

Clifford Smith

Steven D. Grierson

V

CASE NO 20-346330-1

Department 6 VI

STATS OF NEVADA

Electronically Filed
Sep 14 2021 09:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOTICE OF APPEAL

Please TAKE NOTICE, that I wish
to APPEAL the DENIAL of WITHDRAWAL of
GUILTY AND/OR MODIFICATION of SENTENCE of
the DISTRICT COURT.

Dated AUGUST 29 2021

x Clifford Smith

TRANSFER OF RECORDS

Would you transfer ALL RECORDS AND
other tangible documents, along with the
PST Report and what other records that
are necessary.

Dated AUGUST 29 2021

x AUGUST 29, Clifford Smith

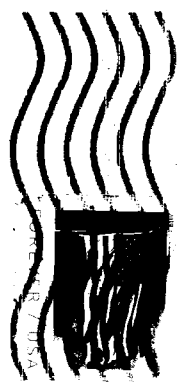
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CLERK OF THE COURT

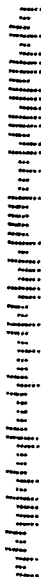
CLIFFORD SMITH # 123585M
INDIAN SPRINGS, NV 89090

LAS VEGAS NV 890
1 SEP 2021 PM 5 L

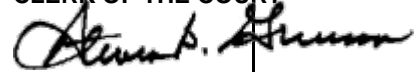


CLERK OF THE COURT
200 LEWIS AVE, 3RD FLOOR
LAS VEGAS, NV 89155

89101-630000



Southern Desert
National Center
AUG 31 2021
OUTGOING MAIL



1 ASTA
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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 CLIFFORD SMITH,

14 Defendant(s),
15

Case No: C-20-346330-1

Dept No: XVII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Clifford Smith

20 2. Judge: Jacqueline M. Bluth

21 3. Appellant(s): Clifford Smith

22 Counsel:

23 Clifford Smith #1235854
24 P.O. Box 208
Indian Springs, NV 89070

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: January 22, 2020

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Post-Conviction Relief

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 10 day of September 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Clifford Smith

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. C-20-346330-1**

State of Nevada
vs
Clifford Smith

§ Location: **Department 17**
 § Judicial Officer: **Villani, Michael**
 § Filed on: **01/22/2020**
 § Case Number History:
 § Cross-Reference Case Number: **C346330**
 § Defendant's Scope ID #: **2681698**
 § ITAG Booking Number: **2000000411**
 § ITAG Case ID: **2191377**
 § Lower Court Case # Root: **20F00126**
 § Lower Court Case Number: **20F00126X**
 § Metro Event Number: **9999999999**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
Jurisdiction: District Court					
1. ATTEMPT ROBBERY	200.380	F	01/02/2020	Case Status:	07/17/2020 Closed
PCN: 0025879716 ACN: 9999999999					
Arrest: 01/02/2020 MET - Metro					

Related Cases

A-21-833992-W (Writ Related Case)

Statistical Closures

07/17/2020 Guilty Plea with Sentence (before trial) (CR)

Bonds

Surety #SV5-5044983 \$5,000.00

7/23/2020 Exonerated

1/28/2020 Active

Counts: 1


DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number	C-20-346330-1
Court	Department 17
Date Assigned	09/07/2021
Judicial Officer	Villani, Michael


PARTY INFORMATION

		Lead Attorneys
Defendant	Smith, Clifford	Gill, Adam <i>Retained</i> 702-750-1590(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**


01/22/2020  Criminal Bindover Packet Justice Court
[1]

In
#1

01/22/2020  Criminal Bindover - Confidential
[2]

In
#2

CASE SUMMARY
CASE NO. C-20-346330-1

01/23/2020	 Information Party: Plaintiff State of Nevada <i>[3] Information</i>	In #2
01/24/2020	 Guilty Plea Agreement <i>[4] Guilty Plea Agreement</i>	In #4
01/28/2020	 Bail Bond <i>[5] \$5,000.00 - - SV5-5044983 Aladdin Bail, NV -- Seaview Insurance Co.</i>	In #5
02/09/2020	 Transcript of Proceedings <i>[6] Reporter's Transcript of Unconditional Waiver of Preliminary Hearing, January 22, 2020</i>	In #6
03/04/2020	 PSI <i>[7]</i>	In #7
07/02/2020	 PSI - Supplemental PSI <i>[8]</i>	In #8
07/17/2020	 Judgment of Conviction <i>[9] Judgment of Conviction (Plea of Guilty)</i>	In #9
07/27/2020	 Bond <i>[10] "Bond exonerated; bonding company notified via mail". # SV5-5044983</i>	In #1
03/02/2021	 Motion Filed By: Defendant Smith, Clifford <i>[11] Motion to Withdraw Counsel</i>	In #1
08/19/2021	 Findings of Fact, Conclusions of Law and Order <i>[12] Findings of Fact, Conclusions of Law and Order</i>	In #1
08/24/2021	 Notice of Entry Filed By: Plaintiff State of Nevada <i>[13] Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>	In #1
08/25/2021	 Notice of Entry Filed By: Plaintiff State of Nevada <i>[14] Amended Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>	In #1
09/07/2021	Case Reassigned to Department 17 <i>From Judge Jacqueline Bluth to Judge Michael Villani</i>	
09/09/2021	 Notice of Appeal (Criminal) <i>[15] Notice of Appeal</i>	In #1
09/10/2021	 Case Appeal Statement	In #1

CASE SUMMARY**CASE NO. C-20-346330-1**

Filed By: Defendant Smith, Clifford
Case Appeal Statement

DISPOSITIONS

01/24/2020 **Plea** (Judicial Officer: Bluth, Jacqueline M.)

1. ATTEMPT ROBBERY

Guilty

PCN: 0025879716 Sequence:

07/13/2020 **Disposition** (Judicial Officer: Bluth, Jacqueline M.)

1. ATTEMPT ROBBERY

Guilty

PCN: 0025879716 Sequence:

07/13/2020 **Adult Adjudication** (Judicial Officer: Bluth, Jacqueline M.)

