

Case No. CV-HC-18-194

Dept. No. 3

FILED

2021 SEP 24 PM 2:44

ELKO CO DISTRICT COURT

Electronically Filed

CLERK OF SUPREME COURT  
Oct 06 2021 11:17 a.m.

Elizabeth A. Brown

Clerk of Supreme Court

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

\* \* \* \* \*

THE STATE OF NEVADA, )

Plaintiff, )

-vs- )

DANIEL CHARLES COOKE, )

Defendant. )

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiff, DANIEL CHARLES COOKE,

in pro se, hereby appeals to the Nevada Supreme Court the

ORDER DENYING POST-CONVICTION RELIEF,

as filed/entered on the 26th day of AUGUST, 2021,

(complete if applicable) and the \_\_\_\_\_

\_\_\_\_\_, as filed/entered on the \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_, in the above-entitled Court.

Dated this 20th day of SEPTEMBER, 2021.

Daniel Cooke  
DANIEL CHARLES COOKE # 1178337  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Plaintiff In Pro Se

LCC LL FORM 26.062

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 20<sup>th</sup> day of SEPTEMBER, 2021, by placing same in the U.S. Mail via prison law library staff:

ELKO COUNTY DISTRICT ATTORNEYS' OFFICE  
540 COURT STREET  
ELKO, NEVADA 89801, AND;

SUPREME COURT OF NEVADA  
OFFICE OF THE CLERK  
201 S. CARSON STREET  
CARSON CITY, NEVADA 89701

Daniel Cooke  
DANIEL CHARLES COOKE #1178332  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

Plaintiff In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. CV-HC-18-194 does not contain the social security number of any person.

Dated this 20<sup>th</sup> day of SEPTEMBER, 2021.

Daniel Cooke  
DANIEL CHARLES COOKE

Plaintiff In Pro Se

CV-HC-18-194  
DEPARTMENT 3

FILED

2021 SEP 30 PM 2:12

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY Am

IN THE FOURTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

DANIEL CHARLES COOKE,  
APPELLANT,

vs.

CHARLES DANIELS, Director,  
Nevada Department of Corrections  
RESPONDENT.

---

**CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

DANIEL CHARLES COOKE

2. Identify the judge issuing the decision, judgment or order  
appealed from:

Honorable Judge MASON SIMONS

3. Identify each appellant and the name and address of counsel for each  
appellant:

DANIEL CHARLES COOKE/ NO COUNSEL  
LOVELOCK CORRECTIONAL CENTER  
1200 PRISON ROAD  
LOVELOCK, NV 89419

4. Identify each respondent and the name and address of appellant counsel, if known for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

TYLER J. INGRAM, ESQ.  
ELKO COUNTY DISTRICT ATTORNEY  
540 COURT ST STE 201  
ELKO, NV 89801

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

APPELLANT WAS REPRESENTED BY LOCKIE & MACFARLAN, LTD

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant has filed appeal on his own and is not represented.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

NO

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

4/9/2018

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Appellant has filed an appeal regarding: ORDER DENYING POST-CONVICTION RELIEF

**11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:**

N/A

**12. Indicate whether this appeal involves child custody or visitation:**

NO

**13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

N/A

**Dated this 30<sup>th</sup> day of September, 2021.**

**KRISTINE JAKEMAN, Elko County Clerk**

By: 

**ANNETTE MARSHALL, Deputy Clerk**

## Case Summary

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### ECDC-CVHC-18-194 - COOKE, DANIEL C VS. BAKER - WARDEN, RENEE

Court: ECDC-CVHC-18-194

Agency: Elko County Clerk's Office

Type: Civil

CaseID: 18-764

Status: Closed

Received Date: 4/9/2018

Status Date: 8/17/2021

Age: 1270 days    Active Age: 1270 days

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#### Involvements

PORTER, NANCY Judge, Inactive -

SIMONS, MASON Judge -

COOKE, DANIEL Petitioner -

BAKER - WARDEN, RENEE Respondent -

IN PROPER PERSON, Defense Attorney -

THOMPSON, CHAD Prosecution Attorney -

HILL, KRISTON Judge, Inactive -

#### Related Name(s)

RENEE BAKER - WARDEN

ELY STATE PRISON is On Behalf Of

DANIEL CHARLES COOKE

is Also Known As of DANIEL CHARLES COOK

#### Name Attributes

For: RENEE BAKER - WARDEN

Name Record Source - Name Record Converted  
from JALAN - Court

For: DANIEL CHARLES COOKE

Name Record Source - Name Record Converted  
from JALAN - Court

#### Case History

Date	Event Type Desc	Status
	Closed - Case Status	
	Case Status Date Change	
	Closed - Case Status	
	Case Status Change	
4/9/2018	Proceedings (Converted) - Event	
	Event Type Code: F17	
	Event Type Description: FILE OPENED - DC	

