORKER PER AD 722

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.

Jeffrey Brown
Petitioner

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 13 day of April 2017, by placing the same into the hands or prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

STEVE WOLFSON
DISTRICT ATTORNEY
200 LEWIS AVE.
POB 89155-
LAS VEGAS, Nevada 89 155

Signature of Petitioner In Pro Se

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document. (POST-CONVICTION)

PETITION FOR WRIT OF HABEAS CORPUS

(Title of Document)

filed in case number: C-16-138858-1

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

-OR-

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

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS125B.055)

Date: 4/8/19

(Signature)

JEFFREY BROWN
(Print Name)

PETITIONER PRO SE
(Attorney for)

JEFFERY K BROWN 1200868
NNCC
P.O. BOX 7000
CARSON CITY NV 89702

3717

MR. STEVEN D. GRIERSON
CLERK OF THE COURT
REGIONAL JUSTICE CENTER
200 LEWIS AVE
LVNV 89155

980000

ELECTRONICALLY SERVED
8/17/2020 2:22 PM

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4/19/2019 9:18 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. JEFFREY BROWN, aka, JEFFERY KENT BROWN, Defendant.	CASE NO. C-16-318858-1 DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, JUNE 21, 2018

RECORDER'S TRANSCRIPT RE:
SENTENCING

APPEARANCES:

For the Plaintiff: KENNETH N. PORTZ, ESQ.
Chief Deputy District Attorney

For the Defendant: TIMOTHY R. TREFFINGER, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

LAS VEGAS, NEVADA, THURSDAY, JUNE 21, 2018

* * * * *

[Case called at 10:44 a.m.]

THE COURT: State of Nevada versus Jeffrey Brown, C318858. He's present. He's in custody. This is on for sentencing.

Mr. Brown, any legal cause or reason why judgment should not be pronounced against you at this time?

THE DEFENDANT: No.

THE COURT: By virtue of your plea entered in this matter, I hereby adjudicate you guilty of Attempt Murder with Use of a Deadly Weapon and Assault with a Deadly Weapon.

Does the State wish to be heard?

MR. PORTZ: Yes, Your Honor. And did the Court receive the State's sentencing memorandum?

THE COURT: I just want to make sure I did because this has been on a few times. Yes.

MR. PORTZ: Thank you. And I also did want to point out that the victims in this case, at least two of the three victims, Mo and Farha, are both present in court today. They're both noticed as speakers and Mo will be speaking on behalf of the family.

Your Honor, Jeffrey Brown systematically stalked and hunted his victims in this case. By the time that he gunned them down at the McCarran airport, he had been waiting for them to arrive for hours. How did he know where their car was? He hacked into Farha's OnStar account to locate her vehicle. How did he know when they would be returning? He hacked into Farha's email

address to locate her flight itinerary so that he could be there when they arrived back. So he sits and he waits in his vehicle with a firearm until Farha, Mo, and Mo's 15-year-old son Mehki come back from a funeral in Indiana. And as they're approaching their car to load their luggage, he pulls up on them and from the comfort of his vehicle he shoots Mo, he shoots Farha, and then he points that firearm at that young boy, who has to run away from his father, who he believes is dying at that moment or already dead.

The facts and the circumstances of this case warrant the maximum sentence and that's part of the reason why we filed the sentencing memorandum, but there's additional facts I want the Court to consider and some of those include the calls that we highlighted made after the arrest that are placed inside the sentencing memorandum.

I anticipate in mitigation the Defense is going to point, as is obvious, that there's a lack of real criminal history in this case. And I think that's a legitimate argument, Your Honor, when someone falls on hard times and turns to an act of crime, in an act of desperation, or a lapse of judgment. That's not what we have here. We have a well-thought-out, sophisticated plan to commit murder. It's days long that he is locating her vehicle, locating when she's going to be coming back, and then waiting there, seen on surveillance coming back to the car time and time again, waiting for them to arrive so that he can drive up and shoot them.

And how do we know he had an intent to kill? Well, we have, one, his plea. Two, you have one of the calls in which he is bragging that he tried to kill. He says I tried to kill that mother fucker, in reference to Mo, when he's talking to his daughter.

I also anticipate there will be a suggestion that the Defendant's age should somehow mitigate the sentence that the Court might impose today. First of all, I think that that's not really an issue to consider because – just because he was older when he decided to commit these crimes doesn't negate the fact that Mo and Farha and Mehki have been severely victimized, that Farha will carry a bullet in her back for the rest of her life, that Mo still has a limp and numbness in his leg and that Mehki still has to see a therapist and undergo treatment for being witness to such a traumatic event.

Furthermore, as seen in some of the calls that we presented to the Court, particularly the calls where he's talking about how this act or this criminal act, this attempt to kill these people was, quote, "worth it" in his mind. He had been discussing with his daughter the fact that he will be spending the rest of his life likely behind bars and he said it was worth it. He understood and thought – he actually contemplated the fact that he was near the end of his life somehow as a motivator that he wouldn't – we couldn't fully punish him because at some point he just planned on dying anyways and he wouldn't have to serve out the maximum term of the sentence is the implication there.

So his age is almost a motivating factor behind the commission of the crime. He thought his time was over and so a man at the end of his life has no need to worry about the consequences of his actions when he goes to this airport and guns these people down.

And, finally, I anticipate there might be some suggestion that this was an act of self-defense against Mo. First of all, let's forget the fact that he stalks them, that he locates where they are and he waits all day with a firearm for them to return. That belies this notion of self-defense. But let's look at the fact of

where these victims were shot. Both Mo and Farha were shot in the back as they were running away from this man pointing the gun at them. There is no self-defense in this case. That argument should fall on deaf ears before this Court. And where's the self-defense when he points the firearm at that 15-year-old boy, after he's gun these two people down, who's hiding behind a car? There's no justification. There's no self-defense to these crimes.

And I want to speak just briefly about the charge with Mehki, the Assault with Deadly Weapon. The State is asking that that run consecutive. First of all, the act of pointing the firearm at that child is above and beyond anything that could've been necessary to commit the crimes of shooting Farha and Mo. If he was going there to kill them, to shoot them, it had – this boy was caught up in that. He is completely innocent and the act of pointing that gun at him was one-hundred percent unnecessary.

But we're also asking the Court to run it consecutive just to consider the fact that this boy is scared. He's hiding behind a car. He sees his father gunned down, believes him to be dead. Mehki was one of the first people to call 9-1-1 and on that 9-1-1 call he's telling the 9-1-1 reporter that his dad is already dead. He truly believed his father was murdered in front of his eyes. And I can't imagine, as he's hiding behind that car watching his father gunned down with every fiber of his being telling him to run to his father to help him, that he can't because the man who just shot him is stilling in his car pointing a gun at him, so he was to run away for his own life and call 9-1-1.

Judge, this man, Jeffrey Brown, has no remorse for his actions. He has – through the jail calls, you can see him playing games trying to suborn perjury from his family, trying to have his son locate what he believes to be

incriminating evidence of his premeditation to get rid of it, to waiting 'til the very day of trial, the brinksmanship of waiting to take a plea on the morning before the jury walks in, to then at the last minute before sentencing attempting to withdraw his plea, coming back with absolutely no legal basis to withdraw his plea. This is a game to him. He does not believe he has done anything wrong. He has no remorse and the State submits that he should receive the maximum penalty in this case.

THE COURT: Thank you.

Mr. Brown?

THE DEFENDANT: Everything he said is not true. I can prove that the son was not there. He was never in any danger. And I'll let my lawyer talk for me.

THE COURT: Thank you.

MR. TREFFINGER: And, Your Honor, that, the story that the State tells is one side of this. He calls waiting until the day of trial brinksmanship and, you know, part of this is Mr. Brown is upset at the situation he's in. His side of the story is completely different. We had a self-defense argument prepared to go to trial. In reviewing the jail calls, some of the things that were said in anger after his arrest wasn't going to paint that in the best light, but his side of the story – and I will note the State says he hacked into Farha's email to find out the flight itinerary. Farha sent him an email saying the flight changed to let him know that the flight was going to be delayed if he was going to show up at the airport.

THE DEFENDANT: And I got proof of that.

MR. TREFFINGER: And we – I did submit that email to the DA. The DA has seen that. As far as going into the vehicle, his side of this is Farha cut off

all communication with him. He's a 70-year-old man. She has his paperwork. She has one of his firearms. He can't get ahold of her. He's trying to get his documentation, his handicap tag back, and he's trying to make whatever effort he can to meet up with her. Should he have gone to the airport that day? He and I have discussed that at length. No. That was a bad idea. But when Farha's boyfriend got in his face – and that's in the jail call too, I might add. I shot him because he got in my face. He got up –

THE COURT: Okay. That's not self-defense.

MR. TREFFINGER: We're getting there, Your Honor. He's sitting in his car. He has severe medical issues. The guy comes up and grabs onto him. At that point, he pulls his – he pulls the firearm –

THE COURT: That's still not self-defense.

MR. TREFFINGER: I would disagree with that, Your Honor.

THE COURT: Okay.

MR. TREFFINGER: If someone comes up to the –

THE COURT: That's why your client pled guilty, because you can't use deadly force unless deadly force is being used against you.

MR. TREFFINGER: And it very well could've been. That's a much younger man coming up. He's in his car. He's got a catheter in. He's not very mobile. I mean I disagree with that position, Your Honor. We were ready to go to trial on that fact. I mean if that's – if that's Your Honor's position that's fine.

THE COURT: That's not my position. That's the law in the State of Nevada; that you cannot use deadly force unless deadly force is being used against you.

MR. TREFFINGER: He didn't know what – force was used on him? It

could've been deadly. He's an old, infirm man in a car that's being approached by someone much younger than him. I mean that's – that's a subject of argument, I guess. I would argue that there are issues there that the jury could have found self-defense, especially if we put the whole case on. This – part of this was risk versus reward going to trial and that's why there was an attempt at a plea withdraw. Obviously, there was not found that to be an issue.

I will note, as the State said, he has no criminal history. He's a decorated Marine. He lived an exemplary life for 69 years, went through four marriages with no prior domestic violence, no arrests, no felonies, no misdemeanors, multiple service medals. He's in poor health, and I mean no history of substance abuse, and has led a completely exemplary life up to this point. But there's more to this than he stalked them with the intent to gun them down. And I mean if Farha is, indeed, so afraid of him, the fact that she's sending him emails, telling him when she's going to be at the airport, that kind of flies in the face of that argument.

Again, should he have gone to the airport to try to get his stuff back? Should he have engaged in this confrontation? No. That was a mistake. I do believe there were self-defense issues here. I understand the Court doesn't agree with me. I do believe that there was potential for that here. I am asking for a minimum sentence or a maximum sentence with probation.

THE COURT: It doesn't matter whether I agree with you or not. Your client pled guilty.

MR. TREFFINGER: Correct. I'm just responding to what the Court has said. And I will submit it on that.

THE COURT: Okay. You can call your first witness.

MR. PORTZ: Thank you, Your Honor. The State calls Monequie Short.

THE COURT: You can either stand here or you can go to the podium, sir. It's up to you.

THE SPEAKER: Where do you want me to go, right here?

MR. PORTZ: Wherever you prefer.

THE SPEAKER: This is fine.

THE COURT: Okay. If you'll just raise your right hand so you can be sworn by the clerk.

MONEQUIE SHORT

[having been called as a speaker, being first duly sworn, testified as follows:]

THE CLERK: Thank you. Could you please state and spell your name for the record?

THE SPEAKER: It's Monequie and it's M-o-n-e-q-u-i-e.

THE CLERK: Thank you.

THE COURT: Go ahead, sir.

THE SPEAKER: Okay. So I want to respond to what he said. I never approached the car. I'm coming back from a funeral. My sister has passed away. He had been calling over – and I was in Indianapolis. He had been calling, cursing her out. He was sending, you know, threatening emails saying how dangerous he was. So we get to the – back to the car. He just pulls up. He starts yelling at her, cursing at her. I'm putting in the luggage. You know I'm kind of like trying to stay out of it just so that, you know, if they're gonna – you know, say whatever you have to say. You're gonna say it. But then he started getting threatening to her, so that's when, you know, I told her to go to the car, just get in

the car, and I told him – I just said, you know, whatever you want to say, you can say it to me, but I was not at the car. He reaches for his gun and I'm backing away. I got shot in the hip. I'm backing away and then he fired – and then he fired at her, so this other stuff about me attacking him is totally – I never reached in the car, never.

This guy is the type of person who's a controlling person. The whole thing is he's upset that he can't control her anymore. His son doesn't even want to have anything to do with him. He threatened me, you know, through the email, in the phone conversations. My son right now, he's still going through things because he's scared of life and it's very hard, you know, to see your son like that. And we're coming from a funeral and this guy had been stalking her. He helped her move out, so the whole thing is he's a controlling person. He couldn't control her anymore. His whole life, according to what her – Farha and the son have said – his son was terrified to come here, doesn't even want to come here, just the way, you know, he is, the type of person he is.

He's the type of person who his son was dating a young girl. He told her to – well, he told him to get her pregnant right away. That's the type of father –

MR. TREFFINGER: I'm going to object. I don't know what this has to do with –

THE COURT: Okay.

THE SPEAKER: I'm just saying –

THE COURT: All right, just –

THE SPEAKER: – that's going to the type of person he is.

THE COURT: I agree. It doesn't really have anything to do with this.

THE SPEAKER: I'm just saying the type of person he is. He's a controlling – like I say, he's a controlling person. And that's all I have to say is that he deserves to be in jail the rest of his life. I mean everything that he's put Farha through, put me through, put my son through that he has to deal with for the rest of his life, so all this other stuff – I mean that's pretty much what I say. He needs to be in jail for the rest of his life. And everything else is just not true.

THE COURT: Okay. Thank you very much, sir.

THE SPEAKER: Thank you.

THE COURT: Do you have any other witnesses?

MR. PORTZ: No, Your Honor. Thank you.

THE COURT: Okay. In accordance with the laws of the State of Nevada, this Court does now sentence you as follows: In addition to $25 administrative assessment, $150 DNA fee, order you submit to genetic marker testing. The $3 DNA collection fee will be imposed. As to Count 1, the Court is going to sentence you to 8 to 20 years in Nevada Department of Corrections, plus a consecutive 8 to 20 years for the deadly weapon enhancement, for an aggregate of 16 to 20 years in Nevada Department of Corrections; as to Count 2, 16 to 72 months to run concurrent to Count 1.

How much credit does he have?

MR. TREFFINGER: I believe it's 536 days, Your Honor.

THE COURT: Five hundred and thirty-six days credit for time served.

MR. PORTZ: Thank you.

THE COURT: Is there any restitution?

MR. PORTZ: Your Honor, there is. It's referenced in the PSI. It's $700 – I'm sorry. It goes to Victims of Crime and it's in the amount of $741.58.

THE COURT: $741.58 in restitution will be imposed. Thank you.

MR. TREFFINGER: Thank you, Your Honor.

MR. PORTZ: Thank you, Your Honor.

[Proceedings concluded at 11:00 a.m.]

* * * * *

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

Kristine Santi

KRISTINE SANTI
Court Recorder

JEFFREY BROWN
(Name)
1200868
(I.D. Number)
Northern Nevada Correctional Center
Post Office Box 7000
Carson City, NV 89702

Petitioner, In Proper Person

FILED
MAY 10 2019
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

JEFFREY BROWN,
Petitioner,

vs.

ISIDRO BACA, WARDEN, NNCC,
Respondent.

Case No.: A-19-793350-W

Dept. No.: XII

AMENDED
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)
(Non Death Penalty)

EVIDENTIARY HEARING REQUESTED

INSTRUCTIONS:

1. This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
2. Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
3. If you want an attorney appointed, you must complete the Affidavit in Support of Motion for Leave to Proceed In Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
4. You must name as Respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the

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Amended Petition
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institution. If you are not in a specific institution of the department but within its custody, name the director of the department of corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.

(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

(7) When the petition is fully completed, the original and copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the attorney general's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of you liberty: NORTHERN NV. CORR. CENTER/CARSON CITY

2. Name and location of court which entered the judgment of conviction under attack: 8TH JUD. DIST. CT. CLARK COUNTY, NV.

3. Date of judgment of conviction: JULY 2, 2018

4. Case Number: C-16-318858-1

5. (a) Length of sentence: COUNT 1 - 8-20 FOR ATTEMPTED MURDER; PLUS, CONSECUTIVE TERM OF 8-20 FOR UDW; COUNT 2 - SIXTEEN (16) TO SEVENTY TWO (72) MONTHS FOR ASSAULT WDW TO RUN CONCURRENT WITH COUNT 1.

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No X

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

N/A

7. Nature of offense involved in conviction being challenged: ATTEMPT MURDER AND ASSAULT WITH A DEADLY WEAPON.

8. What was your plea? (check one)

(a) Not guilty X (c) Guilty but mentally ill _____

(b) Guilty _____ (d) Nolo contender _____

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment of information, or if a plea of guilty was negotiated, give details: ENTERED INTO AN ILL-ADVISED GUILTY PLEA AGREEMENT ON JAN. 17, 2018 PRIOR TO COMPENCY BEING DETERMINED BY THE COMPETENCY COURT ON APRIL 6, 2018.

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

(a) Jury N/A

(b) Judge without a jury N/A

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

12. Did you appeal from the judgment of conviction?

Yes _____ No X

13. If you did appeal, answer the following:

(a) Name of court: _____

(b) Case number or citation: N/A

(c) Result: _____

(d) Date of result: _____

(Attach copy of order or decision, if available)

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

THE PETITIONER'S RIGHT TO A DIRECT APPEAL WAS WAIVED AS PART OF THE PLEA AGREEMENT EXECUTED ON JAN. 17, 2018.

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 X No _____

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

(a) (1) Name of court: EIGHTH JUD. DIST. CT

(2) Name of proceeding: PETITION FOR WRIT OF HABEAS CORPUS

(3) Grounds raised: INSUFFICIEN EVIDENCE TO SUBMIT THE CASE TO THE GRAND JURY FOR THE CHARGES OF AGGRAVATED STALKING AND TWO (2) COUNTS OF DISCHARGING A FIREARM FROM STRUCTURE OR VEHICLE.