1. ATTEMPT ROBBERY

01/02/2020 (F) 200.380 (DC50144)

PCN: 0025879716 Sequence:

Sentenced to Nevada Dept. of Corrections

Term: Minimum:36 Months, Maximum:96 Months

Credit for Time Served: 193 Days

Fee Totals:

Administrative

Assessment Fee

25.00

\$25

Genetic Marker

Analysis AA Fee

3.00

\$3

Indigent Defense

Civil Assessment

250.00


Fee - ASK

Fee Totals \$

278.00

\$150.00 DNA Analysis fee including testing to
determine genetic markers is WAIVED


HEARINGS

01/24/2020  **Initial Arraignment** (10:00 AM) (Hearing Master: Wittenberger, Shannon)

Plea Entered;

Journal Entry Details:

Deft. SMITH present, in custody. Deputy District Attorney Brianna Stutz (15340) present. Court stated the negotiations. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. SMITH ARRAIGNED AND PLED GUILTY TO ATTEMPT ROBBERY (F). Court ACCEPTED plea, and ORDERED, matter referred to the Division of Parole and Probation (P&P) and set for sentencing. Pursuant to negotiations, COURT FURTHER ORDERED, Release with \$5,000.00 BAIL and MID-LEVEL ELECTRONIC MONITORING and DIRECTED Deft. to report to P&P within 24 hours of release, excluding weekends and holidays. BOND/MID-LEVEL EM 05/18/2020 9:30 AM SENTENCING (DEPT. 6);

05/18/2020  **Sentencing** (10:15 AM) (Judicial Officer: Bluth, Jacqueline M.)

05/18/2020, 05/27/2020, 06/03/2020, 07/13/2020

Continued;

Continued;

Continued;

Defendant Sentenced;



Journal Entry Details:

Court noted the new Presentence Investigation report was reviewed. Argument by counsel. Statement by the Deft. DEFT SMITH ADJUDGED GUILTY of ATTEMPT ROBBERY (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, the \$150.00 DNA Analysis fee including testing to determine genetic markers is WAIVED, the \$3.00 DNA Collection and a \$250.00 Indigent Defense Civil Assessment fee, Deft. SENTENCED to a MINIMUM of THIRTY-SIX (36) MONTHS and a MAXIMUM of NINETY-SIX (96) MONTHS in the Nevada Department

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. C-20-346330-1

	<p><i>of Corrections (NDC), with ONE HUNDRED NINETY-THREE (193) DAYS credit for time served. BOND, if any, EXONERATED.;</i></p> <p>Continued;</p> <p>Continued;</p> <p>Continued;</p> <p>Defendant Sentenced;</p> <p>Continued;</p> <p>Continued;</p> <p>Continued;</p> <p>Defendant Sentenced;</p> <p>Journal Entry Details:</p> <p><i>Present via video, Defendant Clifford Smith with Attorney Adam Gill. Mr. Gill advised he went through the Presentence Investigation Report (PSI), there's issues that rise to Stockmeyer, Defendant's Ohio record is incorrect, they're not comfortable going forward with the PSI the way it is and requested a continuance. COURT ORDERED, proceedings CONTINUED for status check regarding the PSI. CUSTODY 6-3-20 10:15 AM STATUS CHECK: PSI...SENTENCING;</i></p> <p>Continued;</p> <p>Continued;</p> <p>Continued;</p> <p>Defendant Sentenced;</p> <p>Journal Entry Details:</p> <p><i>Present via video on behalf of Defendant, Attorney Adam Gill. Mr. Gill requested a continuance for Defendant's review of the Presentence Investigation Report (PSI) which was mailed and is not believed to have yet been received. Defendant acknowledged he's not received the PSI. Colloquy regarding negotiations. COURT ORDERED, matter CONTINUED. CUSTODY 5-27-20 10:15 AM SENTENCING;</i></p>
06/03/2020	<p>Status Check (10:15 AM) (Judicial Officer: Bluth, Jacqueline M.)</p> <p><i>Status Check: Presentence Investigation Report (PSI)</i></p> <p>Matter Heard;</p>
06/03/2020	<p> All Pending Motions (10:15 AM) (Judicial Officer: Bluth, Jacqueline M.)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>STATUS CHECK: PRESENTENCE INVESTIGATION REPORT(PSI)...SENTENCING Present via video on behalf of Defendant, Attorney Adam Gill. The Officer advised the Defendant refused. Argument by Mr. Gill in support of request for a new Presentence Investigation Report. (PSI) . Mr. Turner requested Mr. Gill reach out to Parole and Probation as to what's specifically being challenged. COURT ORDERED, sentencing CONTINUED. CUSTODY 7-13-20 10:15 AM SENTENCING;</i></p>
03/24/2021	<p> Motion (11:00 AM) (Judicial Officer: Bonaventure, Joseph T.)</p> <p><i>Motion to Withdraw Counsel</i></p> <p>Granted;</p> <p>Journal Entry Details:</p> <p><i>There being no opposition, COURT ORDERED, motion GRANTED. NDC CLERK'S NOTE: The above minute order has been distributed to: Adam Gill Esq., at adam@aisengill.com. 3/25/21 gs;</i></p>

DATE

FINANCIAL INFORMATION

Defendant Smith, Clifford	
Total Charges	278.00
Total Payments and Credits	0.00
Balance Due as of 9/10/2021	278.00

Heaven S. Linn

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CLIFFORD SMITH,
#2681698

Petitioner,

CASE NO: A-21-833992-W

-vs-

C-20-346330-1

THE STATE OF NEVADA,

DEPT NO: VI

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: JUNE 30, 2021
TIME OF HEARING: 11:00AM

THIS CAUSE having come on for hearing before the Honorable JACQUELINE M. BLUTH, District Judge, on the 30th day of June, 2021, the Petitioner not being present, PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through YU MENG, 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:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On January 23, 2020, the State charged Clifford Smith (hereinafter "Petitioner") by way
4 of Information with one count of Attempt Robbery (Category B Felony – NRS 200.380,
5 193.330). The next day, Petitioner pleaded guilty to the one count and signed a Guilty Plea
6 Agreement. Pursuant to the negotiations, the State agreed to make no recommendation at
7 sentencing and agreed to not seek habitual criminal treatment. The State also agreed the
8 maximum sentence will not exceed eight years and did not oppose Petitioner's bail being
9 lowered to \$5,000.00 with mid-level electronic monitoring upon entry of plea.

