EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd Fl.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

November 2, 2021

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. CHRISTOPHER BLOCKSON
S.C. CASE: 83656
D.C. CASE: C-18-336552-1

Dear Ms. Brown:

In response to the e-mail dated November 2, 2021, enclosed is a certified copy of the Amended Judgment of Conviction (Plea of Guilty) filed October 4, 2021, the Order filed October 4, 2021 and the Notice of Entry of Order filed October 18, 2021 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

Heather Ungermann, Deputy Clerk

JOCP

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

STATE OF NEVADA,	)	
	)	
Plaintiffs,	)	CASE NO.: C-18-336552-1
	)	DEPT. NO.: XXX
vs.	)	
	)	
CHRISTOPHER BLOCKSON,	)	
	)	
Defendant.	)	
_____	)	

AMENDED JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CRUELTY TO ANIMALS (Category D Felony) in violation of NRS 574.100.1a; COUNT 2 – OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360; and COUNT 3 – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony) in violation of NRS 202.287; thereafter, on the 16th day of April, 2019, the Defendant was present in court for sentencing with counsel, MICHAEL TROIANO, ESQ., and good cause appearing,

THE DEFENDANT WAS ADJUDICATED guilty of said offenses and, in addition to the $25.00 Administrative Assessment, $250.00 Indigent Defense Civil Assessment Fee, and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA Collection Fee, the Defendant was sentenced to the Nevada Department of Corrections (NDC) as follows: COUNT 1 – a MAXIMUM of FORTY-EIGHT (48) MONTHS, with a MINIMUM Parole Eligibility of NINETEEN (19) MONTHS; COUNT 2 – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE TO COUNT 1; with SEVENTY-FOUR (74) DAYS credit for time served. The AGGREGATE TOTAL sentence is ONE HUNDRED TWENTY (120) MONTHS MAXIMUM with a MINIMUM of FORTY-SEVEN (47) MONTHS. COUNT 3 DISMISSED.

Pursuant to the ORDER OF AFFIRMANCE AND REMANDING TO CORRECT THE JUDGMENT OF CONVICTION, from the Nevada Court of Appeals, dated 8/30/21 (Case No. 82860-COA), the Judgment of Conviction is amended as follows:

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CRUELTY TO ANIMALS (Category D Felony) in violation of NRS 574.100.6a; COUNT 2 – OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360; and COUNT 3 – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR VEHICLE (Category B Felony) in violation of NRS 202.287; thereafter, on the 16th day of April, 2019, the Defendant was present in court for sentencing with counsel, MICHAEL TROIANO, ESQ., and good cause appearing,

THE DEFENDANT WAS ADJUDICATED guilty of said offenses and, in addition to the $25.00 Administrative Assessment, $250.00 Indigent Defense Civil Assessment Fee, and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA Collection Fee, the Defendant was sentenced to the Nevada Department of Corrections (NDC) as follows: COUNT 1 – (pursuant to NRS 574.100(6)(a), and NRS 193.130(2)(d), to a MAXIMUM of FORTY-EIGHT (48) MONTHS, with a MINIMUM Parole Eligibility of NINETEEN (19) MONTHS; COUNT 2 – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE TO COUNT 1; with SEVENTY-FOUR (74) DAYS credit for time served. The AGGREGATE TOTAL sentence is ONE HUNDRED TWENTY (120) MONTHS MAXIMUM with a MINIMUM of FORTY-SEVEN (47) MONTHS. COUNT 3 DISMISSED.

DATED this _____ day of October, 2021.

Dated this 4th day of October, 2021

DISTRICT JUDGE LK

738 7CA E060 893F
Jerry A. Wiese
District Court Judge

November 2, 2021

UNITED STATES OF AMERICA
DISTRICT COURT
OF THE
EIGHTH
JUDICIAL
DISTRICT
COUNTY OF CLARK
STATE OF NEVADA

CERTIFIED COPY
ELECTRONIC SEAL (NRS 1.190(3))

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-18-336552-1
vs	DEPT. NO. Department 30
Christopher Blockson	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 10/4/2021

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DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

STATE OF NEVADA,	)	
	)	
Plaintiffs,	)	CASE NO.: C-18-336552-1
	)	DEPT. NO.: XXX
vs.	)	
	)	
CHRISTOPHER BLOCKSON,	)	
	)	**ORDER**
Defendant.	)	
_____	)	

INTRODUCTION

The above-referenced matter is scheduled for a hearing on October 5, 2021, with regard to Defendant's Motion to Overturn and Vacate Conviction for Outrageous Government Conduct and Recusal of Judge Wiese and District Attorney's Office for Clark County, Nevada. This matter has also been remanded by the Nevada Court of Appeals to Correct the Judgment of Conviction. Pursuant to the Administrative Orders of the Court, as well as N.R.Cr.P. 8(2), these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to resolve these issues on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On 12/10/18, Defendant Christopher Blockson was charged in Case No. C336552 with: Count 1- Cruelty to Animals (Category D Felony- NRS 574.100.la); Count 2- Ownership or Possession of Firearm by Prohibited Person (Category B Felony- NRS 202.360); and Count 3- Discharge of Firearm From or Within a Structure or Vehicle (Category B Felony- NRS 202.287).

In conformity with the allegations in the Information, Defendant pled guilty to willfully, unlawfully, maliciously and feloniously torturing, unjustifiably maiming or killing a Pit Bull dog, by shooting and/or stabbing and/or cutting said dog, and/or failing to get medical treatment for said dog. He was also charged with willfully, unlawfully, and feloniously owing, or having in his possession and/or under his custody or control, a Ruger .357 revolver after being convicted in 1996 of Possession of Controlled Substance with Intent to Sell, which is a felony under Nevada law.

Defendant argues that this case arose when his wife brought home a rescue dog, which then attacked him.

Defendant was represented by Michael Troiano at the trial level. Pursuant to a (Guilty Plea Agreement) GPA filed on 12/21/18, Defendant pled guilty to one count of Cruelty to Animals and one count of Ownership or Possession of Firearm by Prohibited Person on 04/16/19. Defendant was sentenced to 19-48 months on Count 1 and 28-72 months on Count 2, to run consecutive to Count 1. Defendant received an aggregate sentence of 47 to 120 months with 74 days' credit for time served. The Court dismissed Count 3. The JOC was filed on 04/22/19.

Defendant filed a Notice of Appeal on 05/02/19, and the Court appointed counsel Caesar Almase, Esq. on 05/23/19. On 08/01/19, the Supreme Court filed an Order indicating that there was some confusion about what lawyer was representing the Defendant. It is unclear what happened at that point between Makris and Almase, but Almase is currently listed on Odyssey as counsel of record in the instant case, C336552, and Defendant is listed as pro se in A810466.

Defendant filed a Notice of Withdrawal of his appeal on 12/30/19, and the Supreme Court filed an Order Dismissing Appeal on 01/16/20 in Case No. 78731, indicating that Defendant had filed a notice of voluntary withdrawal of his direct appeal.

Defendant then filed a Motion for Appointment of Attorney and post-conviction Petition for Writ of Habeas Corpus (PWHC) in related case no. A810466 on 02/13/20, in which he alleged that his sentence in Count 1 is illegal, because the State incorrectly alleged that a violation of NRS 574.100(1)(a) was a felony. Defendant believed this violation was actually a misdemeanor per statute; that his sentence on Count 1 was illegal; and that his plea was thus not knowing, voluntary, or intelligent. Defendant argued that because counsel did not catch the State's mistake, counsel was therefore ineffective. Defendant also argued that he accepted the deal because it was better than facing habitual treatment, and consequently, he did enter his plea knowingly and voluntarily, and did not wish to withdraw his plea. Defendant filed a Motion for Appointment of Counsel on 02/13/20 as well. That PWHC was set to be heard on 05/07/20, but was decided on the papers instead. An Order denying Defendant's first PWHC was filed on 05/05/20, in which the District Court stated that Defendant

appeared to be misinterpreting NRS 574.100, because NRS 574.100(6) states in relevant part that a person who "willfully and maliciously" violates NRS 574.100(1)(a) "is guilty of a category D felony." Therefore, Defendant's argument that he was mischarged was belied by the record, and counsel was consequently not ineffective and appointment of counsel was unnecessary. Defendant's PWHC therefore lacked merit, and Defendant failed to meet his burden in establishing that his Due Process rights were violated.

Defendant appealed the 05/05/20 Order from A810466 to the Supreme Court on 06/16/20. On 07/01/20, the Supreme Court filed an 'Order Directing Transmission of Record and Regarding Briefing,' in which the Court concluded that its review of the complete record is warranted. The Record on Appeal was transmitted on 07/02/20. On 03/05/21, the Supreme Court filed an Order of Affirmance in 81360; Judgment was issued on 03/31/21. Defendant then filed a "Motion to Appoint Counsel and Motion to Modify and/or Correct Illegal Sentence: on 03/25/21. The District Court denied Defendant's Motion in an Order dated 4/14/2021. The Order stated, in pertinent part:

> This Court finds and concludes that the Defendant's claim that his sentence is illegal, lacks merit, and is belied by the record. Defendant's claims that the State violated his rights, misrepresented the statutes, maliciously rewrote the animal cruelty statute, and maliciously prosecuted the Defendant, are all belied by the record. Defendant has failed to set forth any basis for appointment of counsel. Additionally, the Defendant's exact same arguments were previously denied by this Court when Defendant's Petition for Writ of Habeas Corpus was denied in A-20-810466-W. Much of the Court's Order from that case (Order dated 5/5/20), has been set forth herein, but for completeness, the Court adapts and incorporates that Order herein by reference.
>
> ....
>
> Based upon the foregoing, this Court finds and concludes that Defendant's Motion for Appointment of Attorney and Motion to Modify Illegal Sentence lack merit and are belied by the record. Defendant has failed to meet his burden in establishing that his Due Process rights or any other rights were violated. The Court finds no good cause to appoint counsel pursuant to NRS 34.750. Consequently, and good cause appearing,
>
> IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant's Motion for Appointment of Attorney and Motion to Modify Illegal Sentence are both hereby DENIED.

See Order dated 4/14/21.

Subsequently, Defendant filed an Appeal of the 4/14/21 Order. On 8/30/21, the Court of Appeals issued an Order of Affirmance and Remanding to Correct the Judgment of Conviction. The Court of Appeals held:

> ...it is clear that Blockson pleaded guilty to, and was sentenced in accordance with, felony animal cruelty under NRS 574.100(6)(a). And because the district court imposed Blockson's sentence in accordance with NRS 574.100(6)(a), Blockson did not demonstrate that his sentence was illegal. Therefore, we conclude the district court did not err by denying this claim.
>
> We note, however, that the judgment of conviction contains a clerical error. A judgment of conviction must include sentencing statutes. NRS 176.105(1)(c). Blockson's judgment of conviction did not refer to either NRS 574.100(6)(a) or NRS 193.130(2)(d). However, a clerical error "may be corrected by the court at any time." NRS 176.565. Accordingly, we direct the district court, upon remand, to enter an amended judgment of conviction that includes the proper sentencing statutes. We therefore remand this matter to the district court for the limited purpose of correcting the clerical error in the judgment of conviction.

See Order of Affirmance and Remanding to Correct the Judgment of Conviction, filed 8/30/21, at pg. 2.

Before the Order of Affirmance and Remanding was issued by the Court of Appeals, on August 3, 2021, Defendant mailed a "Motion to Overturn and Vacate Conviction for Outrageous Government Conduct and Recusal of Judge Weiss and DA's Office." The Motion appears to be postmarked "08/06/2021." The Clerk of Court's Office received the Motion on August 9, 2021, and filed it on August 13, 2021. The State filed an Opposition on August 31, 2021. Defendant mailed a Reply, which as received by the Clerk of Court on 9/15/21 and e-filed on 9/16/21. Defendant signed "9 October, 2021."