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

(5) Result: PETITION GRANTED

(6) Date of result: DEC. 6, 2016

(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 N/A 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.

(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 X

(2) Second petition, application or motion?

Yes N/A No N/A

(3) Third or subsequent petitions, applications or motions?

Yes N/A 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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length)

THE PETITION WAS GRANTED THUS, NO ADVERSE ACTION EXISTED FOR AN APPEAL OF THAT PARTICULAR ISSUE.

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 post-conviction proceeding? If so, identify: NO —

(a) Which of the grounds is the same: N/A

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

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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

N/A

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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

THE GROUNDS ARE BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL (IAC) THAT MUST BE BROUGHT ON POST-CONVICTION.

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 ½ by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

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:

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: MARLA RENTERIA (HABEAS PETITION); TIMOTHY R. TREFFINGER; DAVID FISCHER

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

Yes _____ No X

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.

(a) Ground One:

DEFENSE COUNSEL FAILED TO INFORM THE PETITIONER THAT THE DISTRICT ATTORNEY INTENDED ON SEEKING A GRAND JURY INDICTMENT, RESPOND TO ANY SUCH NOTICE OR ADVISE PETITIONER OF HIS RIGHT TO APPEAR VIOLATING THE RIGHT OF EFFECTIVE ASSISTANCE OF COUNSEL AND THE 6TH AND 14TH AMENDMENTS.

Supporting Facts:

A.

DEFENSE COUNSEL FAILED TO PROTECT THE PROCEDURAL DUE PROCESS RIGHT OUTLINED IN NRS 172.241 AND 172.095(1)(d) AS, DEFENSE COUNSEL KNEW, OR SHOULD HAVE KNOWN THAT THE DISTRICT ATTORNEY INTENDED TO SEEK AN INDICTMENT BEFORE THE GRAND JURY BUT — SUCH NOTWITHSTANDING, DID NOT INFORM THE PETITIONER OF HIS RIGHT TO APPEAR AND TESTIFY TO EXPLAIN AWAY CHARGES OR, INFORM HIM ABOUT SUBMITTING A REQUEST TO SO DO AND EXECUTE A WAIVER OF SELF-INCRIMINATION TO EXERCISE THE RIGHT.

DEFENSE COUNSEL WAS INEFFECTIVE FOR WITHHOLDING ALL SUCH PROCEDUAL INFORMATION THAT WOULD HAVE HAD AN IMPACT ON FINDING A TRUE BILL ON SEVERAL CHARGES.

ALTHOUGH THE PROSECUTING ATTORNEY HAD PLANNED TO USE SEVERAL EXCITED UTTERANCES AND EMOTIONALLY AND OR MENTALLY QUESTIONABLE STATEMENTS MADE BY THE PETITIONER [PRIOR] TO AND AT THE TIME OF HIS ARREST

Ground: ONE CONTINUED

DEFENSE COUNSEL FAILED TO TAKE SUCH INTO CONSIDERATION AND PROPERLY INFORM THE PETITIONER OF HIS RIGHT TO APPEAR AND TESTIFY. SEE G.J. WITNESS LIST NAMING SGT. AMY WILLIAMS AS WELL AS LVMPD DETECTIVES. (RE PREARREST STATEMENTS).

SAID STATEMENTS WERE USED/PRESENTED TO THE GRAND JURY AS WELL AS, THE ONE SIDED TESTIMONY OF THE VICTIMS THAT WERE ARTFULLY SOLICITED BY THE PROSECUTOR. THE PETITIONER'S SIDE OF THE STORY WAS NOT HEARD.

AS THE RECORD SUPPORTS, SEVERAL OF THE VICTIM STATEMENTS AS TO WHAT TRANSPIRED IN THE WAY OF THE SHOOTING ARE IN CONFLICT ON WHAT CONSTITUTES ATTEMPT MURDER AS TO MS. BROWN. EVIDENCE SUPPORTS THAT MS. BROWN WAS IN FACT AN UNINTENDED VICTIM OF COLLATERAL DAMAGE, I.E. A STRAY BULLET FIRED AT HER BOYFRIEND (MR SHORT) WHEN HE PUT HANDS ON THE PETITIONER (APPROACHED HIM IN A THREATENING MANNER WHILE PETITIONER WAS IN HIS VECHICLE AND STRUCK HIM) SEE FAHA BROWN GJT p. 45, LL 3-4.

THE PETITIONER FURTHER CHARGES THAT HAD HE BEEN GIVEN TIMELY NOTICE OF THE GRAND JURY INVESTIGATION, HE COULD HAVE SOUGHT DISMISSAL OF THE INDICTMENT OF THE AGGREVATED STALKING CHARGE (COUNT 1) AND DISCHARGE OF FIREARM FROM OR WITHIN STRUCTURE OR VECHICLE (COUNTS 6-9) DUE TO THE PARTICULAR FACTUAL CIRCUMSTANCES AND NOT, HAVE HAD THEM HANG OVER HIS HEAD AS LATER LEVERAGE FOR THE PROSECUTING ATTORNEY'S USE FOR THE PSPA DEAL.

THE DEFENSE ATTORNEY'S ACTIONS WERE IN CONFLICT WITH HUMBOLDT COUNTY V. MADDUM, 783 P.2d 1389 (1989) AND RAMIREZ V. 8TH JUD. DIST CT., 913 P.2d 1293 (1996).

1. THE GRAND JURY WAS DEPRIVED OF TESTIMONY RE WHY THE PETITIONER ACTUALLY APPEARED AT THE HOUSE AT THE TIME THE ALLEGED VICTIMS ARRIVED AND, THAT HE WAS PHYSICALLY ATTACKED WHILE SITTING IN HIS VECHICLE

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Ground: ONE CONCLUDED

THE GRAND JURY RETURNED A TRUE BILL ON NINE(9) COUNTS ON OCT. 18, 2016 WITH A WARRENT / INDICTMENT WARRENT ISSUING ON SAID SAME DATE, FOLLOWED BY, THE INDICTMENT WARRENT RETURN ON OCT. 20, 2016.

B.

DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO BRING THE INADEQUATE GRAND JURY NOTICE ISSUE IN THE PRETRIAL HABEAS CORPUS PETITION FILED NOV. 17, 2016, IN VIOLATION OF PETITIONER'S 6TH AND 14TH AMEND. RIGHTS.

ASSUMING ARGUENDO — THAT DEFENSE ATTORNEY WAS NOT PROVIDED WITH THE MANDATORY NOTICE PURSUANT TO NRS 172.241 (THE "MARCUM" NOTICE), DEFENSE COUNSEL WAS LAX IN REPRESENTATION FOR NOT CHALLENGING SAID DEFECT IN THE PETITION FOR WRIT OF HABEAS CORPUS FILED ON NOV. 17, 2016.

THE CASE LAW WAS CLEARLY ESTABLISHED IN MARCUM, SUPRA AND RAMIREZ, SUPRA THAT NOTICE IS A REQUIRED PREREQUISITE IN GRAND JURY PROCEEDINGS OF THIS NATURE AS, THERE IS NO RECORD OR FACTS TO SUPPORT A SECRET INDICTMENT.

ALTHOUGH DEFENSE COUNSEL ADMITS TO BEING AWARE THAT THE STATE PRESENTED THE CASE TO THE GRAND JURY ON OCT. 11, 2016, (HABEAS PETITION P. 7, LL. 24-25), COUNSEL DOES NOT MENTION ANYTHING ABOUT THE MANDATORY NOTICE OR, INFORMING THE PETITIONER ABOUT SUCH OR, OTHERWISE COUNSEL HIM CONCERNING THAT PROCESS.

(b) Ground Two:

DEFENSE COUNSEL WAS INEFFECTIVE FOR NOT REQUESTING ANY COMPETENCY HEARING TO STAY ALL PROCEEDINGS AND, ALLOWING AND OR MISLING THE PETITIONER TO ENTER INTO A GUILT PLEA PRIOR TO THE COMPETENCY HEARING ORDERED BY THE COURT IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS.

Supporting Facts:

DEFENSE COUNSEL[S] WERE AWARE OF THE PETITIONER'S FRAGILE MENTAL AND OR CONFUSED STATE BY WAY OF SEVERAL PREARREST STATEMENTS AND OBSERVATIONS MADE BY THE VA POLICE OFFICER - SGT AMY WILLIAMS ON SEPT. 19, 2016 ("LOOKING CONFUSED . . ."). SEE ALSO, EX. A AND B.[2]

DEFENSE COUNSEL WAS ALSO ON ADEQUATE NOTICE OF THE PETITIONER'S QUESTIONABAL/VUNERABLE MENTAL STATE BY WAY OF THE STATEMENTS MADE TO LUMP ON SEPT. 19, 2016, ALONG WITH, STATEMENTS MADE TO COUNSEL THAT EVIDENCED DEEP DEPRESSION, SELF-PUNISHING AND OR, SEVERE ACCEPTATION THAT IMPACTED SOUND JUDGMENT. Id.

THE ABOVE NOTWITHSTANDING, DEFENSE COUNSEL REFUSED TO BRING THESE EARLY CONCERNS TO THE COURTS ATTENTION PRIOR TO MAR 15, 2018 WHEN, THE DISTRICT JUDGE REFERRED THE DEFENDANT TO THE COMPETENCY COURT BUT, [AFTER], DEFENSE COUNSEL ALLOWED, RECOMMENDED, OR MISLED THE PETITIONER TO ENTER INTO GUILTY PLEA NEGOTIATIONS ON "JAN. 17, 2018."

AT THE TIME THE PETITIONER ENTERED INTO A GUILTY PLEA AGREEMENT OF (COUNT 1) ATTEMPT MURDER WITH USE OF DEADLY WEAPON AND (COUNT 2) ASSAULT WITH A DEADLY WEAPON — HE HAS NOT BEEN FOUND COMPETENT, ALTHOUGH, EVIDENCE SUGGEST THAT HIS COMPETENCY WAS IN QUESTION. EX. A AND B, SUPRA.

2 PLEASE IT THE COURT TO TAKE JUDICIAL NOTICE OF THE COURT MINUTES OF CASE NO. D-16-542464-D DATED MAR. 6, 2018 AND APRIL 10, 2018 RESPECTIVELY.

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Ground: TWO CONTINUED

MOREOVER, DEFENSE COUNSEL (MR. TREFFINGER) DID NOT EVEN HAVE GOOD CONTACT INFORMATION TO ALLOW THE COURT TO CONTACT HIM AND THE COMPETENCY COURT REFERRAL MATTER HAS TO BE CONTINUED.

AT THE COMPETENCY COURT HEARING ON APRIL 6, 2018, DEFENSE COUNSEL (TREFFINGER) LODGED **NO** OBJECTIONS; DID NOT PROPERLY DEFEND THE PETITIONER AT THE COMPETENCY HEARING BY [NOT] CHALLENGING THE COMPETENCY REPORT BY WAY OF AN EXPERT FOR THE DEFENSE, AND/OR ANY SUCH EVALUATION. COUNSEL DID NOTHING!

THE LAW IS CLEAR AS TO THE DETERMINATION OF COMPETENCY OF AN ACCUSED BEFORE HE OR SHE STANDS TRIAL. PATE V. ROBINSON, 383 U.S. 375, 377, 86 S.CT. 836, 838 (1966); DROPE V. MISSOURI, 420 U.S 162, 171, 95 S.CT. 896, 903 (1975); ALSO, MELCHER-GLORIA V. STATE OF NEVADA, 660 P.2d 109 (1983). THUS, IN THE SAME LINE OF THINKING/RATIONALE, IT APPEARS THAT DUE PROCESS REQUIRES A DETERMINATION OF COMPETENCY [PRIOR], TO AN ACCUSED ENTERING INTO A PLEA AGREEMENT WHICH HAS A SENTENCE THAT OPERATES AS A FUNCTIONAL EQUIVALENT OF A LIFE SENTENCE FOR A SEVENTY-EIGHT (68) YEAR OLD MAN, I.E. [TWO (2) AGGREGATED 8-20 YEAR SENTENCES, WHICH MEANS — SIXTEEN (16) YEARS BEFORE HE IS ELIGIBLE FOR PAROLE] AT EIGHTY-FOUR (84).

THE FACT THAT A QUESTIONABLE AND UNCHALLENGED FINDING OF COMPETENCY WAS LATER FOUND ON APRIL 6, 2018, STILL DOES NOT CURE THE OVER-ALL INEFFECTIVENESS OF COUNSEL, THE TOTAL BUTCHERY OF THE SPIRIT OF THE "COMPETENCY" STATUTE AND THE "CART BEFORE THE HORSE" POST-HOC PROCESSES.

Ground: TWO CONCLUDED

AS CITED / HELD IN NRS 178.405 - REQUIRES COMPETENCY AS A LEGAL PREREQUISITE TO [ANY] COURT PROCEEDING. THUS, A HEARING TO DETERMINE DEFENDANT'S COMPETENCY IS CONSTITUTIONALLY, AND STATUTORILY REQUIRED WHERE REASONABLE DOUBT EXISTS ON ISSUE. MILLIGAN-GLORIA, SUPRA. PRIOR TO ENTERING ANY BINDING AGREEMENT. AND, ANY ERROR RELATING THERETO IS NOT HARMLESS WHEN VIEWED IN CONJUNCTION TO THE CUMULATIVE ERRORS ASPECT RELATING TO THE NUMEROUS PROCEDURAL AND OTHER DEFICIENCIES IN THIS MATTER PREMISED UPON, COUNSEL'S INEFFECTIVENESS. SEE GROUND 7.

BASED UPON THE ABOVE FACTS, THE PETITIONER'S GUILTY PLEA AND CONVICTION / SENTENCE SHOULD BE SET ASIDE.

(c) Ground Three:

DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY COMMUNICATE WITH THE PETITIONER; MISLEADING OR, ILL ADVISING TO ENTER INTO A GUILTY PLEA AGREEMENT AND IMPEDING DEFENSE OF REPLACEMENT COUNSEL VIOLATING THE 6TH AND 14TH AMEND.

Supporting Facts:

THE PRECEEDING COUNTS AND THEIR EXAMPLES OF (IAC) ARE INCORPORATED HEREATIN.

ON APRIL 12, 2018, THE MINUTES DOCUMENT THAT THE PETITIONER IS SO DISSATISFIED WITH COUNSEL TREFFINGER UNTIL HE WANTS TO WITHDRAW HIS GUILTY PLEA (PRE SENTENCING), WANTS TO DISMISS HIS ATTORNEY AND, REPRESENT HIMSELF (ALTHOUGH IT IS NOTED THAT A FARETTA CANVASS WILL BE CONDUCTED, NO TRANSCRIPTS OF SAID CANVASS WERE PRODUCED OR AVAILABLE AT THE TIME THIS PETITION WAS DRAFTED).

WHAT IS EVIDENT, IS A COMPLETE DISCONNECT BETWEEN THE PETITIONER AND MR. TREFFINGER TO THE POINT THAT, NO WORKING RELATIONSHIP IS LEFT AND ANY ADVOCACY IS QUESTIONABLE AT BEST.

DEFENSE COUNSEL INFORMS THE COURT THAT THE PETITIONER NO LONGER WANTED TO REPRESENT HIMSELF DESPITE, THE OBVIOUS DISCONNECT. THEN, MOVES TO WITHDRAW FROM THE CASE, WHICH, IS GRANTED BY THE COURT. THE COURT THEN APPOINTS ATTORNEY DAVID FISCHER, WHICH, HAS CONSIDERABLE DIFFICULTIES GETTING DISCOVERY FROM MR. TREFFINGER BUT WITH NO RESPONSE, HAS TO ATTEMPT TO COMPILE SOME INFORMATION ON HIS OWN AND REQUESTED THE STATE TO PRODUCE A COPY OF THE DISCOVERY THAT WAS MET WITH AN OBJECTION FROM MS. CLOWERS ARGUING, HAVING TO RE-PRODUCE

Ground: THREE CONCLUDED

THE DISCOVERY ALL OVER AGAIN AFTER ALREADY PRODUCING IT TO PRIOR DEFENSE COUNSEL [NUMEROUS TIMES] IS RIDICULOUS. THE COURT ORDERED THE SENTENCING MATTER CONTINUED AND MR. TREFFINGER IS ORDERED TO PROVIDE ALL DISCOVERY TO MR. FISCHER

THERE IS NO INDICATION THAT ATTORNEY TREFFINGER EVER TIMELY PRODUCED THE CASE FILE TO MR. FISCHER (PUBLIC DEFENDER) BY MAY 15, 2018, AS, THE DOCUMENTS PRODUCED BY MR. FISCHER PURSUANT TO THE WITHDRAW OF COUNSEL GRANTED ON NOV. 13, 2018, CONTAINED NO DISCOVERY NOR: THE JAVS VIDEO OF DEF'S PLEA; THE NRS 178.420 COMPETENCE REPORT; NOR, THE SENTENCING RECOMMENDATIONS JUST TO NAME A FEW, INCLUDING, NO SENTENCING RECOMMENDATIONS OR EVEN A COPY OF PETITIONER'S MOTION TO WITHDRAW FROM THE GUILTY PLEA AGREEMENT.

BASED UPON THE ABOVE FACTS, THE PETITIONER'S GUILTY PLEA AND CONVICTION/SENTENCE SHOULD BE SET ASIDE.

(d) Ground Four:

ALLOWED, ILL ADVISED, OR MISLED PETITIONER INTO SIGNING A GUILTY PLEA AGREEMENT WHEN A VIABLE DEFENSE EXISTED THAT IN FACT, DEFENSE COUNSEL FILED NOTICE OF SAID AFFIRMATIVE DEFENSE ON OCT. 26, 2017 IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS.