10 On May 27, 2020, Petitioner and his counsel appeared at sentencing and informed this
11 Court there were issues with the Presentence Investigation Report (PSI) and requested a
12 continuance. On July 13, 2020, this Court noted it reviewed the Supplemental PSI that
13 corrected the previous errors, and adjudicated Petitioner guilty of Attempt Robbery. This Court
14 sentenced Petitioner to a minimum of thirty-six months and a maximum of ninety-six months
15 in the Nevada Department of Corrections (NDOC). Petitioner received one hundred ninety-
16 three days credit for time served. The Judgment of Conviction was filed on July 17, 2020.

17 On May 4, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-
18 Conviction) (hereinafter "Petition"). The State filed its Response on June 18, 2021. Following
19 a hearing on June 30, 2021, this Court now finds and concludes as follows:

20 **AUTHORITY**

21 Petitioner claims that he was forced to plead guilty because the District Attorney's
22 Office threatened him by using "materially untrue convictions" to make it appear he was
23 eligible for habitual criminal treatment. Petition, at 1-5. However, the claims raised in the
24 instant Petition are conclusory, bare, and naked assertions that should be summarily dismissed.
25 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

26 Dismissal of a petition is mandatory if "[t]he petitioner's conviction was upon a plea of
27 guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea
28 was involuntarily or unknowingly entered or that the plea was entered without effective

1 assistance of counsel.” NRS 34.810(1)(a). The Nevada Court of Appeals recently considered
2 the types of ineffective assistance of counsel claims that are permissible pursuant to this
3 statute, and concluded that NRS 34.810 *only* permits claims of ineffective assistance of counsel
4 that challenge the validity of the guilty plea. Gonzales v. State, 136 Nev. Adv. Op. 60 (Nev.
5 App. 2020). “[A] petitioner must allege specific facts demonstrating both that counsel’s advice
6 (or failure to give advice) regarding the guilty plea was objectively unreasonable and that the
7 deficiency affected the outcome of the plea negotiation process.” Id. Further, when a
8 conviction is the result of a guilty plea, to demonstrate prejudice, a petitioner “must show that
9 there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty
10 and would have insisted on going to trial.” Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102,
11 1107 (1996) (quoting Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985)).

12 Here, Petitioner claims that the District Attorney’s Office forced him to plead guilty by
13 using “false convictions that did force a plea.” Petition, at 2. Petitioner’s only support for this
14 assertion is his PSI, which was not prepared by the District Attorney’s Office and was not
15 prepared until after Petitioner entered his guilty plea. Petitioner also claims that the District
16 Attorney threatened to charge him as a habitual offender. Petition, at 2. However, the State
17 never filed a Notice of Intent to Seek Habitual Criminal Treatment. The only mention of
18 habitual criminal treatment is the Guilty Plea Agreement, which states, “Additionally, the State
19 agrees not to seek habitual criminal treatment.” Guilty Plea Agreement, January 24, 2020, at
20 1. Thus, it is unclear how Petitioner was forced by the District Attorney to enter a guilty plea
21 because he feared habitual criminal treatment, when the State agreed not to seek it.

22 Furthermore, the record demonstrates that counsel brought the errors in Petitioner’s PSI
23 to the court’s attention before his sentencing. Court Minutes, May 27, 2020. After counsel
24 brought these errors to the court’s attention, a new supplemental PSI was filed prior to
25 sentencing, correcting the number of prior felonies to 2. See Court Minutes, July 13, 2020;
26 Supplemental PSI, prepared July 1, 2020. Even with two prior felonies, Petitioner was eligible
27 to be sentenced under the small habitual statute. See NRS 207.010(1)(a). However, the errors
28

1 were fixed to represent Petitioner's correct number of prior felonies, and Petitioner was not
2 forced into any negotiations by the State.

3 Petitioner also requests this Court allow him to withdraw his plea because his plea was
4 based on a "miscarriage of justice," while simultaneously asking this Court to modify his
5 sentence. Petition, at 5.¹ These two requests are mutually exclusive. If this Court allows him
6 to withdraw his plea, then this Court is unable to sentence him because the court can only
7 sentence a defendant that has either pled guilty or been found guilty at trial.

8 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be
9 withdrawn to correct "manifest injustice." See Baal v. State, 106 Nev. 69, 72, 787 P.2d 391,
10 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the
11 burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State,
12 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535
13 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea
14 voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

15 To determine whether a guilty plea was voluntarily entered, the Court will review the
16 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
17 P.2d at 367. A proper plea canvass should reflect that:

18 [T]he defendant knowingly waived his privilege against self-
19 incrimination, the right to trial by jury, and the right to confront his
20 accusers; (2) the plea was voluntary, was not coerced, and was not the
21 result of a promise of leniency; (3) the defendant understood the
consequences of his plea and the range of punishments; and (4) the
defendant understood the nature of the charge, i.e., the elements of
the crime.

22 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
23 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
24

25
26 ¹ Petitioner also claims cruel and unusual punishment, ineffective assistance of counsel, and violation of due process. Id.
27 He mentions these claims, but never addresses them again and fails to make any factual allegations regarding these
28 claims. It is defendant's responsibility to plead specific factual allegations, and defendant cannot rely on conclusory
claims for relief. NRS 34.735; Colwell v. State, 118 Nev. 807, 812, 59 P.3d 463, 467 (2002) (citing Evans v. State, 117
Nev. 609, 621, 28 P.3d 498, 507 (2001)).

1 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
2 107, 107 (1975).

