

1 THE COURT: This is Case No. CR-FP-16-7293,
2 the State of Nevada versus Daniel Charles Cooke. The
3 Defendant is present in court represented by Mr. Buchler. Electronically Filed
Mar 21 2022 09:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
4 Mr. Buchler is here on behalf of the State. An Amended
5 Criminal Information was filed in this matter on
6 October 27th 2016, and this is the time for an
7 arraignment on those charges.

8 Are the parties ready to proceed?

9 MR. BUCHLER: The State is, Your Honor.

10 MR. GREEN: Yes, Your Honor.

11 THE COURT: Let the record reflect -- let's
12 back up here. Mr. Cooke, please stand, face the Clerk,
13 and raise your right hand.

14 THE CLERK: Do you solemnly swear the
15 testimony you're about to give in this matter is the
16 truth, the whole truth, and nothing but the truth, so
17 help you God?

18 THE DEFENDANT: I do.

19 THE COURT: Let the record reflect that the
20 Bailiff is handing Defense counsel a certified copy of
21 the Amended Criminal Information.

22 Mr. Cooke, about halfway down that first page
23 it says Daniel Charles Cooke. Is that your full name,
24 and is that spelled correctly?

25 THE DEFENDANT: Yes.

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1 THE COURT: All further proceedings shall be
2 had under the name of Daniel Charles Cooke.

3 Mr. Green, do you waive the formal reading of
4 the Information?

5 MR. GREEN: We do, Your Honor.

6 THE COURT: The Defendant will stand and face
7 the Court.

8 Mr. Cooke, do you read and speak English?

9 THE DEFENDANT: Yes.

10 THE COURT: How old are you today?

11 THE DEFENDANT: Thirty-five.

12 THE COURT: How much education have you
13 completed?

14 THE DEFENDANT: Eighth grade.

15 THE COURT: Are you in good physical health
16 today?

17 THE DEFENDANT: Yes.

18 THE COURT: Are you in good mental health
19 today?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you taking any medication or
22 under the influence of any substances?

23 THE DEFENDANT: No.

24 THE COURT: Has your attorney advised you
25 that if you are not a citizen of the United States, a

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1 conviction in this case could affect your ability to
2 remain in or re-enter this country?

3 THE DEFENDANT: Yes.

4 THE COURT: You were charged with attempted
5 sexual assault on a child under the age of 16 years.
6 That's a category B felony. Mr. Buchler, will you
7 please explain the essential elements of the crime, the
8 maximum potential penalties, and whether it is
9 probational.

10 MR. BUCHLER: Yes, Your Honor. But before I
11 do that, if the Court pleases, the State would move to
12 amend by interlineation the NOC number. It's at or
13 about line 24. It currently reads N-O-C 50106. I was
14 informed by Mr. Thompson that it should read 50124. It
15 does nothing to change the charges. It's my
16 understanding, as the Court is, I'm sure, well aware,
17 that that number represents some sort of tracking that
18 the District Attorney's Office sends to the State --
19 well, it's a reporting number that we send to the State.

20 THE COURT: Okay. I assume there's no
21 objection, Mr. Green.

22 MR. GREEN: No.

23 THE COURT: I wouldn't know if those numbers
24 were right or not, Mr. Buchler. They've just started
25 appearing on your forms, and that was my understanding

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1 what it's for.

2 MR. BUCHLER: I don't know if they're right
3 or not either. They mean nothing to me, but I'm told
4 that they're somehow important for the way that the
5 State of Nevada tracks crimes throughout the State.

6 THE COURT: Okay. Would you go ahead then
7 and explain the elements.

8 MR. BUCHLER: I will, yes, Your Honor. In
9 the event that this matter were to proceed to trial, the
10 State would be required to prove beyond a reasonable
11 doubt that on or about July 23rd, 2016, in Elko Nevada,
12 that the Defendant, willfully and unlawfully and with
13 the specific intent to commit the crime of sexual
14 assault on a child under the age of 16 years did an act
15 or acts which tended to, but failed to result in the
16 commission of a completed offense of sexual assault on a
17 child under the age of 16.