Supporting Facts:

PETITIONER TOLD COUNSEL THAT THE ALLEGED VICTIM "MONEQUE SHORT" APPROACHED THE DRIVER'S SIDE OF HIS VEHICLE IN AN AGGRESSIVE MANNER AND SAID: "DO YOU HAVE A PROBLE WITH ME MUTHAFUCKA"?! SEE GJT P. 45, LL 3-4 (THE CLEANED UP VERSION) STATING:

"... ALL I HEAR IS "MO" WALKING TOWARDS HIM SAYING DO YOU HAVE A PROBLEM WITH ME, MAN" (FARAH BROWN) ALSO;

GJT 57: 21-25; 58:1 - MONEQUE SHORT'S TESTIMONY ABOUT CONFRONTING THE PETITIONER BY APPROACHING HIM AND IN AN AGGRESSIVE MANNER ——— STATING: IF YOU HAVE SOMETHING TO SAY, SAY IT TO ME"! THIS LANGUAGE INFERS A CONFRONTATIONAL STANCE ON PART OF MR. SHORT.[3]

THE PETITIONER GOES ON TO INFORM DEFENSE COUNSEL THAT "SHORT" WENT ON TO GRAB HIM BY THE "COLLAR" AT THE HEIGHT OF HIS STATEMENTS/AGGRESSIVE ACTIONS. SEE EX. C. P. 7. AT THAT POINT — THE PETITIONER DRAW/RETRIEVED HIS LEGALLY OWNED WEAPON[4] AND, IN A NOW EXTREMELY EXCITED EMOTIONAL STATE, STARTED TO FIRE THE WEAPON IN A DOWNWARD TRAJECTORY STRIKING "SHORT" IN THE LOWER RIGHT SIDE OF HIS BACK TRACKING DOWNWARD TO SHORT'S UPPER LEFT BUTTOX.

THESE CIRCUMSTANCES SUGGEST AN ADEQUATE PROVOCATION ——

[3] A REASONABLE INFERENCE CAN BE DRAWN THAT MR. SHORT WAS BACKING UP AND TURNED TO RUN AFTER SEEING PETITIONER DRAW HIS WEAPON [AFTER] BEING ASSAULTED BY HIM.

[4] SEE EX. D CONCEALED FIREARM PERMIT

000713

Ground: FOUR CONTINUED

IN THAT, THE PETITIONER DID NOT ARRIVE WITH THE INTENTIONS OF HARMING / SHOOTING ANYONE AS HIS WEAPON WAS NOT INITIALLY DRAWN BUT PUT AWAY AND NOT PRODUCED [UNTIL] "HE" WAS PHYSICALLY ATTACKED AFTER BEING APPROACHED IN A THREATENING MANNER BY "SHORT".

THE ALLEGED VICTIMS, ESPECIALLY MR. SHORT, COULD HAVE SIMPLY CONTINUED TO LOAD THE LUGGAGE AND LEAVE, AS, AT NO TIME DID THE PETITIONER EVER EXIT HIS VEHICLE NOR, DID HE IMPEDE THEIR EGRESS FROM THE PARKING SPACE.

THE ABOVE NOTWITHSTANDING — THE PETITIONER (A SIXTY-EIGHT (68) YEAR OLD MAN) WITH, NUMEROUS HEALTH ISSUES, e.g. (CCDC MEDICAL EXAM RECORDS WILL SUPPORT THAT PETITIONER WAS CATHERIZED AT THE TIME) — AND UNDER CONSIDERABLE STRESS AND OR EMOTIONAL UPHEAVAL DUE TO MARITAL ESTRANGEMENT FROM A WIFE OF TWENTY-TWO (22) YEARS, [IS] APPROACHED ON THE DRIVER'S SIDE OF HIS VEHICLE IN AN AGRESSIVE AND CHALLENGING MANNER, BY THE WIFE'S BOYFRIEND (A YOUNGER AND LARGER MAN) AND IN FACT, (ACCORDING TO INFORMATION GIVEN TO DEFENSE ATTORNEY) IS PHYSICALLY ATTACKED OR BATTERED, EX. C AT p. 7, LL 9-10.

THE ABOVE PLEADINGS MAKE A FACIAL SHOWING OF ASSOCIATE PROVOCATION THAT, INFERREDLY, PROMPTED DEFENSE COUNSEL TO FILE THE NOTICE OF THE SELF-DEFENSE ALTERNATIVE DEFENSE ON OCT. 26, 2017 BUT, SUCH INFORMATION AND FILING NOTWITHSTANDING, LED THE PETITIONER TO ENTER INTO A GUILTY PLEA FOR ATTEMPT MURDER OF MS. FARA BROWN AND MONEQUIE SHORT AS TO COUNT I.

Ground: FOUR CONTINUED

THE ADEQUATE PROVOCATION DEFENSE WOULD HAVE HAD A MAJOR IMPACT, WHEN PROVEN, UPON EACH AND EVERY COUNT OF ATTEMPT MURDER; ASSAULT WITH A DEADLY WEAPON; DISCHARGING A FIREARM FROM A VEHICLE OR WITHIN A STRUCTURE; BATTERY WITH DOW; AND, CHILD ABUSE, NEGLECT OR ENDANGERMENT — AS, THE STATE COULD NOT HAVE MADE A CASE IF THE PETITIONER WAS DEFENDING HIMSELF FROM OR REACTING TO, AN UNPROVOKED ATTACK. (NRS 200.275). AND, BY MRS BROWN'S OWN ADMISSIONS — **NO GUN WAS EVER POINTED AT MERHISHORT.** FN 5, SUPRA.

THE PROSECUTING ATTORNEY INSTRUCTED THE GRAND JURY, THAT:

> MALICE AFORETHOUGHT MEANS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT LEGAL CAUSE OR EXCUSE OR WHAT THE LAW CONSIDERS ADEQUATE PROVOCATION.

SEE, PARAGRAPHS 1-5, PP 15-16 ABOVE IN SUPPORT OF THE ADEQUATE PROVOCATION. THE STATE OF NEVADA'S ADEQUATE PROVOCATION DOCTRINE ("STAND YOUR GROUND") IS SET OUT IN NRS 200.120 "UNDER JUSTIFIABLE HOMICIDE" THAT IS IN FACT, ADOPTED IN NRS 200.275 "JUSTIFIABLE INFLICTION OR THREAT OF BODILY INJURY NOT PUNISHABLE". EVEN THOUGH — **NO** DEATH OCCURED IN THIS MATTER, THE PROVOCATION DOCTRINE THAT IS PREMISED ON THE ASSUMPTION THAT ONE WHO KILLS WHILE IN A HIGHLY EMOTIONAL STATE MAY NOT ACT FROM "ANY WICKEDNESS OF HEART OR CRUELTY OR RECKLESSNESS OF DISPOSITION", BUT RATHER AS "[A] RESULT OF THE TEMPORARY EXCITEMENT BY WHICH THE CONTROL OF REASON WAS DISTURBED", **APPLIES HERE.**

5 SEE EX. E, TEXT MESSAGE OF FARHA BROWN THAT THE PETITIONER NEVER POINTED THE WEAPON AT THE "SON".

Ground: FOUR CONTINUED

THERE IS ADEQUATE EVIDENCE WITHIN THE EXISTING RECORD THAT SUPPORTS THAT THE PETITIONER WAS ACTUALLY SEITING IN HIS VEHICLE WHEN HE WAS ACCOSTED BY THE BOYFRIEND OF HIS ESTRANGED WIFE (MR. SHORT), P. 15 AT PARAGRAPH #1, SUPRA. AND, THE PETITIONER ACTUALLY SUCCUMBS TO AND SUSTAINED AN UNWANTED BATTERY AS DEFINED IN NRS 200.400 AND OR, AN ASSAULT AS DEFINED IN NRS 200.471. RETURN FORCE WAS JUSTIFIED PER NEVADA LAW.

ALL THE WHILE, THE PETITIONER WAS **NOT** REQUIRED TO RETREAT BEFORE USING FORCE TO REPELL HIS ATTACKER AS: (1) HE WAS NOT THE ORIGINAL AGGRESSOR (WAS ACTUALLY SEATED IN HIS VEHICLE) AND SIMPLY SPEAKING WITH HIS LAWFUL WIFE ALTHOUGH, ESTRANGED; (2) HAD A RIGHT TO BE PRESENT AT THE LOCATION, A PUBLIC PLACE (AS **NO RESTRAINING ORDER** HAD ISSUED); AND (3) THE PETITIONER WAS [NOT] ACTUALLY ENGAGED IN CONDUCT IN FURTHERANCE OF CRIMINAL ACTIVITY (THE AGGREVATED STALKING CHARGES WERE UNFOUNDED AND INVALIDATED BY A PRETRIAL HABEAS).

AS SUCH, THE ABOVE FACTUAL UNDERPINNINGS WOULD EVEN HAVE SUPPORTED JUSTIFIABLE HOMICIDE UPON (MR. SHORT) HAD, HIS LIFE BEEN TAKEN AFTER ASSAULTING AND BATTERING THE PETITIONER IN HIS VEHICLE.

MOREOVER, IN ADDITION TO ANY OTHER CIRCUMSTANCES RECOGNIZED AS JUSTIFICATION AT COMMON LAW (NRS 200.275), SUPRA, THE INFLICTION OR THREAT OF BODILY INJURY IS JUSTIFIED, AND DOES NOT CONSTITUTE MAYHEM, BATTERY, OR ASSAULT, IF DONE UNDER CIRCUMSTANCES WHICH WOULD JUSTIFY HOMICIDE.

Ground: FOUR CONTINUED

AS FOR THE INJURIES SUSTAINED BY THE ESTRANGED WIFE (MS. BROWN) THERE WAS "INSUFFICIENT EVIDENCE", AS A MATTER OF LAW, TO PROVE ATTEMPTED MURDER AS, UNDER STATE LAW, A CONVICTION OF ATTEMPTED MURDER REQUIRES, AMONG OTHER THINGS, PROOF OF AN INTENT TO KILL.

THE ADMISSIBLE EVIDENTIARY FACTS/EVIDENCE CLEARLY SHOW THAT (MS. BROWN'S) INJURIES WERE TO THE LOWER PART OF HER BACK TRACKING IN A CROSSWISE MOTION. THE INJURIES WERE **NOT** IN AN UPWARDS TRAJECTORY AND, AS ARGUED ABOVE, WERE THE RESULT OF ADEQUATE PROVOCATION BY HER NEW BOYFRIEND.

THE PETITIONER SIMPLY LAPSED INTO A HIGHLY EMOTIONAL STATE (IF NOT ALREADY PRONED TO SUCH) THAT CAUSED HIM TO REACT AND BEHAVE IN A WAY THAT HE WOULD OTHERWISE FEEL IS MORALLY AND OR LAWFULLY UNACCEPTABLE.

THE EVIDENCE OF ATTEMPS MURDER WAS LAWFULLY NONEXISTANT AS, THE TYPICAL COMMON LAW STANDARD ON PROVOKING EVENTS IS STRUCTURED SUCH THAT ANY NUMBER OF CIRCUMSTANCES MIGHT CONSTITUTE ADEQUATE PROVOCATION SO LONE AS THE/A DEFENDANT CAN SHOW: (1) THAT A REASONABLE PERSON IN THE DEFENDANT'S SITUATION WOULD HAVE BEEN ADEQUATELY PROVOKED, (2) THAT THE DEFENDANT WAS IN-FACT PROVOKED AND BECAME EMOTIONALLY CHARGED TO AN EXTENT THAT HE LOST SELF-CONTROL, (3) THAT A REASONABLE PERSON IN THE DEFENDANT'S SITUATION WOULD NOT HAVE HAD SUFFICIENT TIME TO "COOL OFF" BETWEEN PROVOCATION AND THE INSUING AGGRESSIVE REACTIVE RESPONSE, AND (4) THAT THE DEFENDANT DID NOT, IN-FACT, COOL OFF BEFORE HE ACTED.

Ground: FOUR CONTINUED

TODAY, IN COMMON LAW JURISDICTIONS, PASSION IS OFTEN BROAD ENOUGH TO INCLUDE EMOTIONS LIKE FEAR OR RESENTMENT NOTING THAT "PASSION NEED NOT MEAN 'RAGE OR ANGER' BUT MAY BE ANY '[V]IOLENT, INTENSE, HIGH-WROUGHT OR ENTHUSIASTIC EMOTION'") PEOPLE V. WU, 286 CAL RPTR. 868, 884 (CAL. CT. APP. 1991).

NOT ONLY WAS THE PETITIONER SHOULDERING THE MENTALLY STRESSING FACT THAT HE WAS ACTUALLY SEEING HIS ESTRANGED WIFE WITH THE MAN SHE WAS NOW SLEEPING WITH — THAT **SAME** MAN GOES ON TO GET IN HIS FACE AND **PUTS HANDS ON HIM**.[6] THIS WOULD CAUSE OVERWHELMING ANGER IN **ANY** REASONABLE MAN! (NRS 200.275).

THUS, THE INJURIES TO THE WIFE (MS. BROWN) ARE NOT UPON THE LEVEL OF ATTEMPTED MURDER.

DEFENSE COUNSEL [WAS] AWARE OF THE CIRCUMSTANCES AND THE ADEQUATE PROVOCATION RELATED THERETO WHICH, EXPLAINS THE FILING OF THE NOTICE OF AFFIRMATIVE DEFENSE: SELF-DEFENSE ON OCT. 26, 2017. (FN4 AT PP. 7-8).

BUT, ALL OF THE ABOVE FACTS NOTWITHSTANDING, DEFENSE COUNSEL DID NOT PURSUE SAID DEFENSES BUT INSTEAD, GETS THE PETITIONER TO SIGN HIS LIFE AWAY IN A GUILTY PLEA AGREEMENT. DESPITE —

SHORT EXPLAINED THAT AFTER BROWN PULLED UP, SHORT INTERVENED IN THEIR CONVERSATION BY APPROACHING THE FORD ESCAPE AND TELLING HIM "IF YOU WANT TO SAY ANYTHING TO ME, YOU CAN SAY SOMETHING TO ME." GJT 57:21-25; 58:1. MR. SHORT SEEMED TO EXCERBATE AN ALREADY TENSE SITUATION BY WAY OF HIS OWN BRAVADO.

6 SEE SENTENCING TRANSCRIPT p. 7, LL 9-10, EXHIBIT C.

Ground: FOUR CONCLUDED

AT THE GRAND JURY PROCEEDING (AGAIN, FOR WHICH THE PETITIONER WAS NOT PRESENT) THE STATE PROSECUTOR INSTRUCTED SAID GRAND JURY (AS NOTED AT PAGE 17 ABOVE) ON MALICE AFORETHOUGHT BUT — AS THOROUGHLY ADDRESSED ABOVE IN PAGES 15-20, THAT ELEMENT MUST FAIL AS THERE IS INSUFFICIENT EVIDENTIARY AND FACTUAL SUPPORT IN LIGHT OF AN ADEQUATE PROVOCATION EXISTING.

THE INSTRUCTION [EVEN] RECOGNIZES THAT MALICE IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT LEGAL CAUSE OR EXCUSE OR WHAT THE LAW CONSIDERS ADEQUATE PROVOCATION.

BUT, CONSIDERING THE FACTUAL CIRCUMSTANCES OF THIS MATTER (TAKEN UPON THE WHOLE) ADEQUATE PROVOCATION EXISTED WHICH, WERE SUFFICIENT TO EXCITE FEAR IN A REASONABLE PERSON AND — THAT THIS PETITIONER ACTUALLY ACTED UNDER INFLUENCE OF THOSE FEARS AND OR EMOTION AND [NOT], IN SPITE OR REVENGE. IT WAS PURE EMOTIONAL REACTIVENESS THAT STEERED THE PETITIONERS BEHAVIOR.

MALICE AFORETHOUGHT COULD HAVE NEVER BEEN PROVEN BEYOND A REASONABLE DOUBT, AND AS SUCH, DEFENSE COUNSEL'S PERFORMANCE WAS TOTALLY DEFICIENT IN LIGHT OF THE FACT THAT HE WAS TOTALLY AWARE OF THE EMOTIONALLY FED CONFRONTATIONAL CIRCUMSTANCES, TO THE POINT, OF FILING THE AFFIRMATIVE DEFENSE, BUT, BACKED AWAY / ABANDONED IT FOR A GUILTY PLEA AGREEMENT.

BASED UPON THE ABOVE FACTS AND LAW, THE PETITIONER'S GUILTY PLEA AND CONVICTION / SENTENCE SHOULD BE SET ASIDE.

(e) Ground Five:

ADVISING OR MISLEADING THE PETITIONER TO ENTER INTO AN ILL ADVISED GUILTY PLEA AGREEMENT THAT WAS NOT IN PETITIONER'S BEST INTEREST CONSTITUTING INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE 6TH AND 14TH AMENDMENTS

Supporting Facts:

THE PETITIONER INCORPORATES GROUND FOUR ABOVE AS THOUGH FULLY SET OUT HEREIN AS ADDITIONAL SUPPORT FOR THIS GROUND.

DEFENSE COUNSEL, TIMOTHY R. TREFFINGER, MISLED AND OR WRONGLY ADVISED AND OR INFLUENCED (BY WAY OF OFF THE RECORD COERSION) THE PETITIONER TO ENTER INTO A DEFECTIVE GUILTY PLEA AGREEMENT. COUNSEL KNEW THAT A VALID DEFENSE EXISTED (COUNT 4 ABOVE)[7] BUT, LED THE PETITIONER TO ENTER INTO THE PLEA AGREEMENT THAT CARRIED A SENTENCE THAT HAD AN OPERATIONAL FUNCTIONAL EQUIVOLENT OF LIFE FOR A SIXTY-EIGHT (68) YEAR OLD MAN, I.E., THE PETITIONER WOULD BE EIGHTY-FOUR (84) YEARS OLD AT THE TIME OF PAROLE ELIGIBILITY.