3 This standard requires the court accepting the plea to personally address the defendant
4 at the time he enters his plea in order to determine whether he understands the nature of the
5 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
6 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
7 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
8 formal setting, such as that occurring between an official sitting in judgment of an accused at
9 plea. Id. However, the Court need not conduct a ritualistic oral canvass. State v. Freese, 116
10 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
11 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
12 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
13 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
14 1463, 1470 (1970).

15 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
16 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
17 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
18 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
19 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
20 that a defendant lacked standing to challenge the validity of a plea agreement because he had
21 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
22 468, 477, 958 P.2d 91, 96 (1998).

23 Furthermore, the Nevada Supreme Court has explained:

24 [A] guilty plea represents a break in the chain of events which has
25 preceded it in the criminal process. When a criminal defendant has
26 solemnly admitted in open court that he is in fact guilty of the offense
27 with which he is charged, he may not thereafter raise independent
28 claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.

1 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
2 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
3 constitutional claims based on events occurring prior to the entry of the plea[], except those
4 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
5 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
6 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
7 the effectiveness of counsel.”).

8 Here, Petitioner’s claim that his plea was coerced is belied by the record. First,
9 Petitioner affirmed that he was entering his plea freely and voluntarily when he signed his
10 GPA, which stated:

11 VOLUNTARINESS OF PLEA

12 I have discussed the elements of all the original charge(s) against me
13 with my attorney and I understand the nature of the charge(s) against
me.

14 I understand that the State would have to prove each element of the
15 charge(s) against me at trial.

16 I have discussed with my attorney any possible defenses, defense
strategies and circumstances which might be in my favor.

17 All of the foregoing elements, consequences, rights, and waiver of
18 rights have been thoroughly explained to me by my attorney.

19 I believe that pleading guilty and accepting this plea bargain is in my
best interest, and that trial would be contrary to my best interest.

20 **I am signing this agreement voluntarily, after consultation with**
21 **my attorney, and I am not acting under duress or coercion or by**
22 **virtue of any promises of leniency except those set forth in this**
agreement.

23 I am not now under the influence of any intoxicating liquor, a
24 controlled substance or other drug which would in any manner impair
my ability to comprehend or understand this agreement or the
proceedings surrounding my entry of this plea.

25 My attorney has answered all my questions regarding this plea
26 agreement and its consequences to my satisfaction and I am satisfied
with the services provided by my attorney.

27 Guilty Plea Agreement, January 24, 2020, at 4-5 (emphasis added).

1 Therefore, based on Petitioner's Guilty Plea Agreement, his claim is belied by the
2 record, and he is not entitled to withdraw his plea. Petitioner has not shown withdrawal of his
3 plea is necessary to correct a manifest injustice—especially because Petitioner entered his plea
4 before his PSI was even prepared. As such, Petitioner is not entitled to withdraw his plea.

5 Petitioner is also not entitled to a modification of his sentence. Petition, at 5. In general,
6 a district court lacks jurisdiction to modify a sentence once the defendant has started serving
7 it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other
8 grounds by Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). However, a district court does
9 have inherent authority to correct, vacate or modify a sentence where the defendant can
10 demonstrate the sentence violates due process because it is based on a materially untrue
11 assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards
12 v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996); NRS 176.555; see also Passanisi, 108
13 Nev. at 322, 831 P.2d at 1373. Not every mistake or error during sentencing gives rise to a due
14 process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).
15 The Nevada Supreme Court has emphasized that a "motion to modify a sentence is limited in
16 scope to sentences based on mistaken assumptions about a defendant's criminal record which
17 work to the extreme detriment of the defendant." Edwards, 112 Nev. at 708, 918 P.2d at 325.

18 Here, Petitioner has failed to show that the Court sentenced him under a materially
19 untrue assumption or mistake of fact. See NRS 176.555; Edwards, 112 Nev. at 707, 918 P.2d
20 at 324; Passanisi, 108 Nev. at 322, 831 P.2d at 1373. Petitioner has not presented any argument
21 or evidence that his sentence is facially illegal. This request is not based on a materially untrue
22 assumption or mistake of fact that has worked to his extreme detriment to give the Court any
23 reason to modify his sentence because the error in his PSI was corrected prior to sentencing.
24 Accordingly, Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is DENIED.

25 //

26 //

27 //

28 //

ORDER

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

~~DATED this 22 day of July, 2021.~~

Dated this 19th day of August, 2021

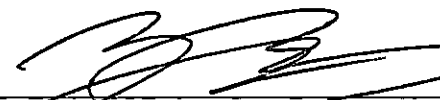

DISTRICT JUDGE

NH kj

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

1F9 6B5 64A0 EA1A
Jacqueline M. Bluth
District Court Judge

BY


KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730


Yu Meng #14741
for

CERTIFICATE OF SERVICE

I certify that on the 22nd day of July, 2021, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

CLIFFORD SMITH, BAC #1235854
THREE LAKES VALLEY C.C.
PO BOX 208
INDIAN SPRINGS, NV 89070

BY


Secretary for the District Attorney's Office

KM/mah/L3

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Clifford Smith, Plaintiff(s)

CASE NO: A-21-833992-W

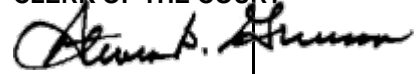
7 vs.

DEPT. NO. Department 6

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CLIFFORD SMITH,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-20-346330-1

Dept No: XI

**NOTICE OF ENTRY OF FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

PLEASE TAKE NOTICE that on August 19, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 24, 2021.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 24 day of August 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Clifford Smith # 1235854
3955 W. Russell Rd.
Las Vegas, NV 89118

Adam Gill, Esq.
723 S. Third St.
Las Vegas, NV 89101

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

Heavenly

CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CLIFFORD SMITH,
#2681698

Petitioner,

CASE NO: A-21-833992-W

-vs-

C-20-346330-1

THE STATE OF NEVADA,

DEPT NO: VI

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: JUNE 30, 2021
TIME OF HEARING: 11:00AM

THIS CAUSE having come on for hearing before the Honorable JACQUELINE M. BLUTH, District Judge, on the 30th day of June, 2021, the Petitioner not being present, PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through YU MENG, 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:

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1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 **STATEMENT OF THE CASE**

3 On January 23, 2020, the State charged Clifford Smith (hereinafter "Petitioner") by way
4 of Information with one count of Attempt Robbery (Category B Felony – NRS 200.380,
5 193.330). The next day, Petitioner pleaded guilty to the one count and signed a Guilty Plea
6 Agreement. Pursuant to the negotiations, the State agreed to make no recommendation at
7 sentencing and agreed to not seek habitual criminal treatment. The State also agreed the
8 maximum sentence will not exceed eight years and did not oppose Petitioner's bail being
9 lowered to \$5,000.00 with mid-level electronic monitoring upon entry of plea.