## Case Summary

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4/9/2018      Proceedings (Converted) - Event  
                 Event Type Code: J25  
                 Event Type Description: JUDGE ASSIGNED  
                 Note: RELATED CASE: CR-FP-16-7293

4/9/2018      Proceedings (Converted) - Event  
                 Event Type Code: P33  
                 Event Type Description: PET - WRIT OF HC  
                 Note: COPY TO MR. COOKE

4/9/2018      Proceedings (Converted) - Event  
                 Event Type Code: A81  
                 Event Type Description: APPL IN FORMA PAUPRS  
                 Note: APPLICATION TO PROCEED IN FORMA PAUPERIS

4/9/2018      Proceedings (Converted) - Event  
                 Event Type Code: C06  
                 Event Type Description: CERTIFICATE OF  
                 Note: INMATE'S INSTITUTIONAL ACCOUNT

4/9/2018      Proceedings (Converted) - Event  
                 Event Type Code: M10  
                 Event Type Description: MOTION  
                 Note: FOR APPOINTMENT OF COUNSEL

4/9/2018      Proceedings (Converted) - Event  
                 Event Type Code: C35  
                 Event Type Description: COPIES PREPARED FOR  
                 Note: THE WHOLE FILE TO THE DISTRICT ATTORNEY'S OFFICE AND ALSO TO MR. COOKE

4/9/2018      Proceedings (Converted) - Event  
                 Event Type Code: F15  
                 Event Type Description: FILE CHECKED OUT BY:  
                 Note: DC I for review/signature

6/1/2018      Proceedings (Converted) - Event  
                 Event Type Code: F16  
                 Event Type Description: FILE CHECKED IN BY:

6/1/2018      Proceedings (Converted) - Event  
                 Event Type Code: L01  
                 Event Type Description: LETTER FROM  
                 Note: DANIEL CHARLES COOKE

6/1/2018      Proceedings (Converted) - Event

## Case Summary

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Event Type Code: F15  
Event Type Description: FILE CHECKED OUT BY:  
Note: DC I for review/signature

6/7/2018      Proceedings (Converted) - Event  
                 Event Type Code: M37  
                 Event Type Description: MOT TO  
                 Note: TAKE JUDICIAL NOTICE OF PRINT MEDIA ARTICLE AND ACLU LAWSUIT COPY RETURNED  
                 TO MR. COOKE FILED PER DIRECTION OF DC 1 FILE IS CHECKED OUT PLEADING PLACED IN DC 1  
                 PICKUP

6/28/2018      ORDER APPOINTING ATTORNEY -  
                 Document

6/28/2018      Proceedings (Converted) - Event  
                 Event Type Code: F16  
                 Event Type Description: FILE CHECKED IN BY:

6/28/2018      Proceedings (Converted) - Event  
                 Event Type Code: Q24  
                 Event Type Description: ORD APPOINTING ATTY

7/3/2018      Proceedings (Converted) - Event  
                 Event Type Code: S65  
                 Event Type Description: SUBMISSION  
                 Note: SUBMISSION BY THE STATE OF MOTION TO HAVE ALL HEBERT COARDS RECORDS, NOTES,  
                 AND ALL DOCUMENTS SENT TO HIM BY ELKO DA, ELKO COURT, AND OR ELKO CO PUBLIC  
                 DEFENDERS PRESERVED, GATHERED, AND SENT TO PETITIONER DANIEL CHARLES COOKE

8/13/2018      Proceedings (Converted) - Event  
                 Event Type Code: C35  
                 Event Type Description: COPIES PREPARED FOR  
                 Note: MACFARLAN ESQ OF THE PETITION

5/29/2019      Proceedings (Converted) - Event  
                 Event Type Code: F15  
                 Event Type Description: FILE CHECKED OUT BY:  
                 Note: DC I for review/signature

2/7/2020      Open - Case Status  
                 Case status change.