LIKEWISE, THE CHARGES WERE PROBATIONABLE BUT, COUNSEL FAILED TO PROPERLY ADVOCATE FOR SUCH DISPITE — THE PETITIONER BEING/WAS A DECORATED VETERAN;, WAS AN OTHERWISE LAW ABIDING CITIZEN WITH **NO** PRIORS AND, AS OUTLINED IN GROUND 4, THE INCIDENT WAS EMOTIONALLY CHARGED MORE WITH, ADEQUATE PROVOCATION / SUFFICIENT PROVOCATION EVEN UNDER NRS 200.120 TO UNDERMINE THE CHARGES HE FACED. ALSO, THE PLEA AGREEMENT INCLUDED: (a) AN ENHANCEMENT PENALTY THAT WAS [NOT] MANDATORY CONSIDERING, **NO** JURY

[7] SEE ALSO EX. C, pp. 7-8.

Ground: FIVE CONTINUED

FOUND THE USE OF A DEADLY WEAPON (WHICH COULD HAVE BEEN NULLIFIED DUE TO ADEQUATE PROVOCATION, GROUND 4, SUPRA);

(b) THE TWO(2) ALLEGED VICTIMS HAS BEEN MERGED INTO A SINGLE COUNT OF ATTEMPT MURDER (COUNT 1) WHEN IN FACT, THEY WERE SEPERATE COUNTS BEFORE THE GRAND JURY (WHICH AGAIN, COULD HAVE BEEN NULLIFIED DUE TO ADEQUATE PROVOCATION, GROUND 4, Id.);

(c) DEFENSE COUNSEL FAILED TO ABIDE BY THE STANDARDS SET OUT IN ADKT. #411 (DISSENT MAUPIN, SAITTA, AND CHERRY) REGARDING ADVISING THE PETITIONER OF THE "COLLATERAL CONSEQUENSES" OF THE GUILTY PLEA UPON HIS PENDING DIVORCE PROCEEDINGS THAT, COUNSEL JEFFRIES, WAS IN FACT HANDLING. NRS 41.133[8] AND EX. A-B.

THE ALLEGED FACTUAL DETERMINATIONS ESTABLISHED BY WAY OF SAID GUILTY PLEA HAD A MONUMENTAL IMPACT UPON SAID DIVORCE PROCEEDURS AND, SUBSEQUENTLY, A MONETARY ASPECT IN THE FORM OF THE PETITIONER'S PENSION BEING AWARDED TO HIS ESTRANGED WIFE ALONG WITH, EXTREAM PUNITIVE AWARDS.

SUCH A FAILURE IMPLICATES A LAWYER'S GENERAL DUTY OF CARE TOWARD THE CLIENT;

(d) DID NOT EXPLAIN THE ADVANTAGES OF A TRIAL AND OR A DIRECT APPEAL INCLUDING, ANY ADDITIONAL INVESTIGATION OR LEGAL CHALLENGES TO THE ARGUMENTS THAT FAILED IN THE PRETRIAL HABEAS CORPUS PETITION RE: COUNTS 8 AND 9;

8 SEE EX. F, NRS 41.133

Ground: FIVE CONCLUDED

(e) FAILED TO PRESERVE THE PETITIONER'S RIGHTS AND PREPARE THE DEFENSE IN RELATION TO ADVISING PETITIONER TO ENTER INTO A GUILTY PLEA AGREEMENT, PRIOR, TO COMPETENCY BEING ESTABLISHED EVEN THOUGH, COUNSEL HAD CONCERNS ABOUT MENTAL STABILITY/COMPETENCY BUT NEVER, BROUGHT ANY SUCH CONCERNS TO THE COURT'S ATTENTION AND, KNOWING THAT AN APPROPRIATE PROVOCATION DEFENSE EXISTED;

(F) FAILED TO DEVELOPE ANY NEGOTIATION STRATEGY DESPITE THE EMOTIONALLY CHARGED CIRCUMSTANCES OF THE CASE AND THE ASPECT OF APPROPRIATE PROVOCATION;

(g) AFTER THE PETITIONER GAINED SOME ADDITIONAL INFORMATION AND OR INSIGHT AS TO THE GUILTY PLEA AGREEMENT NOT BEING IN HIS BEST INTEREST, HE WANTED TO WITHDRAW IT [PRIOR] TO SENTENCING BUT, DEFENSE COUNSEL GAVE HIM INACCURATE AND MISLEADING INFORMATION TO INFLUENCE HIM TO RETRACT HIS MOTION TO WITHDRAW, e.g. DEFENSE COUNSEL TOLD THE PETITIONER THAT THERE WAS NO BASIS IN LAW TO WITHDRAW THE GUILTY PLEA. (DAVID FISCHER APPOINTED 4/17/2018); AND,

(h) THE PETITIONER WAS SO DISSATISFIED WITH DEFENSE COUNSELS THAT HE WANTED TO REPRESENT HIMSELF AND CONTINUE WITH WITHDRAWING HIS PLEA BUT, COUNSEL NEVER GOT A MERITS RULING ON THE MOTION.

BASED UPON THE ABOVE FACTS, THE PETITIONER'S GUILTY PLEA AND CONVICTION/SENTENCE SHOULD BE SET ASIDE.

(F) Ground SIX

DEFENSE COUNSELS WERE INEFFECTIVE IN REGARDS TO THE MANNER THEY HANDLED, MISLED, AND OR ILL ADVISED THE PETITIONER REGARDING HIS PRESENTENCING MOTION TO WITHDRAW FROM THE GUILTY PLEA AGREEMENT VIOLATING THE 6TH AND 14TH AMENDMENTS

Supporting Facts:

AS EARLY AS FEB 21, 2018, THE PETITIONER HAD BEEN INFORMING BOTH DEFENSE COUNSELS (TREFFINGER AND FISCHER) THAT HE WANTED TO WITHDRAW HIS PLEA AND, ATTEMPTED TO FILE/SUBMIT A MOTION IN PROPER PERSON. SEE EX. A (SECOND PARAGRAPH).

ON SAID SAME DATE, ATTORNEY TREFFINGER STATED THAT HE WOULD BE MOVING TO WITHDRAW AS ATTORNEY OF RECORD. THE COURT ADVISED MR. TREFFINGER IT WOULD NOT ALLOW HIM TO WITHDRAW UNTIL THE COURT GETS THROUGH THE "FARETTA" CANVASS.

AFTER THE FARETTA HEARING, THE COURT GRANTS ATTORNEY TREFFINGER'S MOTION TO WITHDRAW AND APPOINTS ATTORNEY DAVID FISCHER AND SETS A STATUS CHECK ON PETITIONER'S MOTION TO WITHDRAW GUILTY PLEA FOR APRIL 17, 2018 AT 8:30 A.M.

ON APRIL 12, 2018, THE COURT SET A STATUS CHECK FOR PETITIONER'S MOTION TO WITHDRAW GUILTY PLEA AND CONFIRMATION OF NEWLY APPOINTED COUNSEL FOR APRIL 17, 2018.

ON APRIL 17, 2018, COUNSEL FISCHER CLAIMS TO HAVE REVIEWED THE CASE FILE INCLUDING PLEA CANVASS AND GUILTY PLEA AGREEMENT AND, TO HAVE MET WITH THE PETITIONER TAKEN NOTES, THAT PETITIONER HAS NO LEGAL BASIS TO WITHDRAW THE PLEA, AND, MOVES TO WITHDRAW FROM THE CASE (WHICH WAS GRANTED), AND THE CASE IS REFERRED BACK

Ground: SIX CONTINUED

TO COUNSEL TREFFINGER IN WHICH, THE PETITIONER INITIALLY HAD SO MUCH CONFLICT WITH AS TO MOVE HIM TO ATTEMPT TO PROCEED PRO SE. (MINUTES DATE APRIL 12, 2018).

DESPITE COUNSEL FISCHER'S CLAIMS TO HAVE REVIEWED CERTAIN DOCUMENTATION TO SUPPORT HIS CLAIM THAT THE PETITIONER HAS "NO LEGAL BASES TO WITHDRAW HIS PLEA" — HE ADMITS THAT HE WAS HAVING DIFFICULTIES GETTING DISCOVERY FROM COUNSEL TREFFINGER. THE STATE EVEN OBJECTS TO RE-PRODUCING THE DISCOVERY ALL OVER AGAIN / NUMEROUS TIMES STATING SUCH IS RIDICULOUS.

THERE WAS NO RULING UPON PETITIONER'S MOTION TO WITHDRAW FROM HIS GUILTY PLEA AGREEMENT AND THE COURT WENT ON TO SET ANOTHER STATUS CHECK ON SAID MOTION FOR JUNE 5, 2018 AND, "JEA" NOTIFIED AND LEFT MESSAGE VOICEMAIL FOR ATTORNEY TREFFINGER, REGARDING THE CASE AND [COURT'S ORDER] REGARDING DISCOVERY ON MAY 15, 2018.

THE MATTER CONTINUED TO BE SHUFFLED BACK AND FORTH BETWEEN TWO(2) ATTORNEYS (NEITHER OF WHICH WANTED THE CASE), ONE NEVER OBTAINED THE ENTIRE CASE FILE (DISCOVERY); AND ONE HAD NOT PROTECTED THE PETITIONER'S INTERESTS TO THE POINT, THE PETITIONER WANTED TO REPRESENT MYSELF.

NO ACTUAL RULING IS MADE BY THE COURT ON THE MOTION TO WITHDRAW FROM THE GUILTY PLEA AGREEMENT AS REFLECTED IN THE CASE SUMMARY AND MINUTES.

Ground: SIX CONCLUDED

ON JUNE 21, 2018, **NO** DECISION UPON THE PETITIONER'S MOTION TO WITHDRAW FROM HIS PROBLEMATIC / ILL ADVISED GUILTY PLEA AGREEMENT NOTWITHSTANDING — THE COURT CONDUCTS A SENTENCING HEARING AND SENTENCES THE PETITIONER IN ACCORDANCE WITH THE PLEA AGREEMENT.

GRANTING OF A MOTION TO WITHDRAW ONE'S PLEA [BEFORE] SENTENCING IS THE PROPER WAY FOR ANY SUBSTANTIAL REASON. BUT, SUCH CANNOT BE SAID TO HAVE EVEN HAD A FAIR PROCEDURAL OPPORTUNITY IN [THIS] MATTER AS, **NO** ACTUAL ADJUDICATION OCCURED ONE WAY OR THE OTHER ON SAID MOTION.

THUS, THE COURT'S DISCRETION TO DENY SUCH A MOTION NOT BEING REVERSED UNLESS THERE HAS BEEN A CLEAR ABUSE OF DISCRETION IS [NOT] IN PLAY AS THE COURT MADE **NO** DOCUMENTED RULING AT ALL BUT SIMPLY NOTED: " COURT STATES IT WILL MAKE IT PART OF THE RECORD".

SUCH IS FAR FROM AN ACTUAL ADJUDICATION UPON THE MERITS OR RULING AS A MATTER OF PROCEDURAL LAW.

THE [ONLY] MATTERS THAT THE COURT ACTUALLY ADDRESSED AND MADE DOCUMENTED RULINGS UPON WERE COUNSELS' MOTIONS TO WITHDRAW AS COUNSELS OF RECORD.

THE PETITIONER HAS NOW IDENTIFIED CREDIBLE AND SUBSTANTIAL REASONS (RELATING TO THE VALIDITY OF THE PLEA AND OR HOW HE WAS OTHERWISE MISLED[9]) TO SET ASIDE THAT GUILTY PLEA AGREEMENT.

THE PRECEDING GROUNDS ARE INCORPORATED IN SUPPORT OF THIS FACTUAL POSITION. THE PETITIONER'S GUILTY PLEA AND SENTENCE SHOULD BE SET ASIDE.

9 COUNSEL DID NOT ACTUALLY EXPLAIN THAT THE PETITIONER WOULD BE 84 YEARS OLD PRIOR TO EVEN ELIGIBLE TO BE CONSIDERED FOR PAROLE, JUST AS AN EXAMPLE.

(9) Ground SEVEN

THE NUMEROUS EXAMPLES OF INEFFECTIVENESS OF COUNSELS CULMINATED IN "CUMULATIVE ERRORS" THAT VIOLATED THE 6TH, 5TH AND 14TH AMENDMENTS

Supporting Facts:

THE OPERATIVE FACTS AND STATEMENTS SET OUT ABOVE IN GROUNDS 1-6 ARE INCORPORATED HEREIN AS THOUGH FULLY SET FORTH IN SUPPORT OF THIS GROUND.

DEFENSE COUNSELS ASSIGNED TO THE CASE OR RETAINED - FAILED TO:

1. NOT PROTECTING PETITIONER'S GRAND JURY RIGHTS

A. INFORM THE PETITIONER THAT HE WAS THE SUBJECT OF THE STATES INTENT TO SEEK AN INDICTMENT BY WAY OF THE GRAND JURY;

B. DID NOT CHALLENGE THE GRAND JURY PROCEEDINGS IN REGARDS TO LACK OF ADEQUATE / MANDATORY NRS 172.241 NOTICE;

2. NOT REQUESTING A COMPETENCY HEARING AND ALLOWING PETITIONER TO ENTER INTO A GUILTY PLEA AGREEMENT PRIOR TO THE COMPETENCY HEARING ORDERED BY THE COURT;

3. NOT PROPERLY COMMUNICATING WITH PETITIONER, MISLEADING OR ILL ADVISING TO ENTER INTO A GUILTY PLEA AGREEMENT AND, IMPEDING DEFENCE OF REPLACEMENT COUNSEL;

4. ILL ADVISED OR MISLED PETITIONER TO SIGN A GUILTY PLEA AGREEMENT WHEN A VIABLE DEFENSE EXISTED RE: ASSOCIATE PROVOCATION;

Ground: SEVEN CONTINUED

5. ADVISING OR MISLEADING THE PETITIONER TO ENTER INTO AN ILL ADVISED GUILTY PLEA AGREEMENT THAT WAS NOT IN PETITIONER'S BEST INTEREST;

(a) AN ENHANCEMENT PENALTY THAT WAS NOT MANDATORY CONSIDERING NO JURY FOUND THE USE OF A DEADLY WEAPON;

(b) THE TWO (2) ALLEGED VICTIMS HAD BEEN MERGED INTO A SINGLE COUNT OF ATTEMPT MURDER (COUNT 1) WHEN INITIALLY WERE SEPERATE COUNTS BEFORE THE GRAND JURY;

(c) DEFENSE COUNSEL FAILED TO ADVISE THE PETITIONER ABOUT THE COLLATERAL CONSEQUENCES THE GUILTY PLEA COULD HAVE UPON HIS PENDING DIVORCE PROCEEDINGS IN LIGHT OF NRS 41.133.[10]

(d) DID NOT EXPLAIN THE ADVANTAGES OF A TRIAL AND OR A DIRECT APPEAL INCLUDING ANY ADDITIONAL INVESTIGATION OR LEGAL CHALLENGES TO ARGUMENTS THAT FAILED IN THE PRETRIAL HABEAS CORPUS PETITION RE: COUNTS 8 AND 9.

(e) DID NOT PRESERVE PETITIONER'S RIGHTS AND PREPARE A DEFENSE RE PLEA AGREEMENT, COMPETENCY HEARING, AND, ADEQUATE PROVOCATION DEFENSE COUNSEL WAS AWARE OF;

(F) DID NOT DEVELOPE ANY NEGOTIATION STRATEGY DESPITE THE EMOTIONALLY CHARGED CIRCUMSTANCES OF THE CASE AND THE ASPECT OF ADEQUATE PROVOCATION;

[10] SEE FN 8, NRS 41.133 EX. F

Ground: SEVEN CONCLUDED

(g-h) DID NOT PROPERLY ASSIST THE PETITIONER IN EXECUTING HIS PRESENTENCING WITHDRAWAL FROM THE GUILTY PLEA AGREEMENT INCLUDING, GIVING PETITIONER INACCURATE AND MISLEADING INFORMATION TO INFLUENCE HIM TO RETRACT THE MOTION OR — NOT ACTUALLY OBTAINING A RULING UPON SAID MOTION.

THE ABOVE EXAMPLES ARE NOT AN EXHAUSTIVE LIST AS THIS PETITION WAS DRAFTED WITHOUT THE BENEFIT OF A COMPLETE JUDICIAL RECORD INCLUDING TRANSCRIPTS. THUS, SAID DOCUMENTATION MAY YIELD NEW OR ADDITIONAL FACTS TO SUPPORT THESE CLAIMS OR, AN AMENDMENT TO BRING ADDITIONAL GROUNDS.

DUE TO THE ABOVE CUMULATIVE ERRORS, THE PETITIONER'S GUILTY PLEA — CONVICTION AND SENTENCE SHOULD BE SET ASIDE.

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

EXECUTED at NNCC, CARSON CITY, Nevada on the 6th Day of MAY, 2019.

JEFFREY BROWN, 1200868

PETITIONER PRO SE

PREPARATION OR PREPARED / ASSISTED BY: C.A. JONES, 50600

LAW LIBRARY WORKER PER AR 722

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.

Jeffrey Brown
Petitioner

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 6TH day of MAY 20 19, by placing the same into the hands or prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

STEVE WOLFSON
DISTRICT ATTORNEY
200 LEWIS AVE.
POB 89155-
LAS VEGAS, Nevada 89 155

Jeffrey Brown
Signature of Petitioner In Pro Se

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document. (POST-CONVICTION)

PETITION FOR WRIT OF HABEAS CORPUS (AMENDED)

(Title of Document)

filed in case number: A-19-793350-W

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

-OR-

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

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS125B.055)

Date: 5/6/19

(Signature)

JEFFREY BROWN
(Print Name)

PETITIONER PRO SE
(Attorney for)

EXHIBIT A

COURT MINUTES MAR. 06, 2018
CASE NO. D-16-542464-D
STATUS CHECK PAGE 1 OF 2

EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Complaint **COURT MINUTES** March 06, 2018

D-16-542464-D Farha Brown, Plaintiff
vs.
Jeffrey K. Brown, Defendant.