10 On May 27, 2020, Petitioner and his counsel appeared at sentencing and informed this
11 Court there were issues with the Presentence Investigation Report (PSI) and requested a
12 continuance. On July 13, 2020, this Court noted it reviewed the Supplemental PSI that
13 corrected the previous errors, and adjudicated Petitioner guilty of Attempt Robbery. This Court
14 sentenced Petitioner to a minimum of thirty-six months and a maximum of ninety-six months
15 in the Nevada Department of Corrections (NDOC). Petitioner received one hundred ninety-
16 three days credit for time served. The Judgment of Conviction was filed on July 17, 2020.

17 On May 4, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus (Post-
18 Conviction) (hereinafter "Petition"). The State filed its Response on June 18, 2021. Following
19 a hearing on June 30, 2021, this Court now finds and concludes as follows:

20 **AUTHORITY**

21 Petitioner claims that he was forced to plead guilty because the District Attorney's
22 Office threatened him by using "materially untrue convictions" to make it appear he was
23 eligible for habitual criminal treatment. Petition, at 1-5. However, the claims raised in the
24 instant Petition are conclusory, bare, and naked assertions that should be summarily dismissed.
25 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

26 Dismissal of a petition is mandatory if "[t]he petitioner's conviction was upon a plea of
27 guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea
28 was involuntarily or unknowingly entered or that the plea was entered without effective

1 assistance of counsel.” NRS 34.810(1)(a). The Nevada Court of Appeals recently considered
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3 statute, and concluded that NRS 34.810 *only* permits claims of ineffective assistance of counsel
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5 App. 2020). “[A] petitioner must allege specific facts demonstrating both that counsel’s advice
6 (or failure to give advice) regarding the guilty plea was objectively unreasonable and that the
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8 conviction is the result of a guilty plea, to demonstrate prejudice, a petitioner “must show that
9 there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty
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12 Here, Petitioner claims that the District Attorney’s Office forced him to plead guilty by
13 using “false convictions that did force a plea.” Petition, at 2. Petitioner’s only support for this
14 assertion is his PSI, which was not prepared by the District Attorney’s Office and was not
15 prepared until after Petitioner entered his guilty plea. Petitioner also claims that the District
16 Attorney threatened to charge him as a habitual offender. Petition, at 2. However, the State
17 never filed a Notice of Intent to Seek Habitual Criminal Treatment. The only mention of
18 habitual criminal treatment is the Guilty Plea Agreement, which states, “Additionally, the State
19 agrees not to seek habitual criminal treatment.” Guilty Plea Agreement, January 24, 2020, at
20 1. Thus, it is unclear how Petitioner was forced by the District Attorney to enter a guilty plea
21 because he feared habitual criminal treatment, when the State agreed not to seek it.

22 Furthermore, the record demonstrates that counsel brought the errors in Petitioner’s PSI
23 to the court’s attention before his sentencing. Court Minutes, May 27, 2020. After counsel
24 brought these errors to the court’s attention, a new supplemental PSI was filed prior to
25 sentencing, correcting the number of prior felonies to 2. See Court Minutes, July 13, 2020;
26 Supplemental PSI, prepared July 1, 2020. Even with two prior felonies, Petitioner was eligible
27 to be sentenced under the small habitual statute. See NRS 207.010(1)(a). However, the errors
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1 were fixed to represent Petitioner's correct number of prior felonies, and Petitioner was not
2 forced into any negotiations by the State.

3 Petitioner also requests this Court allow him to withdraw his plea because his plea was
4 based on a "miscarriage of justice," while simultaneously asking this Court to modify his
5 sentence. Petition, at 5.¹ These two requests are mutually exclusive. If this Court allows him
6 to withdraw his plea, then this Court is unable to sentence him because the court can only
7 sentence a defendant that has either pled guilty or been found guilty at trial.

8 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only be
9 withdrawn to correct "manifest injustice." See Baal v. State, 106 Nev. 69, 72, 787 P.2d 391,
10 394 (1990). The law in Nevada establishes that a plea of guilty is presumptively valid, and the
11 burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State,
12 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 337, 535
13 P.2d 1295, 1295 (1975)). Manifest injustice does not exist if the defendant entered his plea
14 voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394.

15 To determine whether a guilty plea was voluntarily entered, the Court will review the
16 totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721
17 P.2d at 367. A proper plea canvass should reflect that:

18 [T]he defendant knowingly waived his privilege against self-
19 incrimination, the right to trial by jury, and the right to confront his
20 accusers; (2) the plea was voluntary, was not coerced, and was not the
21 result of a promise of leniency; (3) the defendant understood the
consequences of his plea and the range of punishments; and (4) the
defendant understood the nature of the charge, i.e., the elements of
the crime.

22 Wilson v. State, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing Higby v. Sheriff, 86 Nev.
23 774, 476 P.2d 950 (1970)). The presence and advice of counsel is a significant factor in
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26 ¹ Petitioner also claims cruel and unusual punishment, ineffective assistance of counsel, and violation of due process. Id.
27 He mentions these claims, but never addresses them again and fails to make any factual allegations regarding these
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1 determining the voluntariness of a plea of guilty. Patton v. Warden, 91 Nev. 1, 2, 530 P.2d
2 107, 107 (1975).