10/8/2020      REQUEST TO LEAVE TO FILE PETITIONER'S  
                 PRO SE MOTION FOR BAIL PENDING  
                 REVIEW - Document  
                 COPY MAILED TO DANIEL COOKE #1178337  
                 (PLACED IN DC1'S P/U BOX @ 10:01



## Case Summary

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11/24/2020 OPPOSITION TO MOTION FOR BAIL  
PENDING REVIEW OF PETITION FOR WRIT  
OF HABEAS CORPUS - Document  
FILE CHK'D OUT, PLACED IN DC1 BOX @ 10:55 AM

12/1/2020 RETURN TO PETITION FOR WRIT OF  
HABEAS CORPUS - Document  
PLACED IN DC1 BOX

1/29/2021 ORDER FOR RECUSAL AND ORDER FOR  
ASSIGNMENT - Document  
TO DPET 3

2/8/2021 REQUEST FOR COPIES - Document  
REQUEST FOR COPIES OF DOCKET SHEET & 12-PAGE AMENDED MEMO OF PLEA AGREEMENT  
(FILED 2/10/17).  
FILE CHECKED OUT; PLACED IN DC3 PICKUP BOX

2/8/2021 NOTE ADDED TO FILE - Case Notes  
CLERK EMAILED COPY OF CASE SUMMARY AND AMENDED MEMORANDUM OF PLEA AGREEMENT  
TO DANIEL COOKE IN RESPONSE TO RECORD REQUEST FILED IN CV-HC-18-194

2/22/2021 INMATE MAIL RECEIVED - REQUEST -  
Document  
SENT TO DC 3 WITH NOTE ASKING IF OK TO FILE.

2/22/2021 INMATE MAIL RECEIVED - Document  
SENT TO DC 3 WITH NOTE ASKING IF OK TO FILE.

3/15/2021 REQUEST FOR CERTIFIED COPY OF THIRD  
AMENDED CRIMINAL INFORMATION -  
Document  
MADE A COPY OF 3RD AMENDED CRIMINAL INFO FROM CASE CR-FP-16-7293 AND MAILED IT TO  
DANIEL COOKE INMATE #1178337 LOVELOCK CORRECTIONAL CENTER 1200 PRISON RD.  
LOVELOCK, NV 89419  
FILE CHECKED OUT PLACED IN DC3 P/U BOX

3/15/2021 REQUEST FOR CERTIFIED COPY OF  
ORIGINAL MEMORANDUM OF PLEA  
AGREEMENT - Document  
MADE A COPY OF ORIGINAL MOPA FROM CASE CR-FP-16-7293 AND MAILED IT TO DANIEL COOKE  
INMATE #1178337 LOVELOCK CORRECTIONAL CENTER 1200 PRISON RD. LOVELOCK, NV 89419  
FILE CHECKED OUT PLACED IN DC3 P/U BOX

3/19/2021 REQUEST FOR DOCKET - Document  
REQUESTED MINUTES BUT DID NOT SPECIFY. SENT A NOTE ASKING FOR MORE INFORMATION.  
ALSO NOTED TWO EJC CASE NO 15TR01020 & 16-7293. MAILED BACK A FILE STAMPED COPY OF  
REQUEST AND DOCKET TO LOVELOCK CORRECTIONAL CENTER 1200 PRISON RD LOVELOCK, NV  
89419

8/17/2021 ORDER DENYING POST-CONVICTION RELIEF  
- Document

8/25/2021 DC Habeas Corpus Notice - Document

## Case Summary

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8/26/2021	NOTICE OF ENTRY OF DECISION OR ORDER - Document COPIES IN DA AND LOCKIE BOXES, MAILED TO AG, WARDEN AND PETITIONER
8/30/2021	INMATE MAIL - Document PLACED IN DC3'S P/U BOX
9/2/2021	LETTER FROM DANILE COOKE - Document SENT DANIEL COOKE A COPY OF THE JOC AND MINUTES
9/3/2021	NOTICE OF WITHDRAWAL OF ATTORNEY- Document
9/24/2021	NOTICE OF APPEAL - Document
9/30/2021	CASE APPEAL STATEMENT- Document
9/30/2021	CLERK'S CERTIFICATION - Document