March 06, 2018 **1:30 PM** **Status Check**

HEARD BY: Gentile, Denise L **COURTROOM:** Courtroom 03

COURT CLERK: Andrea Slayton

PARTIES:

Farha Brown, Plaintiff, Counter Defendant, present
Jeffrey Brown, Defendant, Counter Claimant, not present
Rhonda Forsberg, Attorney, present
Timothy Treffinger, Attorney, present

JOURNAL ENTRIES

- STATUS CHECK, OR IN THE ALTERNATIVE, ORDER TO SHOW CAUSE FOR DISMISSAL

Attorney Forsberg represented it is Plaintiff's understanding that Defendant is still incarcerated, he took a plea agreement, however, he is now going to withdraw his plea agreement.

Attorney Treffinger represented that is correct, Defendant did sign a guilty plea agreement, however, Defendant informed counsel last week requesting to withdraw his plea agreement. Attorney Treffinger further represented that he believes he will not be representing Defendant as of the 8th due to a conflict of interest going into the plea withdraw process. Additionally, Counsel indicated he will be sending Defendant for a competency evaluation due to his belief Defendant has some serious issues.

COURT ORDERED, Plaintiff's motion currently set to be heard on March 27, 2018 at 2:00 p.m. STANDS.

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

EXHIBIT B

COURT MINUTES APRIL 10, 2018
CASE NO D-16-542464-D
TELEPHONIC HEARING RE: DEFENDANT'S
COMPETENCY STATUS PAGE 1 OF 2

EXHIBIT B

D-16-542464-D

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Complaint	COURT MINUTES	April 10, 2018

D-16-542464-D Farha Brown, Plaintiff
vs.
Jeffrey K. Brown, Defendant.

April 10, 2018 **1:30 PM** **Telephonic Hearing**

HEARD BY: Hardcastle, Kathy **COURTROOM:** Courtroom 03

COURT CLERK: Andrea Slayton

PARTIES:

Farha Brown, Plaintiff, Counter Defendant, not present — Rhonda Forsberg, Attorney, present

Jeffrey Brown, Defendant, Counter Claimant, not present — Timothy Treffinger, Attorney, present

JOURNAL ENTRIES

- TELEPHONIC HEARING RE: DEFENDANT'S COMPETENCY STATUS

Both counsel appeared by telephone.

Upon inquiry from the Court, Attorney Treffinger represented there were two evaluations completed, which showed some concerns regarding cognitive issues, however, both evaluations reported Defendant to be competent pursuant to the Duskey standard.

COURT ORDERED, Trial set to be heard on June 28, 2018 at 9:00 a.m. STANDS.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

EXHIBIT C

RECORDER'S TRANSCRIPT RE:
SENTENCING
CASE NO. C-16-318858-1
PAGES 1, 6, 7 AND 8

EXHIBIT _____

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. JEFFREY BROWN, aka, JEFFERY KENT BROWN, Defendant.	CASE NO. C-16-318858-1 DEPT. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, JUNE 21, 2018

RECORDER'S TRANSCRIPT RE: SENTENCING

APPEARANCES:

For the Plaintiff: KENNETH N. PORTZ, ESQ.
Chief Deputy District Attorney

For the Defendant: TIMOTHY R. TREFFINGER, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

incriminating evidence of his premeditation to get rid of it, to waiting 'til the very day of trial, the brinksmanship of waiting to take a plea on the morning before the jury walks in, to then at the last minute before sentencing attempting to withdraw his plea, coming back with absolutely no legal basis to withdraw his plea. This is a game to him. He does not believe he has done anything wrong. He has no remorse and the State submits that he should receive the maximum penalty in this case.

THE COURT: Thank you.

Mr. Brown?

THE DEFENDANT: Everything he said is not true. I can prove that the son was not there. He was never in any danger. And I'll let my lawyer talk for me.

THE COURT: Thank you.

MR. TREFFINGER: And, Your Honor, that, the story that the State tells is one side of this. He calls waiting until the day of trial brinksmanship and, you know, part of this is Mr. Brown is upset at the situation he's in. His side of the story is completely different. We had a self-defense argument prepared to go to trial. In reviewing the jail calls, some of the things that were said in anger after his arrest wasn't going to paint that in the best light, but his side of the story – and I will note the State says he hacked into Farha's email to find out the flight itinerary. Farha sent him an email saying the flight changed to let him know that the flight was going to be delayed if he was going to show up at the airport.

THE DEFENDANT: And I got proof of that.

MR. TREFFINGER: And we – I did submit that email to the DA. The DA has seen that. As far as going into the vehicle, his side of this is Farha cut off

all communication with him. He's a 70-year-old man. She has his paperwork. She has one of his firearms. He can't get ahold of her. He's trying to get his documentation, his handicap tag back, and he's trying to make whatever effort he can to meet up with her. Should he have gone to the airport that day? He and I have discussed that at length. No. That was a bad idea. But when Farha's boyfriend got in his face – and that's in the jail call too, I might add. I shot him because he got in my face. He got up –

THE COURT: Okay. That's not self-defense.

MR. TREFFINGER: We're getting there, Your Honor. He's sitting in his car. He has severe medical issues. The guy comes up and grabs onto him. At that point, he pulls his – he pulls the firearm –

THE COURT: That's still not self-defense.

MR. TREFFINGER: I would disagree with that, Your Honor.

THE COURT: Okay.

MR. TREFFINGER: If someone comes up to the –

THE COURT: That's why your client pled guilty, because you can't use deadly force unless deadly force is being used against you.

MR. TREFFINGER: And it very well could've been. That's a much younger man coming up. He's in his car. He's got a catheter in. He's not very mobile. I mean I disagree with that position, Your Honor. We were ready to go to trial on that fact. I mean if that's – if that's Your Honor's position that's fine.

THE COURT: That's not my position. That's the law in the State of Nevada; that you cannot use deadly force unless deadly force is being used against you.

MR. TREFFINGER: He didn't know what – force was used on him? It

could've been deadly. He's an old, infirm man in a car that's being approached by someone much younger than him. I mean that's – that's a subject of argument, I guess. I would argue that there are issues there that the jury could have found self-defense, especially if we put the whole case on. This – part of this was risk versus reward going to trial and that's why there was an attempt at a plea withdraw. Obviously, there was not found that to be an issue.

I will note, as the State said, he has no criminal history. He's a decorated Marine. He lived an exemplary life for 69 years, went through four marriages with no prior domestic violence, no arrests, no felonies, no misdemeanors, multiple service medals. He's in poor health, and I mean no history of substance abuse, and has led a completely exemplary life up to this point. But there's more to this than he stalked them with the intent to gun them down. And I mean if Farha is, indeed, so afraid of him, the fact that she's sending him emails, telling him when she's going to be at the airport, that kind of flies in the face of that argument.

Again, should he have gone to the airport to try to get his stuff back? Should he have engaged in this confrontation? No. That was a mistake. I do believe there were self-defense issues here. I understand the Court doesn't agree with me. I do believe that there was potential for that here. I am asking for a minimum sentence or a maximum sentence with probation.

THE COURT: It doesn't matter whether I agree with you or not. Your client pled guilty.

MR. TREFFINGER: Correct. I'm just responding to what the Court has said. And I will submit it on that.

THE COURT: Okay. You can call your first witness.

EXHIBIT D

LVMPD DEPARTMENT
CONCEALED FIREARM PERMIT
FOR: JEFFREY K. BROWN PERMIT NO.
3074249 ISSUED 03-05-2013
EXPIRES 03-05-2018

EXHIBIT D

STATE of NEVADA, CLARK COUNTY

Las Vegas Metropolitan Police Department

CONCEALED FIREARMS PERMIT

JEFFERY K BROWN
Permit No: 3074249
Issued: 03-05-2013

Expires: 03-05-2018

EXHIBIT E

TEXT MESSAGE OF MRS. FRAHA BROWN

EXHIBIT E

5:15 PM suspect

Wow!!!! 5:37 PM — Funke

That's was real accurate except for the part where he pointed the gun at the son that never happened. 5:38 PM — Funke

My Daughter =>

5:41 PM Well someone tld them that

Not necessarily because sometimes cops put words in your mouth and he was just probably scared and nervous. He ran with the first shots went off so he did not stick around to get a gun pointed at him after I was shocked — Funke

Shot 5:43 PM

But everything else was right

EXHIBIT F

NRS 41.133

EXHIBIT F

41.133. Conviction of crime is conclusive evidence of facts necessary to impose civil liability for related injury.

If an offender has been convicted of the crime which resulted in the injury to the victim, the judgment of conviction is conclusive evidence of all facts necessary to impose civil liability for the injury.

HISTORY:

1985, p. 968.

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STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHARLES THOMAN
Chief Deputy District Attorney
Nevada Bar #12649
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEFFREY BROWN, aka,
Jeffery Kent Brown #3074249

Defendant.

CASE NO: A-19-793350-W

DEPT NO: XII

STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION), REQUEST FOR EVIDENTIARY HEARING, AND MOTION FOR APPOINTMENT OF COUNSEL

DATE OF HEARING: JUNE 13, 2019
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through CHARLES THOMAN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction), Request for Evidentiary Hearing, and Motion for Appointment of Counsel.

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

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Case Number: A-19-793350-W

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On October 19, 2016, a grand jury indicted Defendant with aggravated stalking, attempt murder with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm constituting domestic violence, battery with use of a deadly weapon resulting in substantial bodily harm, assault with a deadly weapon, child abuse, neglect, or endangerment with use of a deadly weapon, and discharge of firearm from or within a structure or vehicle. On January 17, 2018, Defendant voluntarily entered a guilty plea agreement (GPA), pleading guilty to attempt murder with use of a deadly weapon and assault with a deadly weapon. On June 21, 2018, the district court sentenced Defendant to an aggregate of a maximum of 20 years and a minimum parole eligibility of 8 years, plus a consecutive term of 20 years with a minimum parole eligibility of 8 years for the use of a deadly weapon. The judgment of conviction was filed on July 2, 2018. On April 11, 2019, Defendant filed a petition for writ of habeas corpus. On May 10, 2019, without a leave of court, Defendant filed an Amendment to the petition.[1]

ARGUMENT

I. DEFENDANT'S GUITY PLEA AGREEMENT CURES EARLIER CONSTITUTIONAL DEFECTS

In McMann v. Richardson, the United States Supreme Court stated that "a voluntary plea of guilty entered on advice of counsel constitutes a waiver of all non-jurisdictional defects in any prior stage of the proceedings against the defendant." McMann v. Richardson, 397 U.S. 759, 762, 90 S. Ct. 1441, 1444 (1970) (citing Glenn v. McMann, 349 F.2d 1018 (C. A. 2d Cir. 1965), cert. denied, 383 U.S. 915 (1966). Therefore, any earlier constitutional defects, such as the State's failure to provide Marcum notice, are cured by the guilty plea agreement.

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[1] If this court elects to consider Defendant's improper amendment to his petition for habeas corpus, the State requests an opportunity to respond.

II. DEFENDANT FAILED TO SHOW HIS COUNSEL WAS INEFFECTIVE

A defendant has the Sixth Amendment right to an effective assistance of counsel in criminal proceedings. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Nevada has adopted the standard outlined in Strickland in determining whether a defendant received effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show that counsel was ineffective, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two–pronged test. Strickland, 466 U.S. at 686–687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687–688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

A court begins with a presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the

merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

In considering whether trial counsel was effective, the court must determine whether counsel made a "sufficient inquiry into the information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996)(citing Strickland, 466 U.S. at 690–691, 104 S. Ct. at 2066). Once this decision is made, the court will consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland, 466 U.S. at 690–691, 104 S. Ct. at 2066). Counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S. Ct. at 2066.

The Strickland analysis does not mean courts should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551 F.2d at 1166 (9th Cir. 1977)). Therefore, counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or raise futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Even if a defendant can show that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068.

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Finally, the Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, the petitioner must satisfy this burden with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Therefore, "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

A. Defendant failed to show that counsel was ineffective for failing to raise Marcum notice (Ground 1)

Defendant first argues that counsel was ineffective for failing to challenge the State's failure to provide Marcum notice. Petition for Writ of Habeas Corpus, 7-9. However, Defendant failed to show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). Thus, Defendant failed to demonstrate that counsel was ineffective for failing to challenge the lack of Marcum notice.

B. Defendant failed to show that counsel was ineffective for failing to order a competency evaluation (Ground 2)

Defendant next argues that counsel was ineffective for advising Defendant to take a plea before subjecting him to a competency exam. Petition, 10-12. Defendant's claim is a naked and bare allegation because he does not identify what a competency evaluation would have revealed. Defendant merely states that his mental state was "fragile" and "confused." Id. at 10. Defendant failed to explain how a fragile and confused state affected his decision to enter a guilty plea agreement. Without this information, this court cannot determine how a competency evaluation would have rendered a different outcome for the Defendant.

In fact, Defendant's claim is belied by the record and his petition. Frist, Defendant alleges that counsel was ineffective for failing to order a competency exam, but immediately claims that he was at a competency hearing on April 1, 2018. Petition, 11. Second, the record

shows that Defendant was found competent to stand for trial under the Dusky standard. Court Minutes, April 6, 2018. Thus, Defendant's naked and bare allegation is belied by the record.

C. Defendant failed to show counsel was ineffective for making misleading representations (Ground 3)

Defendant argues that counsel was ineffective for providing him with ill and misleading advises. Petition, 13. A defendant is not entitled to a particular "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific amount of communication as long as counsel is reasonably effective in his representation. Id. Defendant's current complaint is belied by his statement that he was satisfied with his representation. GPA, 6. Thus, the claim must be denied. Furthermore, Defendant has failed to specify what kind of "ill" and "misleading" information his counsel gave him that compelled him into pleading guilty. Similarly, Defendant complains that his counsel failed to provide case files to him once withdrawn. However, he does not identify what these files were. Without this information, this court cannot determine how the alleged misleading information and the failure to provide Defendant with files affected his decision to plead guilty. Since Defendant has not shown that the result would have been different had he had more communication with counsel, his claim is a naked and bare allegation that is belied by the record.

D. Defendant failed to show that counsel was ineffective for advising him to enter a plea when he had a valid self-defense claim (Ground 4 and 5)

Defendant next argues that his self-defense theory would have had a major impact on every count of attempt murder. Petition, 17 (Ground 4). Defendant further argues that counsel was ineffective becuase he advised Defendant to plead guilty despite knowing about the self-defense theory. Petition, 22 (Ground 5).

Defendant fails to identify what type of advice his counsel gave him that forced him to plead guilty. Without this information, this court cannot analyze how, but for counsel's alleged misleading advise, Defendant would have insisted on proceeding to trial. Defendant's claim is also belied by the record. All of the information Defendant discusses in his petition were

available to him before he decided to plead guilty. Defendant has the ultimate authority to enter or reject a plea offer. Johnson v. State, 117 Nev. 153, 161-62, 17 P.3d 1008, 1012 (2001) (citing Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3302 (1983) (the accused has the ultimate authority to plead guilty)). In fact, Defendant's GPA states "I have discussed with my attorney any possible defense, defense strategies and circumstances which might be in my favor." GPA, at 5. The GPA also stated that "I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest." Id. Finally, considering Defendant's crime and the strength of the evidence—shooting two victims in the back and admitting to shooting his estranged wife to "shut her up"—it was objectively reasonable to advise Defendant to take the plea. Presentence Investigation Report, 4-5. Thus, Defendant's claims include only naked and bare allegation that is belied by the record.

E. Defendant failed to show counsel was ineffective for failing to file a motion to withdraw guilty plea (Ground 6)

It is well-settled law that when a defendant pleads guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself, or that the plea was entered without effective assistance of counsel. NRS 34.810(1); Kirksey, 112 Nev. at 999, 923 P.2d at 1114, (citing Warden, Nevada State Prison v. State, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984)). A defendant cannot enter a guilty plea then later raise independent claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollet v. Henderson, 411 U.S. 258, 267 (1973).

Here, Defendant's allegation is a naked and bare allegation because he failed to identify the basis for wanting to withdraw his GPA. Without this information, this court cannot analyze filing a motion to withdraw guilty plea would have rendered him a more favorable result. Also, Defendant does not allege his entry of plea was involuntary. Therefore, Defendant's claim is a naked and bare allegation that must be denied.

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III. DEFENDANT CANNOT DEMONSTRATE CUMULATIVE ERROR

The Nevada Supreme Court has not endorsed application of its direct appeal cumulative error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307, 318 (2009). Nor should cumulative error apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S. Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors, none of which would by itself meet the prejudice test.").

Nevertheless, even where available, a cumulative error finding in the context of a Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. See Harris By and Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that there can be no cumulative error where the defendant fails to demonstrate any single violation of Strickland. See Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of constitutional stature or are not errors, there is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-553 (5th Cir. 2005)). Since Defendant has not demonstrated any claim warrants relief under Strickland, there are no errors to cumulate.

IV. DEFENDANT'S REQUEST FOR APPOINTMENT OF COUNSEL IS UNWARRANTED

The U.S. Constitution provides no right to counsel in post-conviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991). In McKague v. Warden, 112 Nev. 159, 163, 912 P.2d 255, 258 (1996), the Nevada Supreme Court similarly observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution." McKague specifically held that with the exception of NRS 34.820(1)(a) (entitling appointed counsel when petitioner is under a sentence of death), one does not have "any constitutional or statutory right to counsel at all" in post-conviction proceedings. Id. at 164, 912 P.2d at 258.

However, the Nevada Legislature has given courts the discretion to appoint post-conviction counsel so long as "the court is satisfied that the allegation of indigency is true and the petition is not dismissed summarily." NRS 34.750. NRS 34.750 reads:

> A petition may allege that the Petitioner is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition *is not dismissed summarily*, the court may appoint counsel at the time the court orders the filing of an answer and a return. In making its determination, the court may consider whether:
>
> (a) The issues are difficult;
>
> (b) The Petitioner is unable to comprehend the proceedings; or
>
> (c) Counsel is necessary to proceed with discovery.

Here, there is no need for appointment of counsel. The issues are not difficult because the claims include only naked and bare allegations that are belied by the record. Also, counsel is not necessary to proceed with discovery because existing record fully resolves the issues. Therefore, Defendant's request for counsel must be denied.