3 This standard requires the court accepting the plea to personally address the defendant
4 at the time he enters his plea in order to determine whether he understands the nature of the
5 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
6 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
7 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
8 formal setting, such as that occurring between an official sitting in judgment of an accused at
9 plea. Id. However, the Court need not conduct a ritualistic oral canvass. State v. Freese, 116
10 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
11 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
12 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
13 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
14 1463, 1470 (1970).

15 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
16 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
17 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
18 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
19 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
20 that a defendant lacked standing to challenge the validity of a plea agreement because he had
21 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
22 468, 477, 958 P.2d 91, 96 (1998).

23 Furthermore, the Nevada Supreme Court has explained:

24 [A] guilty plea represents a break in the chain of events which has
25 preceded it in the criminal process. When a criminal defendant has
26 solemnly admitted in open court that he is in fact guilty of the offense
27 with which he is charged, he may not thereafter raise independent
28 claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.

1 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
2 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
3 constitutional claims based on events occurring prior to the entry of the plea[], except those
4 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
5 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
6 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
7 the effectiveness of counsel.”).

8 Here, Petitioner’s claim that his plea was coerced is belied by the record. First,
9 Petitioner affirmed that he was entering his plea freely and voluntarily when he signed his
10 GPA, which stated:

11 VOLUNTARINESS OF PLEA

12 I have discussed the elements of all the original charge(s) against me
13 with my attorney and I understand the nature of the charge(s) against
me.

14 I understand that the State would have to prove each element of the
15 charge(s) against me at trial.

16 I have discussed with my attorney any possible defenses, defense
strategies and circumstances which might be in my favor.

17 All of the foregoing elements, consequences, rights, and waiver of
18 rights have been thoroughly explained to me by my attorney.

19 I believe that pleading guilty and accepting this plea bargain is in my
best interest, and that trial would be contrary to my best interest.

20 **I am signing this agreement voluntarily, after consultation with**
21 **my attorney, and I am not acting under duress or coercion or by**
22 **virtue of any promises of leniency except those set forth in this**
agreement.

23 I am not now under the influence of any intoxicating liquor, a
24 controlled substance or other drug which would in any manner impair
my ability to comprehend or understand this agreement or the
proceedings surrounding my entry of this plea.

25 My attorney has answered all my questions regarding this plea
26 agreement and its consequences to my satisfaction and I am satisfied
with the services provided by my attorney.

27 Guilty Plea Agreement, January 24, 2020, at 4-5 (emphasis added).

1 Therefore, based on Petitioner's Guilty Plea Agreement, his claim is belied by the
2 record, and he is not entitled to withdraw his plea. Petitioner has not shown withdrawal of his
3 plea is necessary to correct a manifest injustice—especially because Petitioner entered his plea
4 before his PSI was even prepared. As such, Petitioner is not entitled to withdraw his plea.

5 Petitioner is also not entitled to a modification of his sentence. Petition, at 5. In general,
6 a district court lacks jurisdiction to modify a sentence once the defendant has started serving
7 it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other
8 grounds by Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). However, a district court does
9 have inherent authority to correct, vacate or modify a sentence where the defendant can
10 demonstrate the sentence violates due process because it is based on a materially untrue
11 assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards
12 v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996); NRS 176.555; see also Passanisi, 108
13 Nev. at 322, 831 P.2d at 1373. Not every mistake or error during sentencing gives rise to a due
14 process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).
15 The Nevada Supreme Court has emphasized that a "motion to modify a sentence is limited in
16 scope to sentences based on mistaken assumptions about a defendant's criminal record which
17 work to the extreme detriment of the defendant." Edwards, 112 Nev. at 708, 918 P.2d at 325.

18 Here, Petitioner has failed to show that the Court sentenced him under a materially
19 untrue assumption or mistake of fact. See NRS 176.555; Edwards, 112 Nev. at 707, 918 P.2d
20 at 324; Passanisi, 108 Nev. at 322, 831 P.2d at 1373. Petitioner has not presented any argument
21 or evidence that his sentence is facially illegal. This request is not based on a materially untrue
22 assumption or mistake of fact that has worked to his extreme detriment to give the Court any
23 reason to modify his sentence because the error in his PSI was corrected prior to sentencing.
24 Accordingly, Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is DENIED.

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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 22 day of July, 2021.~~

Dated this 19th day of August, 2021

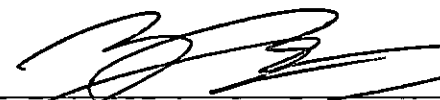

DISTRICT JUDGE

NH kj

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

1F9 6B5 64A0 EA1A
Jacqueline M. Bluth
District Court Judge

BY


KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730


Yu Meng #14741
for

CERTIFICATE OF SERVICE

I certify that on the 22nd day of July, 2021, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

CLIFFORD SMITH, BAC #1235854
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PO BOX 208
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BY


Secretary for the District Attorney's Office

KM/mah/L3

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4 CLARK COUNTY, NEVADA

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6 Clifford Smith, Plaintiff(s)

CASE NO: A-21-833992-W

7 vs.

DEPT. NO. Department 6

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NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CLIFFORD SMITH,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-20-346330-1

Dept No: XI

Amended

**AMENDED NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW AND
ORDER**

PLEASE TAKE NOTICE that on August 19, 2021, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

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STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton

Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 25 day of August 2021, I served a copy of this Notice of Entry on the following:

☒ By e-mail:

Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Clifford Smith # 1235854
P.O. Box 208
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Adam Gill, Esq.
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/s/ Amanda Hampton

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Heather S. Linn

CLERK OF THE COURT

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CLARK COUNTY, NEVADA**

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#2681698

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-vs-

C-20-346330-1

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DEPT NO: VI

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**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: JUNE 30, 2021
TIME OF HEARING: 11:00AM

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2 107, 107 (1975).