1 Case No. CV-HC-18-194

2 Dept. No. 1

FILED

2018 JUN 28 PM 12:12

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY AP

3  
4  
5  
6 IN THE FOURTH JUDICIAL DISTRICT COURT  
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO  
8

9 DANIEL CHARLES COOKE,

10 Petitioner,

ORDER APPOINTING ATTORNEY

11 V.

12 RENEE BAKER, Warden,

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

15 Above-named Petitioner has filed a Petition for Writ of Habeas Corpus. It appears to this Court that  
16 said Petitioner is both indigent and presently incarcerated.

17 THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

18 That the firm of Lockie & Macfarlan, Ltd., is hereby appointed to represent said Petitioner in all  
19 matters related to the Petition for Writ of Habeas Corpus.

20 IT IS FURTHER ORDERED that the firm of Lockie & Macfarlan, Ltd., shall be responsible for  
21 obtaining a copy of the files related to this matter through the Elko County Clerk's office (775-753-4600).

22 SO ORDERED this 28<sup>th</sup> day of June, 2018.

23 Nancy Porter  
24 NANCY PORTER  
25 DISTRICT JUDGE - DEPT. 1  
26

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 28 day of June, 2018, I personally hand delivered a file stamped copy of the foregoing **ORDER APPOINTING ATTORNEY** to:

Tyler J. Ingram, Esq.  
Elko County District Attorney  
540 Court Street, 2<sup>nd</sup> Floor  
Elko, NV 89801  
{1 File Stamped Copy}  
[Box in Clerk's Office]

Lockie & Macfarlan, Ltd.  
919 Idaho Street  
Elko, NV 89801



CERTIFICATE OF MAILING

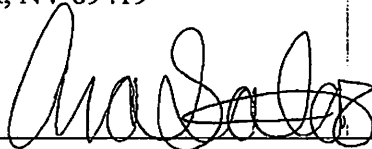
Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 28 day of June, 2018, I deposited for mailing in the U.S. mail at Elko, Nevada, postage prepaid, a file stamped copy of the foregoing **ORDER APPOINTING ATTORNEY** to:

Daniel Charles Cooke - Inmate# 1178337  
1200 Prison Road Correctional Center  
Lovelock, NV 89419

Adam Paul Laxalt, Esq.  
Nevada Attorney General  
100 North Carson St.  
Carson City, NV 89701

James Dzurenda, Director  
Nevada Department of Corrections  
5500 Snyder Avenue, Bldg. 17  
P.O. Box 7011  
Carson City, NV 89702

Lovelock Correctional Center  
Attn: Renee Baker, Warden  
1200 Prison Road  
Lovelock, NV 89419



Case No. CV-HC-18-0194

Dept. No. 3

FILED

2021 AUG 16 AM 10:04

FOURTH JUDICIAL DISTRICT COURT

COUNTY OF ELKO, STATE OF NEVADA

ELKO CO DISTRICT COURT

DEPUTY

DANIEL CHARLES COOKE,

Petitioner,

**ORDER DENYING  
POST-CONVICTION RELIEF**

V.

CHARLES DANIELS, Director, Nevada  
Department of Corrections

Respondent.

Defendant, Daniel Cooke, filed a Post-Conviction Petition for Writ of Habeas Corpus, in proper person, on April 9, 2018. The law office of Lockie & Macfarlan was appointed by the Court to represent the Petitioner on June 28, 2018. On October 8, 2018 the Petitioner, without the assistance of his court-appointed counsel, filed a Request for Leave to File Petitioner's Pro Se Motion for Bail Pending Review of Petition for Writ of Habeas Corpus (Post-Conviction) per NRS 178.4871. On November 24, 2020 the State of Nevada filed an Opposition to Motion for Bail Pending Review of Petition for Writ of Habeas Corpus (Post-Conviction).

4JDCR 10 provides in relevant part that "the parties shall presume the presiding judge is unaware of a motion's existence absent the filing and service of a 'Request for Review.' A party may file a Request for Review when a motion is at issue. When a party has filed a Request for Review, the court clerk shall bring the file containing the motion for which review has been requested to the presiding judge's chambers." A Request for Review was never filed on the Petitioner's pending motion.