V. AN EVIDENTIARY HEARING IS UNWARRANTED

Defendant's request for an evidentiary hearing should be denied because his request does not meet the statutory criteria.[2]

NRS 34.770 grants this Court discretion to determine whether an evidentiary hearing is necessary:

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

//

[2] The State does not object to Defendant's request for files from his counsel.

Importantly, the Nevada Supreme Court has ruled that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994). A defendant is only entitled to an evidentiary hearing if his petition is supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Moreover, it is improper to hold an evidentiary hearing simply to make a complete record. State v. Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) ("The district court considered itself the 'equivalent of . . . the trial judge' and consequently wanted 'to make as complete a record as possible.' This is an incorrect basis for an evidentiary hearing").

Here, there is no need to expand the record to resolve the petition and Defendant has failed to demonstrate any need to expand the record. The existing record fully addresses Defendant's allegations. His request for an evidentiary hearing must be denied.

CONCLUSION

For the foregoing reasons, the State respectfully requests that Defendant's Petition for Writ of Habeas Corpus, Motion for Appointment of Counsel, and Request for Evidentiary Hearing be DENIED.

DATED this 4th day of June, 2019.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 1565

BY Hagan Tuppeedi #10114 for
CHARLES THOMAN
Chief Deputy District Attorney
Nevada Bar #12649

mEB

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 4th day of June, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JEFFREY BROWN
BAC #1200868
P.O. BOX 7000 (NNCC)
CARSON CITY, NEVADA, 89702

BY _____
Secretary for the District Attorney's Office

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Steven D. Grierson
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RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHON VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEFFREY BROWN, aka,
Jeffery Kent Brown #3074249

Defendant.

CASE NO: A-19-793350-W

DEPT NO: XII

STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: FEBRUARY 13, 2020
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHON VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Supplemental Petition for Writ Of Habeas Corpus.

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

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Case Number: A-19-793350-W

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On October 19, 2016, a grand jury indicted Petitioner with Aggravated Stalking; Attempt Murder with use of a Deadly Weapon; Battery with use of a Deadly Weapon Resulting in Substantial Bodily Harm Constituting Domestic Violence; Battery with use of a Deadly Weapon Resulting in Substantial Bodily Harm; Assault with a Deadly Weapon; Child Abuse, Neglect, or Endangerment with use of a Deadly Weapon; and Discharge of a Firearm from or Within a Structure or Vehicle.

On January 17, 2018, Petitioner plead guilty to Attempt Murder with use of a Deadly Weapon and Assault with a Deadly Weapon.

On June 21, 2018, Petitioner was sentenced to an aggregate sentence of 8 to 20 years, with a consecutive sentence of 8 to 20 years for the deadly weapon enhancement. The Judgment of Conviction was filed on July 2, 2018.

On April 11, 2019, Petitioner filed a Petition for Writ of Habeas Corpus. On May 10, 2019, Petitioner filed an Amended Petition. The State filed its response June 4, 2019.

ARGUMENT

A defendant has the Sixth Amendment right to an effective assistance of counsel in criminal proceedings. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 5 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Nevada has adopted the standard outlined in Strickland in determining whether a defendant received effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show that counsel was ineffective, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the

result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

A court begins with a presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances or' the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing Cooper v. Fitzharris. 551F.2d1162, 1166 (9th Cir. 1977)). In considering whether trial counsel was effective, the court must determine whether counsel made a "sufficient inquiry into the information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996)(citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Once this decision is made, the court will consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Id. at 846, 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S. Ct. at 2066.

The Strickland analysis does not mean courts should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551 F.2d at 1166 (9th Cir. 1977)). Therefore, counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or raise futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Even if a defendant can show that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068.

Courts must dismiss a petition if a petitioner plead guilty and the petitioner is not alleging "that the plea was involuntarily or unknowingly entered, or that the plea was entered without effective assistance of counsel." NRS 34.810(1)(a). Although a defendant may attack the validity of a guilty plea by showing that he received ineffective assistance of counsel, the defendant maintains the burden of demonstrating "'a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" See Molinav. State, 120 Nev.185, 190, 87 P.3d 533, 537 (2004); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985)). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. "Bare" or "naked" allegations are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538. Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether

or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

I. TRIAL COUNSEL WAS NOT INEFFECTIVE IN HIS PRETRIAL INVESTIGATION OF PETITIONER'S SELF-DEFENSE CLAIM

A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial. See Love, 109 Nev. at 1138, 865 P.2d at 323.

Petitioner argues that trial counsel was ineffective because he did not investigate Petitioner's self-defense claim. Supp. Petition at 3. First, Petitioner claims counsel should have consulted ballistics experts to study the trajectory of the bullets as well as the positions of the victim and Petitioner. Supp. Petition at 3. Next, Petitioner claims counsel should have hired an investigator to determine whether witnesses could corroborate Petitioner's self-defense claim. Supp. Petition at 3. Specifically, Petitioner argues that counsel should have interviewed the victims, security guards at the incident. Supp. Petition at 4. However, in pleading guilty, Petitioner waived his ability to raise this claim because it does not allege that Petitioner's plea was involuntary or that counsel was ineffective in the plea process. NRS 34.810(1)(a).

Additionally, Petitioner's claims fail under Molina because Petitioner does not explain what better investigation into those areas would have shown. Petitioner does not explain how a ballistics expert's conclusion would have shown that Petitioner acted in self-defense. Next, Petitioner does not allege that there even were witnesses who could corroborate Petitioner's claims. Petitioner also does not explain what information counsel would have received if he had interviewed the security guards and victim.

Further, all of Petitioner's claims are belied under Hargrove by the Guilty Plea Agreement. In signing the Guilty Plea, Petitioner confirmed that he had spoken with his attorney about any possible defenses, defense strategies, and circumstances that were in his favor. Guilty Plea Agreement at 5. Petitioner further confirmed that he believed that pleading

guilty would be in his best interest. Guilty Plea Agreement at 5. Additionally, Petitioner does not allege that he would not have plead guilty had trial counsel conducted the alleged investigation. Finally, it was Petitioner's decision to enter the guilty plea without this level of investigation and that decision belonged to him and not counsel. Rhyne, 118 Nev. at 8, 38 P.3d at 163. As Petitioner pled guilty in lieu of going to trial, Petitioner fails to explain how any such investigation or interviews would have changed the result of trial.

II. COUNSEL WAS NOT INEFFECTIVE REGARDING INFORMING PETITIONER OF HIS RIGHT TO TESTIFY BEFORE THE GRAND JURY

Petitioner claims that trial counsel was ineffective because he did not inform him of his right to testify and present evidence at the grandy jury. Supp. Petition at 4. Petitioner argues that had he known of this right, he would have testified that he was defending himself. Marcum notice was served to defense counsel on October 5, 2016. Exhibit 1. As such, Petitioner cannot show prejudice sufficient for ineffective assistance of counsel purposes because he does not articulate what specific facts or evidence would have impacted the outcome as required under Strickland. Petitioner does not explain how his testimony would have established that he shot two victims, whom he stalked, out of self-defense. Petitioner failed to show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus, Defendant failed to demonstrate that counsel was ineffective.

III. NO INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO PREPARE A SENTENCING MEMORANDUM

Petitioner complains that counsel was ineffective because he did not file a sentencing memorandum and did not address the prejudicial information in the state's sentencing memorandum. Supp. Petition at 5. As a result, Petitioner claims he was sentenced to the maximum sentence. Petitioner's claim fails because the decision to file a sentencing memorandum or offer the information orally at a sentencing hearing is a virtually unchallengeable strategic decision. Doleman, 112 Nev. at 846, 921 P.2d at 280.

At sentencing, defense counsel's argument rebutted arguments made by the state in their sentencing memorandum and orally. Specifically, in the State's sentencing memorandum, the State argued that Petitioner should be sentenced to the maximum and regurgitated the facts elicited from the Grand Jury and pointed the court to several calls Petitioner made while in custody where he (1) acknowledged that he was trying to kill one of the victims; (2) asked others to get "dirt" on another victim to use at trial; (3) suborn perjury through his son, a witness to the case; and (4) asked his son to destroy what he believed to be incriminating evidence. Sentencing Memorandum at 2-8. At sentencing, the State highlighted the key facts, trauma suffered by the victims, Petitioner's lack of remorse; and rebutted mitigating factors such as his age, self-defense claim, and lack of criminal history. Recorder's Transcript Re: Sentencing at 2-6. In response, trial counsel argued his theory of the case, and explained that given Petitioner's age, health, and lack of history, they had a valid argument for self-defense. Transcript Re: Sentencing at 6-8.

However, the district court disagreed with Petitioner's argument, explaining that per the law in Nevada, a person cannot use deadly force in self-defense unless deadly force is first used against them. Transcript Re: Sentencing at 7. Petitioner fails to explain what other facts would have changed the district court's position because Petitioner is not alleging that deadly force was actually used against Petitioner before he shot two people in the back. As such, Petitioner's claim fails.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that Petitioner's Supplemental Petition for Writ of Habeas Corpus be DENIED.

DATED this 16th day of January, 2020.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565

BY _____ #10347 for mlb
JONATHON VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Response To Defendant's Supplemental Petition For Writ Of Habeas Corpus, was made this 16th day of January, 2020, by Electronic Filing to:

JEANNIE HUA, ESQ.
EMAIL: jeanniehua@aol.com

BY _____
Secretary for the District Attorney's Office

16F15698X/JB/mlb/dvu

TRANSMISSION VERIFICATION REPORT

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TEL :
SER.# : BROJ3V465787

DATE,TIME	10/05 13:57
FAX NO./NAME	7023661911
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RESULT	OK
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NOTICE OF INTENT TO SEEK INDICTMENT

TO: JEFFREY BROWN AND/OR YOUR LEGAL COUNSEL MARLA RENTERIA, ESQ.

YOU ARE HEREBY NOTIFIED THAT THE DISTRICT ATTORNEY MAY SEEK AN INDICTMENT AGAINST YOU FOR THE CRIMES OF:

ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM CONSTITUTING DOMESTIC VIOLENCE (Category B Felony - NRS 200.481; 200.485; 33.018 - NOC 57936); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481 - NOC 50226); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201); PREVENTING OR DISSUADING WITNESS FROM TESTIFYING OR PRODUCING EVIDENCE (Gross Misdemeanor - NRS 199.230 - NOC 52983); DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287 - NOC 51445); AGGRAVATED STALKING (Category B Felony - NRS 200.575 - NOC 50333); UNLAWFUL DISSEMINATION OF AN INTIMATE IMAGE (Category D Felony - NRS AB 49 - NOC 58738); STALKING WITH USE OF INTERNET OR ELECTRONIC COMMUNICATION (Category C Felony - NRS 200.575 - NOC 50335); AND/OR ANY OTHER CHARGES ARISING OUT OF THE INCIDENTS OCCURRING ON OR ABOUT SEPTEMBER 15, 2016, THROUGH OCTOBER 2016; AGENCY EVENT NUMBERS: 160919-3279

A person whose indictment the District Attorney intends to seek or the Grand Jury on its own motion intends to return, but who has not been subpoenaed to appear before the Grand Jury, may testify before the Grand Jury if he requests to do so and executes a valid waiver in writing of his constitutional privilege against self-incrimination. Nev. Rev. Stat. 172.241

You are advised that you may testify before the Grand Jury only if you submit a written request to the District Attorney and include an address where the District Attorney may send a notice of the date, time and place of the scheduled proceeding of the Grand Jury. Nev. Rev. Stat. 172.241

A person whose indictment the District Attorney intends to seek or the Grand Jury on its own motion intends to return, may be accompanied by legal counsel during any appearance before the Grand Jury. The legal counsel who accompanies a person may advise his client, but shall not address directly the members of the Grand Jury, speak in such a manner as to be heard by members of the Grand Jury, or in any other way participate in the proceedings of the Grand Jury. The court or the foreperson of the Grand Jury may have the legal counsel removed if he violates any of these provisions or in any other way disrupts the proceedings of the Grand Jury. Nev. Rev. Stat. 172.239

If you are aware of any evidence which tends to explain away the above crimes, and it is your desire that this evidence be presented to the Grand Jury, then you or your attorney must furnish such evidence to the office of the District Attorney immediately. Responses to testify or present evidence must be addressed to:

Clark County District Attorney, 200 Lewis Avenue, 3rd Floor, Rm. 3418 - Grand Jury, Las Vegas, NV 89155-2211. The

EXHIBIT "1"

NOTICE OF INTENT TO SEEK INDICTMENT

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Clark County District Attorney, 200 Lewis Avenue, 3rd Floor, Rm. 3418 - Grand Jury, Las Vegas, NV89155-2211. The Grand Jury telephone numbers are operative 8:00 A.M. - 5:00 P.M. (702) 671-2570/ 671-2575

THIS IS THE ONLY NOTICE YOU WILL RECEIVE. It is your duty to respond as set forth above. Any response inconsistent with the above directions will be disregarded.

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 5 day of OCTOBER, 2016, by K. NICHOLAS PORTZ to:

MARLA RENTERIA, ESQ.
PUBLIC DEFENDER'S OFFICER

by K. NICHOLAS PORTZ #12473
District Attorney's Office

I certify that I received the above Notice of Intent To Seek Indictment _____

16F15698X
K. NICHOLAS PORTZ

CCDA 9/05

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jeanniehua@aol.com

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BROWN, Petitioner, vs. ISIDRO BACA, WARDEN, NNCC Respondent.	Case No.: A-19-793350-W DEPT. NO.:XII

REPLY TO STATE'S RESPONSE TO PETITIONER'S SUPPLEMENTAL

PETITION FOR WRIT OF HABEAS CORPUS

In State's Response, the State argued that Petitioner waived his ability to raise the claim of ineffective assistance of counsel for lack of investigation because Petitioner didn't raise the issue of involuntary plea per NRS 34.810(1)(a). (State's Response, p. 5, ls. 16-18). Per NRS 34.810(1)(a), "The court shall dismiss a petition if the court determines that the petitioner's conviction was upon a plea of guilty… and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." If this Court decides to grant an evidentiary hearing, Petitioner will testify to how his trial counsel failed to do any investigation much less investigation as to self-defense issue including expert opinion as to trajectory of bullets and witness interviews. Investigation is a necessary part of the decision as to whether to negotiate or to proceed to trial. By failing to investigate, Petitioner's trial counsel was ineffective up to, during, and after the plea process.

State further argued that Petitioner had not shown enough evidence of prejudice from trial counsel's lack of effort in pursuing self-defense claim. If this Court grants an evidentiary hearing, Petitioner will testify and relate the threat he felt prior to being forced to defend himself.

The Court in State v. Colbert, 949 S.W.2d 932 (1997) found that Petition's counsel's performance was deficient, that Petitioner was prejudiced from the deficiency and remanded the case for evidentiary hearing. While Colbert is a Missouri case, the Court arrived at its ruling by applying Strickland, Id. The State charged Petitioner with Forcible Rape, Kidnapping, and First-Degree Robbery. Jury found Petitioner guilty of all counts. The trial court sentenced Petitioner to life for rape, fifteen years for kidnapping, and thirty years for robbery, all counts to run consecutively. After trial, Petitioner filed for Post-Conviction relief, contending that this trial counsel failed to relay an offer from the State for twenty-five years for rape, five year each for kidnapping and robbery. The five years to run concurrently to each other but consecutive to the twenty-five years for a total of thirty years. The offer was made to Petitioner's Public Defender prior to Petitioner retaining private counsel. The court decided to remand Petitioner's case for evidentiary hearing based upon his claim of the offer not relayed and how he would have taken the deal had he known of the offer.

Here, per Colbert, Petitioner asserts that trial counsel failed to effectively investigate his case and as a result, Petitioner was unable to make an informed decision and was prejudiced by the deficiency. Because the Petitioner's assertions merited an evidentiary hearing in Colbert, Petitioner respectfully request this Court to grant an evidentiary hearing on the issue.

The State's last argument on the issues of a lack of investigation invalidating Petitioner's guilty plea is based upon Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Appellant in Hargrove argued that he was forced to plead guilty even though his trial counsel failed to effectively investigate his case because he wanted to avoid the greater threat of receiving habitual criminal treatment. Court in Hargrove held that threat would not give rise to a claim of coercion. This case is different. Petitioner pled to the most serious charge of Attempt Murder with Use of a Deadly Weapon plus a count of Assault with Use of a Deadly Weapon. Why else would any defendant in Petitioner's position plead to the charge that carried the longest prison sentences? It's because he was forced into it from his trial counsel's complete lack of effort to investigate his case much less his valid claim of self-defense. Thus, Hargrove should not apply here.

Dated this 10th day of February, 2020.

/s/ Jeannie N. Hua

Jeannie N. Hua, Esq.

DEPT. NO.:XII - 2

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of REPLY TO STATE'S RESPONSE TO PETITIONER'S SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS was made this 10th day of February 2020 by Electronic Filing to: Jonathon Vanboskerck, Chief Deputy District Attorney

Jonathan.VanBoskerck@clarkcountyda.com

DEPT. NO.:XII - 3

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DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BROWN, Petitioner, vs. ISIDRO BACA, WARDEN, NNCC Respondent.	Case No.: A-19-793350-W DEPT. NO.:XII

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Dated this 10th day of February, 2020.

/s/ Jeannie N. Hua

Jeannie N. Hua, Esq.

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Jonathan.VanBoskerck@clarkcountyda.com

DEPT. NO.:XII - 3

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**February 13, 2020**

A-19-793350-W Jeffrey Brown, Plaintiff(s)
vs.
Isidro Baca, Warden, Defendant(s)

February 13, 2020 **08:30 AM** **All Pending Motions**

HEARD BY: Leavitt, Michelle **COURTROOM:** RJC Courtroom 14D

COURT CLERK: Pannullo, Haly

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Andrea D. Orwoll	**Attorney for Defendant, Plaintiff**
Jeannie N Hua	**Attorney for Plaintiff**

JOURNAL ENTRIES

HEARING: RE: PETITION FOR WRIT OF HABEAS CORPUS ... PETITION FOR WRIT OF HABEAS CORPUS ... MOTION TO REVISIT PETITIONER'S MOTION FOR TRANSCRIPTS AT STATE'S EXPENSE BY CONSIDERATION OF THE SUPPLEMENTAL

Counsel submitted on the briefs. COURT ORDERED, Petition DENIED; Motion to Revisit Motion OFF CALENDAR. Ms. Hua requested the Court sign an Order for Appointment for Appellate Counsel. COURT SO CONFIRMED.