18 And that the Defendant did so by touching one
19 PC, a child under the age of 14, against her will or
20 under conditions in which the child was incapable of
21 resisting, that he touched her near her vagina and/or by
22 placing his finger in or near the vaginal opening of PC
23 and/or by kissing or touching PC's breasts and/or by
24 kissing or touching PC and/or by touching PC's pubic
25 hair and/or by taking PC's hand and placing it on the

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1 Defendant's penis and rubbing his penis with PC's hand.

2 This is a category B felony. The maximum
3 penalty is 20 years in the Nevada State Prison, and it
4 is not probatable.

5 THE COURT: Thank you.

6 Mr. Cooke, do you understand what you've been
7 charged with, including the elements of the crime?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand the potential
10 penalties for this crime?

11 THE DEFENDANT: Not a hundred percent.

12 THE COURT: Mr. Buchler, can you explain the
13 penalties again to Mr. Cooke, please.

14 MR. BUCHLER: Sure. The maximum term of
15 incarceration would be 20 years in the Nevada State
16 prison. Given the nature of the charge, you would not
17 be eligible for probation. So the Court does not have
18 the discretion -- the discretion has been taken from the
19 Court in this particular -- in these particular charges.
20 So you will be facing a prison sentence of up to 20
21 years. I do not believe that there is a fine associated
22 with this crime.

23 THE COURT: Thank you.

24 Mr. Cooke, the most you could get on the
25 minimum is 40 percent of that 20 years. So the most you

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1 could get on the minimum is 8 years. So you're looking
2 at a sentence of 8 to 20 years at the most, and
3 probation is not available.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you discussed this entire
7 matter, the plea agreement, and your plea, with
8 Mr. Green before coming to Court?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you satisfied with your
11 attorney and confident in his ability to represent you?

12 THE DEFENDANT: I suppose so.

13 THE COURT: Okay. I'm going to need a little
14 more definite answer than that. Are you satisfied with
15 your attorney?

16 THE DEFENDANT: I'm not satisfied with the
17 results of the charges, but I don't really feel I have
18 any other choice, so yes.

19 THE COURT: Okay. Well, that's what you're
20 here about. I need to determine whether you're making
21 this decision willfully and whether you're acting in
22 your own best interest. You've signed a plea agreement
23 saying you're going to plead guilty to this crime.

24 Is this what you want to do today?

25 THE DEFENDANT: Yes.

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1 THE COURT: Are you satisfied with
2 Mr. Green's representation to this point then?

3 THE DEFENDANT: Yes.

4 THE COURT: How many times have you talked
5 with him about this case?

6 THE DEFENDANT: Two times.

7 THE COURT: Three?

8 THE DEFENDANT: Two.

9 THE COURT: Two. Has that been enough?

10 THE DEFENDANT: I don't know. I don't really
11 know the law that well, so.

12 THE COURT: It's Mr. Green's job to explain
13 all that to you. You have a written plea agreement that
14 you signed. Did you read that before you signed it?

15 THE DEFENDANT: Yeah, we went over it.

16 THE COURT: Did Mr. Green answer any
17 questions that you had?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you had enough time to talk
20 to Mr. Green about this case before you enter your plea
21 today?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you talked to him about how
24 you could defend this case if it went to trial?

25 THE DEFENDANT: A little bit.

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1 THE COURT: Have you talked to him enough
2 about how you could defend the case if it went to trial?

3 THE DEFENDANT: I'm not sure on that.

4 THE COURT: Okay. What I'm sensing here,
5 Mr. Cooke, is that you're not ready to enter a plea, and
6 I don't want you to enter a guilty plea to a crime this
7 serious that's going to send you to prison for 8 to 20
8 years.

9 So Mr. Green, we're going to continue this.
10 I'm going to give you a chance to meet with Mr. Cooke
11 again. Will you please contact my chambers to reset the
12 plea.