SUMMARY OF LEGAL AND FACTUAL ARGUMENTS

The majority of Defendants' Motion appears to contain arguments almost identical to those set forth in his Motion to Appoint Counsel and Motion to Modify and/or Correct Illegal Sentence' filed on 03/25/21 and decided on 4/14/21. However, Defendant adds a new argument that this Court should recuse itself because "District Court Judge Wiese has twice demonstrated in his rulings that he is not capable of being fair and impartial in this matter." (See Motion at pg. 8) Defendant argues that the Court, in denying both his Writ and Motion to Modify, "pointed to the sentencing transcripts to provide that [Blockson] entered a plea voluntarily to willful animal

cruelty." Further, Defendant alleges that this Court refused to acknowledge the law under *Edwards v. State*, and ignored the admonishment of rights for animal cruelty which "proved [Blockson] was maliciously prosecuted." Further, Defendant argues that this Court apparently did not send Defendant a copy of the 4/14/21 Order, which Defendant alleges was in hopes that the 30 days for him to file a notice of appeal would lapse.

Additionally, Defendant requests that the District Attorney's Office also recuse itself. Defendant argues that "everyone knows what's going on [,][h]owever all officers of the court including the judge have turned a blind eye to the travesty and fundamental unfairness that is unfolding in their presence." (See Motion at pg. 8). Defendant asserts, "We are here because of what the Chief Deputy District Attorney did and Judge Wiess is covering up." *Id*. Finally, Defendant requests that, in addition to the recusals/removals, his sentenced be overturned and he be released from custody.

In Opposition, the State argues that Defendant's claims regarding the felony being a misdemeanor and government misconduct are procedurally barred by the law of the case and res judicata. Defendant's claims regarding government misconduct and the charge being a misdemeanor have already been ruled on by the Court of Appeals of the State of Nevada on 3/5/21. More recently, when affirming this Court's denial of Defendant's Motion to Correct Illegal Sentence, the Court of Appeals held the description of the crime sufficient, and that "it is clear that Blockson pleaded guilty to, and was sentenced in accordance with, felony animal cruelty under NRS 74.100(6)(a)."

The State also argues that Defendant's claim is barred by res judicata. The decisions of the district court are final decisions absent a showing of changed circumstances, and relitigation of claims is barred by the doctrine of res judicata. See *Mason v. State*, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the criminal context); see also *York v. State*, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file motions with the same arguments, his motion is barred by the doctrines of the law of the case and res judicata. *Id.*; *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Defendant relitigates these same issues without presenting any changed circumstances. Thus, res judicata bars Defendant's claims regarding the representation of the statute and government conduct. Additionally, the claims Defendant seeks to litigate necessitate either a direct

appeal or a petition for writ of habeas corpus, and given that this motion constitutes neither of the two methods, this the State asks that the Court deny Defendant's motion.

With regard to Defendant's request that this Court recuse itself, the State argues that Defendant fails to substantiate a proper reason for the recusal. This Court ruling against Defendant is insufficient evidence to prove personal bias. Defendant additionally claims that the Court was "sitting on the order." This claim is belied by the record, as the order was filed on April 14, 2021. As Defendant presents no cognizable grounds for recusal, this Court should deny the Defendant's request for the Court's recusal.

As to Defendant's request that the District Attorney's Office be recused, the State argues that the legal standard required is impossible for Defendant to meet. And, while Defendant claims that the Clark County District Attorney's Office engaged in malicious prosecution, both this Court and the Court of Appeals for the State of Nevada rejected his arguments.

In Reply, Defendant states he filed the instant Motion so that his claims of outrageous government conduct/malicious prosecution could be heard. Defendant claims that he has "been stone-walled and silenced," and that the suggestion his claims should be dismissed is ludicrous. Moreover, Defendant states, "We all have the admonishment of rights for animal cruelty that is so damning that the Court and the DA can't even acknowledge its existence. Shame! You shame America and the State of Nevada." Further, Defendant agrees that there is nothing new in his argument, but states "only the evidence that the DA has ignored," and that he can challenge an illegal sentence at any time.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds and concludes that Defendant's Motion makes the exact same arguments as he previously raised in his post-conviction PWHC, and in his Motion to Modify or Correct Illegal Sentence. In all of his pleadings, Defendant claims that his sentence on Count 1 is illegal because Cruelty to Animals should have been punished as a misdemeanor rather than a Category D felony, and that the State "rewrote" the animal cruelty statute in all of their filed documents with malicious intent to prosecute. The Court notes that Defendant does not wish to withdraw his plea.

NRS 574.100 states in pertinent part the following:

NRS 574.100 Torturing, overdriving, injuring or abandoning animals; failure to provide proper sustenance; requirements for restraining dogs and using outdoor enclosures; horse tripping; penalties; exceptions.

1. A person shall not:

(a) Torture or unjustifiably maim, mutilate or kill:

(1) An animal kept for companionship or pleasure, whether belonging to the person or to another; or

(2) Any cat or dog;

. . . .

6. A person who willfully and maliciously violates paragraph (a) of subsection 1:

(a) Except as otherwise provided in paragraph (b), is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(b) If the act is committed in order to threaten, intimidate or terrorize another person, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

. . . .

(NRS 574.100).

According to the Judgment of Conviction (Plea of Guilty), the Defendant was convicted of COUNT 1-CRUELTY TO ANIMALS (Category D Felony) in violation of NRS 574.100(1)(a).

In reviewing the Guilty Plea Agreement signed by the Defendant, and filed 12/21/18, it is clear that the Defendant was pleading guilty to COUNT 1- CRUELTY TO ANIMALS (Category D Felony – NRS 574.100.1a – NOC 55977), and the parties stipulated on Count 1 to a sentence of "nineteen (19) to forty-eight (48) months in the Nevada Department of Corrections." (See GPA filed 12/21/18).

Most importantly, the Information filed 12/10/18, which was attached to the Guilty Plea Agreement, specifically alleged with regard to Count 1, that Defendant "did willfully, unlawfully, maliciously and feloniously torture or unjustifiably maim, mutilate or kill a Pit Bull dog, by shooting and/or stabbing and/or cutting said dog, and/or by failing to get medical treatment for said dog." (See Information at pg. 2).

This Court previously found that the "willful and malicious" charging language was contained in the Information, and the Defendant clearly acknowledged that he was pleading to a category D felony in that regard. Additionally, there was a "stipulated sentence" of 19-48 months in prison relating to that charge.

When Mr. Blockson pled guilty, at the time of his arraignment, pursuant to the GPA, he was canvassed in part as follows:

> All right. Before I can accept your plea of guilty, I have to go through the Information with you to make sure that there's a factual basis. It says on or about the fourth day of April 2018 in Clark County, Nevada, contrary to the laws of the State of Nevada, on Count One, you did willfully, unlawfully, maliciously and feloniously torture or unjustifiably maim, mutilate or kill a Pitbull dog by shooting or stabbing or cutting said dog and/or failing to get medical treatment for said dog.
> Count Two, ownership or possession of a firearm by a prohibited person, you did willfully, unlawfully and feloniously own or have possession and/or under your custody or control a firearm, to wit, a Ruger .357 revolver bearing serial number 575-15259, the Defendant being a convicted felon having in 1996 being -- been convicted of possession of a controlled substance with intent to sell in case C135719 in the Eighth Judicial Court, a felony under the laws of the State of Nevada.
> Did you do those things?
> THE DEFENDANT: Yes, sir.

(See Transcript of Hearing, December 21, 2018, at pgs. 7-8)

NRS 574.100(6) states in relevant part that a person who "willfully and maliciously" violates NRS 574.100(1)(a) "is guilty of a category D felony." The Petitioner's argument that he was not charged with a violation of NRS 574.100(1) is belied by the record, as the Information alleges this violation, and indicates that he was being charged with the Category D felony portion of the statute. This Court previously found that the Information complied with NRS 173.075.

At the time of his Arraignment, the Defendant was specifically asked if he had read and understood the Guilty Plea Agreement, as follows:

> THE COURT: In looking at the Guilty Plea Agreement, it looks like you signed it on page 6, dated December 21; did you sign it today?
> THE DEFENDANT: Yes, sir.
> THE COURT: Did you have a chance to read it? Did you understand it before you signed it?
> THE DEFENDANT: Yeah, I understood.
> THE COURT: Okay. You had a chance to talk to Mr. Troiano about it and he answered any questions you had about it?
> THE DEFENDANT: Who is that?
> THE COURT: This attorney standing next to you.
> THE DEFENDANT: Oh, yeah. I talked to him.
> THE COURT: Do you understand that by signing the Guilty Plea Agreement you're agreeing that you read it and understood it; correct?
> THE DEFENDANT: That's -- that's correct, sir.
> THE COURT: You understand that by signing it you're giving up important Constitutional rights like right to go to trial, confront your accuser, to present evidence on your own behalf; do you understand that?

THE DEFENDANT: Yes, sir.
THE COURT: Are you currently under the influence of any alcohol, medication, narcotics or any substance that might affect your ability to understand these documents or the process that we're going through?
THE DEFENDANT: No, sir.
THE COURT: Are you currently suffering from any emotional or physical distress that's caused you to enter this plea?
THE DEFENDANT: No, sir.
THE COURT: Do you understand that the range of punishment for this -- these charges as to Count One, it's up to one to four years and up to $5,000 fine, and Count Two is up to six years and up to a $5,000 fine; do you understand that?
THE DEFENDANT: Yes, sir.
THE COURT: Do you understand that sentencing is strictly up to the Court, nobody can promise you probation, leniency or any special treatment?
THE DEFENDANT: I understand.
THE COURT: Do you have any questions that you want to ask of me, your attorney or the State before we go forward?
THE DEFENDANT: Are you the sentencing judge?
THE COURT: Am I what?
THE DEFENDANT: The sentencing judge --
THE COURT: I am in your case.
MR. TROIANO: Actually, yeah, he is.
THE COURT: And your case is assigned to Department 30, so I will be the sentencing judge, but only after you do a PSI.
THE DEFENDANT: All right.
THE COURT: Any other questions?
THE DEFENDANT: No, sir.
THE COURT: Has your attorney made any promises to you that are not contained in the Guilty Plea Agreement?
THE DEFENDANT: No.
THE COURT: Based on all the facts and circumstances, are you satisfied with the services of your attorney?
THE DEFENDANT: Yes.

(See Transcript from Arraignment, December 21, 2018, at pgs. 5-7).

As the Court of Appeals noted in its order, "the judgment of conviction contains a clerical error. A judgment of conviction must include sentencing statutes. NRS 176.105(1)(c). Blockson's judgment of conviction did not refer to either NRS 574.100(6)(a) or NRS 193.130(2)(d). However, a clerical error 'may be corrected by the court at any time.' NRS 176.565." (See Court of Appeals Order, at pg. 2). Because the arguments in the instant motion, (at least relating to overturning and vacating the Defendant's conviction), have already been addressed and affirmed by the Nevada

Court of Appeals, that Court's decision is the law of the case. This Court will comply with the Court of Appeals Remand, and an Amended Judgment of Conviction will be entered forthwith, including the appropriate sentencing statutes.

With regard to the Defendant's request to remove the District Attorney's Office from the case, the Court finds no basis for this request, and it is summarily denied.