NDC

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CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHON VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEFFREY BROWN,
#3074249

Defendant.

CASE NO: A-19-793350-W

DEPT NO: XII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: FEBRUARY 13, 2020
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT, District Judge, on the 13 day of February, 2020, the Petitioner not being present, represented by Jeannie N. Hua, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ANDREA ORWOLL, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 19, 2016, a grand jury indicted Petitioner with Aggravated Stalking; Attempt Murder with use of a Deadly Weapon; Battery with use of a Deadly Weapon Resulting

in Substantial Bodily Harm Constituting Domestic Violence; Battery with use of a Deadly Weapon Resulting in Substantial Bodily Harm; Assault with a Deadly Weapon; Child Abuse, Neglect, or Endangerment with use of a Deadly Weapon; and Discharge of a Firearm from or Within a Structure or Vehicle.

On January 17, 2018, Petitioner plead guilty to Attempt Murder with use of a Deadly Weapon and Assault with a Deadly Weapon.

On June 21, 2018, Petitioner was sentenced to an aggregate sentence of 8 to 20 years, with a consecutive sentence of 8 to 20 years for the deadly weapon enhancement. The Judgment of Conviction was filed on July 2, 2018.

On April 11, 2019, Petitioner filed a Petition for Writ of Habeas Corpus. On May 10, 2019, Petitioner filed an Amended Petition. The State filed its response June 4, 2019.

ANALYSIS

A defendant has the Sixth Amendment right to an effective assistance of counsel in criminal proceedings. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 5 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Nevada has adopted the standard outlined in Strickland in determining whether a defendant received effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show that counsel was ineffective, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether

it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

A court begins with a presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances or' the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing Cooper v. Fitzharris. 551F.2d1162, 1166 (9th Cir. 1977)). In considering whether trial counsel was effective, the court must determine whether counsel made a "sufficient inquiry into the information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996)(citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Once this decision is made, the court will consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Id. at 846, 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S. Ct. at 2066.

The Strickland analysis does not mean courts should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551 F.2d at 1166 (9th Cir. 1977)). Therefore, counsel cannot be deemed ineffective for failing to

make futile objections, file futile motions, or raise futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Even if a defendant can show that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068.

Courts must dismiss a petition if a petitioner pled guilty and the petitioner is not alleging "that the plea was involuntarily or unknowingly entered, or that the plea was entered without effective assistance of counsel." NRS 34.810(1)(a). Although a defendant may attack the validity of a guilty plea by showing that he received ineffective assistance of counsel, the defendant maintains the burden of demonstrating "'a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" See Molinav. State, 120 Nev.185, 190, 87 P.3d 533, 537 (2004); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985)). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. "Bare" or "naked" allegations are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538. Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendant's. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

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I. TRIAL COUNSEL WAS NOT INEFFECTIVE IN HIS PRETRIAL INVESTIGATION OF PETITIONER'S SELF-DEFENSE CLAIM

A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial. See Love, 109 Nev. at 1138, 865 P.2d at 323.

Petitioner argues that trial counsel was ineffective because he did not investigate Petitioner's self-defense claim. Supp. Petition at 3. First, Petitioner claims counsel should have consulted ballistics experts to study the trajectory of the bullets as well as the positions of the victim and Petitioner. Supp. Petition at 3. Next, Petitioner claims counsel should have hired an investigator to determine whether witnesses could corroborate Petitioner's self-defense claim. Supp. Petition at 3. Specifically, Petitioner argues that counsel should have interviewed the victims, security guards at the incident. Supp. Petition at 4. However, in pleading guilty, Petitioner waived his ability to raise this claim because it does not allege that Petitioner's plea was involuntary or that counsel was ineffective in the plea process. NRS 34.810(1)(a).

Additionally, Petitioner's claims fail under Molina because Petitioner does not explain what better investigation into those areas would have shown. Petitioner does not explain how a ballistics expert's conclusion would have shown that Petitioner acted in self-defense. Next, Petitioner does not allege that there even were witnesses who could corroborate Petitioner's claims. Petitioner also does not explain what information counsel would have received if he had interviewed the security guards and victim.

Further, all of Petitioner's claims are belied under Hargrove by the Guilty Plea Agreement. In signing the Guilty Plea, Petitioner confirmed that he had spoken with his attorney about any possible defenses, defense strategies, and circumstances that were in his favor. Guilty Plea Agreement at 5. Petitioner further confirmed that he believed that pleading guilty would be in his best interest. Guilty Plea Agreement at 5. Additionally, Petitioner does not allege that he would not have plead guilty had trial counsel conducted the alleged

investigation. Finally, it was Petitioner's decision to enter the guilty plea without this level of investigation and that decision belonged to him and not counsel. Rhyne, 118 Nev. at 8, 38 P.3d at 163. As Petitioner pled guilty in lieu of going to trial, Petitioner fails to explain how any such investigation or interviews would have changed the result of trial.

II. COUNSEL WAS NOT INEFFECTIVE REGARDING INFORMING PETITIONER OF HIS RIGHT TO TESTIFY BEFORE THE GRAND JURY

Petitioner claims that trial counsel was ineffective because he did not inform him of his right to testify and present evidence at the grandy jury. Supp. Petition at 4. Petitioner argues that had he known of this right, he would have testified that he was defending himself. Marcum notice was served to defense counsel on October 5, 2016. As such, Petitioner cannot show prejudice sufficient for ineffective assistance of counsel purposes because he does not articulate what specific facts or evidence would have impacted the outcome as required under Strickland. Petitioner does not explain how his testimony would have established that he shot two victims, whom he stalked, out of self-defense. Petitioner failed to show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus, Defendant failed to demonstrate that counsel was ineffective.

III. NO INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO PREPARE A SENTENCING MEMORANDUM

Petitioner complains that counsel was ineffective because he did not file a sentencing memorandum and did not address the prejudicial information in the state's sentencing memorandum. Supp. Petition at 5. As a result, Petitioner claims he was sentenced to the maximum sentence. Petitioner's claim fails because the decision to file a sentencing memorandum or offer the information orally at a sentencing hearing is a virtually unchallengeable strategic decision. Doleman, 112 Nev. at 846, 921 P.2d at 280.

At sentencing, defense counsel's argument rebutted arguments made by the state in their sentencing memorandum and orally. Specifically, in the State's sentencing memorandum, the State argued that Petitioner should be sentenced to the maximum and

regurgitated the facts elicited from the Grand Jury and pointed the court to several calls Petitioner made while in custody where he (1) acknowledged that he was trying to kill one of the victims; (2) asked others to get "dirt" on another victim to use at trial; (3) suborn perjury through his son, a witness to the case; and (4) asked his son to destroy what he believed to be incriminating evidence. Sentencing Memorandum at 2-8. At sentencing, the State highlighted the key facts, trauma suffered by the victims, Petitioner's lack of remorse; and rebutted mitigating factors such as his age, self-defense claim, and lack of criminal history. Recorder's Transcript Re: Sentencing at 2-6. In response, trial counsel argued his theory of the case, and explained that given Petitioner's age, health, and lack of history, they had a valid argument for self-defense. Transcript Re: Sentencing at 6-8.

However, the district court disagreed with Petitioner's argument, explaining that per the law in Nevada, a person cannot use deadly force in self-defense unless deadly force is first used against them. Transcript Re: Sentencing at 7. Petitioner fails to explain what other facts would have changed the district court's position because Petitioner is not alleging that deadly force was actually used against Petitioner before he shot two people in the back. As such, Petitioner's claim fails.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this _____ day of July, 2020.

Dated this 30th day of July, 2020

MICHELLE LEAVITT

10B 538 1AB1 9DC4
Michelle Leavitt
District Court Judge

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

BY Hagar Tuppeedi 8/10/14 for
JONATHON VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528

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DISTRICT COURT
CLARK COUNTY, NEVADA

Jeffrey Brown, Plaintiff(s) vs. Isidro Baca, Warden, Defendant(s)	CASE NO: A-19-793350-W DEPT. NO. Department 12

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 7/30/2020

JEANNIE HUA, ESQ.	jeanniehua@aol.com

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8/13/2020 12:54 PM
Steven D. Grierson
CLERK OF THE COURT

NOTC

JEANNIE N. HUA, ESQ.
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Las Vegas, Nevada 89149
(702) 239-5715
JeannieHua@aol.com
Attorneys for Defendant
Jeffrey Brown

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. JEFFREY BROWN, aka Jeffrey Kent Brown, #3074249 , Defendant.	)	Case No. A-19-793350-W Dept No. XII

NOTICE OF APPEAL

Notice is hereby given that JEFFREY BROWN, defendant above named, hereby appeals to the Supreme Court of Nevada from the Findings of Facts, Conclusions of Law entered in this action on the 30 th day of July, 2020.

DATED this 13th of August, 2020.

LAW OFFICE OF JEANNIE HUA

By /s/ Jeannie N. Hua
JEANNIE N. HUA, ESQ.
Nevada Bar No. 5672
Attorney for Defendant
Jeffrey Brown

CERTIFICATE OF SERVICE

I, Jeannie Hua hereby affirm that I serviced a copy of the Notice of Appeal via electronic transmission to –

Alexander Chen
Chief Deputy District Attorney
Alexander.chen@clarkcountyda.com

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8/17/2020 2:22 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. JEFFREY BROWN, Defendant.	CASE NO. C-16-318858-1 DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, JANUARY 17, 2018

RECORDER'S TRANSCRIPT OF PROCEEDINGS
TRIAL BY JURY - DAY 1

APPEARANCES:

For the State: SHANON L. CLOWERS
KENNETH N. PORTZ
Chief Deputy District Attorneys

For the Defendant: TIMOTHY TREFFINGER, ESQ.

RECORDED BY: KRISTINE SANTI, COURT RECORDER

LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 17, 2018, 9:08 A.M.

* * * * *

[Outside the Presence of the Prospective Jury]

THE COURT: Everybody's ready to go and your client's going to take a plea?

MR. TREFFINGER: Yes, Your Honor.

THE COURT: Okay. State versus Jeffrey Brown, case C318858, Mr. Brown is present. He's in custody. Do you want to state your appearances, and then, Counsel, you can state the negotiations.

MR. PORTZ: Nick Portz and Shanon Clowers for the State.

MR. TREFFINGER: Tim Treffinger, bar number 12877, on behalf of Mr. Brown who is present in custody.

The guilty plea agreement is as follows, Your Honor, he's going to plead guilty to attempt murder with use of a deadly weapon and assault with a deadly weapon; both sides are retaining the full right to argue including for consecutive treatment.

THE COURT: Between counts?

MR. TREFFINGER: Yes.

THE COURT: Okay. And, Mr. Brown, is that your understanding of the negotiations?

THE DEFENDANT: Yes. Yes, Judge.

THE COURT: And that's what you want to do today?

THE DEFENDANT: Yes, Judge.

THE COURT: Your true and full name for the record?

THE DEFENDANT: I'm sorry?

THE COURT: Your true and full name for the record?

THE DEFENDANT: Jeffrey Kurt Brown.

THE COURT: How old are you?

THE DEFENDANT: 69.

THE COURT: How far did you go in school?

THE DEFENDANT: 13.

THE COURT: You do read, write, and understand the English language?

THE DEFENDANT: I do.

THE COURT: You received a copy of the third amended indictment in this case charging you with attempt murder with use of a deadly weapon and assault with a deadly weapon?

THE DEFENDANT: I did.

THE COURT: And you had a chance to review it?

THE DEFENDANT: Yes, Judge.

THE COURT: Discussed it with your lawyer?

THE DEFENDANT: Yes, Judge.

THE COURT: You understand those charges against you?

THE DEFENDANT: Yes, Judge.

THE COURT: How do you plead to the charges in the third amended indictment?

THE DEFENDANT: Guilty.

THE COURT: Are you entering into this plea today freely and voluntarily?

THE DEFENDANT: Yes, Judge.

THE COURT: Did anyone threaten or coerce you into entering into this plea?

THE DEFENDANT: No, Judge.

THE COURT: Other than what's contained in this guilty plea agreement, did

anyone make you any promises to get you to enter into this agreement?

THE DEFENDANT: No, Judge.

THE COURT: I have before me a guilty plea agreement; is that your signature on page 6?

THE DEFENDANT: Yes, Judge.

THE COURT: And you read it --

THE DEFENDANT: Yes, Judge.

THE COURT: -- before you signed it?

THE DEFENDANT: Yes, Judge.

THE COURT: You discussed it with your lawyer prior to signing it?

THE DEFENDANT: Yes, Judge.

THE COURT: He answered all your questions prior to signing it?

THE DEFENDANT: Yes, Judge.

THE COURT: Do you have any questions of the Court regarding this guilty plea agreement?

THE DEFENDANT: No, Judge.

THE COURT: You understand as to Count 1 you are facing 2 to 20 years in the Nevada Department of Corrections plus a consecutive term of 1 to 20 years?

THE DEFENDANT: Yes, Judge.

THE COURT: And you understand as to Count 2 you're facing 1 to 6 years in the Nevada Department of Corrections?

THE DEFENDANT: Yes, Judge.

THE COURT: And you understand the State of Nevada has retained the full right to argue for any lawful sentence within that sentencing range?

THE DEFENDANT: Yes.

THE COURT: Including consecutive time between the counts?

THE DEFENDANT: Yes, Judge.

THE COURT: Do you have any questions about that?

THE DEFENDANT: No.

THE COURT: And you understand that sentencing is completely within the discretion of the Court, that no one can make you any promises regarding what will happen at the time of sentencing?

THE DEFENDANT: Yes, Judge.

THE COURT: Anyone make you any promises?

THE DEFENDANT: No.

THE COURT: You also understand you are giving up all your trial rights by entering into this plea today, that you do have a right to a speedy and public trial, that if this matter went to trial the State would be required to prove each of the elements as alleged in their charging document by proof beyond a reasonable doubt; and did your attorney explain to you what the State would have to prove if this matter went to trial?

THE DEFENDANT: Yes, Judge.

THE COURT: You discussed any defenses that you may have to these charges?

THE DEFENDANT: Yes, Judge.

THE COURT: You understand at the time of trial you'd have the right to testify, to remain silent, to have others come in and testify for you, to be confronted by the witnesses against you and cross-examine them, to appeal any conviction, and to be represented by counsel throughout all critical stages of the proceedings?

THE DEFENDANT: Yes, Judge.

THE COURT: You understand all these trial rights?

THE DEFENDANT: Yes, Judge.

THE COURT: And you understand that by entering into this plea today that you are giving up all of these trial rights?

THE DEFENDANT: Yes, Judge.

THE COURT: And do you have any questions about the trial rights that you're giving up?

THE DEFENDANT: No, Judge.

THE COURT: Any questions about this guilty plea agreement?

THE DEFENDANT: No, Judge.

THE COURT: Okay. On or about the 19th day of September, 2016, as to Count 1, did you willfully, unlawfully, feloniously, and without -- I'm sorry, and with malice aforethought attempt to kill Farha Brown?

THE DEFENDANT: Yes.

THE COURT: And/or Monequie Short with the use of deadly weapon, a firearm, by shooting at or into their bodies?

THE DEFENDANT: Yes, Judge.

THE COURT: As to Count 2, did you willfully, unlawfully, feloniously, intentionally place another person in reasonable apprehension of immediate bodily harm and/or did you willfully, unlawfully attempt to use physical force against another person, to wit, M.S., with use of a deadly weapon, a firearm, by displaying and/or pointing the firearm at M.S.?

THE DEFENDANT: Yes, Judge.

THE COURT: Is the State satisfied with that?

MR. PORTZ: Yes, Your Honor. Thank you.

THE COURT: Okay. At this time the Court's going to accept your plea, make a finding you've entered into it freely and voluntarily, that you understand the nature of the charges and the consequences of your plea. The matter will be referred to Parole and Probation and it will be set for sentencing.

THE CLERK: March 8, 8:30.

THE COURT: Does he have bail in this case? At this time if there's any bail amount, he -- it'll be revoked and he'll be held without bail pending sentencing.

MR. PORTZ: Thank you, Your Honor.

And, Your Honor, there's -- I believe he has current restrictions on his phone privileges, I just ask that that remain in effect, that he not be allowed to make phone calls or contact individuals associated with the case.

THE COURT: Okay.

MR. TREFFINGER: He has a current phone restriction that he's not allowed to make any calls whatsoever. He can't call counsel or his family. I have no issue with that phone restriction to people involved, but if we could lift it so that he can call his sick mother or his attorney; I'd appreciate it.

MR. PORTZ: The reason it was revoked is because he was using the calls and contacting family members to have them illegally --

THE COURT: Third-party?

MR. PORTZ: -- attempt to -- yeah, engage in contact with our victims. There's never been a restriction on his ability to contact counsel and we wouldn't ask that be imposed. I just want it to remain in effect when we're remanding him without bail.

THE COURT: Okay. Because I'm kind of surprised there would be a restriction, I'm going to leave the restriction in place, however, he can contact his

lawyer.

MR. TREFFINGER: I'll take it up with the jail.

THE COURT: Yeah, and I have confidence you wouldn't participate in any of that.

Thank you.

MR. PORTZ: Thank you, Your Honor.

MS. CLOWERS: Thank you.

THE COURT: And trial date will be vacated and the jury will be excused. Thank you.

MR. TREFFINGER: Thank you, Your Honor.

THE COURT: Thank you.

PROCEEDING CONCLUDED AT 9:15 A.M.

* * * * * * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.