13 MR. GREEN: That will be fine.

14 THE COURT: Anything further on this matter?

15 MR. BUCHLER: Not from the State.

16 MR. GREEN: No, Your Honor.

17 THE COURT: Thank you.

18 (Whereupon, proceeding concluded)
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STATE OF NEVADA)
) ss.
COUNTY OF CARSON)

I, Julie Rowan, Transcriptionist for the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko, have transcribed the proceedings held in Department 1 of the above-entitled Court on October 31, 2016.

The foregoing transcript is an UNCERTIFIED ROUGH DRAFT TRANSCRIPT of the electronic tape recording of said proceedings. THIS TRANSCRIPT HAS NOT BEEN EDITED, PROOFREAD, FINALIZED, INDEXED OR CERTIFIED.

DATED: This 15th day of November, 2018.



Julie Rowan

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Exhibit 6

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FILED
2018 NOV 16 PM 1:15
ELKO CO DISTRICT COURT
CLERK — [Signature]

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO,
BEFORE THE HONORABLE NANCY PORTER, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,

Plaintiff,

Case No. CR-FP-16-0007293

V.

Dept. No. 1

DANIEL CHARLES COOKE,

Defendant.

COPY

Rough Draft

Transcript of Proceedings

Arraignment - Continued

December 5, 2016

Elko, Nevada

 **SCANNED**

Transcribed By: Julie Rowan - (775) 745-2327

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ELKO CO. DISTRICT ATTORNEY

A P P E A R A N C E S

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For the Defendant: Brian Green, Jr., Esq.
Elko County Public Defender's
Office
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Elko, NV 89801

Division of Parole and Marni Pool
Probation:

-oOo-

I N D E X

WITNESSES ON BEHALF OF THE PLAINTIFF: PAGE

None

WITNESSES ON BEHALF OF THE DEFENSE:

None

EXHIBITS:

None

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1 THE COURT: This is Case No. CR-FP-16-7293,
2 the State of Nevada versus Daniel Charles Cooke. The
3 Defendant is present in court represented by Mr. Green.
4 Mr. Slade is here on behalf of the State. An Amended
5 Criminal Information was filed in this matter on
6 October 27th, 2016, and this is the time for an
7 arraignment.

8 Are the parties ready to proceed?

9 MR. SLADE: The State is, Your Honor.

10 MR. GREEN: Somewhat.

11 THE COURT: Okay. We tried last time,
12 Mr. Green, and Mr. Cooke just really did not seem ready
13 to enter a plea. So where are we today?

14 MR. GREEN: He's indicated to me -- I went
15 and talked with him last week and again today, and he's
16 indicated that he wants to set this for trial, in which
17 case, I think the State is going to be wanting to
18 reinstate the original charges against Mr. Cooke. I
19 believe that was filed in the original Criminal
20 Information, and they've since filed an Amended Criminal
21 Information. So to reinstate those charges, I don't
22 know if that requires a second amended.

23 THE COURT: It does. I can't arraign
24 Mr. Cooke today. The State will have to file another
25 Amended Criminal Information. So contact my chambers

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1 and reschedule that arraignment, please. Okay, we'll
2 have to do this another day, Mr. Cooke.

3 Anything further, Mr. Green?

4 MR. GREEN: No, Your Honor.

5 THE COURT: Thank you.

6 MR. GREEN: Thank you.

7 (Whereupon, proceeding concluded)
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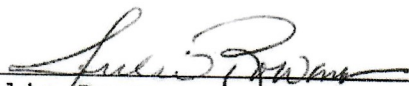
124

STATE OF NEVADA)
) ss.
COUNTY OF CARSON)

I, Julie Rowan, Transcriptionist for the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko, have transcribed the proceedings held in Department 1 of the above-entitled Court on December 5, 2016.

The foregoing transcript is an UNCERTIFIED ROUGH DRAFT TRANSCRIPT of the electronic tape recording of said proceedings. THIS TRANSCRIPT HAS NOT BEEN EDITED, PROOFREAD, FINALIZED, INDEXED OR CERTIFIED.

DATED: This 15th day of November, 2018.