With regard to the Defendant's request for "recusal" of Judge Wiese, this Court notes that, "A judge is presumed to be impartial, and the party asserting the challenge carries the burden of establishing sufficient factual grounds warranting disqualification." *Las Vegas Sands Corp. v. Eighth Jud. Dist. Ct.*, 2016 WL 2842901 (unpublished, Nev. 2016), citing *Rippo v. State*, 113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (1997). "Nevada has two statutes governing disqualification of district court judges. NRS 1.230 lists substantive grounds for disqualification, and NRS 1.235 sets forth a procedure for disqualifying district court judges." *Towbin Dodge LLC v. Eighth Judicial Dist. Ct.*, 121 Nev. 251, 255, 112 P.3d 1063, 1066 (2005). NRS 1.230 reads as follows:

> **NRS 1.230 Grounds for disqualifying judges other than Supreme Court justices or judges of the Court of Appeals.**
>
> 1. A judge shall not act as such in an action or proceeding when the judge entertains actual bias or prejudice for or against one of the parties to the action.
>
> 2. A judge shall not act as such in an action or proceeding when implied bias exists in any of the following respects:
>
> (a) When the judge is a party to or interested in the action or proceeding.
>
> (b) When the judge is related to either party by consanguinity or affinity within the third degree.
>
> (c) When the judge has been attorney or counsel for either of the parties in the particular action or proceeding before the court.
>
> (d) When the judge is related to an attorney or counselor for either of the parties by consanguinity or affinity within the third degree. This paragraph does not apply to the presentation of ex parte or uncontested matters, except in fixing fees for an attorney so related to the judge.
>
> 3. A judge, upon the judge's own motion, may disqualify himself or herself from acting in any matter upon the ground of actual or implied bias.
>
> 4. A judge or court shall not punish for contempt any person who proceeds under the provisions of this chapter for a change of judge in a case.
>
> 5. This section does not apply to the arrangement of the calendar or the regulation of the order of business.

NRS 1.235, which sets for the procedure for disqualifying a district court judge, reads in part as follows:

NRS 1.235 Procedure for disqualifying judges other than Supreme Court justices or judges of the Court of Appeals.

1. Any party to an action or proceeding pending in any court other than the Supreme Court or the Court of Appeals, who seeks to disqualify a judge for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought. The affidavit of a party represented by an attorney must be accompanied by a certificate of the attorney of record that the affidavit is filed in good faith and not interposed for delay. Except as otherwise provided in subsections 2 and 3, the affidavit must be filed:

(a) Not less than 20 days before the date set for trial or hearing of the case; or

(b) Not less than 3 days before the date set for the hearing of any pretrial matter.

2. Except as otherwise provided in this subsection and subsection 3, if a case is not assigned to a judge before the time required under subsection 1 for filing the affidavit, the affidavit must be filed:

(a) Within 10 days after the party or the party's attorney is notified that the case has been assigned to a judge;

(b) Before the hearing of any pretrial matter; or

(c) Before the jury is empaneled, evidence taken or any ruling made in the trial or hearing, whichever occurs first. If the facts upon which disqualification of the judge is sought are not known to the party before the party is notified of the assignment of the judge or before any pretrial hearing is held, the affidavit may be filed not later than the commencement of the trial or hearing of the case.

3. If a case is reassigned to a new judge and the time for filing the affidavit under subsection 1 and paragraph (a) of subsection 2 has expired, the parties have 10 days after notice of the new assignment within which to file the affidavit, and the trial or hearing of the case must be rescheduled for a date after the expiration of the 10-day period unless the parties stipulate to an earlier date.

4. At the time the affidavit is filed, a copy must be served upon the judge sought to be disqualified. Service must be made by delivering the copy to the judge personally or by leaving it at the judge's chambers with some person of suitable age and discretion employed therein.

5. Except as otherwise provided in subsection 6, the judge against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter and shall:

(a) If the judge is a district judge, immediately transfer the case to another department of the court, if there is more than one department of the court in the district, or request the judge of another district court to preside at the trial or hearing of the matter;

(b) If the judge is a justice of the peace, immediately arrange for another justice of the peace to preside at the trial or hearing of the matter as provided pursuant to NRS 4.032, 4.340 or 4.345, as applicable; or

(c) If the judge is a municipal judge, immediately arrange for another municipal judge to preside at the trial or hearing of the matter as provided pursuant to NRS 5.023 or 5.024, as applicable.

6. A judge may challenge an affidavit alleging bias or prejudice by filing a written answer with the clerk of the court within 5 judicial days after the

affidavit is filed, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of the judge's disqualification. The question of the judge's disqualification must thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed:

(a) If the judge is a district judge, by the presiding judge of the judicial district in judicial districts having more than one judge, or if the presiding judge of the judicial district is sought to be disqualified, by the judge having the greatest number of years of service;

(b) If the judge is a justice of the peace, by the presiding judge of the justice court in justice courts having more than one justice of the peace, or if the presiding judge is sought to be disqualified, by the justice of the peace having the greatest number of years of service;

(c) If the judge is a municipal judge, by the presiding judge of the municipal court in municipal courts having more than one municipal judge, or if the presiding judge is sought to be disqualified, by the municipal judge having the greatest number of years of service; or

(d) If there is no presiding judge, by the Supreme Court.

It should be noted that "a trial judge has a duty to sit and 'preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard, or other compelling reason to the contrary," and "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required." *Millen v. Eighth Judicial Dist Ct.*, 122 Nev. 1245, 1253, 148 P.3d 694 (2006). The Nevada Supreme Court has further held that "A judge is presumed to be unbiased, and generally, 'the attitude of a judge toward the attorney for a party is largely irrelevant.'" *Millen* at pg. 1254, citing *Las Vegas Downtown Redev. Agency v. Hecht*, 113 Nev. 632, 635, 940 P.2d 127, 128 (1997). "The general rule of law is that what a judge learns in his official capacity does not result in disqualification." *Kirksey v. State*, 112 Nev. 980, 923 P.2d 1102, citing to *Goldman v. Bryan*, 104 Nev. 644, 764 P.2d 1296 (1988). Additionally, "Because a judge is presumed to be impartial, 'the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification.'" *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011), citing *Goldman v. Bryan,* 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988). Finally, the Court has indicated that "disqualification for personal bias requires 'an extreme showing of bias that would permit manipulation of the court and significantly impede the judicial process and the administration of justice.' Generally, disqualification for personal bias or prejudice or knowledge of disputed facts will depend on the circumstances of each case." *Millen* at pg. 1254-1255, citing *Hecht* at pg. 636.

In the Nevada Code of Judicial Conduct, some terms are defined. "Impartial" is one of those terms, and is defined as follows:

> "Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." (NCJC, Terminology).

Rule 1.2 indicates that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." (NCJC, Rule 1.2, Canon 1)

Rule 2.2 reads in part as follows:

> **Rule 2.2. Impartiality and Fairness**. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.
> [1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
> [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
> [3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.
> . . . .

(NCJC, Rule 2.2, Canon 2)

Rule 2.3 reads in part as follows:

> **Rule 2.3. Bias, Prejudice, and Harassment**.
> (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
> (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
> (C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including, but not limited to, race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.
> (D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

(NCJC, Rule 2.3, Canon 2)

Rule 2.4 reads in part that "A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." (NCJC, Rule 2.4, Canon 2)

Rule 2.11(A) of the Nevada Rules of Judicial Conduct, indicates that "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. . ." (NCJC, Rule 2.11, Canon 2). The Comments to this rule contain the following statement: "Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply."

In the case of *City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial Dist. Ct.*, 116 Nev. 640, 5 P.3d 1059 (2000), the Nevada Supreme Court addressed a request to recuse Judge Mark Denton from an eminent domain case. The Court referenced NCJC Canon 3(E)(1), which indicated that "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, ..." *Redevelopment Agency* at pg. 644. The Court went on to state the following, "[W]e have held that whether a judge's impartiality can reasonably be questioned is an objective question that this court reviews as a question of law using its independent judgment of the undisputed facts. *Redevelopment Agency*, at pg. 644, citing *In re Varain*, 114 Nev. 1271, 1278, 969 P.2d 305, 310 (1998).

In *People for the Ethical Treatment of Animals (PETA) v. Bobby Berosini,* 111 Nev. 431, 894 P.2d 337 (1995), overruled on other grounds by *Towbin Dodge LLC v. Eighth Judicial Dist Court*, the Nevada Supreme Court similarly stated, "the test for whether a judge's impartiality might reasonably be questioned is objective; whether a judge is actually impartial is not material." *Berosini* at pg. 436. The Court referenced NCJC Canon 2, which provided that "a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities," and indicated that "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity,

impartiality and competence is impaired." *Berosini* at pg. 435-436. The Court referenced 28 U.S.C. §455(a) a federal statute, designed to promote public confidence in the integrity of the judicial process, and referenced a case which indicated that "The goal of section 455(a) is to ***avoid even the appearance of partiality***." *Berosini* at pg. 436, (emphasis added), citing *Liljeberg v. Health Services Acquisition Corp*, 486 U.S. 847, 108 S.Ct. 2094, 100 L.Ed.2d 855 (1988). Another federal court had stated, "Under §455(a) a judge has a continuing duty to recuse before, during, or, in some circumstances, after a proceeding, if the judge concludes that sufficient factual grounds exist to cause an objective observer reasonably to question the judge's impartiality... The standard is purely objective. The inquiry is limited to outward manifestations and reasonable inferences drawn therefrom." *Berosini,* at pg. 437, citing *United States v. Cooley*, 1 F.3d 985, 992-993 (10th Cir. 1993). The Court in *Berosini,* indicated that the question before the Court was "whether a reasonable person, knowing all the facts, would harbor reasonable doubts about Judge Lehman's impartiality." The Court concluded that they had to grant the motion to disqualify Judge Lehman, "to avoid even the appearance of impropriety and to promote public confidence in the integrity of the judicial process. We conclude that a reasonable person knowing all the facts, would harbor reasonable doubts about Judge Lehman's impartiality." *Berosini*, at pg. 438.

In another Nevada Supreme Court case, the Court stated, "remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." *Schubert v. Eighth Judicial Dist. Ct.*, 128 Nev. 933, 381 P.3d 660 (2012).

In the *Hecht* case, Hecht filed a motion to disqualify Justice Cliff Young from participating in an appellate decision, based on the argument that he allegedly harbored a bias against Hecht's counsel, Kermitt Waters. This alleged bias stemmed from statements made by Justice Young during a Washoe County Bar Association Lunch, during a campaign, where Steve Jones was running against Justice Young. There were comments about campaign financing that Jones had received from Kermitt Waters, and Justice Young suggested that it appeared that Mr. Waters had exceeded the allowable limit of contributions to Judge Jones. Hecht argued that these statements "amounted to an accusation that Waters had committed a crime, and as

such [were] evidence of Justice Young's actual or implied bias toward Waters." *Hecht* at pg. 634.

The Court stated that it had "consistently held that the attitude of a judge toward the attorney for a party is largely irrelevant." *Hecht* at pg. 635. The Court cited to its decision in *Ainsworth v. Combined Ins. Co.,* 105 Nev. 237, 259, 774 P.2d 1003, 1019 (1989), in which the Court held that "generally, an allegation of bias in favor of or against counsel for a litigant states an insufficient ground for disqualification because it is not indicative of extrajudicial bias against the party." The Court indicated that the purpose for that policy was that because Nevada is a small state, with a limited bar membership, it is "inevitable that frequent interactions will occur between the members of the bar and the judiciary." *Hecht* at pg. 635-636. The Court further stated that "we continue to believe that to permit a justice or judge to be disqualified on the basis of bias for or against a litigant's counsel in cases in which there is anything but an extreme showing of bias would permit manipulation of the court and significantly impede the judicial process and the administration of justice." *Id.* While the Canon states that "a judge can be disqualified for animus toward an attorney, situations where such a disqualification has been found are exceedingly rare, and non-existent in Nevada." *Id.*, citing Richard E. Flamm, *Judicial Disqualification* §4.4.4, at 124 (1996). Further, "To warrant judicial disqualification . . . the judge's bias toward the attorney ordinarily must be extreme. Situations in which judges have manifested such extreme bias toward an attorney are exceedingly rare." *Id.*

In *Hecht,* the Court cited to *Valladares v. District Court*, 112 Nev. 79, 910 P.2d 256 (1996), in which Judge Connie Steinheimer's campaign literature was very critical of then District Judge Lew Carnahan. Such letters made disparaging remarks about Carnahan's ethics, honesty, and competency. Steinheimer won the election, and Carnahan appeared as an attorney for a party before her, and requested that she recuse herself. Steinheimer refused, and it was taken to the Supreme Court, which stated that "Judge Steinheimer does not possess an actual or apparent bias against Carnahan and therefore need not recuse herself." *Hecht* at pg. 636, citing *Valladares* at 84.