1 It should be noted that this matter was originally assigned to the Fourth Judicial District Court,  
2 Dept. 1 (District Judge Nancy Porter). In November 2020, Kriston Hill was elected to said department to  
3 replace Judge Porter, and was sworn into office in January 2021. This matter was subsequently  
4 reassigned to Department 3, following a recusal that was entered by Judge Hill on January 29, 2021.

5 By reason of a guilty plea entered on February 16, 2017, Petitioner stands convicted of attempted  
6 sexual assault of a child who is less than 16 years of age. He is presently incarcerated under an 8 to 20  
7 year sentence. Petitioner now requests post-conviction relief from said sentence.

8 Petitioner raises four claims in his Petition for Writ of Habeas Corpus (Post-Conviction):

9 1) That his underlying sentence was illegal;

10 2) That the Petitioner was the subject of an illegal search and improper interrogation by  
11 detectives;

12 3) That his trial counsel was ineffective; and

13 4) That he was deprived of due process and subject to cruel and unusual punishment.  
14

15 The Court has elected to dispose of this petition without conducting an evidentiary hearing. The  
16 Nevada Supreme Court has held that "a post-conviction habeas petitioner is entitled to an evidentiary  
17 hearing 'only if he supports his claims with specific factual allegations that if true would entitle him to  
18 relief.'" *Means v. State*, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004); citing *Thomas v. State*, 120 Nev.  
19 37, 44, 83 P.3d 818, 823 (2004).  
20

21 In the present case, the Court finds the petitioner's claims to be lacking in merit, and to be belied  
22 by the record, and as such, has elected to dispose of these claims without an evidentiary hearing.

#### 23 CLAIM 1 - ILLEGAL SENTENCE

24 Petitioner contends that his trial counsel used a plea agreement that he never agreed upon, that  
25 the pre-sentence investigation report and psycho-sexual evaluation both contain statements from the  
26 Petitioner that he "is hoping for probation," and that trial counsel put forward a plea agreement that  
27 stipulated to an eight year minimum sentence, that he did not agree to.  
28

1 Petitioner's claim that trial counsel used a plea agreement that he never agreed upon is belied by  
2 the record. The Defendant signed the plea agreement<sup>1</sup>, and was thoroughly canvassed at the time his plea  
3 was entered about his agreement with the terms contained in that plea agreement, and his understanding  
4 of said plea agreement and acquiescence to the terms thereof.<sup>2</sup>

5 Petitioner was also explicitly advised that he was not eligible for probation during the change of  
6 plea hearing on February 16, 2017, and acknowledged that he understood.<sup>3</sup>

7 Contrary to the Petitioner's contentions, the plea agreement informed the Defendant that the  
8 charge carried a maximum sentence of 20 years in prison, and that the parties were stipulating to 20  
9 years as the maximum sentence, but the parties were free to argue as to what the minimum sentence  
10 would be.<sup>4</sup> There was no stipulation as to an 8 year minimum sentence.

11 The fact that the Petitioner was "hoping for probation" is of no consequence. The record clearly  
12 reflects the Petitioner was clearly advised he was not eligible for probation, that the maximum sentence  
13 would be imposed was 20 years, and the minimum sentence was subject to argument at the sentencing  
14 hearing.

## 15 CLAIM 2 - ILLEGAL SEARCH AND IMPROPER INTERROGATION

16  
17 The Court need not consider the Petitioner's contentions in Claim 2 as they relate to events that  
18 occurred prior to the guilty plea. In *Tollett v. Henderson*, 411 U.S. 258, 267 (1973), the U.S. Supreme  
19 Court indicated that "a guilty plea represents a break in the chain of events which has preceded it in the  
20 criminal process." "When a defendant has solemnly admitted in open court that he is in fact guilty of the  
21 offense with which he is charged, he may not thereafter raise independent claims relating to the  
22 deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Id.*

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23 <sup>1</sup> Exhibit 2, Page 11, Line 11. All exhibits referenced herein are the exhibits attached to the Opposition to Motion for  
24 Bail Pending Review of Petition for Writ of Habeas Corpus (Post-Conviction) filed by the State on November 24, 2020.