Julie Rowan

125


1	Court [1] - 2:4 cR-FP-16-0007293 [1] - 1:11 CR-FP-16-7293 [1] - 3:1 Criminal [4] - 3:5, 3:19, 3:20, 3:25	J	reinstate [2] - 3:18, 3:21 represented [1] - 3:3 requires [1] - 3:22 reschedule [1] - 4:1 rough [1] - 1:16 Rowan [1] - 1:24
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5 [1] - 1:20 540 [1] - 2:4 571 [1] - 2:7	DANIEL [1] - 1:13 Daniel [1] - 3:2 December [1] - 1:20 Defendant [3] - 1:14, 2:5, 3:3 Defender's [1] - 2:6 DEFENSE [1] - 2:16 Dept [1] - 1:12 DISTRICT [2] - 1:4, 1:6 District [1] - 2:3 Division [1] - 2:8 Draft [1] - 1:16	Marni [1] - 2:8 matter [1] - 3:5 MR [5] - 3:9, 3:10, 3:14, 4:4, 4:6	THE [10] - 1:4, 1:5, 1:6, 2:13, 2:16, 3:1, 3:11, 3:23, 4:5 they've [1] - 3:20 today [3] - 3:13, 3:15, 3:24 Transcribed [1] - 1:24 Transcript [1] - 1:17 trial [1] - 3:16 tried [1] - 3:11
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1 Case No. CV-HC-18-0194

2 Dept. No. 3

FILED

2021 AUG 16 AM 10:04

4 FOURTH JUDICIAL DISTRICT COURT
5 COUNTY OF ELKO, STATE OF NEVADA
6 ELKO CO DISTRICT COURT
7 CLERK DEPUTY 

8 DANIEL CHARLES COOKE,

9 Petitioner,

10 V.

11 CHARLES DANIELS, Director, Nevada
12 Department of Corrections

13 Respondent.
14 _____ /

**ORDER DENYING
POST-CONVICTION RELIEF**

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

22 4JDCR 10 provides in relevant part that "the parties shall presume the presiding judge is unaware
23 of a motion's existence absent the filing and service of a 'Request for Review.' A party may file a
24 Request for Review when a motion is at issue. When a party has filed a Request for Review, the court
25 clerk shall bring the file containing the motion for which review has been requested to the presiding
26 judge's chambers." A Request for Review was never filed on the Petitioner's pending motion.
27
28

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

10 1) That his underlying sentence was illegal;

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

13 3) That his trial counsel was ineffective; and

14 4) That he was deprived of due process and subject to cruel and unusual punishment.
15

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

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 agreement¹, 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.²

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.³

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.⁴ 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.*

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

25 ² See Exhibit 1.

26 ³ See Exhibit 1, Page 8, Lines 14-16.

27 ⁴ 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 "constitutiuonal" 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.

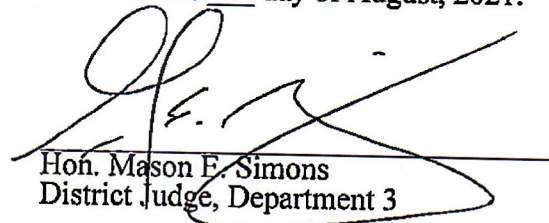
4 These claims are belied by the record and are without merit.

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

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 14 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]

Melise Schnor
Signature of Court Employee

133

1 Case No. CV-HC-18-194

2 Dept. No. 3

FILED
2021 AUG 26 AM 7:55

3 IN THE FOURTH JUDICIAL DISTRICT COURT
4 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
5 *KJ*

6 DANIEL CHARLES COOKE,

7 Petitioner,

8 vs.

**NOTICE OF ENTRY OF
DECISION OR ORDER**

9 RENEE BAKER - WARDEN,

10
11 Respondent.
12
13

14
15 PLEASE TAKE NOTICE that on the 16th of August, 2021, the Court entered a decision or
16 Order in this matter, a true and correct copy of which is attached to this Notice.

17 You may appeal to the Supreme Court from the Order of this Court. If you wish to appeal, you
18 must file a Notice of Appeal with the Clerk of this Court within 33 days after the date this Notice
19 was sent to you.