The Court also cited to *Sonner v. State*, where a prosecutor represented a judge up to the day the prosecutor was to begin trying a death penalty case in front of the judge. The Court held that even though the prosecutor had represented the judge in an

unrelated matter, until the day before trial, "there was no reason to conclude that the attorney-client relationship between the judge and the prosecutor in any way affected the judge's ability to be fair and impartial." *Hecht* at pg. 636-637, citing *Sonner v. State*, 112 Nev. 1328, 930 P.2d 707 (1996).

The Court in *Hecht*, indicated that "the facts presented in the case at bar do not rise to anything near the level warranting Justice Young's disqualification. The comments made by Justice Young were off-the-cuff remarks made during an election campaign; and they were not nearly as serious as those made in Ainsworth and Valadares, in which the judges made egregious remarks about counsel for a party, or the situation in Sonner. Justice Young's comments were based upon the information he had received and merely suggested that Waters may have engaged in impropriety. . . .Justice Young's remarks do not show evidence of a bias toward Waters that would mandate Justice Young's disqualification in this matter." *Hecht* at pg. 637. The Court concluded its opinion by stating that "Before a justice or judge can be disqualified because of animus toward a party's attorney, egregious facts must be shown." *Hecht* at pg. 638.

In *Ainsworth v. Combined Ins. Co. of America*, 105 Nev. 237, 774 P.2d 1003 (1989), the Court addressed a motion requesting disqualification of former Chief Justice Gunderson. Combined argued that 1) he had a "disqualifying bias or prejudice for and against the litigants and their counsel;" 2) his impartiality was subject to question so as to create a "disqualifying appearance of impropriety;" and 3) his alleged partiality denied Combined its right to a fair hearing before an impartial tribunal. *Id.*, at 253. Combined argued that the appeal was handled in a manner contrary to the Court's normal procedure, but the Court summarily concluded that the Court followed its normal procedure, and nothing relating to that issue demonstrated any prejudice, bias or appearance or impropriety stemming from an extrajudicial source. *Id.*, at 255-256. Combined argued that during oral argument, Gunderson "(1) 'openly ridiculed' and was uncivil and hostile to Combined and its attorney; (2) 'acted not as a member of an appellate court but as an advocate for the appellant'; (3) 'expressed the opinion that Combined's very policy was an act of bad faith;' and (4) expressed an 'animus' that was not 'confined to Combined and its counsel but seemingly reached the insurance industry as a whole.'" *Id.*, at 256. The Supreme Court apparently reviewed the

recording of the oral argument, and concluded that the arguments were legally insufficient to support the disqualification, but were also belied by the "tone, tenor and substance" of Justice Gunderson's remarks. *Id.*, at pgs. 256-257. The Court held that his conduct was "well within the acceptable boundaries of courtroom exchange." Id., at 257, citing *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1316 (2nd Cir. 1988). The Court held that "Although he may have expressed strong views regarding the separate, additional facts in the record evidencing the oppressive nature of Combined's conduct, his expression of those views at the oral argument exhibited no bias stemming from an extrajudicial source." *Id.* at 257, citing *Goldman v. Bryan*, 104 Nev. 644, --, n. 6, 764 P.2d 1296, 1301 (1988); and citing also to *In re Guardianship of Styer*, 24 Ariz. App. 148, 536 P.2d 717 (1975) "(Although a judge may have a strong opinion on merits of a cause or a strong feeling about the type of litigation involved, the expression of such views does not establish disqualifying bias or prejudice.)" Apparently Justice Gunderson made some comments about Combined and its counsel, which may have indicated a preconceived bias. The Court indicated that "although former Chief Justice Gunderson's response candidly acknowledges that he harbored preconceived, negative impressions respecting the legal abilities of one of Combined's counsel, his response also indicated that those impressions were based upon his perception of counsel's prior 'work product and performance in this court.' Thus, those perceptions constitute neither an extrajudicial, nor a disqualifying bias." *Id.*, at pg. 258, citing *Goldman v. Bryan*, 104 Nev. 644, 764 P.2d 1296 (1988); *In re Cooper* 821 F.2d 833, 838-42 (1st Cir. 1987) (a judge is not required to 'mince words' respecting counsel who appear before him; it is a judge's job to make credibility determinations, and when he does so, he does not thereby become subject, legitimately, to charges of bias.) The Court said, that to whatever extent "Gunderson's response may evidence negative, personal impressions about Combined's counsel, based upon counsel's prior legal associations, his performance on the bar examination or his marital situation, those impressions were formed during the course of his judicial and administrative duties as a Justice and Chief Justice on this court." *Id.*, at pg. 258, citing *United States v. Conforte*, 457 F.Supp. 641, 657 (D.Nev. 1978) (where origin of judge's impressions was inextricably bound up with judicial proceedings, judge's alleged bias did not stem from an extrajudicial source), modified on other grounds, 624 F.2d 869 (9th Cir.), cert denied,

449 U.S. 1012, 101 S.Ct. 568, 66 L.Ed.2d 470 (1980). Finally, the Court stated that "those negative impressions extended only to counsel for the litigant involved, not to the litigant itself. Generally, an allegation of bias in favor of or against counsel for a litigant states an insufficient ground for disqualification because it is not indicative of extrajudicial bias against the party." *Id*., at pg. 259, citing *In re Petition to Recall Dunleavy*, 104 Nev. 784, 769 P.2d 1271, 1275, citing *Gilbert v. City of Little Rock, Ark*., 722 F.2d 1390, 1398-99 (8th Cir. 1983), cert denied, 466 U.S. 972, 104 S.Ct. 2347, 80 L.Ed.2d 820 (1984); *Davis v. Board of School Com'rs of Mobile County*, 517 F.2d 1044, 1050 (5th Cir. 1975). Ultimately, the Court found that there was no basis for disqualification of Justice Gunderson.

This Court acknowledges that several of the cases referenced herein, have been reversed or modified for various reasons. This Court believes, however, that the analysis contained in them is still good law, and is helpful and instructive in the present case. This Court further acknowledges that most of the cases cited herein dealt with the Nevada Code of Judicial Conduct which existed prior to the Code's revision in 2009. The Revised Nevada Code of Judicial Conduct became effective January 19, 2010, containing somewhat different language, different section numbers, etc. This Court's reliance on the above-referenced case law, is consistent with the Nevada Supreme Court's recent reference to many of these same cases. In the unpublished case of *Mkhitaryan v. Eighth Judicial Dist. Ct*., 2016 WL 5957647, 385 P.3d 48 (Nev., 2016, unpublished), the Nevada Supreme Court stated the following analysis:

> Rule 2.7 of the Nevada Code of Judicial Conduct (NCJC), provides that "[a] judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law." Under Rule 2.11(A)(1) of the NCJC, judicial disqualification is required "in any proceeding in which the judge's impartiality might reasonably be questioned, including when the judge has a personal bias or prejudice concerning a party." See also NRS 1.230 ("A judge shall not act as such in an action or proceeding when the judge entertains actual bias or prejudice for or against one of the parties to the action."). ***The test under the NCJC to evaluate whether a judge's impartiality might reasonably be questioned is an objective one – whether a reasonable person knowing all of the facts would harbor reasonable doubts about the judge's impartiality.*** See *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011). Disqualification for personal bias requires an extreme showing of bias. *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254, 148 P.3d 694, 701 (2006). Further, this court has generally recognized that bias must stem from an "extrajudicial source," something other than what

> the judge learned from his or her participation in the case. *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009), and that adverse judicial rulings during the proceedings are not a basis to disqualify a judge. *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). . . .

Id., (emphasis added).

In another recent Nevada Court of Appeals decision, also unpublished, the Court set forth the same test in determining whether disqualification was warranted. The Court of Appeals stated, "The test for whether a judge's impartiality might reasonably be questioned is objective and disqualification is required when 'a reasonable person, knowing all the facts, would harbor reasonable doubts about the judges impartiality.'" *Bayouth v. State,* 2018 WL 2489862 (Nev.Ct.of App., 2018, unpublished).

In *Ybarra v. State*, 127 Nev. 47, 247 P.3d 269 (2011), the Nevada Supreme Court again indicated that "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." *Ybarra* at pg. 50, citing NCJC Canon 2A. The Court went on to indicate that the issue that needed to be addressed was again, "***whether a reasonable person, knowing all the facts, would harbor reasonable doubts about the judge's impartiality***." *Ybarra* at pg. 51, (emphasis added), citing *PETA*, 111 Nev. at 438, 894 P.2d at 341 (additional citations omitted). In *Ybarra*, the Court cited to *People v. Booker*, where the Defendant who was charged with a crime, argued that the judge should have been disqualified because he had represented the victim's father in a divorce proceeding, and the appellate court could find no evidence in the record suggesting that the trial judge was biased against the defendant. 224 Ill.App.3d 542, 166 Ill. Dec. 252, 585 N.E.2d 1274, 1284 (1992). Further, a judge in a small town, need not disqualify himself merely because he knows one of the parties. *Ybarra* at pg. 52, citing *Jacobson v. Manfredi*, 100 Nev. 226, 230, 679 P.2d 251, 254 (1984). In Ybarra, the Court concluded that the prior representation by Judge Dobrescue would not cause an objective person reasonably to doubt his impartiality. *Ybarra* at pg. 52.

This Court does not believe that any of the grounds set forth in NRS 1.230 apply, as this Court has no bias or prejudice against the Defendant, and no basis for a voluntary recusal. The Court is not sure whether the present Motion for Recusal of Judge Wiese was intended to be a Motion for Disqualification, pursuant to NRS 1.235,

as it was called a Motion for Recusal and not called a Motion for Disqualification. If it was intended to be a Motion for Disqualification under NRS 1.235, it is untimely pursuant to NRS 1.235(1), as the statute appears to only apply "pre-trial." An "Affidavit," as required by NRS 1.235 was not filed, nor served on the Court, and consequently, there appears to be no reason to "challenge an affidavit alleging bias or prejudice by filing a written answer with the clerk of the court within 5 judicial days after the affidavit is filed." This Court does not believe that an objective person would reasonably doubt this Court's impartiality, and consequently, the Court does not believe that recusal, or disqualification would be appropriate.

CONCLUSION AND ORDER.

Based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that the Defendant's Motion to Overturn and Vacate Conviction for Outrageous Government Conduct and Recusal of Judge Wiese and District Attorney's Office for Clark County, Nevada, is hereby **DENIED.**

The Court requests that Counsel for the State prepare and process a Notice of Entry of this Order.

Because this matter has been decided on the pleadings, the hearing set for October 5, 2021, will be taken "off calendar," and consequently, there is no need that counsel or the parties appear.

Pursuant to the 8/30/21 Order of the Court of Appeals, an Amended Judgment of Conviction will be filed forthwith.