Sara Richardson

SARA RICHARDSON
Court Recorder/Transcriber

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8/9/2021 12:51 PM

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08/09/2021 12:51 PM
CLERK OF THE COURT

FCL
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JEFFREY BROWN,
#3074249

Defendant.

CASE NO: A-19-793350-W

DEPT NO: XII

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: FEBRUARY 13, 2020
TIME OF HEARING: 8:30 AM

THIS CAUSE having come on for hearing before the Honorable MICHELLE LEAVITT, District Judge, on the 13 day of February, 2020, the Petitioner not being present, represented by Jeannie N. Hua, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through ANDREA ORWOLL, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On October 19, 2016, a grand jury indicted Petitioner with Aggravated Stalking; Attempt Murder with use of a Deadly Weapon; Battery with use of a Deadly Weapon Resulting

Case Number: A-19-793350-W

in Substantial Bodily Harm Constituting Domestic Violence; Battery with use of a Deadly Weapon Resulting in Substantial Bodily Harm; Assault with a Deadly Weapon; Child Abuse, Neglect, or Endangerment with use of a Deadly Weapon; and Discharge of a Firearm from or Within a Structure or Vehicle.

On January 17, 2018, Petitioner plead guilty to Attempt Murder with use of a Deadly Weapon and Assault with a Deadly Weapon.

On June 21, 2018, Petitioner was sentenced to an aggregate sentence of 8 to 20 years, with a consecutive sentence of 8 to 20 years for the deadly weapon enhancement. The Judgment of Conviction was filed on July 2, 2018.

On April 11, 2019, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition"). On May 10, 2019, Petitioner filed an Amended Petition ("Amended Petition"). The State filed its response June 4, 2019.

On June 18, 2019, the district court appointed counsel. On October 7, 2019, counsel for Petitioner filed a Supplement to Petitioner's Post Conviction Writ of Habeas Corpus ("Supplement"). On January 16, 2020, the State filed a Response to Petitioner's Supplement. On February 10, 2020, counsel for Petitioner filed a Reply to the State's Response to Petitioner's Supplement. On February 13, 2020, the district court denied Petitioner's Petition, Amended Petition, and Supplement. Findings of Fact, Conclusion of Law and Order reflecting the Court's denial of Petitioner's Supplement were filed on July 30, 2020. Petitioner appealed the court's decision and on July 12, 2021, the Nevada Court of Appeals dismissed the appeal because the filed Findings of Fact, Conclusions of Law and Order "did not resolve all of the claims raised in those Petitions."

ANALYSIS

A defendant has the Sixth Amendment right to an effective assistance of counsel in criminal proceedings. See Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Nevada has adopted the standard outlined in Strickland in determining whether a defendant received effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113

(1996); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show that counsel was ineffective, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland, 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

A court begins with a presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances or' the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing Cooper v. Fitzharris. 551F.2d1162, 1166 (9th Cir. 1977)). In considering whether trial counsel was effective, the court must determine whether counsel made a "sufficient inquiry into the information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996)(citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Once this decision

is made, the court will consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066). Counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Id. at 846, 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S. Ct. at 2066.

The Strickland analysis does not mean courts should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551 F.2d at 1166 (9th Cir. 1977)). Therefore, counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or raise futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Even if a defendant can show that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068.

Courts must dismiss a petition if a petitioner pled guilty and the petitioner is not alleging "that the plea was involuntarily or unknowingly entered, or that the plea was entered without effective assistance of counsel." NRS 34.810(1)(a). Although a defendant may attack the validity of a guilty plea by showing that he received ineffective assistance of counsel, the defendant maintains the burden of demonstrating "'a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" See Molina v. State, 120 Nev.185, 190, 87 P.3d 533, 537 (2004); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985)). "A reasonable probability is a probability sufficient to undermine confidence

in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. "Bare" or "naked" allegations are not sufficient to show ineffectiveness of counsel. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome. Molina, 120 Nev. at 192, 87 P.3d at 538. Ultimately, while it is counsel's duty to candidly advise a defendant regarding a plea offer, the decision of whether or not to accept a plea offer is the defendants. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 163 (2002).

I. PETITIONER'S PETITION IS DENIED

A. Petitioner's Guilty Plea Agreement Cures Earlier Constitutional Defects.

In McMann v. Richardson, the United States Supreme Court stated that "a voluntary plea of guilty entered on advice of counsel constitutes a waiver of all non-jurisdictional defects in any prior stage of the proceedings against the defendant." 397 U.S. 759, 762, 90 S. Ct. 1441, 1444 (1970) (citing Glenn v. McMann, 349 F.2d 1018 (C. A. 2d Cir. 1965), cert. denied, 383 U.S. 915 (1966)). Therefore, any earlier constitutional defects, such as the State's failure to provide Marcum notice, are cured by Petitioner's guilty plea agreement.

B. Petitioner failed to show his counsel was ineffective.

1. Petitioner failed to show that counsel was ineffective for failing to raise Marcum notice (Ground 1).

Petitioner first argues that counsel was ineffective for failing to challenge the State's alleged failure to provide Marcum notice. Petition, at 7-9. However, Petitioner failed to show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus, Petitioner failed to demonstrate that counsel was ineffective for failing to challenge the lack of Marcum notice.

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2. Petitioner failed to show that counsel was ineffective for failing to order a competency evaluation (Ground 2).

Petitioner next argues that counsel was ineffective for advising Defendant to take a plea before subjecting him to a competency exam. Petition, 10-12. Petitioner claim is a naked and bare allegation because he does not identify what a competency evaluation would have revealed. Petitioner merely states that his mental state was "fragile" and "confused." Id. at 10. Petitioner failed to explain how a fragile and confused state affected his decision to enter a guilty plea agreement. Without this information, this court cannot determine how a competency evaluation would have rendered a different outcome for the Petitioner.

In fact, Petitioner's claim is belied by the record and his petition. Frist, Petitioner alleges that counsel was ineffective for failing to order a competency exam, but immediately claims that he was at a competency hearing on April 1, 2018. Petition, 11. Second, the record shows that Petitioner was found competent to stand for trial under the Dusky standard. Court Minutes, April 6, 2018. Thus, Defendant's naked and bare allegation is belied by the record.

3. Petitioner failed to show counsel was ineffective for making misleading representations (Ground 3).

Petitioner argues that counsel was ineffective for providing him with ill and misleading advice. Petition, 13. A defendant is not entitled to a particular "relationship" with his attorney. Morris v. Slappy, 461 U.S. 1, 14, 103 S. Ct. 1610, 1617 (1983). There is no requirement for any specific amount of communication as long as counsel is reasonably effective in his representation. Id. Petitioner's current complaint is belied by his statement that he was satisfied with his representation. GPA, 6. Thus, the claim must be denied. Furthermore, Petitioner has failed to specify what kind of "ill" and "misleading" information his counsel gave him that compelled him into pleading guilty. Similarly, Petitioner complains that his counsel failed to provide case files to him once withdrawn. However, he does not identify what these files were. Without this information, this court cannot determine how the alleged misleading information and the failure to provide Petitioner with files affected his decision to plead guilty. Since Petitioner has not shown that the result would have been different had he had more

communication with counsel, his claim is a naked and bare allegation that is belied by the record.

4. Petitioner failed to show that counsel was ineffective for advising him to enter a plea when he had a valid self-defense claim (Grounds 4 and 5).

Petitioner next argues that his self-defense theory would have had a major impact on every count of attempt murder. Petition, 17 (Ground 4). Petitioner further-argues that counsel was ineffective because he advised Petitioner to plead guilty despite knowing about the self-defense theory. Petition, 22 (Ground 5).

Petitioner fails to identify what type of advice his counsel gave him that forced him to plead guilty. Without this information, this court cannot analyze how, but for counsel's alleged misleading advise, Petitioner would have insisted on proceeding to trial. Petitioner's claim is also belied by the record. All of the information Petitioner discusses in his petition were available to him before he decided to plead guilty. Petitioner has the ultimate authority to enter or reject a plea offer. Johnson v. State, 117 Nev.153, 161-62, 17P.3d 1008, 1012 (2001) (citing Jones v. Barnes, 463 U.S. 745, 751, 103 S. Ct. 3302 (1983) (the accused has the ultimate authority to plead guilty)). In fact, Petitioner's GPA states "I have discussed with my attorney any possible defense, defense strategies and circumstances which might be in my favor." GPA, at 5. The GPA also stated that "I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest." Id. Finally, considering Petitioner's crime and the strength of the evidence-shooting two victims in the back and admitting to shooting his estranged wife to "shut her up" it was objectively reasonable to advise Petitioner to take the plea. Presentence Investigation Report, 4-5. Thus, Petitioner's claims include only naked and bare allegation that is belied by the record.

5. Petitioner failed to show counsel was ineffective for failing to file a motion to withdraw guilty plea (Ground 6).

It is well-settled law that when a defendant pleads guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself, or that the plea was entered without effective assistance of counsel. NRS 34.810(1); Kirksey, 112 Nev. at 999,923

P.2d at 1114, (citing Warden, Nevada State Prison v. State, 100 Nev. 430,432, 683 P.2d 504, 505 (1984)). A defendant cannot enter a guilty plea then later raise independent claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollet v. Henderson, 411 U.S. 258,267 (1973)).

Here, Petitioner's allegation is a naked and bare allegation because he failed to identify the basis for wanting to withdraw his GPA. Without this information, this court cannot analyze filing a motion to withdraw guilty plea would have rendered him a more favorable result. Also, Petitioner does not allege his entry of plea was involuntary. Therefore, Petitioner's claim is a naked and bare allegation that must be denied.

C. Petitioner cannot demonstrate cumulative error.

The Nevada Supreme Court has not endorsed application of its direct appeal cumulative error standard to the post-conviction Strickland context. McConnell v. State, 125 Nev. 243, 259, 212 P.3d 307,318 (2009). Nor should cumulative error apply on post-conviction review. Middleton v. Roper, 455 F.3d 838, 851 (8th Cir. 2006), cert. denied, 549 U.S. 1134, 1275 S.Ct. 980 (2007) ("a habeas petitioner cannot build a showing of prejudice on series of errors, none of which would by itself meet the prejudice test.").

Nevertheless, even where available, a cumulative error finding in the context of a Strickland claim is extraordinarily rare and requires an extensive aggregation of errors. See Harris By and Through Ramseyer v. Wood, 64 F.3d 1432, 1438 (9th Cir. 1995). In fact, logic dictates that there can be no cumulative error where the defendant fails to demonstrate any single violation of Strickland. See Turner v. Quarterman, 481 F.3d 292, 301 (5th Cir. 2007) ("where individual allegations of error are not of constitutional stature or are not errors, there is 'nothing to cumulate.'") (quoting Yohey v. Collins, 985 F.2d 222, 229 (5th Cir. 1993)); Hughes v. Epps, 694 F.Supp.2d 533, 563 (N.D. Miss. 2010) (citing Leal v. Dretke, 428 F.3d 543, 552-553 (5th Cir. 2005)). Since Petitioner has not demonstrated any claim warrants relief under Strickland, there are no errors to cumulate.

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II. PETITIONER'S AMENDED PETITION IS DENIED

Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a petitioner from filing any additional pleadings or supplements, except for those specifically provided for in subsections (2)-(4), unless ordered by the Court. Because Petitioner's Amended Petition was filed after he filed his Petition and filed without leave of this Court, the pleadings and claims raised are hereby struck and any new claims or allegations contained therein are denied.

III. PETITIONER'S SUPPLEMENT IS DENIED

A. Trial counsel was not ineffective in his pretrial investigation of petitioner's self-defense claim.

A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have changed the outcome of trial. Strickland, 466 U.S. at 687, 104 S. Ct. at 2064. Such a defendant must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the trial. See Love, 109 Nev. at 1138, 865 P.2d at 323.

Petitioner argues that trial counsel was ineffective because he did not investigate Petitioner's self-defense claim. Supp. Petition at 3. First, Petitioner claims counsel should have consulted ballistics experts to study the trajectory of the bullets as well as the positions of the victim and Petitioner. Supp. Petition at 3. Next, Petitioner claims counsel should have hired an investigator to determine whether witnesses could corroborate Petitioner's self-defense claim. Supp. Petition at 3. Specifically, Petitioner argues that counsel should have interviewed the victims, security guards at the incident. Supp. Petition at 4. However, in pleading guilty, Petitioner waived his ability to raise this claim because it does not allege that Petitioner's plea was involuntary or that counsel was ineffective in the plea process. NRS 34.810(1)(a).

Additionally, Petitioner's claims fail under Molina because Petitioner does not explain what better investigation into those areas would have shown. Petitioner does not explain how a ballistics expert's conclusion would have shown that Petitioner acted in self-defense. Next, Petitioner does not allege that there even were witnesses who could corroborate Petitioner's

claims. Petitioner also does not explain what information counsel would have received if he had interviewed the security guards and victim.

Further, all of Petitioner's claims are belied under Hargrove by the Guilty Plea Agreement. In signing the Guilty Plea, Petitioner confirmed that he had spoken with his attorney about any possible defenses, defense strategies, and circumstances that were in his favor. Guilty Plea Agreement at 5. Petitioner further confirmed that he believed that pleading guilty would be in his best interest. Guilty Plea Agreement at 5. Additionally, Petitioner does not allege that he would not have plead guilty had trial counsel conducted the alleged investigation. Finally, it was Petitioner's decision to enter the guilty plea without this level of investigation and that decision belonged to him and not counsel. Rhyne, 118 Nev. at 8, 38 P.3d at 163. As Petitioner pled guilty in lieu of going to trial, Petitioner fails to explain how any such investigation or interviews would have changed the result of trial.

D. COUNSEL WAS NOT INEFFECTIVE REGARDING INFORMING PETITIONER OF HIS RIGHT TO TESTIFY BEFORE THE GRAND JURY

Petitioner claims that trial counsel was ineffective because he did not inform him of his right to testify and present evidence at the grandy jury. Supp. Petition at 4. Petitioner argues that had he known of this right, he would have testified that he was defending himself. Marcum notice was served to defense counsel on October 5, 2016. As such, Petitioner cannot show prejudice sufficient for ineffective assistance of counsel purposes because he does not articulate what specific facts or evidence would have impacted the outcome as required under Strickland. Petitioner does not explain how his testimony would have established that he shot two victims, whom he stalked, out of self-defense. Petitioner failed to show a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Molina, 120 Nev. at 190-91, 87 P.3d at 537. Thus, Defendant failed to demonstrate that counsel was ineffective.

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E. NO INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO PREPARE A SENTENCING MEMORANDUM

Petitioner complains that counsel was ineffective because he did not file a sentencing memorandum and did not address the prejudicial information in the state's sentencing memorandum. Supp. Petition at 5. As a result, Petitioner claims he was sentenced to the maximum sentence. Petitioner's claim fails because the decision to file a sentencing memorandum or offer the information orally at a sentencing hearing is a virtually unchallengeable strategic decision. Doleman, 112 Nev. at 846, 921 P.2d at 280.

At sentencing, defense counsel's argument rebutted arguments made by the state in their sentencing memorandum and orally. Specifically, in the State's sentencing memorandum, the State argued that Petitioner should be sentenced to the maximum and regurgitated the facts elicited from the Grand Jury and pointed the court to several calls Petitioner made while in custody where he (1) acknowledged that he was trying to kill one of the victims; (2) asked others to get "dirt" on another victim to use at trial; (3) suborn perjury through his son, a witness to the case; and (4) asked his son to destroy what he believed to be incriminating evidence. Sentencing Memorandum at 2-8. At sentencing, the State highlighted the key facts, trauma suffered by the victims, Petitioner's lack of remorse; and rebutted mitigating factors such as his age, self-defense claim, and lack of criminal history. Recorder's Transcript Re: Sentencing at 2-6. In response, trial counsel argued his theory of the case, and explained that given Petitioner's age, health, and lack of history, they had a valid argument for self-defense. Transcript Re: Sentencing at 6-8.

However, the district court disagreed with Petitioner's argument, explaining that per the law in Nevada, a person cannot use deadly force in self-defense unless deadly force is first used against them. Transcript Re: Sentencing at 7. Petitioner fails to explain what other facts would have changed the district court's position because Petitioner is not alleging that deadly force was actually used against Petitioner before he shot two people in the back. As such, Petitioner's claim fails.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this _____ day of August, 2021.

Dated this 9th day of August, 2021

MICHELLE LEAVITT

5EB 5B6 1E0E 81BF
Michelle Leavitt
District Court Judge

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

BY Selena Wyse Bar # 14971 for
JONATHON VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #6528

CERTIFICATE OF SERVICE

I certify that on the 5th day of August, 2021, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

JEFFREY BROWN, NDC #1200868
NNCC
P.O. BOX 7000
CARSON CITY, NV 89702

BY _____
Secretary for the District Attorney's Office

16F15698X/jb/JV/ckb/L4

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Jeffrey Brown, Plaintiff(s) vs. Isidro Baca, Warden, Defendant(s)	CASE NO: A-19-793350-W DEPT. NO. Department 12

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 8/9/2021

JEANNIE HUA, ESQ.	jeanniehua@aol.com

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Steven D. Grierson
CLERK OF THE COURT

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Jeffrey Brown

CASE NO: A-21-839615-A
Department 27

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. JEFFREY BROWN, aka Jeffrey Kent Brown, #3074249 , Defendant.	Case No.	A-19-793350-W
	Dept No.	XII

NOTICE OF APPEAL

Notice is hereby given that JEFFREY BROWN, defendant above named, hereby appeals to the Supreme Court of Nevada from the Findings of Facts, Conclusions of Law entered in this action on the 11 th day of August, 2021.

DATED this 17th of August, 2021.

LAW OFFICE OF JEANNIE HUA

By /s/ Jeannie N. Hua
JEANNIE N. HUA, ESQ.
Nevada Bar No. 5672
Attorney for Defendant
Jeffrey Brown

CERTIFICATE OF SERVICE

I, Jeannie Hua hereby affirm that I serviced a copy of the Notice of Appeal via electronic transmission to –

Alexander Chen
Chief Deputy District Attorney
Alexander.chen@clarkcountyda.com