3 This standard requires the court accepting the plea to personally address the defendant
4 at the time he enters his plea in order to determine whether he understands the nature of the
5 charges to which he is pleading. Bryant, 102 Nev. at 271, 721 P.2d at 367. A court may not
6 rely simply on a written plea agreement without some verbal interaction with a defendant. Id.
7 Thus, a “colloquy” is constitutionally mandated and a “colloquy” is but a conversation in a
8 formal setting, such as that occurring between an official sitting in judgment of an accused at
9 plea. Id. However, the Court need not conduct a ritualistic oral canvass. State v. Freese, 116
10 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of guilty pleas “do not require
11 the articulation of talismanic phrases,” but only that the record demonstrates a defendant
12 entered his guilty plea understandingly and voluntarily. Heffley v. Warden, 89 Nev. 573, 575,
13 516 P.2d 1403, 1404 (1973); see also Brady v. United States, 397 U.S. 742, 747-48, 90 S. Ct.
14 1463, 1470 (1970).

15 Nevada precedent reflects “that where a guilty plea is not coerced and the defendant
16 [is] competently represented by counsel at the time it [is] entered, the subsequent conviction
17 is not open to collateral attack and any errors are superseded by the plea of guilty.” Powell v.
18 Sheriff, Clark County, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969) (citing Hall v. Warden, 83
19 Nev. 446, 434 P.2d 425 (1967)). In Woods v. State, the Nevada Supreme Court determined
20 that a defendant lacked standing to challenge the validity of a plea agreement because he had
21 “voluntarily entered into the plea agreement and accepted its attendant benefits.” 114 Nev.
22 468, 477, 958 P.2d 91, 96 (1998).

23 Furthermore, the Nevada Supreme Court has explained:

24 [A] guilty plea represents a break in the chain of events which has
25 preceded it in the criminal process. When a criminal defendant has
26 solemnly admitted in open court that he is in fact guilty of the offense
27 with which he is charged, he may not thereafter raise independent
28 claims relating to the deprivation of constitutional rights that occurred
prior to the entry of the guilty plea.

1 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollet v. Henderson, 411
2 U.S. 258, 267, 93 S. Ct. 1602, 1608 (1973)). Indeed, entry of a guilty plea “waive[s] all
3 constitutional claims based on events occurring prior to the entry of the plea[], except those
4 involving voluntariness of the plea[] [itself].” Lyons, 100 Nev. at 431, 683 P.2d 505; see also,
5 Kirksey, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only
6 claims that may be raised thereafter are those involving the voluntariness of the plea itself and
7 the effectiveness of counsel.”).

8 Here, Petitioner’s claim that his plea was coerced is belied by the record. First,
9 Petitioner affirmed that he was entering his plea freely and voluntarily when he signed his
10 GPA, which stated:

11 VOLUNTARINESS OF PLEA

12 I have discussed the elements of all the original charge(s) against me
13 with my attorney and I understand the nature of the charge(s) against
me.

14 I understand that the State would have to prove each element of the
15 charge(s) against me at trial.

16 I have discussed with my attorney any possible defenses, defense
strategies and circumstances which might be in my favor.

17 All of the foregoing elements, consequences, rights, and waiver of
18 rights have been thoroughly explained to me by my attorney.

19 I believe that pleading guilty and accepting this plea bargain is in my
best interest, and that trial would be contrary to my best interest.

20 **I am signing this agreement voluntarily, after consultation with**
21 **my attorney, and I am not acting under duress or coercion or by**
22 **virtue of any promises of leniency except those set forth in this**
agreement.

23 I am not now under the influence of any intoxicating liquor, a
24 controlled substance or other drug which would in any manner impair
my ability to comprehend or understand this agreement or the
proceedings surrounding my entry of this plea.

25 My attorney has answered all my questions regarding this plea
26 agreement and its consequences to my satisfaction and I am satisfied
with the services provided by my attorney.

27 Guilty Plea Agreement, January 24, 2020, at 4-5 (emphasis added).

1 Therefore, based on Petitioner's Guilty Plea Agreement, his claim is belied by the
2 record, and he is not entitled to withdraw his plea. Petitioner has not shown withdrawal of his
3 plea is necessary to correct a manifest injustice—especially because Petitioner entered his plea
4 before his PSI was even prepared. As such, Petitioner is not entitled to withdraw his plea.

5 Petitioner is also not entitled to a modification of his sentence. Petition, at 5. In general,
6 a district court lacks jurisdiction to modify a sentence once the defendant has started serving
7 it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other
8 grounds by Harris v. State, 130 Nev. 435, 329 P.3d 619 (2014). However, a district court does
9 have inherent authority to correct, vacate or modify a sentence where the defendant can
10 demonstrate the sentence violates due process because it is based on a materially untrue
11 assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards
12 v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996); NRS 176.555; see also Passanisi, 108
13 Nev. at 322, 831 P.2d at 1373. Not every mistake or error during sentencing gives rise to a due
14 process violation. State v. Dist. Ct. (Husney), 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984).
15 The Nevada Supreme Court has emphasized that a "motion to modify a sentence is limited in
16 scope to sentences based on mistaken assumptions about a defendant's criminal record which
17 work to the extreme detriment of the defendant." Edwards, 112 Nev. at 708, 918 P.2d at 325.

18 Here, Petitioner has failed to show that the Court sentenced him under a materially
19 untrue assumption or mistake of fact. See NRS 176.555; Edwards, 112 Nev. at 707, 918 P.2d
20 at 324; Passanisi, 108 Nev. at 322, 831 P.2d at 1373. Petitioner has not presented any argument
21 or evidence that his sentence is facially illegal. This request is not based on a materially untrue
22 assumption or mistake of fact that has worked to his extreme detriment to give the Court any
23 reason to modify his sentence because the error in his PSI was corrected prior to sentencing.
24 Accordingly, Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction) is DENIED.