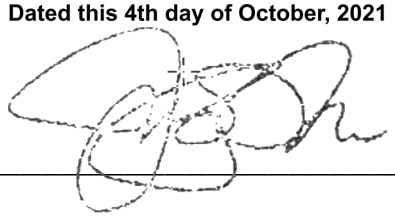
Because the Defendant's Motion for Recusal could be construed as a Motion for Disqualification, this Order will also be submitted to the Chief Judge, and if she believes it should be considered a Motion for Disqualification, she may take whatever action in that regard she believes is appropriate.

The Court further notes Defendant has filed a Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference seeking personal appearance for the October 5, 2021, hearing. Said motion is set for hearing on October 7, 2021, at 8:30 AM.

Because the Motion to Overturn and Vacate Conviction for Outrageous Government Conduct and Recusal of Judge Wiese and District Attorney's Office for Clark County, Nevada, has been decided without oral argument and the October 5,

2021, hearing was vacated, Defendant's Motion for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference is hereby deemed **MOOT.** The hearing set for October 7, 2021, will be taken "off calendar," and consequently, there is no need for counsel or the parties appear.

Dated this 4th day of October, 2021



83B 60D C216 2354
Jerry A. Wiese
District Court Judge

November 2, 2021

CERTIFIED COPY
ELECTRONIC SEAL (NRS 1.190(3))

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-18-336552-1
vs	DEPT. NO. Department 30
Christopher Blockson	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 10/4/2021

Jason Makris	jason.makris@makrislegal.com
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10/18/2021 2:52 PM
Steven D. Grierson
CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
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Chief Deputy District Attorney
Nevada Bar #005391
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CHRISTOPHER LENARD BLOCKSON, #1220853

Defendant.

CASE NO: **C-18-336552-1**

DEPT NO: **XXX**

NOTICE OF ENTRY OF ORDER

TO: **CHRISTOPHER BLOCKSON, BAC#50821**
S.D.C.C.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

PLEASE TAKE NOTICE that an ORDER DENYING Defendant's Motion To Overturn And Vacate Conviction For Outrageous Government Conduct And Recusal Of Judge Weise And District Attorney's Office For Clark County, Nevada was entered in the above-entitled matter, a copy of which is attached hereto.

DATED this 18th day of October, 2021.

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

BY

STACEY KOLLINS
Chief Deputy District Attorney
Nevada Bar #005391

hjc/SVU

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

STATE OF NEVADA,	)	
	)	
Plaintiffs,	)	CASE NO.: C-18-336552-1
	)	DEPT. NO.: XXX
vs.	)	
	)	
CHRISTOPHER BLOCKSON,	)	
	)	**ORDER**
Defendant.	)	
_____	)	

INTRODUCTION

The above-referenced matter is scheduled for a hearing on October 5, 2021, with regard to Defendant's Motion to Overturn and Vacate Conviction for Outrageous Government Conduct and Recusal of Judge Wiese and District Attorney's Office for Clark County, Nevada. This matter has also been remanded by the Nevada Court of Appeals to Correct the Judgment of Conviction. Pursuant to the Administrative Orders of the Court, as well as N.R.Cr.P. 8(2), these matters may be decided with or without oral argument. This Court has determined that it would be appropriate to resolve these issues on the pleadings, and consequently, this Order issues.

FACTUAL AND PROCEDURAL HISTORY

On 12/10/18, Defendant Christopher Blockson was charged in Case No. C336552 with: Count 1- Cruelty to Animals (Category D Felony- NRS 574.100.la); Count 2- Ownership or Possession of Firearm by Prohibited Person (Category B Felony- NRS 202.360); and Count 3- Discharge of Firearm From or Within a Structure or Vehicle (Category B Felony- NRS 202.287).

In conformity with the allegations in the Information, Defendant pled guilty to willfully, unlawfully, maliciously and feloniously torturing, unjustifiably maiming or killing a Pit Bull dog, by shooting and/or stabbing and/or cutting said dog, and/or failing to get medical treatment for said dog. He was also charged with willfully, unlawfully, and feloniously owing, or having in his possession and/or under his custody or control, a Ruger .357 revolver after being convicted in 1996 of Possession of Controlled Substance with Intent to Sell, which is a felony under Nevada law.

Defendant argues that this case arose when his wife brought home a rescue dog, which then attacked him.

Defendant was represented by Michael Troiano at the trial level. Pursuant to a (Guilty Plea Agreement) GPA filed on 12/21/18, Defendant pled guilty to one count of Cruelty to Animals and one count of Ownership or Possession of Firearm by Prohibited Person on 04/16/19. Defendant was sentenced to 19-48 months on Count 1 and 28-72 months on Count 2, to run consecutive to Count 1. Defendant received an aggregate sentence of 47 to 120 months with 74 days' credit for time served. The Court dismissed Count 3. The JOC was filed on 04/22/19.

Defendant filed a Notice of Appeal on 05/02/19, and the Court appointed counsel Caesar Almase, Esq. on 05/23/19. On 08/01/19, the Supreme Court filed an Order indicating that there was some confusion about what lawyer was representing the Defendant. It is unclear what happened at that point between Makris and Almase, but Almase is currently listed on Odyssey as counsel of record in the instant case, C336552, and Defendant is listed as pro se in A810466.

Defendant filed a Notice of Withdrawal of his appeal on 12/30/19, and the Supreme Court filed an Order Dismissing Appeal on 01/16/20 in Case No. 78731, indicating that Defendant had filed a notice of voluntary withdrawal of his direct appeal.

Defendant then filed a Motion for Appointment of Attorney and post-conviction Petition for Writ of Habeas Corpus (PWHC) in related case no. A810466 on 02/13/20, in which he alleged that his sentence in Count 1 is illegal, because the State incorrectly alleged that a violation of NRS 574.100(1)(a) was a felony. Defendant believed this violation was actually a misdemeanor per statute; that his sentence on Count 1 was illegal; and that his plea was thus not knowing, voluntary, or intelligent. Defendant argued that because counsel did not catch the State's mistake, counsel was therefore ineffective. Defendant also argued that he accepted the deal because it was better than facing habitual treatment, and consequently, he did enter his plea knowingly and voluntarily, and did not wish to withdraw his plea. Defendant filed a Motion for Appointment of Counsel on 02/13/20 as well. That PWHC was set to be heard on 05/07/20, but was decided on the papers instead. An Order denying Defendant's first PWHC was filed on 05/05/20, in which the District Court stated that Defendant

appeared to be misinterpreting NRS 574.100, because NRS 574.100(6) states in relevant part that a person who "willfully and maliciously" violates NRS 574.100(1)(a) "is guilty of a category D felony." Therefore, Defendant's argument that he was mischarged was belied by the record, and counsel was consequently not ineffective and appointment of counsel was unnecessary. Defendant's PWHC therefore lacked merit, and Defendant failed to meet his burden in establishing that his Due Process rights were violated.

Defendant appealed the 05/05/20 Order from A810466 to the Supreme Court on 06/16/20. On 07/01/20, the Supreme Court filed an 'Order Directing Transmission of Record and Regarding Briefing,' in which the Court concluded that its review of the complete record is warranted. The Record on Appeal was transmitted on 07/02/20. On 03/05/21, the Supreme Court filed an Order of Affirmance in 81360; Judgment was issued on 03/31/21. Defendant then filed a "Motion to Appoint Counsel and Motion to Modify and/or Correct Illegal Sentence: on 03/25/21. The District Court denied Defendant's Motion in an Order dated 4/14/2021. The Order stated, in pertinent part:

> This Court finds and concludes that the Defendant's claim that his sentence is illegal, lacks merit, and is belied by the record. Defendant's claims that the State violated his rights, misrepresented the statutes, maliciously rewrote the animal cruelty statute, and maliciously prosecuted the Defendant, are all belied by the record. Defendant has failed to set forth any basis for appointment of counsel. Additionally, the Defendant's exact same arguments were previously denied by this Court when Defendant's Petition for Writ of Habeas Corpus was denied in A-20-810466-W. Much of the Court's Order from that case (Order dated 5/5/20), has been set forth herein, but for completeness, the Court adapts and incorporates that Order herein by reference.
>
> ....
>
> Based upon the foregoing, this Court finds and concludes that Defendant's Motion for Appointment of Attorney and Motion to Modify Illegal Sentence lack merit and are belied by the record. Defendant has failed to meet his burden in establishing that his Due Process rights or any other rights were violated. The Court finds no good cause to appoint counsel pursuant to NRS 34.750. Consequently, and good cause appearing,
>
> IT IS HEREBY ORDERED ADJUDGED AND DECREED that Defendant's Motion for Appointment of Attorney and Motion to Modify Illegal Sentence are both hereby DENIED.

See Order dated 4/14/21.

Subsequently, Defendant filed an Appeal of the 4/14/21 Order. On 8/30/21, the Court of Appeals issued an Order of Affirmance and Remanding to Correct the Judgment of Conviction. The Court of Appeals held:

> ...it is clear that Blockson pleaded guilty to, and was sentenced in accordance with, felony animal cruelty under NRS 574.100(6)(a). And because the district court imposed Blockson's sentence in accordance with NRS 574.100(6)(a), Blockson did not demonstrate that his sentence was illegal. Therefore, we conclude the district court did not err by denying this claim.
>
> We note, however, that the judgment of conviction contains a clerical error. A judgment of conviction must include sentencing statutes. NRS 176.105(1)(c). Blockson's judgment of conviction did not refer to either NRS 574.100(6)(a) or NRS 193.130(2)(d). However, a clerical error "may be corrected by the court at any time." NRS 176.565. Accordingly, we direct the district court, upon remand, to enter an amended judgment of conviction that includes the proper sentencing statutes. We therefore remand this matter to the district court for the limited purpose of correcting the clerical error in the judgment of conviction.

See Order of Affirmance and Remanding to Correct the Judgment of Conviction, filed 8/30/21, at pg. 2.

Before the Order of Affirmance and Remanding was issued by the Court of Appeals, on August 3, 2021, Defendant mailed a "Motion to Overturn and Vacate Conviction for Outrageous Government Conduct and Recusal of Judge Weiss and DA's Office." The Motion appears to be postmarked "08/06/2021." The Clerk of Court's Office received the Motion on August 9, 2021, and filed it on August 13, 2021. The State filed an Opposition on August 31, 2021. Defendant mailed a Reply, which as received by the Clerk of Court on 9/15/21 and e-filed on 9/16/21. Defendant signed "9 October, 2021."

SUMMARY OF LEGAL AND FACTUAL ARGUMENTS

The majority of Defendants' Motion appears to contain arguments almost identical to those set forth in his Motion to Appoint Counsel and Motion to Modify and/or Correct Illegal Sentence' filed on 03/25/21 and decided on 4/14/21. However, Defendant adds a new argument that this Court should recuse itself because "District Court Judge Wiese has twice demonstrated in his rulings that he is not capable of being fair and impartial in this matter." (See Motion at pg. 8) Defendant argues that the Court, in denying both his Writ and Motion to Modify, "pointed to the sentencing transcripts to provide that [Blockson] entered a plea voluntarily to willful animal

cruelty." Further, Defendant alleges that this Court refused to acknowledge the law under *Edwards v. State*, and ignored the admonishment of rights for animal cruelty which "proved [Blockson] was maliciously prosecuted." Further, Defendant argues that this Court apparently did not send Defendant a copy of the 4/14/21 Order, which Defendant alleges was in hopes that the 30 days for him to file a notice of appeal would lapse.

Additionally, Defendant requests that the District Attorney's Office also recuse itself. Defendant argues that "everyone knows what's going on [,][h]owever all officers of the court including the judge have turned a blind eye to the travesty and fundamental unfairness that is unfolding in their presence." (See Motion at pg. 8). Defendant asserts, "We are here because of what the Chief Deputy District Attorney did and Judge Wiess is covering up." *Id*. Finally, Defendant requests that, in addition to the recusals/removals, his sentenced be overturned and he be released from custody.

In Opposition, the State argues that Defendant's claims regarding the felony being a misdemeanor and government misconduct are procedurally barred by the law of the case and res judicata. Defendant's claims regarding government misconduct and the charge being a misdemeanor have already been ruled on by the Court of Appeals of the State of Nevada on 3/5/21. More recently, when affirming this Court's denial of Defendant's Motion to Correct Illegal Sentence, the Court of Appeals held the description of the crime sufficient, and that "it is clear that Blockson pleaded guilty to, and was sentenced in accordance with, felony animal cruelty under NRS 74.100(6)(a)."

The State also argues that Defendant's claim is barred by res judicata. The decisions of the district court are final decisions absent a showing of changed circumstances, and relitigation of claims is barred by the doctrine of res judicata. See *Mason v. State*, 206 S.W.3d 869, 875 (Ark. 2005) (recognizing the doctrine's applicability in the criminal context); see also *York v. State*, 342 S.W. 528, 553 (Tex. Crim. Appl. 2011). Accordingly, by simply continuing to file motions with the same arguments, his motion is barred by the doctrines of the law of the case and res judicata. *Id.*; *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Defendant relitigates these same issues without presenting any changed circumstances. Thus, res judicata bars Defendant's claims regarding the representation of the statute and government conduct. Additionally, the claims Defendant seeks to litigate necessitate either a direct

appeal or a petition for writ of habeas corpus, and given that this motion constitutes neither of the two methods, this the State asks that the Court deny Defendant's motion.

With regard to Defendant's request that this Court recuse itself, the State argues that Defendant fails to substantiate a proper reason for the recusal. This Court ruling against Defendant is insufficient evidence to prove personal bias. Defendant additionally claims that the Court was "sitting on the order." This claim is belied by the record, as the order was filed on April 14, 2021. As Defendant presents no cognizable grounds for recusal, this Court should deny the Defendant's request for the Court's recusal.

As to Defendant's request that the District Attorney's Office be recused, the State argues that the legal standard required is impossible for Defendant to meet. And, while Defendant claims that the Clark County District Attorney's Office engaged in malicious prosecution, both this Court and the Court of Appeals for the State of Nevada rejected his arguments.

In Reply, Defendant states he filed the instant Motion so that his claims of outrageous government conduct/malicious prosecution could be heard. Defendant claims that he has "been stone-walled and silenced," and that the suggestion his claims should be dismissed is ludicrous. Moreover, Defendant states, "We all have the admonishment of rights for animal cruelty that is so damning that the Court and the DA can't even acknowledge its existence. Shame! You shame America and the State of Nevada." Further, Defendant agrees that there is nothing new in his argument, but states "only the evidence that the DA has ignored," and that he can challenge an illegal sentence at any time.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds and concludes that Defendant's Motion makes the exact same arguments as he previously raised in his post-conviction PWHC, and in his Motion to Modify or Correct Illegal Sentence. In all of his pleadings, Defendant claims that his sentence on Count 1 is illegal because Cruelty to Animals should have been punished as a misdemeanor rather than a Category D felony, and that the State "rewrote" the animal cruelty statute in all of their filed documents with malicious intent to prosecute. The Court notes that Defendant does not wish to withdraw his plea.

NRS 574.100 states in pertinent part the following:

NRS 574.100 Torturing, overdriving, injuring or abandoning animals; failure to provide proper sustenance; requirements for restraining dogs and using outdoor enclosures; horse tripping; penalties; exceptions.

1. A person shall not:

(a) Torture or unjustifiably maim, mutilate or kill:

(1) An animal kept for companionship or pleasure, whether belonging to the person or to another; or

(2) Any cat or dog;

. . . .

6. A person who willfully and maliciously violates paragraph (a) of subsection 1:

(a) Except as otherwise provided in paragraph (b), is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(b) If the act is committed in order to threaten, intimidate or terrorize another person, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

. . . .

(NRS 574.100).

According to the Judgment of Conviction (Plea of Guilty), the Defendant was convicted of COUNT 1-CRUELTY TO ANIMALS (Category D Felony) in violation of NRS 574.100(1)(a).

In reviewing the Guilty Plea Agreement signed by the Defendant, and filed 12/21/18, it is clear that the Defendant was pleading guilty to COUNT 1- CRUELTY TO ANIMALS (Category D Felony – NRS 574.100.1a – NOC 55977), and the parties stipulated on Count 1 to a sentence of "nineteen (19) to forty-eight (48) months in the Nevada Department of Corrections." (See GPA filed 12/21/18).

Most importantly, the Information filed 12/10/18, which was attached to the Guilty Plea Agreement, specifically alleged with regard to Count 1, that Defendant "did willfully, unlawfully, maliciously and feloniously torture or unjustifiably maim, mutilate or kill a Pit Bull dog, by shooting and/or stabbing and/or cutting said dog, and/or by failing to get medical treatment for said dog." (See Information at pg. 2).

This Court previously found that the "willful and malicious" charging language was contained in the Information, and the Defendant clearly acknowledged that he was pleading to a category D felony in that regard. Additionally, there was a "stipulated sentence" of 19-48 months in prison relating to that charge.

When Mr. Blockson pled guilty, at the time of his arraignment, pursuant to the GPA, he was canvassed in part as follows:

> All right. Before I can accept your plea of guilty, I have to go through the Information with you to make sure that there's a factual basis. It says on or about the fourth day of April 2018 in Clark County, Nevada, contrary to the laws of the State of Nevada, on Count One, you did willfully, unlawfully, maliciously and feloniously torture or unjustifiably maim, mutilate or kill a Pitbull dog by shooting or stabbing or cutting said dog and/or failing to get medical treatment for said dog.
> Count Two, ownership or possession of a firearm by a prohibited person, you did willfully, unlawfully and feloniously own or have possession and/or under your custody or control a firearm, to wit, a Ruger .357 revolver bearing serial number 575-15259, the Defendant being a convicted felon having in 1996 being -- been convicted of possession of a controlled substance with intent to sell in case C135719 in the Eighth Judicial Court, a felony under the laws of the State of Nevada.
> Did you do those things?
> THE DEFENDANT: Yes, sir.

(See Transcript of Hearing, December 21, 2018, at pgs. 7-8)

NRS 574.100(6) states in relevant part that a person who "willfully and maliciously" violates NRS 574.100(1)(a) "is guilty of a category D felony." The Petitioner's argument that he was not charged with a violation of NRS 574.100(1) is belied by the record, as the Information alleges this violation, and indicates that he was being charged with the Category D felony portion of the statute. This Court previously found that the Information complied with NRS 173.075.

At the time of his Arraignment, the Defendant was specifically asked if he had read and understood the Guilty Plea Agreement, as follows:

> THE COURT: In looking at the Guilty Plea Agreement, it looks like you signed it on page 6, dated December 21; did you sign it today?
> THE DEFENDANT: Yes, sir.
> THE COURT: Did you have a chance to read it? Did you understand it before you signed it?
> THE DEFENDANT: Yeah, I understood.
> THE COURT: Okay. You had a chance to talk to Mr. Troiano about it and he answered any questions you had about it?
> THE DEFENDANT: Who is that?
> THE COURT: This attorney standing next to you.
> THE DEFENDANT: Oh, yeah. I talked to him.
> THE COURT: Do you understand that by signing the Guilty Plea Agreement you're agreeing that you read it and understood it; correct?
> THE DEFENDANT: That's -- that's correct, sir.
> THE COURT: You understand that by signing it you're giving up important Constitutional rights like right to go to trial, confront your accuser, to present evidence on your own behalf; do you understand that?

THE DEFENDANT: Yes, sir.
THE COURT: Are you currently under the influence of any alcohol, medication, narcotics or any substance that might affect your ability to understand these documents or the process that we're going through?
THE DEFENDANT: No, sir.
THE COURT: Are you currently suffering from any emotional or physical distress that's caused you to enter this plea?
THE DEFENDANT: No, sir.
THE COURT: Do you understand that the range of punishment for this -- these charges as to Count One, it's up to one to four years and up to $5,000 fine, and Count Two is up to six years and up to a $5,000 fine; do you understand that?
THE DEFENDANT: Yes, sir.
THE COURT: Do you understand that sentencing is strictly up to the Court, nobody can promise you probation, leniency or any special treatment?
THE DEFENDANT: I understand.
THE COURT: Do you have any questions that you want to ask of me, your attorney or the State before we go forward?
THE DEFENDANT: Are you the sentencing judge?
THE COURT: Am I what?
THE DEFENDANT: The sentencing judge --
THE COURT: I am in your case.
MR. TROIANO: Actually, yeah, he is.
THE COURT: And your case is assigned to Department 30, so I will be the sentencing judge, but only after you do a PSI.
THE DEFENDANT: All right.
THE COURT: Any other questions?
THE DEFENDANT: No, sir.
THE COURT: Has your attorney made any promises to you that are not contained in the Guilty Plea Agreement?
THE DEFENDANT: No.
THE COURT: Based on all the facts and circumstances, are you satisfied with the services of your attorney?
THE DEFENDANT: Yes.

(See Transcript from Arraignment, December 21, 2018, at pgs. 5-7).

As the Court of Appeals noted in its order, "the judgment of conviction contains a clerical error. A judgment of conviction must include sentencing statutes. NRS 176.105(1)(c). Blockson's judgment of conviction did not refer to either NRS 574.100(6)(a) or NRS 193.130(2)(d). However, a clerical error 'may be corrected by the court at any time.' NRS 176.565." (See Court of Appeals Order, at pg. 2). Because the arguments in the instant motion, (at least relating to overturning and vacating the Defendant's conviction), have already been addressed and affirmed by the Nevada

Court of Appeals, that Court's decision is the law of the case. This Court will comply with the Court of Appeals Remand, and an Amended Judgment of Conviction will be entered forthwith, including the appropriate sentencing statutes.

With regard to the Defendant's request to remove the District Attorney's Office from the case, the Court finds no basis for this request, and it is summarily denied.

With regard to the Defendant's request for "recusal" of Judge Wiese, this Court notes that, "A judge is presumed to be impartial, and the party asserting the challenge carries the burden of establishing sufficient factual grounds warranting disqualification." *Las Vegas Sands Corp. v. Eighth Jud. Dist. Ct.*, 2016 WL 2842901 (unpublished, Nev. 2016), citing *Rippo v. State*, 113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (1997). "Nevada has two statutes governing disqualification of district court judges. NRS 1.230 lists substantive grounds for disqualification, and NRS 1.235 sets forth a procedure for disqualifying district court judges." *Towbin Dodge LLC v. Eighth Judicial Dist. Ct.*, 121 Nev. 251, 255, 112 P.3d 1063, 1066 (2005). NRS 1.230 reads as follows:

> **NRS 1.230 Grounds for disqualifying judges other than Supreme Court justices or judges of the Court of Appeals.**
>
> 1. A judge shall not act as such in an action or proceeding when the judge entertains actual bias or prejudice for or against one of the parties to the action.
>
> 2. A judge shall not act as such in an action or proceeding when implied bias exists in any of the following respects:
>
> (a) When the judge is a party to or interested in the action or proceeding.
>
> (b) When the judge is related to either party by consanguinity or affinity within the third degree.
>
> (c) When the judge has been attorney or counsel for either of the parties in the particular action or proceeding before the court.
>
> (d) When the judge is related to an attorney or counselor for either of the parties by consanguinity or affinity within the third degree. This paragraph does not apply to the presentation of ex parte or uncontested matters, except in fixing fees for an attorney so related to the judge.
>
> 3. A judge, upon the judge's own motion, may disqualify himself or herself from acting in any matter upon the ground of actual or implied bias.
>
> 4. A judge or court shall not punish for contempt any person who proceeds under the provisions of this chapter for a change of judge in a case.
>
> 5. This section does not apply to the arrangement of the calendar or the regulation of the order of business.

NRS 1.235, which sets for the procedure for disqualifying a district court judge, reads in part as follows:

NRS 1.235 Procedure for disqualifying judges other than Supreme Court justices or judges of the Court of Appeals.

1. Any party to an action or proceeding pending in any court other than the Supreme Court or the Court of Appeals, who seeks to disqualify a judge for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought. The affidavit of a party represented by an attorney must be accompanied by a certificate of the attorney of record that the affidavit is filed in good faith and not interposed for delay. Except as otherwise provided in subsections 2 and 3, the affidavit must be filed:

(a) Not less than 20 days before the date set for trial or hearing of the case; or

(b) Not less than 3 days before the date set for the hearing of any pretrial matter.

2. Except as otherwise provided in this subsection and subsection 3, if a case is not assigned to a judge before the time required under subsection 1 for filing the affidavit, the affidavit must be filed:

(a) Within 10 days after the party or the party's attorney is notified that the case has been assigned to a judge;

(b) Before the hearing of any pretrial matter; or

(c) Before the jury is empaneled, evidence taken or any ruling made in the trial or hearing, whichever occurs first. If the facts upon which disqualification of the judge is sought are not known to the party before the party is notified of the assignment of the judge or before any pretrial hearing is held, the affidavit may be filed not later than the commencement of the trial or hearing of the case.

3. If a case is reassigned to a new judge and the time for filing the affidavit under subsection 1 and paragraph (a) of subsection 2 has expired, the parties have 10 days after notice of the new assignment within which to file the affidavit, and the trial or hearing of the case must be rescheduled for a date after the expiration of the 10-day period unless the parties stipulate to an earlier date.

4. At the time the affidavit is filed, a copy must be served upon the judge sought to be disqualified. Service must be made by delivering the copy to the judge personally or by leaving it at the judge's chambers with some person of suitable age and discretion employed therein.

5. Except as otherwise provided in subsection 6, the judge against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter and shall:

(a) If the judge is a district judge, immediately transfer the case to another department of the court, if there is more than one department of the court in the district, or request the judge of another district court to preside at the trial or hearing of the matter;

(b) If the judge is a justice of the peace, immediately arrange for another justice of the peace to preside at the trial or hearing of the matter as provided pursuant to NRS 4.032, 4.340 or 4.345, as applicable; or

(c) If the judge is a municipal judge, immediately arrange for another municipal judge to preside at the trial or hearing of the matter as provided pursuant to NRS 5.023 or 5.024, as applicable.

6. A judge may challenge an affidavit alleging bias or prejudice by filing a written answer with the clerk of the court within 5 judicial days after the

affidavit is filed, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of the judge's disqualification. The question of the judge's disqualification must thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed:

(a) If the judge is a district judge, by the presiding judge of the judicial district in judicial districts having more than one judge, or if the presiding judge of the judicial district is sought to be disqualified, by the judge having the greatest number of years of service;

(b) If the judge is a justice of the peace, by the presiding judge of the justice court in justice courts having more than one justice of the peace, or if the presiding judge is sought to be disqualified, by the justice of the peace having the greatest number of years of service;

(c) If the judge is a municipal judge, by the presiding judge of the municipal court in municipal courts having more than one municipal judge, or if the presiding judge is sought to be disqualified, by the municipal judge having the greatest number of years of service; or

(d) If there is no presiding judge, by the Supreme Court.

It should be noted that "a trial judge has a duty to sit and 'preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard, or other compelling reason to the contrary," and "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required." *Millen v. Eighth Judicial Dist Ct.*, 122 Nev. 1245, 1253, 148 P.3d 694 (2006). The Nevada Supreme Court has further held that "A judge is presumed to be unbiased, and generally, 'the attitude of a judge toward the attorney for a party is largely irrelevant.'" *Millen* at pg. 1254, citing *Las Vegas Downtown Redev. Agency v. Hecht*, 113 Nev. 632, 635, 940 P.2d 127, 128 (1997). "The general rule of law is that what a judge learns in his official capacity does not result in disqualification." *Kirksey v. State*, 112 Nev. 980, 923 P.2d 1102, citing to *Goldman v. Bryan*, 104 Nev. 644, 764 P.2d 1296 (1988). Additionally, "Because a judge is presumed to be impartial, 'the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification.'" *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011), citing *Goldman v. Bryan,* 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988). Finally, the Court has indicated that "disqualification for personal bias requires 'an extreme showing of bias that would permit manipulation of the court and significantly impede the judicial process and the administration of justice.' Generally, disqualification for personal bias or prejudice or knowledge of disputed facts will depend on the circumstances of each case." *Millen* at pg. 1254-1255, citing *Hecht* at pg. 636.

In the Nevada Code of Judicial Conduct, some terms are defined. "Impartial" is one of those terms, and is defined as follows:

> "Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." (NCJC, Terminology).

Rule 1.2 indicates that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." (NCJC, Rule 1.2, Canon 1)

Rule 2.2 reads in part as follows:

> **Rule 2.2. Impartiality and Fairness**. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.
> [1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
> [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
> [3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.
> . . . .

(NCJC, Rule 2.2, Canon 2)

Rule 2.3 reads in part as follows:

> **Rule 2.3. Bias, Prejudice, and Harassment**.
> (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
> (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
> (C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including, but not limited to, race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.
> (D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

(NCJC, Rule 2.3, Canon 2)

Rule 2.4 reads in part that "A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." (NCJC, Rule 2.4, Canon 2)

Rule 2.11(A) of the Nevada Rules of Judicial Conduct, indicates that "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. . ." (NCJC, Rule 2.11, Canon 2). The Comments to this rule contain the following statement: "Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply."

In the case of *City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial Dist. Ct.*, 116 Nev. 640, 5 P.3d 1059 (2000), the Nevada Supreme Court addressed a request to recuse Judge Mark Denton from an eminent domain case. The Court referenced NCJC Canon 3(E)(1), which indicated that "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, ..." *Redevelopment Agency* at pg. 644. The Court went on to state the following, "[W]e have held that whether a judge's impartiality can reasonably be questioned is an objective question that this court reviews as a question of law using its independent judgment of the undisputed facts. *Redevelopment Agency*, at pg. 644, citing *In re Varain*, 114 Nev. 1271, 1278, 969 P.2d 305, 310 (1998).

In *People for the Ethical Treatment of Animals (PETA) v. Bobby Berosini,* 111 Nev. 431, 894 P.2d 337 (1995), overruled on other grounds by *Towbin Dodge LLC v. Eighth Judicial Dist Court*, the Nevada Supreme Court similarly stated, "the test for whether a judge's impartiality might reasonably be questioned is objective; whether a judge is actually impartial is not material." *Berosini* at pg. 436. The Court referenced NCJC Canon 2, which provided that "a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities," and indicated that "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity,

impartiality and competence is impaired." *Berosini* at pg. 435-436. The Court referenced 28 U.S.C. §455(a) a federal statute, designed to promote public confidence in the integrity of the judicial process, and referenced a case which indicated that "The goal of section 455(a) is to ***avoid even the appearance of partiality***." *Berosini* at pg. 436, (emphasis added), citing *Liljeberg v. Health Services Acquisition Corp*, 486 U.S. 847, 108 S.Ct. 2094, 100 L.Ed.2d 855 (1988). Another federal court had stated, "Under §455(a) a judge has a continuing duty to recuse before, during, or, in some circumstances, after a proceeding, if the judge concludes that sufficient factual grounds exist to cause an objective observer reasonably to question the judge's impartiality... The standard is purely objective. The inquiry is limited to outward manifestations and reasonable inferences drawn therefrom." *Berosini,* at pg. 437, citing *United States v. Cooley*, 1 F.3d 985, 992-993 (10th Cir. 1993). The Court in *Berosini,* indicated that the question before the Court was "whether a reasonable person, knowing all the facts, would harbor reasonable doubts about Judge Lehman's impartiality." The Court concluded that they had to grant the motion to disqualify Judge Lehman, "to avoid even the appearance of impropriety and to promote public confidence in the integrity of the judicial process. We conclude that a reasonable person knowing all the facts, would harbor reasonable doubts about Judge Lehman's impartiality." *Berosini*, at pg. 438.

In another Nevada Supreme Court case, the Court stated, "remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence." *Schubert v. Eighth Judicial Dist. Ct.*, 128 Nev. 933, 381 P.3d 660 (2012).

In the *Hecht* case, Hecht filed a motion to disqualify Justice Cliff Young from participating in an appellate decision, based on the argument that he allegedly harbored a bias against Hecht's counsel, Kermitt Waters. This alleged bias stemmed from statements made by Justice Young during a Washoe County Bar Association Lunch, during a campaign, where Steve Jones was running against Justice Young. There were comments about campaign financing that Jones had received from Kermitt Waters, and Justice Young suggested that it appeared that Mr. Waters had exceeded the allowable limit of contributions to Judge Jones. Hecht argued that these statements "amounted to an accusation that Waters had committed a crime, and as

such [were] evidence of Justice Young's actual or implied bias toward Waters." *Hecht* at pg. 634.

The Court stated that it had "consistently held that the attitude of a judge toward the attorney for a party is largely irrelevant." *Hecht* at pg. 635. The Court cited to its decision in *Ainsworth v. Combined Ins. Co.,* 105 Nev. 237, 259, 774 P.2d 1003, 1019 (1989), in which the Court held that "generally, an allegation of bias in favor of or against counsel for a litigant states an insufficient ground for disqualification because it is not indicative of extrajudicial bias against the party." The Court indicated that the purpose for that policy was that because Nevada is a small state, with a limited bar membership, it is "inevitable that frequent interactions will occur between the members of the bar and the judiciary." *Hecht* at pg. 635-636. The Court further stated that "we continue to believe that to permit a justice or judge to be disqualified on the basis of bias for or against a litigant's counsel in cases in which there is anything but an extreme showing of bias would permit manipulation of the court and significantly impede the judicial process and the administration of justice." *Id.* While the Canon states that "a judge can be disqualified for animus toward an attorney, situations where such a disqualification has been found are exceedingly rare, and non-existent in Nevada." *Id.*, citing Richard E. Flamm, *Judicial Disqualification* §4.4.4, at 124 (1996). Further, "To warrant judicial disqualification . . . the judge's bias toward the attorney ordinarily must be extreme. Situations in which judges have manifested such extreme bias toward an attorney are exceedingly rare." *Id.*

In *Hecht,* the Court cited to *Valladares v. District Court*, 112 Nev. 79, 910 P.2d 256 (1996), in which Judge Connie Steinheimer's campaign literature was very critical of then District Judge Lew Carnahan. Such letters made disparaging remarks about Carnahan's ethics, honesty, and competency. Steinheimer won the election, and Carnahan appeared as an attorney for a party before her, and requested that she recuse herself. Steinheimer refused, and it was taken to the Supreme Court, which stated that "Judge Steinheimer does not possess an actual or apparent bias against Carnahan and therefore need not recuse herself." *Hecht* at pg. 636, citing *Valladares* at 84.

The Court also cited to *Sonner v. State*, where a prosecutor represented a judge up to the day the prosecutor was to begin trying a death penalty case in front of the judge. The Court held that even though the prosecutor had represented the judge in an

unrelated matter, until the day before trial, "there was no reason to conclude that the attorney-client relationship between the judge and the prosecutor in any way affected the judge's ability to be fair and impartial." *Hecht* at pg. 636-637, citing *Sonner v. State*, 112 Nev. 1328, 930 P.2d 707 (1996).

The Court in *Hecht*, indicated that "the facts presented in the case at bar do not rise to anything near the level warranting Justice Young's disqualification. The comments made by Justice Young were off-the-cuff remarks made during an election campaign; and they were not nearly as serious as those made in Ainsworth and Valadares, in which the judges made egregious remarks about counsel for a party, or the situation in Sonner. Justice Young's comments were based upon the information he had received and merely suggested that Waters may have engaged in impropriety. . . .Justice Young's remarks do not show evidence of a bias toward Waters that would mandate Justice Young's disqualification in this matter." *Hecht* at pg. 637. The Court concluded its opinion by stating that "Before a justice or judge can be disqualified because of animus toward a party's attorney, egregious facts must be shown." *Hecht* at pg. 638.

In *Ainsworth v. Combined Ins. Co. of America*, 105 Nev. 237, 774 P.2d 1003 (1989), the Court addressed a motion requesting disqualification of former Chief Justice Gunderson. Combined argued that 1) he had a "disqualifying bias or prejudice for and against the litigants and their counsel;" 2) his impartiality was subject to question so as to create a "disqualifying appearance of impropriety;" and 3) his alleged partiality denied Combined its right to a fair hearing before an impartial tribunal. *Id.*, at 253. Combined argued that the appeal was handled in a manner contrary to the Court's normal procedure, but the Court summarily concluded that the Court followed its normal procedure, and nothing relating to that issue demonstrated any prejudice, bias or appearance or impropriety stemming from an extrajudicial source. *Id.*, at 255-256. Combined argued that during oral argument, Gunderson "(1) 'openly ridiculed' and was uncivil and hostile to Combined and its attorney; (2) 'acted not as a member of an appellate court but as an advocate for the appellant'; (3) 'expressed the opinion that Combined's very policy was an act of bad faith;' and (4) expressed an 'animus' that was not 'confined to Combined and its counsel but seemingly reached the insurance industry as a whole.'" *Id.*, at 256. The Supreme Court apparently reviewed the

recording of the oral argument, and concluded that the arguments were legally insufficient to support the disqualification, but were also belied by the "tone, tenor and substance" of Justice Gunderson's remarks. *Id.*, at pgs. 256-257. The Court held that his conduct was "well within the acceptable boundaries of courtroom exchange." Id., at 257, citing *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1316 (2nd Cir. 1988). The Court held that "Although he may have expressed strong views regarding the separate, additional facts in the record evidencing the oppressive nature of Combined's conduct, his expression of those views at the oral argument exhibited no bias stemming from an extrajudicial source." *Id.* at 257, citing *Goldman v. Bryan*, 104 Nev. 644, --, n. 6, 764 P.2d 1296, 1301 (1988); and citing also to *In re Guardianship of Styer*, 24 Ariz. App. 148, 536 P.2d 717 (1975) "(Although a judge may have a strong opinion on merits of a cause or a strong feeling about the type of litigation involved, the expression of such views does not establish disqualifying bias or prejudice.)" Apparently Justice Gunderson made some comments about Combined and its counsel, which may have indicated a preconceived bias. The Court indicated that "although former Chief Justice Gunderson's response candidly acknowledges that he harbored preconceived, negative impressions respecting the legal abilities of one of Combined's counsel, his response also indicated that those impressions were based upon his perception of counsel's prior 'work product and performance in this court.' Thus, those perceptions constitute neither an extrajudicial, nor a disqualifying bias." *Id.*, at pg. 258, citing *Goldman v. Bryan*, 104 Nev. 644, 764 P.2d 1296 (1988); *In re Cooper* 821 F.2d 833, 838-42 (1st Cir. 1987) (a judge is not required to 'mince words' respecting counsel who appear before him; it is a judge's job to make credibility determinations, and when he does so, he does not thereby become subject, legitimately, to charges of bias.) The Court said, that to whatever extent "Gunderson's response may evidence negative, personal impressions about Combined's counsel, based upon counsel's prior legal associations, his performance on the bar examination or his marital situation, those impressions were formed during the course of his judicial and administrative duties as a Justice and Chief Justice on this court." *Id.*, at pg. 258, citing *United States v. Conforte*, 457 F.Supp. 641, 657 (D.Nev. 1978) (where origin of judge's impressions was inextricably bound up with judicial proceedings, judge's alleged bias did not stem from an extrajudicial source), modified on other grounds, 624 F.2d 869 (9th Cir.), cert denied,

449 U.S. 1012, 101 S.Ct. 568, 66 L.Ed.2d 470 (1980). Finally, the Court stated that "those negative impressions extended only to counsel for the litigant involved, not to the litigant itself. Generally, an allegation of bias in favor of or against counsel for a litigant states an insufficient ground for disqualification because it is not indicative of extrajudicial bias against the party." *Id*., at pg. 259, citing *In re Petition to Recall Dunleavy*, 104 Nev. 784, 769 P.2d 1271, 1275, citing *Gilbert v. City of Little Rock, Ark*., 722 F.2d 1390, 1398-99 (8th Cir. 1983), cert denied, 466 U.S. 972, 104 S.Ct. 2347, 80 L.Ed.2d 820 (1984); *Davis v. Board of School Com'rs of Mobile County*, 517 F.2d 1044, 1050 (5th Cir. 1975). Ultimately, the Court found that there was no basis for disqualification of Justice Gunderson.

This Court acknowledges that several of the cases referenced herein, have been reversed or modified for various reasons. This Court believes, however, that the analysis contained in them is still good law, and is helpful and instructive in the present case. This Court further acknowledges that most of the cases cited herein dealt with the Nevada Code of Judicial Conduct which existed prior to the Code's revision in 2009. The Revised Nevada Code of Judicial Conduct became effective January 19, 2010, containing somewhat different language, different section numbers, etc. This Court's reliance on the above-referenced case law, is consistent with the Nevada Supreme Court's recent reference to many of these same cases. In the unpublished case of *Mkhitaryan v. Eighth Judicial Dist. Ct*., 2016 WL 5957647, 385 P.3d 48 (Nev., 2016, unpublished), the Nevada Supreme Court stated the following analysis:

> Rule 2.7 of the Nevada Code of Judicial Conduct (NCJC), provides that "[a] judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law." Under Rule 2.11(A)(1) of the NCJC, judicial disqualification is required "in any proceeding in which the judge's impartiality might reasonably be questioned, including when the judge has a personal bias or prejudice concerning a party." See also NRS 1.230 ("A judge shall not act as such in an action or proceeding when the judge entertains actual bias or prejudice for or against one of the parties to the action."). ***The test under the NCJC to evaluate whether a judge's impartiality might reasonably be questioned is an objective one – whether a reasonable person knowing all of the facts would harbor reasonable doubts about the judge's impartiality.*** See *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011). Disqualification for personal bias requires an extreme showing of bias. *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1254, 148 P.3d 694, 701 (2006). Further, this court has generally recognized that bias must stem from an "extrajudicial source," something other than what

> the judge learned from his or her participation in the case. *Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009), and that adverse judicial rulings during the proceedings are not a basis to disqualify a judge. *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988). . . .

Id., (emphasis added).

In another recent Nevada Court of Appeals decision, also unpublished, the Court set forth the same test in determining whether disqualification was warranted. The Court of Appeals stated, "The test for whether a judge's impartiality might reasonably be questioned is objective and disqualification is required when 'a reasonable person, knowing all the facts, would harbor reasonable doubts about the judges impartiality.'" *Bayouth v. State,* 2018 WL 2489862 (Nev.Ct.of App., 2018, unpublished).

In *Ybarra v. State*, 127 Nev. 47, 247 P.3d 269 (2011), the Nevada Supreme Court again indicated that "the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." *Ybarra* at pg. 50, citing NCJC Canon 2A. The Court went on to indicate that the issue that needed to be addressed was again, "***whether a reasonable person, knowing all the facts, would harbor reasonable doubts about the judge's impartiality***." *Ybarra* at pg. 51, (emphasis added), citing *PETA*, 111 Nev. at 438, 894 P.2d at 341 (additional citations omitted). In *Ybarra*, the Court cited to *People v. Booker*, where the Defendant who was charged with a crime, argued that the judge should have been disqualified because he had represented the victim's father in a divorce proceeding, and the appellate court could find no evidence in the record suggesting that the trial judge was biased against the defendant. 224 Ill.App.3d 542, 166 Ill. Dec. 252, 585 N.E.2d 1274, 1284 (1992). Further, a judge in a small town, need not disqualify himself merely because he knows one of the parties. *Ybarra* at pg. 52, citing *Jacobson v. Manfredi*, 100 Nev. 226, 230, 679 P.2d 251, 254 (1984). In Ybarra, the Court concluded that the prior representation by Judge Dobrescue would not cause an objective person reasonably to doubt his impartiality. *Ybarra* at pg. 52.

This Court does not believe that any of the grounds set forth in NRS 1.230 apply, as this Court has no bias or prejudice against the Defendant, and no basis for a voluntary recusal. The Court is not sure whether the present Motion for Recusal of Judge Wiese was intended to be a Motion for Disqualification, pursuant to NRS 1.235,

as it was called a Motion for Recusal and not called a Motion for Disqualification. If it was intended to be a Motion for Disqualification under NRS 1.235, it is untimely pursuant to NRS 1.235(1), as the statute appears to only apply "pre-trial." An "Affidavit," as required by NRS 1.235 was not filed, nor served on the Court, and consequently, there appears to be no reason to "challenge an affidavit alleging bias or prejudice by filing a written answer with the clerk of the court within 5 judicial days after the affidavit is filed." This Court does not believe that an objective person would reasonably doubt this Court's impartiality, and consequently, the Court does not believe that recusal, or disqualification would be appropriate.

CONCLUSION AND ORDER.

Based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that the Defendant's Motion to Overturn and Vacate Conviction for Outrageous Government Conduct and Recusal of Judge Wiese and District Attorney's Office for Clark County, Nevada, is hereby **DENIED.**

The Court requests that Counsel for the State prepare and process a Notice of Entry of this Order.

Because this matter has been decided on the pleadings, the hearing set for October 5, 2021, will be taken "off calendar," and consequently, there is no need that counsel or the parties appear.

Pursuant to the 8/30/21 Order of the Court of Appeals, an Amended Judgment of Conviction will be filed forthwith.

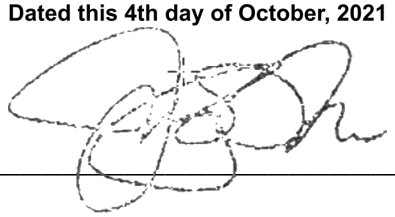
Because the Defendant's Motion for Recusal could be construed as a Motion for Disqualification, this Order will also be submitted to the Chief Judge, and if she believes it should be considered a Motion for Disqualification, she may take whatever action in that regard she believes is appropriate.

The Court further notes Defendant has filed a Motion and Order for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference seeking personal appearance for the October 5, 2021, hearing. Said motion is set for hearing on October 7, 2021, at 8:30 AM.

Because the Motion to Overturn and Vacate Conviction for Outrageous Government Conduct and Recusal of Judge Wiese and District Attorney's Office for Clark County, Nevada, has been decided without oral argument and the October 5,

2021, hearing was vacated, Defendant's Motion for Transportation of Inmate for Court Appearance or in the Alternative for Appearance by Telephone or Video Conference is hereby deemed **MOOT.** The hearing set for October 7, 2021, will be taken "off calendar," and consequently, there is no need for counsel or the parties appear.

Dated this 4th day of October, 2021



83B 60D C216 2354
Jerry A. Wiese
District Court Judge

November 2, 2021

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ELECTRONIC SEAL (NRS 1.190(3))

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-18-336552-1
vs	DEPT. NO. Department 30
Christopher Blockson	

AUTOMATED CERTIFICATE OF SERVICE

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

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