25 <sup>2</sup> See Exhibit 1.

26 <sup>3</sup> See Exhibit 1, Page 8, Lines 14-16.

27 <sup>4</sup> See Exhibit 2, Page 2, Lines 2-4.

1  
2 CLAIM 3 - INEFFECTIVE ASSISTANCE OF COUNSEL

3  
4 Petitioner claims that trial counsel “failed to pull back that guilty plea,” that the sentence was one  
5 that he “hadn’t agreed to” and that trial counsel had coerced him into taking the plea and had failed to  
6 file a direct appeal as directed by Petitioner.

7 Claims of ineffective assistance of counsel are governed by *Strickland v. Washington*, 466 U.S.  
8 668 (1984). In order to demonstrate ineffective assistance, 1) counsel’s performance must be deficient;  
9 and 2) the deficient performance must have prejudiced the defense so as to deprive the defendant of a  
10 fair trial. *Id.* at 687. In addition, the Defendant must show that counsel’s representation fell below an  
11 objective standard of reasonableness. *Id.* at 688. The key determination is whether there is a reasonable  
12 probability that, but for counsel’s unprofessional errors, the result would have been different. *Id.* at 694.

13 The Petitioner’s agreement with the State of Nevada was encapsulated in a Memorandum of Plea  
14 Agreement that was filed with the Court on February 10, 2017. Said agreement clearly states the possible  
15 sentencing range, that the parties were stipulating to a maximum of 20 years in prison, and that the  
16 parties were free to argue as to the minimum length of incarceration. *Exhibit 2, page 2, lines 1-4 and 10-*  
17 *12.* The plea agreement also clearly states that the Petitioner was not eligible for probation. *Exhibit 2,*  
18 *page 2, lines 22-23.* Petitioner further acknowledges in the Memorandum of Plea Agreement that he is  
19 not acting under duress or coercion in executing the plea agreement. *Exhibit 2, page 10, lines 27-28.* The  
20 Petitioner in his executed Memorandum of Plea Agreement waived his right to appeal “unless the appeal  
21 was based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of  
22 the proceedings.” *Exhibit 2, page 10, lines 5-7.*

23 The Petitioner was also thoroughly advised of the possible penalties at the time of his change of  
24 plea. *Exhibit 1, page 6, lines 13-14.* He was advised that the judge would decide his ultimate sentence.  
25 *Exhibit 1, page 8, lines 5-7.* He acknowledged that he was entering into the plea agreement freely and  
26 voluntarily and that he had not been threatened in order to enter into the plea agreement. *Exhibit 1, page*  
27 *10, lines 4-6.*

28 The ultimate sentence given by the trial judge fell within the guidelines articulated in the plea



1 agreement, a sentence which was in her discretion to give. The Petitioner contends that the sentence was  
2 not one that he had agreed to. The parties were free to argue as to what minimum sentence should be  
3 imposed, the actual sentencing range had not been stipulated to by the parties. As such, there was no  
4 requirement that the Petitioner agree to the sentence, because the parties were free to argue as to an  
5 appropriate minimum sentence at the sentencing hearing.

6 The Petitioner fails to meet the Strickland test to show ineffective assistance of counsel. First, he  
7 has failed to show that his counsel's performance was deficient. In drawing this conclusion, the Court  
8 relies on Petitioner's own statement at his change of plea hearing:

9 *Court: Are you satisfied with your attorney and confident in his ability to represent you?*

10 *Defendant: Yes.*

11 *See Exhibit 1, page 7, lines 6-9.*

12 The Court also inquired whether or not the Defendant had discussed the content of the plea  
13 agreement with his counsel, and if his counsel had discussed possible defenses with  
14 him. The Defendant acknowledged in the affirmative.

15 The Petitioner contends that his trial counsel failed to file a direct appeal as directed. The  
16 Petitioner fails to acknowledge that he waived his right to appeal "unless the appeal was based upon  
17 reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings."  
18 *Exhibit 2, page 10, lines 5-7.* Such grounds have not been articulated, and as such, it was not error for  
19 his counsel not to do so.

20 Secondly, Petitioner must show that counsel's performance must have prejudiced the Defendant  
21 so as to deprive the Defendant of a fair trial. No such showing has been made. There is no suggestion  
22 within the Petition that the Petitioner was somehow deprived of a fair proceeding, rather the Petitioner  
23 makes clear that he has a case of buyer's remorse - specifically, that he is unhappy with the ultimate  
24 sentence, which he clearly understood was in the exclusive discretion of the trial judge.

25 Lastly, Petitioner must show that there is a reasonable probability that, but for counsel's  
26 unprofessional errors, the result would have been different. This prong also falls flat. Even if counsel had  
27 filed a direct appeal, as Petitioner claims that he directed counsel to do, it is unclear what  
28 "constitutional" or "jurisdictional" grounds he would have been relying on to do so, that would not

1 have been barred by the terms of the plea agreement.

2 CLAIM 4 - DUE PROCESS / CRUEL AND UNUSUAL PUNISHMENT

3 In the body of said claim, the Petitioner restates the prior claims that have been noted above.

4 These claims are belied by the record and are without merit.

5 GOOD CAUSE APPEARING,

6 IT IS HEREBY ORDERED that Petition for Writ of Habeas Corpus (Post-Conviction) is  
7 DENIED.

8 IT IS HEREBY ORDERED that as the Petition has been denied, the Motion for Bail Pending  
9 Review of Petition for Writ of Habeas Corpus (Post-Conviction) is now moot, and as such, is DENIED.

10 DATED this 13 day of August, 2021.

11  
12   
13 Hon. Mason E. Simons  
14 District Judge, Department 3  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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26  
27  
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 3, and that on this 16 day of August, 2021, served by hand delivery a true copy of the foregoing document addressed to:

Tyler J. Ingram, Esq.  
Elko County District Attorney  
[Box in Clerk's Office]

David Lockie, Esq.  
Lockie & Macfarlan  
[Box in Clerk's Office]

Aaron Ford, Attorney General  
Attorney General's Office  
100 N. Carson Street  
Carson City, NV 89701  
[Via Regular Mail]

Daniel Charles Cooke, Inmate #1178337  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419  
[Via Regular Mail]

Tim Garrett, Warden  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419  
[Via Regular Mail]

  
Signature of Court Employee

Case No. CV-HC-18-194

Dept. No. 3

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

FILED  
2021 SEP 30 PM 2:12  
ELKO CO DISTRICT COURT  
CLERK \_\_\_\_\_ DEPUTY *am*

\_\_\_\_\_  
DANIEL CHARLES COOKE,  
Appellant,

vs.

CHARLES DANIELS, DIRECTOR,  
Nevada Department of Corrections,  
Respondent,  
\_\_\_\_\_ /

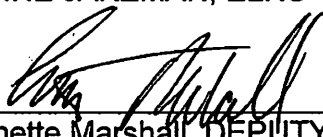
**CLERK'S CERTIFICATION**

I, KRISTINE JAKEMAN, the duly elected, acting and qualified County Clerk and Ex-Officio Clerk of the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, do hereby certify that the annexed are true, full and correct copies of certain documents in Case No. CV-HC-18-194, Dept. 3, DANIEL CHARLES COOKE, Appellant, vs. CHARLES DANIELS, DIRECTOR, Nevada Department of Corrections, Respondent, as appears on file and of record in my office.

WITNESS My Hand and Seal of said Court on September 30, 2021.

KRISTINE JAKEMAN, ELKO COUNTY CLERK

By

  
\_\_\_\_\_  
Annette Marshall, DEPUTY CLERK

### CERTIFICATE OF SERVICE

I hereby certify that I caused to be sent electronically and/or mailed a certified copy of the annexed documents in Case No. CV-HC-18-194, Dept. 3, DANIEL CHARLES COOKE, Appellant, vs. CHARLES DANIELS, DIRECTOR, Nevada Department of Corrections, Respondent, as appears on file and of record in this Court, to the following:

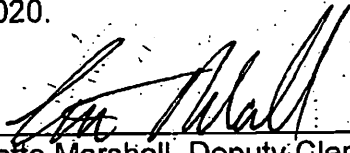
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Tim Garrett, Warden  
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DATED this 30<sup>th</sup>, day of September, 2020.

  
\_\_\_\_\_  
Annette Marshall, Deputy Clerk