20 Dated this 26th of August, 2021.

21
22 *Kristine Jakeman*
23 KRISTINE JAKEMAN
24 ELKO COUNTY CLERK
25
26

134

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Elko County Clerk's Office, of the Fourth Judicial District Court, and that on this 25th of August, 2021 served by the following method of service:

☒ Regular US Mail

☐ Overnight UPS

☐ Certified US Mail

☐ Overnight Federal Express

☐ Registered US Mail

☐ Fax to # _____

☐ Overnight US Mail

☒ Hand Delivery

(Copy in Agency Box)

A true copy of the foregoing document addressed to:

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

Daniel Charles Cooke, Inmate #1178337
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419
(Regular US Mail)

Aaron Ford, Esq.
Nevada Attorney General
Attn: Criminal Division
100 North Carson Street
Carson City, NV 89701
(Regular US Mail)

David Lockie, Esq.
Lockie & Macfarlan
(Box in Clerk's Office)

Tim Garrett, Warden
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419
(Regular US Mail)


Kristine Jakeman, Elko County Clerk

135


1 Case No. CV-HC-18-0194

2 Dept. No. 3

FILED

2021 AUG 16 AM 10:04

4 FOURTH JUDICIAL DISTRICT COURT

5 COUNTY OF ELKO, STATE OF NEVADA CLERK _____ DEPUTY 

8 DANIEL CHARLES COOKE,

9 Petitioner,

10 V.

11 CHARLES DANIELS, Director, Nevada
Department of Corrections

12 Respondent.
13 _____ /

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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
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26 ³ See Exhibit 1, Page 8, Lines 14-16.

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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.

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

10 *Defendant: Yes.*

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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 "constitutuional" 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.

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13 Hon. Mason E. Simons
14 District Judge, Department 3
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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]

Melisa Schnor
Signature of Court Employee

142

Case No. CV-HC-18-194Dept. No. 3

FILED

2021 SEP 24 PM 2:44

ELKO CO DISTRICT COURT

Electronically Filed

CLERK 06 2021 11:17 a.m.

Elizabeth A. Brown

Clerk of Supreme Court

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADAIN 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 # 1173337
 Lovelock Correctional Center
 1200 Prison Road
 Lovelock, Nevada 89419

Plaintiff In Pro Se

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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 20th 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 #1172337
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 20th day of SEPTEMBER, 2021.


Daniel Cooke
DANIEL CHARLES COOKE

Plaintiff In Pro Se

144

1 Case No. CV-HC-18-194

2 Dept. No. 3

FILED
2021 NOV -2 AM 11:03
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY 

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

9 DANIEL CHARLES COOKE,
10 Appellant,

11 V.

12 CHARLES DANIELS, DIRECTOR,
13 NEVADA DEPARTMENT OF
CORRECTIONS,

14 Respondent.
15 _____/

**ORDER APPOINTING
APPELLATE ATTORNEY**

16 On October 19, 2021, the Supreme Court of Nevada filed an Order of Limited Remand for
17 Appointment of Counsel for the Appellant in this case.

18 THEREFORE, IT IS HEREBY ORDERED that Ben Gaumond, Esq. is hereby appointed to
19 represent Daniel Charles Cooke in this matter on appeal.

20
21 DATED this 2 day of November, 2021.

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24 
Hon. Mason E. Simons
District Judge, Department 3
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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 2 day of November, 2021, served by hand delivery a true copy of the foregoing document addressed to:

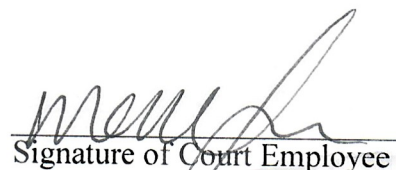
Tyler J. Ingram, Esq.
Elko County District Attorney
[Box in Clerk's Office]

Ben Gaumond, Esq.
495 Idaho Street, #109
Elko, NV 89801
[Box in Clerk's Office]

Aaron Ford, Esq.
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701
[Regular US Mail]

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

Supreme Court of the State of Nevada
201 S. Carson Street, Suite 201
Carson City, NV 89701
[Regular US Mail]


Signature of Court Employee