25 //

26 //

27 //

28 //

ORDER

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

~~DATED this 22 day of July, 2021.~~

Dated this 19th day of August, 2021

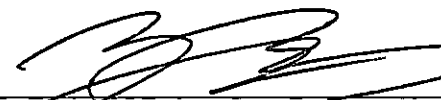

DISTRICT JUDGE

NH kj

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

1F9 6B5 64A0 EA1A
Jacqueline M. Bluth
District Court Judge

BY


KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #13730


Yu Meng #14741
for

CERTIFICATE OF SERVICE

I certify that on the 22nd day of July, 2021, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

CLIFFORD SMITH, BAC #1235854
THREE LAKES VALLEY C.C.
PO BOX 208
INDIAN SPRINGS, NV 89070

BY


Secretary for the District Attorney's Office

KM/mah/L3

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Clifford Smith, Plaintiff(s)

CASE NO: A-21-833992-W

7 vs.

DEPT. NO. Department 6

8 State of Nevada, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's
12 electronic filing system, but there were no registered users on the case. The filer has been
13 notified to serve all parties by traditional means.
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 24, 2020

C-20-346330-1 State of Nevada
 vs
 Clifford Smith

January 24, 2020 10:00 AM Initial Arraignment

HEARD BY: Wittenberger, Shannon **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kathy Thomas
 Carolyn Jackson

RECORDER: Sharon Nichols

REPORTER:

PARTIES

PRESENT: Pieper, Danielle K. Attorney
 Smith, Clifford Defendant

JOURNAL ENTRIES

- Deft. SMITH present, in custody. Deputy District Attorney Brianna Stutz (15340) present. Court stated the negotiations. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. SMITH ARRAIGNED AND PLED GUILTY TO ATTEMPT ROBBERY (F). Court ACCEPTED plea, and ORDERED, matter referred to the Division of Parole and Probation (P&P) and set for sentencing. Pursuant to negotiations, COURT FURTHER ORDERED, Release with \$5,000.00 BAIL and MID-LEVEL ELECTRONIC MONITORING and DIRECTED Deft. to report to P&P within 24 hours of release, excluding weekends and holidays.

BOND/MID-LEVEL EM

05/18/2020 9:30 AM SENTENCING (DEPT. 6)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 18, 2020

C-20-346330-1 State of Nevada
 vs
 Clifford Smith

May 18, 2020

10:15 AM

Sentencing

HEARD BY: Bluth, Jacqueline M.

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:

Smith, Clifford

Defendant

State of Nevada

Plaintiff

Turner, Robert B.

Attorney

JOURNAL ENTRIES

- Present via video on behalf of Defendant, Attorney Adam Gill. Mr. Gill requested a continuance for Defendant's review of the Presentence Investigation Report (PSI) which was mailed and is not believed to have yet been received. Defendant acknowledged he's not received the PSI. Colloquy regarding negotiations. COURT ORDERED, matter CONTINUED.

CUSTODY

5-27-20 10:15 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 27, 2020

C-20-346330-1 State of Nevada
 vs
 Clifford Smith

May 27, 2020 10:15 AM Sentencing

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT: State of Nevada Plaintiff
 Turner, Robert B. Attorney

JOURNAL ENTRIES

- Present via video, Defendant Clifford Smith with Attorney Adam Gill. Mr. Gill advised he went through the Presentence Investigation Report (PSI), there's issues that rise to Stockmeyer, Defendant's Ohio record is incorrect, they're not comfortable going forward with the PSI the way it is and requested a continuance. COURT ORDERED, proceedings CONTINUED for status check regarding the PSI.

CUSTODY

6-3-20 10:15 AM STATUS CHECK: PSI...SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 03, 2020

C-20-346330-1 State of Nevada
 vs
 Clifford Smith

June 03, 2020

10:15 AM

All Pending Motions

HEARD BY: Bluth, Jacqueline M.

COURTROOM: RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER: De'Awna Takas

REPORTER:

PARTIES

PRESENT:

State of Nevada
Turner, Robert B.

Plaintiff
Attorney

JOURNAL ENTRIES

- STATUS CHECK: PRESENTENCE INVESTIGATION REPORT(PSI)...SENTENCING

Present via video on behalf of Defendant, Attorney Adam Gill. The Officer advised the Defendant refused. Argument by Mr. Gill in support of request for a new Presentence Investigation Report. (PSI) . Mr. Turner requested Mr. Gill reach out to Parole and Probation as to what's specifically being challenged. COURT ORDERED, sentencing CONTINUED.

CUSTODY

7-13-20 10:15 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 13, 2020

C-20-346330-1 State of Nevada
 vs
 Clifford Smith

July 13, 2020

10:15 AM

Sentencing

HEARD BY: Bluth, Jacqueline M.

COURTROOM: RJC Courtroom 10C

COURT CLERK: Jill Chambers

RECORDER: Gail Reiger

REPORTER:

PARTIES

PRESENT:

Clowers, Shanon
Gill, Adam
Smith, Clifford
State of Nevada

Attorney
Attorney
Defendant
Plaintiff

JOURNAL ENTRIES

- Court noted the new Presentence Investigation report was reviewed.

Argument by counsel. Statement by the Deft.

DEFT SMITH ADJUDGED GUILTY of ATTEMPT ROBBERY (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, the \$150.00 DNA Analysis fee including testing to determine genetic markers is WAIVED, the \$3.00 DNA Collection and a \$250.00 Indigent Defense Civil Assessment fee, Deft. SENTENCED to a MINIMUM of THIRTY-SIX (36) MONTHS and a MAXIMUM of NINETY-SIX (96) MONTHS in the Nevada Department of Corrections (NDC), with ONE HUNDRED NINETY-THREE (193) DAYS credit for time served.

BOND, if any, EXONERATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 24, 2021

C-20-346330-1 State of Nevada
 vs
 Clifford Smith

March 24, 2021 11:00 AM Motion

HEARD BY: Bonaventure, Joseph T. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Grecia Snow

RECORDER: Toshiana Pierson

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- There being no opposition, COURT ORDERED, motion GRANTED.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Adam Gill Esq., at
adam@aisengill.com. 3/25/21 gs

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF
ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; AMENDED NOTICE
OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT
MINUTES

STATE OF NEVADA,

Plaintiff(s),

vs.

CLIFFORD SMITH,

Defendant(s).

Case No: C-20-346330-1

Dept No: XVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 10 day of September 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk