

IN THE SUPREME COURT OF THE STATE OF NEVADA

BO DWIGHT HEGGE,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

CASE NO. 83664
Electronically Filed
Feb 26 2022 11:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Judgment of Conviction
Fourth Judicial District Court, County of Elko
The Honorable Kriston N. Hill, District Court Judge

JOINT APPENDIX

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Attorney for Appellant

Attorneys for Respondent

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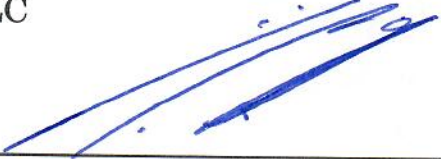
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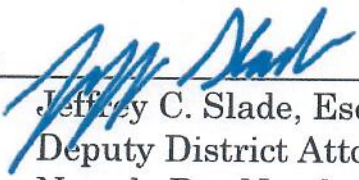
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Dated this 25TH day of January, 2022 Dated this 24 day of January, 2022.

BEN GAUMOND LAW FIRM,
PLLC

TYLER J. INGRAM
ELKO CO. DISTRICT ATTORNEY

By: 
Benjamin C. Gaumond, Esq.
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By: 
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Deputy District Attorney
Nevada Bar Number 13249
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Elko, NV 89801
(775)738-3101

///

CERTIFICATE OF SERVICE

I, BENJAMIN C. GAUMOND, certify that I am an employee of the Elko County Public Defender's Office and that on the 26th day of FEBRUARY, 2022, I served a copy of the foregoing JOINT

APPENDIX by:

(a) sending a copy via the Master Service List to Tyler J. Ingram, Elko County District Attorney; Jeffrey C. Slade, Deputy Elko County District Attorney; and Aaron D. Ford, Nevada Attorney General; and

(b) sending a copy via U.S. mail with postage prepaid to Bo Dwight Hegge, NDOC # 1084187, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070-0650.

DATED this 26th day of February, 2022.


BENJAMIN C. GAUMOND, Owner
BEN GAUMOND LAW FIRM, PLLC

FILED

CASE NO. DC-CR-21-90

2021 MAR 18 AM 10:48

DEPT. NO. \

ELKO CO DISTRICT COURT

Affirmation Pursuant to NRS 239B.030

SSN Does Appear

SSN Does Not Appear SP

CLERK _____ DEPUTY 18

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

THE STATE OF NEVADA,

Plaintiff,

vs.

BO DWIGHT HEGGE,

Defendant.

CRIMINAL

INFORMATION

**(Filed Pursuant to Plea
Agreement)**

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and informs the above-entitled Court that Defendant above-named, on or about the 13th day of February, 2021, at or near the location of Elko, within the County of Elko, and the State of Nevada, committed a crime or crimes described as follows:

COUNT 1

**POSSESSION OF A FIREARM BY A PROHIBITED PERSON, A
CATEGORY B FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460)**

That the Defendant willfully and unlawfully owned; and/or possessed, actually or constructively; and/or had custody and/or control of the following described firearm(s): Smith and Wesson semi-automatic pistol.

Furthermore, that the Defendant, at the time of the ownership, possession, custody or control, of said firearm(s) had been previously convicted of committing a misdemeanor crime of domestic violence, had been previously convicted of committing a felony criminal offense, was a fugitive from justice,

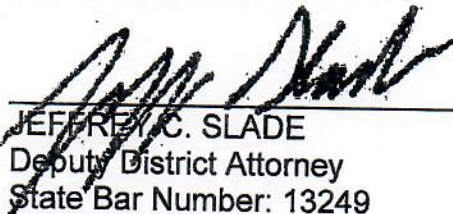
1 was an unlawful user of, or addicted to, any controlled substance, or was
2 otherwise prohibited by federal law from having a firearm, to wit:

3 Previously convicted of a felony offense in the Fourth Judicial District in case
4 number CR-FO-09-2394 and/or is an unlawful user of or addicted to a
5 controlled substance.

6 All of which is contrary to the form of the Statute in such cases made and provided,
7 and against the peace and dignity of the State of Nevada.

8 Dated: March 9, 2021.

9 TYLER J. INGRAM
10 Elko County District Attorney

11 
12 JEFFREY C. SLADE
13 Deputy District Attorney
14 State Bar Number: 13249

15 Witnesses' names and addresses known to the District Attorney at the time of filing
16 the above Criminal Information, if known, are as follows:

17 ARTHUR GENE BRASHER: ADDRESS REDACTED

18 DEAN BRASHER: 536 MORSE LANE #16 ELKO, NV 89801

19 ANDREW CUNNINGHAM: 1448 SILVER STREET ELKO, NV 89801-3924

20 KODY MICHAEL HOLLAND: 688 6TH STREET ELKO, NV 89801

21 DEAN PATRICK PINKHAM: 1448 SILVER STREET ELKO, NV 89801-3924
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1 CERTIFICATE OF SERVICE

2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
3 Elko County District Attorney's Office, and that on the 18th day of March, 2021, I hereby
4 served a copy of the CRIMINAL INFORMATION, by delivering, mailing, faxing, or causing to
5 be delivered, faxed, or mailed, a copy of said document to the following:

6 By delivering to:

7 HONORABLE DISTRICT COURT JUDGE
8 FOURTH JUDICIAL DISTRICT COURT
9 ELKO COUNTY COURTHOUSE
10 ELKO, NV 89801

11 GARY D. WOODBURY
12 ATTORNEY AT LAW
13 1053 IDAHO STREET
14 ELKO, NV 89801

15 

16 TESSA DEML
17 CASEWORKER
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27 DA # F-21-00375
28

Case No.: DC-CR-21-90

Dept. No.: 1

FILED

2021 APR -2 AM 10: 57
ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 18

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

STATE OF NEVADA,

Plaintiff,

v.

MEMORANDUM OF

PLEA AGREEMENT

BO DWIGHT HEGGE,

Defendant.

I hereby agree to enter a plea of No Contest to one count of Possession of a Firearm by a Prohibited Person, a Category B Felony in violation of NRS 202.360.

My decision to enter into this agreement is based upon the Plea Agreement in this case, in which the State has agreed to:

1. Dismiss all other charges pending against me in this matter.
2. File no further charges arising out of facts now specifically known by the Elko County District Attorney's Office in this matter.

The Parties are free at the time of sentencing to argue for the sentence each deems appropriate.

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OFFER OF PROOF

I acknowledge that if this matter proceeded to trial on the herein mentioned charge of Possession of a Firearm by a Prohibited Person, a Category B Felony in violation of NRS 202.360, the State would have sufficient evidence to show beyond a reasonable doubt that:

1. On or about the 12th and/or 13th day of February, 2021;
2. Within the County of Elko, State of Nevada;
3. I willfully and unlawfully owned and/or possessed, actually or constructively and/or had custody and/or control of a Smith and Wesson semi-automatic pistol;
4. Further that I have been previously convicted of a felony offense and/or am an unlawful user of or addicted to a controlled substance.

CONSEQUENCES OF THE PLEA

I understand that by pleading No Contest I must admit certain facts, which appear to support all the elements of the offense I am pleading No contest to exist.

I understand that as a consequence of my above stated plea that I am liable to a term of incarceration of a minimum 1 year to a maximum of 6 years in the Nevada State Prison and that I may be fined up to, \$5,000.

I understand that I am eligible for and may be placed on formal probation.

I understand that the law requires me to pay an administrative assessment fee, and that in some instances I may be required to pay other costs incurred by the State in this prosecution, such as drug analysis fees or costs of extradition.

I understand that I may be ordered to make restitution to any victim of the offense to which I am pleading and that even though charges have been dismissed or not brought as a result of this Agreement, they may still be considered by the Judge in determining the appropriate sentence to be imposed in my case.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence will be determined by the Court within the limits prescribed by law. I understand that if

5

1 my attorney, or the State, or both, recommend any particular sentence, the Court is not obligated
2 to follow those recommendations.

3 COLLATERAL CONSEQUENCE OF DEPORTATION

4 I have been informed that if I am not a citizen of the United States of America, that
5 conviction of the offense with which I have been charged may have the consequence of
6 deportation, exclusion from admission to the United States of America, or denial of naturalization
7 pursuant to the laws of the United States of America.

8 WAIVER OF RIGHTS

9 I understand that my plea as above described waives and forever requires me to give up the
10 following rights and privileges:

11 1. The Constitutional right against self-incrimination, including the right to choose
12 whether to testify at trial, and the right to prohibit the prosecutor from commenting on my silence
13 if I choose not to testify.

14 2. The Constitutional right to a speedy, fair and public trial. If the crime charged is a
15 felony or a gross misdemeanor, the right to be tried by a jury.

16 3. The Constitutional right to be assisted at trial by an attorney, either retained by me, or
17 appointed for me if I am indigent and cannot afford an attorney: The right to require the State to
18 prove each element of the offense with which I am charged beyond a reasonable doubt; the
19 Constitutional right to confront and cross-examine my accusers, and the Constitutional right to
20 subpoena witnesses on my behalf.

21 4. The right to appeal, this conviction as well as any legal issues arising prior to entry of
22 this plea with the assistance or retained or appointed counsel.

23 VOLUNTARINESS OF PLEA

24 I have discussed the elements of all of the original charges against me as well as the
25 elements of the charges that I will be convicted of if the court accepts the plea, with my attorney
26 and I understand the nature of both.
27
28

1 I understand that the State would have to prove each element of the original charges against
2 me at trial beyond a reasonable doubt.

3 I have discussed with my attorney any possible defenses, defense strategies, and
4 circumstances which might be favorable to me.


5 All of the foregoing elements, consequences, rights and waiver of rights, have been
6 thoroughly explained to me by my attorney. My attorney has answered all of my questions
7 regarding this Plea Agreement and its consequences to my satisfaction.

8 I believe that accepting this plea agreement is in my best interest, even though it will result
9 in conviction of a crime. And that a trial on the original charges could be contrary to my best
10 interest.

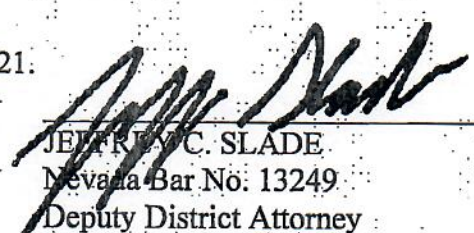
11 I am satisfied that my attorney is skilled in criminal defense and that I have been fully and
12 fairly served by my attorney.

13 I am not now under the influence of any intoxicating liquor, controlled substance or other
14 substance, which would in any manner impair my ability to comprehend or understand this
15 Agreement or the proceedings surrounding my entry of this plea. I am signing this Agreement
16 freely and voluntarily, after consultation with my attorney, and I am not acting under duress,
17 coercion, or promises of leniency except as expressly set forth in this Agreement.

18
19
20 DATED this 1 day of April, 2021.

21
22
23 
24 BO DWIGHT HEGGE
Defendant

25 DATED this 9th day of March, 2021.

26
27 
28 JEFFREY C. SLADE
Nevada Bar No. 13249
Deputy District Attorney

7

CERTIFICATE OF COUNSEL

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court, hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the original charges and the charge to which this plea is being entered.

2. I have advised the Defendant of the penalties for both the original charges and the charge contained herein and the restitution Defendant may be ordered to pay.

3. The plea offered by the Defendant pursuant to this Agreement is consistent with the facts known to me and is made with my advice to the Defendant and may be in the best interest of the Defendant.


4. To the best of my knowledge and belief, the Defendant:

a. Is competent and understands the charges and the consequences of plea as provided in this Agreement.

b. Executed this Agreement and will perform in accordance with it voluntarily.

c. Was not under the influence of intoxicating liquor, a controlled substance or other substance at the time of the execution of this Agreement.

DATED this 2 day of April, 2021.


GARY D. WOODBURY
Nevada Bar No. 1915
Attorney for the Defendant

1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to NRCP 5(b), I certify that I, KIMBERLY DAWSON, on the 2 day of
4 April 2021, served the foregoing MEMORANDUM OF PLEA AGREEMENT
5 by delivering, mailing or by facsimile transmission or causing to be delivered, mailed, or
6 transmitted by facsimile transmission, a copy of said document to the following:


7 By delivering to:

8
9 DISTRICT JUDGE KRISTON HILL
10 FOURTH JUDICIAL DISTRICT COURT
11 ELKO, NV

12 JEFFREY SLADE
13 ELKO COUNTY DISTRICT ATTORNEY
14 540 COURT STREET, SECOND FLOOR
15 ELKO, NV 89801

16 Mailed to:

17 BO HEGGE
18 440 GRANT ST. LOT 30
19 ELKO, NV 89801

20
21 
22 KIMBERLY DAWSON
23
24
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1 CASE NO. DC-CR-21-90

2 DEPT. NO. 1

FILED

2021 JUL 15 AM 9:33

ELKO CO DISTRICT COURT

3
4 THE FOURTH JUDICIAL DISTRICT COURT, ELKO, STATE OF NEVADA

5 IN AND FOR THE COUNTY OF ELKO

6 BEFORE THE HONORABLE KRISTON N. HILL

7 DISTRICT JUDGE, PRESIDING

8
9 THE STATE OF NEVADA,

10 PLAINTIFF,

11 v.

12 BO DWIGHT HEGGE,

13 DEFENDANT.

ORIGINAL

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15
16 TRANSCRIPT OF PROCEEDING

17 ARRAIGNMENT

18 April 12, 2021

19 ELKO, NEVADA

20
21
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23
24
25 Reported by: Tonja Lemich
CSR No. 380

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 DANIEL ROCHE
4 Deputy District Attorney
5 540 Court Street, 2nd Floor
6 Elko, Nevada 89801

7 FOR THE DEFENDANT:

8 GARY WOODBURY
9 1053 Idaho Street
10 Elko, Nevada 89801

11
12 * * * * *

TRANSCRIPT OF PROCEEDINGS

THE COURT: This is Case No. DC-CR-21-90. The State of Nevada versus Bo Dwight Hegge.

Are you Mr. Hegge?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. The defendant is here, out of custody with his attorney, Gary Woodbury. The State is represented by Deputy District Attorney Daniel Roche. This is the date and time set for arraignment.

Are the parties ready to proceed?

MR. ROCHE: Yes, we are, Your Honor.

MR. WOODBURY: Yes, Your Honor.

THE COURT: The Criminal Information was filed on March 18, 2021. I have a certified copy being handed down to counsel and his client.

Q BY THE COURT: Sir, the Information says your name is Bo Dwight Hegge. Is that true and correct?

A Yes, ma'am.

Q Is it spelled correctly?

A Yes, ma'am.

Q All proceedings will go forward in the Information's caption.

Do you read, write, speak and understand the English language?

1 A Yes, ma'am.

2 Q What is your highest level of education?

3 A Ninth grade.

4 Q Are you satisfied with your lawyer and
5 confident in his abilities to represent you?

6 A Yes, ma'am.

7 THE COURT: Mr. Woodbury, your client is
8 pleading guilty pursuant to a plea agreement -- excuse
9 me, no contest.

10 MR. WOODBURY: No contest.

11 THE COURT: And does the defense waive the
12 formal reading of the charges?

13 MR. WOODBURY: We do.

14 THE COURT: Sir, if you would stand.

15 (Defendant complied.)

16 Q BY THE COURT: I'm going to review the charges
17 for you and ask for you to enter a plea at the end, so
18 please listen carefully.

19 The State alleges that on or about the 13th day
20 of February, 2021, at or near the location of Elko,
21 within the County of Elko, State of Nevada, you
22 committed the following offense: Possession of a
23 firearm by a prohibited person.

24 That you willfully and unlawfully owned and/or
25 possessed, actually or constructively, and/or had

13

1 custody and/or control of the following-described
2 firearm: A Smith & Wesson semi-automatic pistol.

3 Do you understand the charges?

4 A Yes, ma'am.

5 Q And how do you plead?

6 A No contest.

7 Q You can have a seat.

8 A (Defendant complied.)

9 Q You're making this plea under a written
10 Memorandum of Plea Agreement; is that correct?

11 A Yes, ma'am.

12 Q Do you have a copy of that in front of you?

13 A Yes, ma'am.

14 Q It was filed on April 2, 2021. It's six pages
15 long. I would like you to look at page 4. There's a
16 signature line for "Bo Dwight Hegge."

17 Do you see that on your copy?

18 A Yes, ma'am.

19 Q Is that your signature?

20 A Yes, ma'am.

21 Q And do you recall signing it on April 1, 2021?

22 A Yes, ma'am.

23 Q Did you read this document carefully and
24 completely before you signed it?

25 A Yes, ma'am.

14

1 Q Did you understand it before you signed it?

2 A Yes, ma'am.

3 Q If you had any questions about this document,
4 did your attorney answer those questions for you?

5 A Yes, ma'am.

6 THE COURT: Mr. Woodbury, would you please go
7 over your client's deal with the State?

8 MR. WOODBURY: Yes, ma'am.

9 In exchange for his plea of no contest to those
10 charges, the State has agreed to file no further
11 charges arising out of the facts they now specifically
12 know in this matter, and the parties are free at
13 sentencing to argue for whatever sentence they deem
14 appropriate.

15 THE COURT: Thank you, Mr. Woodbury.

16 Q BY THE COURT: Mr. Hegge, is that your
17 understanding of your deal?

18 A Yes, ma'am.

19 THE COURT: Mr. Roche, is that the State's
20 understanding?

21 MR. ROCHE: Yes, ma'am.

22 THE COURT: Mr. Roche is the prosecutor today.
23 He'll go over the elements of the offense to which you
24 are pleading, the maximum sentence, and whether you are
25 eligible for probation.

15

1 MR. ROCHE: The elements of the offense to
2 which the defendant is pleading no contest today
3 include that on or about the 13th day of February,
4 2021, here in Elko County, the defendant willfully and
5 unlawfully owned or possessed, actually or
6 constructively, and/or had custody and control of a
7 Smith & Wesson semi-automatic pistol. And at the time
8 he was a prohibited person because he had previously
9 been convicted of a felony offense in the Fourth
10 Judicial District Court Case CR-FO-09-2394, and/or was
11 an unlawful user of or addicted to a controlled
12 substance.

13 The maximum punishment for that offense is 28
14 to 72 months in the Department of Corrections. The
15 minimum range is 12 to 30 months. There's a possible
16 fine up to \$5,000. And the defendant is eligible for
17 probation.

18 THE COURT: Is that correct, Mr. Woodbury?

19 MR. WOODBURY: Yes.

20 Q BY THE COURT: Sir, do you understand that
21 sentencing is entirely up to the judge?

22 A Yes, ma'am. Sorry.

23 Q The constitutional rights that you give up by
24 pleading no contest include: At all times you have the
25 right to be presumed innocent, and you have the right

1 to plead not guilty. You have the right to a speedy
2 and public jury trial.

3 If you plead not guilty, the Court will set
4 that trial within 60 days of today's date.

5 At trial you have the right to be represented
6 by your attorney and confront the evidence and
7 witnesses against you.

8 You have the right to be -- to present evidence
9 on your own behalf and to subpoena witnesses.

10 You have the right to take the witness stand if
11 you wish and testify in your defense. If you choose
12 not to, that fact could not and would not be used
13 against you by this Court or a jury.

14 You're giving up your right to appeal any
15 defect or problem in your case, at least to this point
16 in the proceedings.

17 Your Constitutional rights are listed in your
18 Memorandum of Plea Agreement.

19 Do you understand you're giving up these
20 valuable rights by pleading no contest?

21 A Yes, ma'am.

22 Q And are you still willing to give them up?

23 A Yes, ma'am.

24 Q You seem a little reluctant.

25 A I kind of am, but it's all right. Yes, ma'am.

1 Q It's not all right. You have the right to go
2 to trial --

3 A To me, I feel like I want to take it to trial
4 because how it says -- I feel like it's been way long
5 enough time where it should have been off my record,
6 that felony. How does it make sense it says seven
7 years? I shouldn't have had a felony on my record.
8 It's been over ten years, almost ten years since that
9 felony.

10 Q Have you expressed your concerns with
11 Mr. Woodbury?

12 A Yes. But his concerns is that --

13 Q I don't want to get into what you and your
14 attorney have discussed.

15 MR. WOODBURY: I have informed Mr. Hegge that
16 it is possible to have your gun rights restored after
17 conviction of a felony, but the passage of time doesn't
18 do it.

19 Q BY THE COURT: I believe that's a correct
20 recitation of the law.

21 A And I understand it, but I didn't know that.
22 And a lot of people didn't know that, that you have to
23 petition the Court to get it dropped off your record.
24 I didn't know that.

25 Q Sir, I would be happy to set this for trial if

1 you like. This is your case, and you determine the
2 direction we go with it.

3 Do you need some more time to discuss it with
4 Mr. Woodbury?

5 MR. WOODBURY: Please.

6 THE COURT: Okay. Mr. Woodbury, if you would
7 like to use the jury room.

8 MR. WOODBURY: Okay.

9 (Recess.)

10 THE COURT: Mr. Hegge. So we're back on the
11 record in Case DC-CR-21-90.

12 Q BY THE COURT: Mr. Hegge, did you have an
13 opportunity to speak with Mr. Woodbury?

14 A Yes, ma'am.

15 Q Are you prepared to proceed?

16 A Yes, ma'am.

17 THE COURT: Mr. Woodbury, what is your client's
18 intention?

19 MR. WOODBURY: His intention at this time is to
20 continue with the plea agreement.

21 Q BY THE COURT: Is that correct, Mr. Hegge?

22 A Yes, ma'am.

23 Q So, Mr. Hegge, I believe that I reviewed your
24 constitutional rights with you and asked if you
25 understood those rights.

19

1 A Yes, ma'am.

2 Q And are you willing to give those rights up?

3 A Yes, ma'am.

4 Q Has anybody coerced you, or intimidated you, or
5 placed you in fear to get your plea?

6 A No, ma'am.

7 Q Has anyone offered you anything outside of
8 court to get your plea?

9 A No, ma'am.

10 Q Do you think pleading no contest is the best
11 thing to do all thing considered?

12 A Yes, ma'am.

13 Q Do you have any physical problems today?

14 A No, ma'am.

15 Q Have you ever been diagnosed with a mental
16 illness or difficulty?

17 A No, ma'am.

18 Q Do you have any alcohol or other drugs in your
19 system now, including illegal drugs, prescription
20 medication, or over-the-counter medications?

21 A No, ma'am.

22 Q Are you sober and in full control of your mind?

23 A Yes, ma'am.

24 Q I believe that you are now that I've had the
25 opportunity to speak with you for a bit.

20

1 Did your attorney discuss any defenses that you
2 thought or he thought might be applicable to your case?

3 A Yes, ma'am.

4 Q And do you understand that you're giving up the
5 right to present those defenses by pleading no contest?

6 A Yes, ma'am.

7 Q I don't know if you're a U.S. citizen, but I
8 have to inform you if you're not, any criminal
9 conviction in this case can have bad consequences for
10 your residency in the country, up to and including
11 removal, deportation, and they don't let you back in
12 the country.

13 Do you understand that?

14 A Yes, ma'am.

15 Q Do you still wish to plead no contest with that
16 understanding?

17 A Yes, ma'am.

18 Q Keeping in mind the consequences of your plea,
19 the rights you're waiving by pleading no contest, do
20 you still wish to plead no contest?

21 A Yes, ma'am.

22 Q Because you're pleading no contest, I'm not
23 going to ask you to stand up and tell me what happened.
24 But included in your plea agreement is an offer of
25 proof, which is what would be proven if this case were

21

1 to go to trial.

2 Would you like me to rely on this offer of
3 proof in deciding whether there's a factual basis for
4 your plea?

5 A Yes, ma'am.

6 THE COURT: Anything else?

7 MR. ROCHE: Not from the State, Your Honor.

8 THE COURT: Mr. Woodbury, anything you would
9 like me to canvass your client on?

10 MR. WOODBURY: No, Your Honor.

11 THE COURT: The Court finds there's a factual
12 basis for your plea. I accept your pleas. I find
13 they're made knowingly, intelligently, and voluntarily,
14 and that you have full knowledge of your rights.

15 Does June 8th at 3 p.m. work for sentencing?

16 THE DEFENDANT: Yes, ma'am.

17 MR. WOODBURY: I don't have my calendar, but
18 I'm sure it will. We'll make it work.

19 THE COURT: Ms. Dawson is nodding her head that
20 will work.

21 MR. WOODBURY: She knows more than I do.

22 THE COURT: For the State?

23 MR. ROCHE: Yes, Your Honor.

24 THE COURT: The presentence investigation will
25 be due two weeks before sentencing.

22

1 Anything else?

2 MR. WOODBURY: Mr. Hegge is on house arrest,
3 and there's certain exclusions, but we would like just
4 one more exclusion so he can go to the Division of
5 Parole and Probation and be interviewed by them.

6 THE COURT: Certainly. That seems reasonable.

7 MR. WOODBURY: Okay.

8 THE COURT: All right. Anything else?

9 MR. WOODBURY: No.

10 THE COURT: All right. Thank you. We'll see
11 you back in June.

12 (Proceedings concluded.)

13 --ooOoo--
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CERTIFICATE

STATE OF NEVADA)
ELKO COUNTY) SS.
)

I, Tonja Lemich, CSR No. 380, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Honorable Kriston N. Hill, District Judge, presiding.

Dated at Elko, Nevada, this
13th day of July, 2021.



Tonja Lemich
CSR No. 380

1 Case No.: DC-CR-21-90

2 Dept. No.: 1

FILED

2021 JUN 25 AM 9:54

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 18

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7 **IN THE FOURTH JUDICIAL DISTRICT COURT**
8 **IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA**
9

10 _____
11 STATE OF NEVADA,
12 Plaintiff,

13 **MOTION TO WITHDRAW PLEA**
14 **OF NO CONTEST**
15

16 BO DWIGHT HEGGE,
17 Defendant.
18 _____

19 Comes now the Defendant above named by and through his attorney Gary D. Woodbury
20 and pursuant to NRS 176.165 moves this court for its order allowing Defendant to withdraw his
21 plea of No Contest to one Count of Possession of a Firearm by a Prohibited Person.

22 On April 12, 2021 Defendant pled No contest to a charge of violating NRS 202.360.
23 The Amended Information alleged that he had violated the statute willfully and unlawfully. The
24 date of the offense was alleged to have occurred on February 13, 2021.

25 Defendant is presently scheduled to be sentenced for the Offense on June 28, 2021.

26 Defendant's justification for requesting to withdraw his plea of No Contest is made
27 pursuant Robey v State, 96 Nev. 459 (1980), NRS 194.010 (5), (6) and (7) and (8) and NRS
28 200.160.

1 In addition, Defendant asserts that the involved law enforcement officers did not have
2 the right to conduct a pat down search of Defendant based solely on the assertions of one Arthur
3 Brasher and that Defendant's would have prevailed had a motion to suppress the finding of the
4 pistol been filed. The firearm that Defendant possessed was found during a pat down search.

5 ARGUMENT

6 1. Willfully.

7 A motion to withdraw a plea of guilty or nolo contendere filed before sentencing has
8 been held by the Nevada Supreme court to not prejudice the State if it is granted, Mitchell v
9 State, 109 Nev. 137, 141 (1993).

10 If the Court grants a hearing, Defendant will testify that until the time of his arrest he was
11 understood that because his prior conviction for a felony was over 10 years old that the provision
12 of the Nevada law prohibiting him from possessing a firearm as an ex-felon no longer applied to
13 him. Defendant was not, therefore, aware or conscious of the fact he was committing an unlawful
14 act by possessing a pistol.

15 In Robey v State, 96 Nev.459 (1980) the Nevada Supreme Court held that the word
16 "willfully" as an element of a criminal act requires the conscious commission of a wrongful act,
17 Schertz v State, 109 Nev 377 (1993), State of Nevada v 2nd Judicial District Court, 462 P.2d
18 671, 675 (2020).

19 Defendant will acknowledge in his testimony that he learned he was mistaken about his
20 conclusion that he could lawfully possess a firearm because 10 years had passed since a previous
21 felony conviction, but he contends that he did not consciously violate the law and that therefore,
22 under Robey, he did not act willfully in violation of the law and did not commit a crime.

23 Defendant will also testify that although discussions with trial counsel may have included
24 him being informed of the possibility of an acquittal based on him not having been aware of his
25 mistaken belief that he was entitled to possess a firearm, that if such discussions occurred, he did
26 not understand their significance.

27 2. Defense of Others.

28 Defendant will testify that he has had two brothers who he believes have been murdered
within the last two years. His brother Dennis died in Winnemucca of an apparent drug overdose
on or about March 1, 2019. Defendant will testify that he believes Dennis was injected with a
drug or drugs by third parties that caused his death.

1 A portion of the remains of Douglas Hegge, the twin brother of Defendant, were found
2 in Elko County in June 2021. Douglas Hegge had been missing since 2019. Douglas Hegge's
3 common law wife, Beth Agee-Morrison, was found dead in a remote area of Elko County in
4 September, 2020. Both Douglas and Ms. Morrison had obviously been murdered.

5 Defendant will testify that even though his twin brother's remains had not been found
6 prior to Feb 13, 2021, it was clear to him that his brother being missing and Ms. Morrison being
7 murdered meant that his brother had been murdered as well.

8 Defendant will testify that in the past two-year period he has received several anonymous
9 notes threatening him with being killed as his brothers and his common-law sister-in-law had
10 been. Those notes were found at or near Defendant's residence where he resided with two small
11 children and their mother, Christine Woolsey. The children are the biological children of
12 Defendant.

13 Defendant will testify that he purchased the firearm to give to Ms. Woolsey to protect
14 herself. Defendant will testify that he has two small children living with him and Ms. Woolsey
15 who also needs protection.

16 Doing specific acts in defense of others who are in imminent danger can constitute an
17 excusable act under Nevada law, NRS 200.160. It follows that taking steps that may otherwise
18 be criminal to assist in the defense of family members who have been threatened with harm is
19 also excusable.

20 REASONABLE BELIEF

21 Defendant will also explain to the Court that he believes that the pat down search by Elko
22 City police officer Pinkham was illegal, and that the physical evidence of Defendant possessing
23 a firearm should have been suppressed.

24 Specifically, the pat down search was conducted on September 13, 2020. Officer
25 Pinkham's justification for conducting the pat-down search was based on verbal information
26 provided to him by Arthur Brasher. According to Pinkham's Probable Cause Declaration, he
27 was aware that there had been incidents of prior criminal activity at the residence, (Paragraph 6
28 of the Pinkham Declaration of Probable Cause attached hereto as Exhibit 1).

According to Officer Pinkham's Declaration of Probable Cause, Brasher told him that
Defendant on February 12, 2021 drew a gun on Mr. Brasher over an unpaid loan Defendant had
made to Mr. Brasher's twin brother. Officer Pinkham did not attempt to clarify why an apparent

1 assault would be made by Defendant on Mr. Brasher when it was his brother that owed money to
2 Defendant.

3 Officer Pinkham did not ascertain at what time of day on February 12, 2021 that the
4 alleged assault on him had occurred.

5 Mr. Brasher told Officer Pinkham that Defendant was in his residence at the time law
6 enforcement assistance was requested. That information appears in paragraph 2 of Officer
7 Pinkham's report attached hereto as exhibit 2. When Officer Pinkham approached Defendant,
8 Defendant was standing alone outside the Brasher residence. No evidence of Defendant having
9 been in the Brasher residence on February 13, 2021 is stated.

10 Officer Pinkham's declaration of probable cause next asserts that based on what he had
11 been told by Mr. Brasher he concluded that Defendant could be armed with a firearm and that
12 Officer Pinkham needed to conduct a search of Defendant for a weapon.

13 Neither the Probable Cause Declaration of Officer Pinkham or his report asserts that
14 Defendant was angry, evasive or contradictory in his answers to questions posed before the pat
15 down, that he declined to keep his hands in view, that he was nervous or agitated when he was
16 approached, or that he made any furtive movements, Cortex v State, 127 Nev. Ad. Op. 44
17 (2011).

18 Officer Pinkham asked and was informed by Defendant that Defendant was waiting for a
19 friend to arrive and Defendant voluntarily informed him who was in the residence. Officer
20 Pinkham did not seek information from Defendant about whether he would admit or deny he had
21 been at the residence the previous day or what had happened the previous day.

22 Officer Pinkham then initiated the pat down search of Defendant.

23 Police officers may conduct a limited pat-down search for weapons of a suspect who
24 they reasonably believe is armed with a dangerous weapon and is a threat to the safety of the
25 peace officer or another. Such reasonable belief, in both instances, must be based on specific
26 articulable facts that justify the search, Some v. State, 124 Nev. 434 (2008). See NRS
27 171.1232.

28 Defendant will testify that he engaged in discussions with trial counsel regarding the
validity of the search by Officer Pinkham and that the questions raised by Defendant concerned
whether evidentiary hearsay rules prevented the validity of the search. Defendant will testify


1 that he never understood that there were issues about whether officer Pinkham's suspicions that
2 Defendant was armed were objectively reasonable.

3 Defendant will also testify that he has been informed that Mr. Brasher and his brother
4 have moved from the residence and that their location is and has been unknown to law
5 enforcement since before he entered his plea.

6 **SUMMARY**

7 Based on the above Defendant requests to be allowed to withdraw his plea of Nolo
8 Contendere and to enter a plea of not guilty.

9 RESPECTFULLY SUBMITTED THIS 25 DAY OF JUNE 2021.

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13 GARY D. WOODBURY
14 Attorney for Defendant
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I, KIMBERLY DAWSON, on the 25 day of JUNE 2021 served the foregoing MOTION TO WITHDRAW PLEA OF NO CONTEST by delivering, mailing or by facsimile transmission or causing to be delivered, mailed, or transmitted by facsimile transmission, a copy of said document to the following:

By delivering to:

THE HONORABLE KRISTON HILL
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

ELKO COUNTY DISTRICT ATTORNEY
540 COURT STREET, SECOND FLOOR
ELKO, NV 89801


KIMBERLY DAWSON

30

EXHIBIT 1

31

DECLARATION OF PROBABLE CAUSE

ARRESTEE'S NAME: Hegge, Bo Dwigitt

DOB: 05/24/1986

DATE OF ARREST: 02/13/2021

TIME OF ARREST: 1759hrs

PLACE OF ARREST: 536 Morse Ln #16

TYPE OF ARREST:

Without Arrest Warrant: ☒

With Arrest Warrant: ☐

Arrested for P & P Hold: ☐

Citizen's Arrest: ☐ (Citizen's Arrest Form must be attached)

(If Domestic Violence is charged, indicate date and time that the battery occurred:

Date:

Time:

(If DUI is charge, indicate the arrest and conviction dates for each prior DUI offense within 7 years:

Prior Arrest:

Prior Conviction:

Prior Arrest:

Prior Conviction:

NOC	NRS CITY COUNTY	CHARGE DESCRIPTION	# CT	M- GM F	BAIL	COURT
202.360		Ex Felon in Possession of a firearm	1	F	20,000	ELJC
202.350		Carrying concealed firearm w/o permit	1	F	5,000	ELJC
200.471		Assault w/ Deadly Weapon	1	F	20,000	ELJC
205.067		Home Invasion	1	F	50,000	ELJC
205.060		Burglary w/ firearm	1	F	50,000	ELJC
200.380		Robbery w/firearm	1	F	100,000	ELJC
453.336		Possession of a C/S	1	F	5,000	ELJC

I, D. Pinkham MADE THE ARREST OF THE ABOVE NAMED ARRESTEE AND HERBY DECLARE, UNDER PENALTY OF PERJURY, THAT I HAVE KNOWLEDGE OF OR HAVE BEEN INFORMED OF THE FOLLOWING FACTS AND CIRCUMSTANCES WHICH SUPPORT THAT A CRIME OR CRIMES HAS OR WERE COMMITTED:

On 02/13/2021 at approximately 171 hrs, I Officer D. Pinkham with the Elko Police Department was dispatched to 536 Morse Lane #16 for a report of an assault. The call narrative advised the reporting party advised he was held at gun point the day prior by a male and female subject and forced out of his residence.

I arrived and made contact with the reporting party, Arthur Brasher. Arthur advised me his brother owed Bo Hegge 80 dollars. Arthur stated on 02/12/2021, Bo knocked on his door, put a gun to his head and shoved his way into the residence. Arthur stated Bo shoved him so hard he fell over the couch in the living room. Arthur stated Bo demanded they give him more than he loaned them. Arthur stated he gave Bo 20 dollars and Kody (roommate) gave him 180 dollars. Bo threatened Arthur stating he would be back for the rest of the money. Arthur described the firearm as a black semi-automatic pistol.

After learning this information, Officer Cunningham and I approached the residence. As I approached, I could see a male subject I knew to be Bo Hegge standing in the driveway. With the information that Bo could be armed with a firearm, I asked Bo to put his hands behind his back so I could search him for weapons. As I grabbed Bo's left wrist, he tensed up and refused to put his right arm behind his back. I could see his right hand was inside his hoodie pocket. I ordered Bo to put his hands behind his back. Bo continued to resist until I was able to pull his hand out of his pocket and place it behind his back. Officer Cunningham removed a black Smith and Wesson semi-automatic pistol from the pocket Bo had his hand inside. Bo was placed in handcuffs. I requested dispatch run a records check and a criminal history check on Bo. Dispatch advised Bo had two non extraditable warrants and that he had prior felony convictions.

Bo was advised he was under arrest. I conducted a search incident to arrest. Inside Bo's left pants pocket, I located a plastic baggie with a white crystal like substance. With my training and experience, I recognized the substance

to be methamphetamine. I used a Defecta-chem test to test the substance. The substance tested presumptively positive for methamphetamine. I transported Bo to the Elko County Jail where he was booked on the above charges.

DATE: 02/13/2021

[Signature] #151
(PEACE OFFICER OR CITIZEN)

DEPT.: EPD ID.NO.: 151

*FOR JUDGE'S USE ONLY

PROBABLE CAUSE FOR FURTHER DETENTION:

FOUND: ☐

NOT FOUND: ☐

DATED THIS _____ DAY OF _____ TIME: _____

(MAGISTRATE)

EXHIBIT 2

34

Initial Report/D.Pinkham

Initial Report
Officer D. Pinkham
Case: 2021-02978
Written: 02/14/2021

On 02/13/2021 at approximately 1711hrs, I Officer D. Pinkham with the Elko Police Department was dispatched to 536 Morse Lane #16 for a report of an assault. The call narrative advised the reporting party advised he was held at gunpoint the day prior by a male and female subject and forced out of his residence. The call narrative advised the reporting party did not invite the people over. The reporting party advised the subjects were still inside his house.

I arrived and made contact with the reporting party at the entrance to the trailer park. The reporting party was identified as Arthur Brasher. Arthur stated a guy and his wife came yesterday because his brother owed them money. Arthur stated the male subject knocked on his door, put a gun to his head and shoved his way into the residence. Arthur stated the male subject shoved him so hard he fell over the couch in the living room. Arthur stated two people by the names of Bo and Kody are currently inside his residence. Arthur stated Kody is allowed to be in the residence but Bo is not. I asked Arthur who put the gun in his face. Arthur stated Bo did. I asked Arthur if he lives at the residence, which he stated he does.

After learning this information, Officer Cunningham and I approached the residence. As I approached, I could see a male subject I knew to be Bo Hegge standing in the driveway. I asked Bo if he lived at residence. Bo stated he did not and that he was waiting for a friend of his. I asked Bo who was inside the residence. Bo stated someone named "Bro", Kody and someone else. With the information that Bo could be armed with a firearm, I asked Bo to put his hands behind his back so I could search him for weapons. As I grabbed Bo's left wrist, he tensed up and refused to put his right arm behind his back. I could see his right hand was inside his hoodie pocket. I ordered Bo to put his hands behind his back. Bo continued to resist until I was able to pull his hand out of his pocket and place it behind his back. Officer Cunningham removed a loaded black Smith and Wesson semi-automatic pistol from the pocket Bo had his hand inside. Bo was placed in handcuffs.

While dealing with Bo, three other subjects exited the residence. For our safety, we ordered to see everyone's hands. All subjects were eventually detained and placed in handcuffs. I asked Bo what he was doing at the residence. Bo stated "the twins" stole a coin that belonged to him and he was there to collect it. Bo advised "the twins" were Deau and Gene, unknown last names. (Later on in my investigation, I learned Arthur's middle name is Gene and he and his brother are twins.)

As I was speaking with Bo, Kody stated Bo "rushed in on them." I asked who lived in the residence. Bo stated Deau, Gene and Kody. Serafin stated the owner of the residence is "Mr. Roden." The subjects who exited the residence were identified as Kody Holland, Jared Conklin and Serafin Perez. I requested dispatch run a records check on all subjects. As I was giving dispatch information, I overheard Bo and Kody arguing. Kody was telling Bo "If you would have just let him ask if they had your coin, and be respectful to my house." I asked everyone who had permission to be inside the house. Kody stated he was the only one allowed in the residence. Bo stated he was outside and never went inside. Jared stated he "just walked up." Serafin stated Kody answered the door and let them inside.

Dispatch advised Kody had a Parole and Probation warrant and Bo had two non-extraditable warrants. Jared and Serafin had no stops or warrants. I asked dispatch to check Bo's criminal history for prior felony convictions. Dispatch advised Bo had prior felony convictions. Bo was asked if the firearm he had was stolen. Bo stated, "It shouldn't be." (Later on in my investigation, I asked Bo how he got the firearm. Bo advised he bought it from Jason Bills.) Officer Cunningham made contact with the owner of the residence and was advised Arthur and his brother rent from him but the other people were not supposed to be there. Due to the owner's son, being in jail, it was hard to determine if he told anyone else they could be there. This residence has had prior issues with criminal activity.

I asked Officer Cunningham if he could bring Arthur to the residence so he could identify the suspect. Officer Cunningham stated Arthur identified Bo and his wife. I asked Bo what his wife's name was, which he advised Christine Woolsey. I assisted Bo to his feet and walked him to a patrol vehicle. I advised Bo he was under arrest. I conducted a search incident to arrest. Inside Bo's left pants pocket, I located a plastic baggie with a white crystal like substance. With my training and experience, I recognized the substance to be methamphetamine. Bo claimed it was in a glove he got from someone inside the residence. I finished my search and read Bo his Miranda Rights. I asked Bo if he would speak with me, which he stated he would.

I asked Bo why he was at the residence today. Bo stated he was there to retrieve a coin that one of the "twins" stole from his house. Bo claimed the coin is worth a lot of money. Bo stated when he got to the residence today, Kody told him the "twins" were at the corner store. Bo stated he asked Kody if he had a pair of gloves and waited in the driveway for the "twins." I asked Bo if Jared and Serafin came with him, which he stated they did but they just drove him there. I asked Bo if he came to the residence yesterday. Bo stated he did not. Bo stated his wife and the tenants that live behind him could verify he was not at the residence yesterday. Bo stated he bought the firearm from Jason Bills earlier that day. I asked Bo if he would complete a written statement when we got to the jail, which he advised he would.

M3 (35)

I walked Bo to my patrol vehicle had placed him in the rear passenger seat. I used a Detec-a-chem test to test the suspected methamphetamine. The substance tested presumptively positive for methamphetamine. I then made contact with the reporting party who provided me his written statement. In Arthur's written statement, he states his brother owed Bo \$80.00 dollars. Bo shoved his way into the house and put a gun in his face demanding the money plus more. Bo's wife was also with him. Bo settled down when Arthur gave \$20.00 dollars and Kody gave \$120.00 dollars. Bo gave Arthur's brother until that night to give the remainder of the \$500.00 dollars. (See written statement.) I asked Arthur if he remembered what the gun looked like. Arthur stated a black semi-automatic pistol possibly a 9mm.

I transported Bo to the Elko County Jail where he was booked on assault with a deadly weapon, burglary with a firearm, robbery with a firearm, home invasion, ex-felon in possession of a firearm, carrying a concealed firearm without a permit, and possession of a controlled substance. I returned to the Elko Police Department and placed the seized firearm and methamphetamine in a temporary evidence locker. On 02/14/2021, I entered the seized items into the Elko Police Department's Evidence System. The presumptively positive methamphetamine had net weight of .51 grams.

I request this report to be forwarded to the Elko County District Attorney's Office for prosecution. I also request charges be considered for Bo's wife, Christine Woolsey. Bodycam video and pictures taken were downloaded into Evidence.com. All seized items were entered into evidence. Statements were scanned into the report.

END OF REPORT.

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CASE NO. DC-CR-21-90

FILED

2021 JUN 25 PM 3:34
ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 10/

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BO DWIGHT HEGGE,

Defendant.

STIPULATION AND ORDER
TO CONTINUE SENTENCING TO
BRIEF THE DEFENDANT'S DESIRE TO
WITHDRAW HIS PLEA

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J. INGRAM, District Attorney for the County of Elko, and JEFFREY C. SLADE Deputy District Attorney, and BO DWIGHT HEGGE, the Defendant, by and through his attorney, GARY D. WOODBURY, and hereby stipulate that the Sentencing Hearing now scheduled for June 28, 2021, be continued to a date to be agreed upon by both Parties for the following reason: The Defendant wishes to withdraw his plea which is an issue the parties will need to brief. The Defendant is not in custody.

Dated this 24th day of June, 2021.

Dated this 24 day of June, 2021.

TYLER J. INGRAM
Elko County District Attorney

By: *Jeffrey C. Slade*

JEFFREY C. SLADE
Deputy District Attorney
State Bar Number: 13249

By: *Gary D. Woodbury*

GARY D. WOODBURY
Attorney for Defendant
State Bar Number: 1915

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4 ORDER TO CONTINUE HEARING

5 Based on the foregoing Stipulation To Continue Hearing,
6 IT IS HEREBY ORDERED that the hearing above described be continued to a date to
7 be agreed upon by both Parties.
8

9 Dated this 25th day of June, 2021.
10

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16 KRISTON N. HILL
17 FOURTH JUDICIAL DISTRICT COURT JUDGE
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26 DA# F-21-00375
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RECEIVED

JUN 24 2021

Elko County Clerk

39

1 CASE NO. DC-CR-21-90

2 DEPT. NO. 1

3 Affirmation Pursuant to NRS 239B.030

4 SSN Does Appear

5 SSN Does Not Appear JD

FILED

2021 JUL -2 AM 10:55

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY AS

6
7 IN THE FOURTH JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
9

10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

13 BO DWIGHT HEGGE,

14 Defendant.
15

OPPOSITION TO MOTION TO WITHDRAW

PLEA OF NO CONTEST

16 COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J.
17 INGRAM, District Attorney for the County of Elko, and JEFFREY C. SLADE, Deputy District
18 Attorney, and submits the following Points and Authorities in support of this Opposition
19 together with all pleadings and papers on file herein.
20

21 Dated this 2nd day of July, 2021.

22 TYLER J. INGRAM
Elko County District Attorney

23 By:

24 Jeffrey C. Slade
JEFFREY C. SLADE
25 Deputy District Attorney
26 State Bar Number: 13249
27
28

1 POINTS AND AUTHORITIES

2 Defendant Bears the Burden

3 Guilty pleas are presumptively valid, especially when entered on advice of counsel.
4 *Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004). Defendant bears the burden of
5 showing that, under the totality of the circumstances, permitting him to withdraw his no
6 contest plea would be fair and just. *Stevenson v. State*, 354 P.3d 1277, 131 Nev. 598(2015)
7 (finding Stevenson failed to present a sufficient reason to permit withdrawal of his plea). The
8 Defendant must show that permitting him to withdraw his plea would not amount to allowing
9 the solemn entry of a no contest plea to become a mere gesture, a temporary and
10 meaningless formality reversible at the defendant's whim. *See id* at 1282.

11
12 Court's Decision is Protected by a More Favorable Standard of Review

13 A motion to withdraw a plea of guilty is subject to the discretion of the Court, and the
14 court's decision thereon will not be set aside on appeal unless an abuse of discretion is
15 apparent. *State v. Adams*, 94 Nev. 503, 505, 581 P.2d 868, 869 (1978) (citing *State v.*
16 *District Court*, 85 Nev. 381, 455 P.2d 923 (1969)).

17 Put another way, the Nevada Supreme Court will presume that the district court
18 correctly assessed the validity of the plea, and will not reverse the district court's
19 determination absent a *clear* showing of an abuse of discretion. *Riker v. State*, 111 Nev.
20 1316, 1322, 905 P.2d 706, 710 (quoting *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364,
21 368 (1986)) (emphasis added). Additionally, the district court may decline to conduct an
22 evidentiary hearing if it finds that the defendant's claim is belied by the record. *Little v.*
23 *Warden*, 117 Nev. 845, 852, 34 P.3d 540, 544-45 (2001); *Hargrove v. State*, 100 Nev. 498,
24 502, 686 P.2d 222, 225 (1984).

1 Most Current Legal Standard

2 Since its almost verbatim adoption from Federal Rule of Criminal Procedure 32(d)¹
3 back in 1967, NRS 176.165 has been reviewed multiple times by the Nevada Supreme
4 Court. See *Stevenson*, 354 P.3d 1277, 131 Nev. 598(2015). The most current standard of
5 interpretation can be found in *Stevenson v. State*, 354 P.3d 1277, 131 Nev. 598(2015).
6 Disavowing prior decisions which *exclusively* focused on the validity of the plea, the Nevada
7 Supreme Court affirmed that a district court must consider the totality of the circumstances to
8 determine whether permitting withdrawal of a guilty plea before sentencing would be fair and
9 just. *Id* at 1281.

10 Guilty Plea is not a Place Holder

11 A motion to withdraw a guilty or no contest plea is not an opportunity to litigate
12 potential defenses. If anything, the Defendant's attempts to draw the Court into considering
13 the merits of potential defenses actually suggests that he did in fact use his no contest plea
14 as a placeholder and now wishes to withdraw his plea because he now sees these potential
15 defenses as a preferable alternative. See *Stevenson*, 354 P.3d at 1282 (guilty plea is not a
16 placeholder that reserves a defendant's right to our criminal system's incentives for
17 acceptance of responsibility unless or until a preferable alternative later arises. Rather, it is a
18 grave and solemn act, which is accepted only with care and discernment).

19 Factual Innocence vs Ignorance of the Law

20 A *credible* claim of *factual* innocence may be a "fair and just" basis for allowing the
21 withdrawal of a guilty or no contest plea. See *Mitchell v. State*, 109 Nev. 137, 140-41, 848
22 P.2d 1060, 1061-62 (1993). In that case Mitchell worked as a maid for an apartment
23 complex. *Id*. She spoke English as a second language. *Id*. She was sent with a list of
24 apartments to clean but accidentally went to the wrong build. *Id*. Because each building had
25 the same apartment numbers, she entered the correct apartment number on her cleaning list
26 but in the wrong building. *Id*.

27
28 ¹ Rule 32(d) now exists as Fed. R. Crim. P. 11(d).

1 The occupants held her at gunpoint until police arrived. *Id.* Her frantic apologies in
2 broken English were taken as admissions and she was arrested. *Id.* Other aspects of the
3 "totality of the circumstances" lent credibility to her claim of factual innocence. She did not
4 wait several weeks to notify her attorney she wished to withdraw her plea. *Id.* Instead, she
5 immediately informed her attorney after entering her plea that she misunderstood the
6 negotiations and did not understand that she would be giving up her right to trial. *Mitchell v.*
7 *State*, 109 Nev. 137, 848 P.2d 1060(1993).

8 Further, she explained in a letter written in broken English and attached to the motion,
9 that she never had an opportunity to speak with her public defender because he never had
10 time. *Id.* Thus, not only did she have a credible claim of factual innocence, she also had a
11 believable explanation as to why she was bringing this up after entering her plea.

12 Hegge does not allege factual innocence. Instead he alleges, erroneously, that he
13 cannot be proven guilty of being a prohibited person in possession of a firearm because he
14 supposedly was ignorant of the law. He misconstrues the holding in *Robey v. State*, 96 Nev.
15 459, 611 P.2d 209(1980) in an attempt to support his ignorance of the law defense. Motion
16 pg.2.

17 Far different from Mitchell's situation where she was simply trying to do her job and
18 suddenly found herself being held at gunpoint, Hegge was reported to Officer Pinkham as
19 having been the one holding the reporting party, Arthur Brasher, at gun point. Motion exhibit
20 2, pg. 1, par. 1. Rather than having *legal* access to the residence for purposes of
21 employment, Hegge reportedly forced his way into Brasher's residence by putting a gun to
22 Brasher's head and shoving his way in. Motion exhibit 2, pg. 1 par. 2. Rather than
23 supposedly using or carrying the gun to protect himself from "anonymous" threats to kill him,
24 He was *openly* threatening to kill, by putting his gun to Brasher's head to collect money. *Id.*
25 Mitchell was lawfully earning money, Hegge was reportedly robbing Brasher and the other
26 occupants of the residence, or as he puts it, was there to "retrieve a coin" that Brasher or his
27 brother had allegedly "taken." Motion exhibit 2, pg.2
28

1 As a side, Authur Brasher correctly reported Hegge's location, first name, and Hegge
2 admitted that he was there to collect items of value. He also had a loaded firearm which
3 corroborated Brasher's report about Hegge threatening him with a gun. Motion exhibit 2.
4 Hegge being present outside of the residence was also consistent with Brasher's statement
5 that Hegge had, the previous day, given Brasher until that night to give Hegge even more
6 money. Motion exhibit 2. Hegge also corroborated Brasher's statements when he told Officer
7 Pinkham that he was standing in front of the residence "waiting for a friend of his." Motion
8 exhibit 2 pg. 1, par. 3.

9 When asked to put his hands behind his back, Hegge refused to put his right arm
10 behind his back but instead kept his right hand inside his hoodie pocket. Motion exhibit 2 pg.
11 1, par. 3. Pinkham then had to order Hegge to put his hands behind his back and Hegge
12 continued to resist until Pinkham ultimately forced Hegge's hand out of his pocket and placed
13 it behind his back. *Id.* These actions as described in the Defendant's own exhibit to his
14 motion point to three things: 1. He was not acting like someone who truly believed he was in
15 lawful possession of a firearm – but instead someone who knew he should not have it. 2. His
16 reaction was also consistent with Brasher's statements that Hegge was armed. 3. His actions
17 were the total opposite of Mitchell who in no way resisted law enforcement. *See Mitchell v.*
18 *State*, 109 Nev. 137(1993).

19 There are two more important distinctions between Mitchell's situation and Hegge's:
20 First, timing of the possible defenses: Mitchell, who did not speak English as a first language,
21 was unable to share with her attorney her claim of factual innocence until *after* she entered
22 her plea. The State fully anticipates that should the arraignment transcript be obtained and
23 reviewed, it will reflect that Hegge spoke up *before* entering his plea and raised his alleged
24 ignorance of the law defense. Further, that both the Court and, during a break intentionally
25 made to address this issue, Mr. Woodbury also addressed the Defendant's apparent
26 confusion. Finally, the Court carefully confirmed that the Defendant was then comfortable
27 going forward. The Defendant also admits that he discussed possible issues surrounding
28 Officer Pinkham's search *before* entering his plea. Motion pg. 4: 25-27. Before moving on to

1 the second important distinction, Hegge claims that he *never understood* "that there were
2 issues about whether Officer Pinkham's suspicions that Defendant was armed were
3 objectively reasonable." Motion pg. 5: 1-2. This excuse, from the State's perspective, is far
4 too subjective to be considered a reliable basis for allowing Hegge to withdraw his plea. If all
5 defendants could withdraw their pleas by simply claiming they "never understood" a particular
6 nuance of fourth amendment law that conceivably applies to their case, the results would be
7 absurd.

8 Second, timing of the motion to withdraw: Mitchell indicated that she wanted to withdraw her
9 plea immediately after she entered it, long before she was interviewed by the Department of
10 Parole and Probation and before the PSI was completed. *Mitchell*, 109 Nev. at 139. The
11 Defendant entered his no contest plea back on April 12, 2021. It was not until more than 10
12 weeks after arraignment that the Defendant filed his motion to withdraw his plea. The Nevada
13 Supreme Court not only pointed to the timing of Mitchell's motion to withdraw as part of the
14 totality of the circumstances favoring her motion, it also noted Stevenson's delay in moving to
15 withdraw his plea as part of the basis for denying his. See *Stevenson*, 354 P.3d at 1281.

16 Gary Woodbury is Now a Necessary Witness

17 The Defendant's motion says cryptically, "Defendant will also testify that although
18 discussions with trial counsel may have included him being informed of the possibility of an
19 acquittal based on him having been aware of his mistaken belief that he was entitled to
20 possess a firearm, that if such discussions occurred, he did not understand their
21 significance." Motion pg. 2:21-23.

22 The Defendant's motion also states, "that he never understood that there were issues
23 about whether officer Pinkham's suspicions that Defendant was armed were objectively
24 reasonable." Motion pg. 5:1-2.

25 Both these portions of the Defendant's motion are an implicit challenge to the
26 effectiveness of Mr. Woodbury's work as Hegge's counsel. These portions of the Defendant's
27 motion are also at odds with his assertions in the filed plea agreement and his statements to
28

1 the Court at arraignment. By putting at issue Mr. Woodbury's discussions with the Defendant,
2 Hegge has turned Mr. Woodbury into a necessary witness should the Court decide to
3 conduct an evidentiary hearing. Thus, the Defendant now needs a new attorney so that his
4 constitutional right to the effective assistance of counsel is not compromised.

5 Conclusion

6 The Defendant's Motion to Withdraw his Plea should be denied. His reasons for
7 granting his motion lack merit and his assertions lack credibility. As such he is seeking to
8 treat his no contest plea as a meaningless formality.
9

10
11
12 Dated this 2nd day of July, 2021.

13 TYLER J. INGRAM
14 Elko County District Attorney

15
16 By: 

17 JEFFREY C. SLADE
18 Deputy District Attorney
19 State Bar Number: 13249
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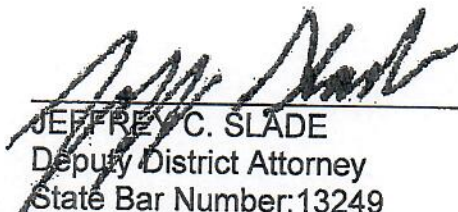
Unsworn Declaration In Support Of Opposition

Pursuant to NRS 53.045

Comes now JEFFREY C. SLADE, who declares the following to the above-entitled Court:

1. That the Declarant is presently serving as a Deputy District Attorney of the Elko County District Attorney's Office.
2. That I have read the assertions of fact set forth in this pleading and incorporate them into this Declaration.
3. This Opposition is made in good faith, and not merely for the purposes of delay.
4. I declare under penalty of perjury that it is my belief the foregoing is a true and correct reflection of the facts as they appear in the sources cited to in the motion itself.

Dated this 2nd day of July, 2021


JEFFREY C. SLADE
Deputy District Attorney
State Bar Number: 13249

NOTICE

TC: GARY D. WOODBURY, Attorney for the above-named Defendant and
The Clerk of the Fourth Judicial District Court.

A hearing on this Opposition is requested and a court reporter is requested. It is
estimated that one hour should be set aside for the hearing on this Opposition.

Dated this 2nd day of July, 2021.

TYLER J. INGRAM
Elko County District Attorney

By: 

JEFFREY C. SLADE
Deputy District Attorney
State Bar Number: 13249


CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 2nd day of July, 2021, I served the foregoing Opposition, by delivering, mailing or by facsimile transmission or causing to be delivered, mailed or transmitted by facsimile transmission, a copy of said document to the following:

By delivering to:

THE HONORABLE KRISTON N. HILL
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

GARY D. WOODBURY
ATTORNEY AT LAW
1053 IDAHO STREET
ELKO, NEVADA 89801


TESSA DEML
CASEWORKER

DA# F-21-00375

1 Case No.: DC-CR-21-90

2 Dept. No.: 1

FILED

2021 JUL 15 PM 3:04

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *[Signature]*

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6
7 IN THE FOURTH JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
9

10
11 STATE OF NEVADA,

12 Plaintiff,

13
14 Vs.

REPLY TO OPPOSITION TO
MOTION TO WITHDRAW PLEA
OF NO CONTEST

15
16 BO DWIGHT HEGGE,

17 Defendant.
18

19 Comes now the Defendant above-named and in reply to the Opposition of the State to
20 withdraw his plea of No Contest informs the Court as follows.

21 A presentence motion to withdraw a guilty plea may be granted "for any reason where
22 permitting withdrawal would be fair and just. "Stevenson v. State, 131 Nev. 598, 604, 354 P.3d
23 1277, 1281 (2015).

24 The forgoing statement in Stevenson disavows prior decisions of the Nevada Supreme
25 Court which over a number of years had exclusively focused on the validity of the plea in
26 determining whether to allow withdrawal.

27 Now the District Court must consider the totality of the circumstances to determine
28 whether permitting withdrawal of a guilty plea before sentencing would be fair and just.
Stevenson v State, 354 P. 3d 1277 (2019).

50

1 The States Opposition to Defendant's motion does not assert that the State would be in
2 anyway prejudiced by the court allowing withdrawal of the No Contest plea. No significant
3 expenditure of time or resources of the State to achieve the plea agreement is claimed. No
4 subsequent decisions of the State with respect to prosecuting other people based on the belief
5 that Defendant had been convicted are claimed.

6 Moreover, the evidence will establish that the State withheld information it received
7 about the principal witness against Defendant, Arthur Brasher, from March 18, 2021 until June
8 24, 2021.

9 Defendant's response to the allegation of the State in its Opposition that Defendant
10 entered his no contest plea and now seeks to withdraw it as a result of the agreement having
11 been used as a place holder makes no sense.

12 There is no indication whatever that Defendant used or intended to use the entry of his
13 plea of No Contest as a means to hold an outcome in place while he tries to find a means to
14 negotiate or force a more favorable agreement.

15 Neither does Defendant understand the State's assertion that Counsel has become a
16 necessary witness.

17 Most importantly, Defendant will inform the Court that his decision to enter a plea of no
18 contest was largely based on the potential of him being convicted of not only possessing a
19 firearm as an ex-felon, but also being convicted of possession of a controlled substance, robbery,
20 burglary and assault with a deadly weapon. Had Defendant been convicted of two of the charged
21 felonies would potentially have resulted in him becoming an habitual criminal.

22 Defendant admits and will testify that the case, including the anticipated evidence against
23 him, was discussed with counsel. His assertion is that he now realizes that he didn't understand
24 counsel's legal conclusions in their entirety, specifically that he did not fully understand the
25 concept of how fact finders are required and permitted to weigh evidence.

26 Defendant will also testify that he told counsel, as well as law enforcement authorities
27 that he had not been to the residence of Arthur Brasher the day before his arrest on February 13,
28 2021.

29 As indicated above and in Defendant's motion, the principal witness against him was
30 Arthur Brasher. It was Mr. Brasher who allegedly provided information that created an
31 articulable and reasonable suspicion to Officer Pinkham that resulted in a pat down search of

1 Defendant by the officer on February 13, 2021. As a result of the pat down search, a gun in the
2 possession of Defendant as well as a bag of methamphetamine were found.

3 An articulable reasonable suspicion of a police officer that a person they encounter might
4 possess a firearm might be armed is an intricate question.

5 First, what is "reasonable", has to be understood. In the real world, legally trained
6 lawyers and judges endlessly debate what is reasonable. Defendant is not legally trained. He did
7 not even attend High School according to the information contained in the Pre-Sentence report of
8 the Division of Parole and Probation. He did, however, get a GED.

9 Mr. Hegge will testify that he was made aware that just before the pat down search,
10 Arthur Brasher told officers that Defendant had possessed a firearm the preceding day at Mr.
11 Brasher's residence and had threatened Mr. Brasher with it. Mr. Brasher did say that. The
12 statement was recorded on a police officer's body camera.

13 The question of "Reasonableness" that the statement was true, however, goes well
14 beyond simply hearing the statement. A finding of reasonableness requires the officer to
15 evaluate Mr. Brasher's reliability.

16 Officer Pinkham did not ask Mr. Brasher why he hadn't reported the unjustified armed
17 assault on him by Mr. Hegge the day before to the police. The assault on Mr. Brasher was
18 unjustified, as Office Pinkham knew from Mr. Brasher's statement that Defendant was angry
19 over money he loaned to Mr. Brasher's brother, who didn't repay it.

20 Officer Pinkham did not ascertain whether Mr. Brasher was angry at Defendant. Officer
21 Pinkham did not ascertain when on the preceding day he claimed Defendant was at the residence.

22 Defendant will testify that he was unaware that his response to Officer Pinkham's
23 question of why he was at the residence that was posed to him just prior to the pat down search,
24 contradicted the claims of Mr. Brasher and because his presence was based on his allegation that
25 a coin of considerable value had been stolen from him, that should have triggered further
26 inquiries by Officer Pinkham to ensure that Mr. Brasher's statement was reliable.

27 Up to that point, Defendant will testify that he believed the reasonableness of Officer
28 Pinkham's determination of an articulable suspicion was a close question that he would likely
lose because fact finders typically favor the testimony of police officers.

Defendant will testify that he subsequently learned that Officer Pinkham was aware that
the residence Mr. Brasher lived in had prior incidents that resulted in police presence.

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1 Defendant will also testify that he subsequently learned that Mr. Brasher left Elko
2 County shortly after Defendant's arrest, and that Mr. Brasher has been incarcerated in the State
3 of Utah for criminal offenses.


4 Defendant's information that Mr. Brasher left Elko County and was incarcerated in Utah
5 came in the form of a letter from Mr. Brasher that was received by the Elko County District
6 Attorney's Office on March 18, 2021, approximately 11 days before Defendant signed the plea
7 agreement.

8 That document was not transmitted to Defense Counsel in Discovery until June 24th,
9 2021, the day before Defendant's motion to withdraw his plea was filed. A copy of the letter and
10 the discovery notice is attached.

11 The State has raised no issue that makes Defendant's Motion to withdraw his plea of No
12 Contest unreasonable, or that would not result in a fair and just outcome.

13 Respectfully submitted this 15 day of JULY 2021.

14
15
16 By: GARY D. WOODBURY

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19 
20 GARY D. WOODBURY
21 Nevada State Bar No. 1915
22 Attorney for Defendant
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[illegible]

By delivering to:

AND

Kimberly Dawson
KIMBERLY DAWSON

54

1 Case No. DC-CR-21-90

2 Dept. 1

FILED

2021 JUL 16 AM 11:28

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY AS

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7 **IN THE FOURTH JUDICIAL DISTRICT COURT**
8 **IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA**
9

10 _____
11 STATE OF NEVADA,

12 Plaintiff,

13 **REQUEST FOR REVIEW**
14

15 BO DWIGHT HEGGE,

16 Defendant.
17 _____

18 COMES NOW the Defendant above-named by and through his attorney, Gary D.
19 Woodbury and requests this Court, pursuant to 4th Judicial District Court Rule 10 (11), to review
20 Defendant's Motion to withdraw plea of No Contest, in the above-entitled case filed on June 25,
21 2021, the Opposition to the Motion on behalf of the State filed on July 2, 2021 and the reply to
22 the Opposition filed by Defendant on July 15, 2021.

23
24 Dated this 16 day of JULY 2021.

25
26 By: GARY D. WOODBURY

27 Gary D. Woodbury
28 GARY D. WOODBURY

55

1
2 CERTIFICATE OF SERVICE

3 Pursuant to NRCP 5(b), I certify that I, KIMBERLY DAWSON, on the 16 day of
4 JULY 2021 served the foregoing REQUEST FOR REVIEW ON MOTION TO WITHDRAW
5 PLEA OF NO CONTEST, by delivering, mailing or by facsimile transmission or causing to be
6 delivered, mailed, or transmitted by facsimile transmission, a copy of said document to the
7 following:

8 By delivering to:
9

10 THE HONORABLE KRISTON HILL
11 FOURTH JUDICIAL DISTRICT COURT
12 ELKO COUNTY COURTHOUSE
13 ELKO, NV 89801

14 JEFFREY C. SLADE
15 ELKO COUNTY DEPUTY DISTRICT ATTORNEY
16 540 COURT ST., 2ND FLOOR
17 ELKO, NV 89801

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22 
23 KIMBERLY DAWSON
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DC-CR-21-90
Case No. CR-AP-18-5837

Dept. No. 1

FILED

2021 AUG -9 AM 9:36

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY ll

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

THE STATE OF NEVADA,

Plaintiff,

V.

BO DWIGHT HEGGE,

Defendant.

**ORDER DENYING MOTION TO
WITHDRAW PLEA OF NO
CONTEST**

On April 12, 2021, Defendant pled No Contest to one count of Possession of a Firearm by a Prohibited Person. On June 25, 2021, Defendant filed a Motion to Withdraw Plea of No Contest. Plaintiff opposed that motion on July 2, 2021. Defendant replied to that opposition on July 15, 2021. For the reasons stated below, Defendant's Motion is DENIED.

Defendant states that at the time of his arrest, he believed that he was no longer prohibited from owning a firearm as a felon because his felony conviction was more than ten years old. Defendant also states that he had been receiving anonymous notes threatening to kill him, and that this made him concerned for the safety of his two children and their mother. Defendant states that he purchased the firearm to give to the mother of his children so she could protect herself. Defendant next states that he believes that the pat-down search by Officer Pinkham which revealed the firearm on his person was illegally conducted.

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1 "[A] district court may grant a defendant's motion to withdraw his guilty plea before
2 sentencing for any reason where permitting withdrawal would be fair and just." Stevenson v.
3 State, 131 Nev 598, 604 (2015); NRS176.165. Defendant's first and third arguments, that he
4 believed at the time of his arrest that he was no longer prohibited from owning a firearm, and that
5 he thinks there are constitutional issues with his pat-down by Officer Pinkham, are unavailing.
6 Defendant raised the issue of his mistaken belief of the law at his plea hearing and addressed it
7 with both the Court and his counsel. Defendant was then given the opportunity to change his
8 mind, not plead, and go to trial. Defendant chose to plead. Similarly, Defendant states that
9 he also spoke with defense counsel about his concerns about Officer Pinkham's pat-down prior
10 to entering his plea. Defendant indicated on the record that he understood he was giving
11 up his right to present any defenses by pleading No Contest. As Defendant states that he
12 had opportunities in court and outside of it to discuss these possible defenses with his
13 attorney and he still chose to plead No Contest, the Court does not see how allowing Defendant
14 to withdraw his No Contest plea now would be fair and just. Defendant's motion is DENIED as
15 to these two grounds.

16 Defendant's remaining allegation is that he bought the firearm to protect his children and
17 their mother, and so he believes he may have the defense of defense of others. This is belied by
18 the record. Defendant was found outside the home of Arthur Brashur. His children and their
19 mother were nowhere around. Defendant has not alleged that Brashur is the originator of the
20 anonymous death threats Defendant states that he received. Defendant himself states in his reply
21 to the State's opposition that he was at the Brashur home because he was looking for a valuable
22 coin which had been stolen from him. Defendant's argument that he had the gun to protect other
23 people who were not around, while at the same time he was trying to recover stolen property, is
24 frankly incoherent. Allowing Defendant to withdraw his plea based on that argument would not
25 be just and fair. Defendant's motion is DENIED as to this ground as well.

26 ///

1 Therefore, Defendant's Motion to Withdraw Plea is hereby DENIED. The Court's
2 administrative staff will contact both parties to reschedule Defendant's sentencing hearing.
3

4 IT IS SO ORDERED this 6th day of August, 2021.

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7 KRISTON HILL
8 DISTRICT JUDGE - DEPT. 1
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1 CERTIFICATE OF HAND DELIVERY

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
3 Court, Department 1, and that on this 9 day of August, 2021, I personally hand delivered a
4 file-stamped copy of the foregoing **ORDER DENYING MOTION TO WITHDRAW PLEA**
5 addressed to:

6 Tyler J. Ingram, Esq.
7 Elko County District Attorney
8 540 Court Street, 2nd Floor
9 Elko, Nevada 89801
10 [Box in Clerk's Office]

11 
12

13 CERTIFICATE OF MAILING

14 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial District
15 Court, Department 1, and that on this 9 day of August, 2021, I deposited for mailing in the U.S.
16 mail at Elko, Nevada, postage prepaid, a true file-stamped copy of the foregoing **ORDER**
17 **DENYING MOTION TO WITHDRAW PLEA** addressed to:

18 Gary Woodbury
19 1053 Idaho Street
20 Elko, NV 89801

21 
22
23
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1 CASE NO. DC-CR-21-90

2 DEPT. NO. 1

FILED

2021 NOV 30 AM 10:06

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY DB

3 THE FOURTH JUDICIAL DISTRICT COURT THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF ELKO

5 BEFORE THE HONORABLE KRISTON N. HILL

6 DISTRICT JUDGE, PRESIDING

7 THE STATE OF NEVADA,

8 PLAINTIFF,

9 v.

10 BO DWIGHT HEGGE,

11 DEFENDANT.

COPY

12 _____ /

13 TRANSCRIPT OF PROCEEDING

14 JUDGMENT AND SENTENCING

15 SEPTEMBER 27, 2021

16 ELKO, NEVADA

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25 Reported by: Tonja Lemich
CSR No. 380

61

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 MERCEDES MARTINEZ
4 Deputy District Attorney
5 540 Court Street
6 2nd Floor
7 Elko, Nevada 89801

8 FOR THE DEFENDANT:

9 GARY WOODBURY
10 1053 Idaho Street
11 Elko, Nevada 89801

12 * * * * *

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TRANSCRIPT OF PROCEEDINGS

THE COURT: This is Case No. DC-CR-21-90. The State of Nevada versus Bo Dwight Hegge. The defendant is in court, out of custody. He's represented by his attorney, Gary Woodbury. The State is represented by Mercedes Martinez, Deputy District Attorney.

The defendant has pled no contest to possession of a firearm by a prohibited person, a Category B felony. This is the date and time set for entry of judgement and imposition of sentence.

Are the parties ready to proceed?

MS. MARTINEZ: Yes, Your Honor.

MR. WOODBURY: The defense is ready.

THE COURT: The Presentence Investigation Report has been ordered and received.

Mr. Hegge, have you had an opportunity to review that with your attorney?

THE DEFENDANT: Yes, ma'am.

THE COURT: Sir, have you ever served in the military?

THE DEFENDANT: No, ma'am.

THE COURT: Mr. Woodbury, did you see any errors or omissions in the presentence report?

MR. WOODBURY: We did not see errors of

1 sufficient consequence to bring them in to court.

2 THE COURT: Thank you, Mr. Woodbury.

3 Mr. Hegge, did you see any errors or omissions?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Okay. Any on behalf of the State?

6 MS. MARTINEZ: No, Your Honor.

7 THE COURT: What is the State's position on
8 sentencing?

9 MS. MARTINEZ: Yes, Your Honor. We would ask
10 that the Court sentence Mr. Hegge to one year of jail
11 time.

12 The facts of this case are from February 13th,
13 2021, when officers were dispatched for a report of
14 assault. The victim in that case said the day prior,
15 the defendant knocked on the door, put a gun to the
16 victim's head, and shoved his way in to the victim's
17 home.

18 When police arrived, they asked the defendant
19 to put his hands behind his back to search for weapons.
20 He refused to put his right arm behind his back. He
21 did have his right hand inside his pocket, where it was
22 later discovered he had a loaded semi-automatic weapon.

23 If you turn to the PSI, you will see extensive
24 history going back to 2006, including one felony
25 conviction, one gross misdemeanor conviction, and 11

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1 misdemeanor convictions. Of note is the felony charge
2 from 2009; receiving, possessing stolen goods. In that
3 case, the defendant was given probation, which was
4 later revoked. He was then paroled on that same case,
5 which he was then dishonorably discharged.

6 He also has a conviction for resisting an
7 officer in 2010. In that case, an FTP warrant was
8 issued. He was arrested and subsequently found to be
9 in contempt. And then another FTP warrant was issued
10 three weeks later. He also has a conviction of battery
11 in 2011, as well as battery on a police officer from
12 2012.

13 The State feels these facts, paired with this
14 defendant's criminal history, are concerning, but so
15 are the other facts that one can find in the PSI.

16 Defendant claims to be a homemaker since his
17 youngest sons were born, which seem to be supported by
18 the character witness letter submitted on his behalf.
19 But he also admits to having a drinking problem. He
20 does indulge daily. So the State is concerned with the
21 example he is setting for his children with that.

22 The State realizes if the defendant is a
23 homemaker, then making him serve time may cause issues
24 for his family. But the defendant did not seem to be
25 very concerned with those issues when he forced his way

1 in to someone's home at gun point, knowing that he
2 purchased the gun despite knowing he wasn't allowed to
3 have a gun.

4 The character witness letter also suggests that
5 Mr. Hegge is dealing with personal problems. And the
6 State acknowledges that those life events are terrible
7 and can be traumatic, but they don't justify holding
8 people at gun point. His children were clearly not
9 enough to deter him from engaging in these activities.
10 And we have seen he has a habit of not doing what's
11 expected of him when he is on parole or probation.

12 So the State would suggest that the minimum
13 term of 12 to 30 months would be sufficient to deter
14 this defendant from doing something like this in the
15 future. And it would hopefully serve a double purpose
16 in helping him get sober so he can better enjoy his
17 time with his young children.

18 Thank you.

19 THE COURT: Mr. Woodbury?

20 MR. WOODBURY: Thank you, Your Honor.

21 THE DEFENDANT: There is an error in the damn
22 paper. There was an error because I was sitting on the
23 side. I didn't go in that house.

24 MR. WOODBURY: Just quit.

25 The -- I suppose given the circumstances, the

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1 first thing I want to address is the fact that the
2 Division of Parole and Probation has decided that they
3 will give what they call an offense synopsis. And that
4 is extraordinarily troubling and should be really
5 across the board. Because it gives a synopsis of the
6 events that were the basis of the original police
7 report. And we never had an opportunity to cross
8 examine or to look further in to the evidence.

9 But the fact is that as we had indicated in a
10 prior pleading, the people that are involved and made
11 the claim against Mr. Hegge originally spent the next
12 few months, maybe possibly longer, in jail in Utah.
13 And the fact is that the prosecution was of the
14 position that it would not charge that, would not
15 charge the events that they're now relying on to
16 support their sentencing argument, period. They didn't
17 partially dismiss them, anything like that. They
18 dismissed them, period. They can never bring them.

19 And that's what Mr. Hegge is, of course,
20 extraordinarily upset about, was the fact that the
21 Court is now apprised of the facts, which may or may
22 not be facts. He has been adamant throughout, from the
23 time that he was arrested on that night, until right
24 now, he never entered that house, he never put a gun to
25 anybody's head, he never did anything even remotely

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1 like that, and wouldn't have done anything remotely
2 like that.

3 So we would ask the Court, first, to pay
4 attention to the fact that they have gone out of their
5 way to prejudice you with facts that don't pertain to
6 sentencing. If they were so hot and bothered about
7 what happened at that house, they had the right to put
8 that evidence on, period. And they didn't.

9 Next I want to start where I originally thought
10 we would start, and that was with the COVID problem
11 that happened last time sentencing was scheduled. We
12 provided the prosecution with documentation, medical
13 documentation, that he did, in fact, have COVID. So it
14 wasn't an effort to avoid having to come to sentencing,
15 period.

16 The fact is that Mr. Hegge had a troubled
17 beginning. You've read that in the Presentence
18 Investigation Report, and it's sufficient to give you
19 an idea of the terrible circumstances some young people
20 have when their parents aren't very caring for them.
21 It puts them in a funny position. And it says some
22 things about their parents that they pass onto the
23 kids, both through nature and threw the circumstances
24 of their raising.

25 Mr. Hegge was responsible for his siblings.

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1 And he, as a result, got mixed up with some people he
2 shouldn't have gotten mixed up with, and got mixed up
3 with and couldn't get rid of them. He hasn't used
4 drugs for a very long time now. And that is because he
5 recognizes the tremendous problems they cause him.

6 He, of course, has indicated he consumes
7 alcohol, but Mr. Hegge and I have discussed it. And he
8 recognizes that alcohol consumption would be a problem
9 if he's on probation. And he will quit drinking
10 alcohol, period. He will quit.

11 The -- I guess the principal problem is, and
12 it's a problem that was identified by the prosecution,
13 and that is that sometimes when you have a criminal
14 defendant standing before the Court and looking to be
15 sentenced, the actual serious damage is going to be to
16 somebody else.

17 Mr. Hegge has indicated to you, and there are
18 letters of support and letters from Ms. Woolsey, who is
19 the mother of the two children, that tells you that he
20 is living in that house. He hardly ever leaves it. He
21 is the person who cares for those children, those two
22 young men. And they're very young. And it is
23 Ms. Woolsey who has the job and provides the monetary
24 support for the family. She can't do both. She can't
25 hire a babysitter for those children and continue to

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1 work, at least at the employment that she has.

2 And that leads to the proposition that she
3 tells you in her letter of support, that the children
4 are absolutely crazy about Mr. Hegge. And he's
5 absolutely crazy about them. And the consequences of
6 taking him and putting him in imprisonment are
7 tremendous to those children. And they shouldn't be.

8 So I guess the question is, what do you do when
9 you're faced with a proposition like this?

10 Mr. Woolsey -- or Mr. Woolsey -- Mr. Hegge and I have
11 had an interesting series of conversations. This
12 entire panoply of things came from Mr. Hegge not fully
13 appreciating -- I'm not sure that's the right word --
14 not fully understanding that the people that were in
15 the world that he was in when drugs were in play, he
16 didn't break off those relationships. Now, of course
17 to us logical people you would see that has to happen
18 almost immediately. You have got to get rid of those
19 people out of your lives. And Mr. Hegge didn't.

20 He is somewhat generous to a fault. And he
21 does a lot of things for a lot of people, and these
22 kind of people are the kind of people who don't pay you
23 back just right. And you move in to a world that's
24 different than the world that the social and moral
25 values of the rest of the folks in the world don't

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1 like.

2 So you can see that the affect of the
3 conversation between Mr. Hegge and I had an effect. He
4 has now been in that house without supervision, I think
5 for six months, six-and-a-half months, and not one
6 incident, not one bad incident has happened. And he is
7 perfectly willing, and obviously now capable, of living
8 in that house.

9 If you want to put him on probation and say
10 that probation will last for "X" number of months or
11 years, then put him in the house and let him finally
12 get to the point where he can finally convince the
13 Department of Parole and Probation to let him out and
14 free him up a little bit. And if the Court is
15 inclined, we can come back and ask for a modification
16 with the Court.

17 But for six-and-a-half months he has behaved
18 himself. It's been a long time that he's been free and
19 clear, for six-and-a-half months. The -- well, I guess
20 I've said what I want to say.

21 THE COURT: Thank you, Mr. Woodbury.

22 Mr. Hegge, you are entitled to make a
23 statement. You're not required to. Is there anything
24 you would like to add?

25 THE DEFENDANT: Okay. The worst thing in my

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1 life was to wake up and tell my boys that daddy might
2 not be coming home today. It killed me to see them and
3 have them cry to me because daddy might not come home.
4 Those -- that's not the way it played out. And, like,
5 I don't care, that's not how it played out.

6 Those two boys, they're my life. I will do
7 anything for them. I don't give a -- if you put me on
8 ten years of parole or probation, but as long as I'm
9 there with my boys, I'm okay. That's all that matters
10 to me, is being a father to those two boys.

11 THE COURT: Is there anything else you would
12 like to add?

13 THE DEFENDANT: No.

14 THE COURT: I will note that I changed the
15 sentencing date on page 1 and page 7 of the Presentence
16 Investigation Report to reflect today's date.

17 Mr. Hegge, I reviewed the letters that were
18 provided on your behalf.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And I will tell you that your sons,
21 the thought of them has weighed very heavily on my mind
22 and in my heart. And I am very sad for them, that you
23 put yourself in this position so that you may not be
24 there for them.

25 THE DEFENDANT: I understand that, ma'am. But

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1 it was not like that. It wasn't like that.

2 THE COURT: If you'll please stand and face the
3 Court.

4 THE DEFENDANT: Yes, ma'am.

5 (Defendant complied.)

6 THE COURT: The Court will order a Judgement of
7 Conviction be ordered against Mr. Hegge, finding him
8 guilty of possession of a firearm by a prohibited
9 person, a Category B felony.

10 The defendant shall pay the \$25 administrative
11 assessment fee, the \$3 DNA administrative assessment
12 fee. It appears as if the DNA -- excuse me, the
13 genetic testing fee has already been paid and your
14 markers are on record.

15 The defendant is sentenced to a maximum term of
16 30 months, with a minimum parole eligibility after 12
17 months in the Nevada Department of Corrections. You'll
18 receive 13 days credit for time previously served.

19 I wish you the best of luck, sir.

20 THE DEFENDANT: Can I ask one thing?

21 THE COURT: I'm sorry, sir?

22 THE DEFENDANT: Can I ask one thing? Can I
23 have a minute so I can kiss my boys? I just want to
24 kiss my boys one more time.

25 THE COURT: I'm sorry, I can't do that.

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1 THE DEFENDANT: I'm going to appeal the case
2 anyway.

3 (Proceedings concluded.)

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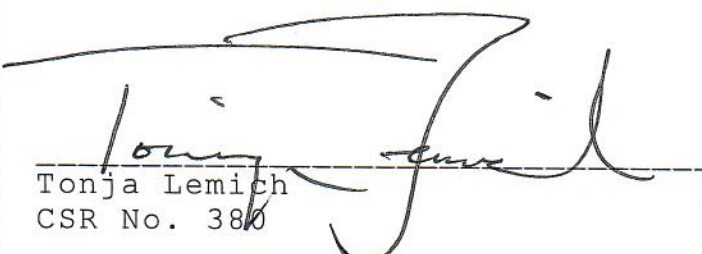
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CERTIFICATE

STATE OF NEVADA)
) SS.
ELKO COUNTY)

I, Tonja Lemich, CSR No. 380, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Honorable Kriston N. Hill, District Judge, presiding.

Dated at Elko, Nevada, this
20th day of November, 2021.


Tonja Lemich
CSR No. 380

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FD

1 CASE NO. DC-CR-21-90

2 DEPT. NO. 1

FILED

2021 OCT -4 AM 10:18

4th JUDICIAL DISTRICT COURT
CLERK _____ DEPUTY 18

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

9 THE STATE OF NEVADA,

JUDGMENT OF CONVICTION

10 Plaintiff,

11 V.

12 BO DWIGHT HEGGE,

13 Defendant.
14 _____/

15 On April 12, 2021, above-named Defendant, BO DWIGHT HEGGE [who is further
16 described as follows: Date of birth: 05/24/1986; Place of birth: Spokane, WA] was arraigned and
17 entered a plea of no contest to the crime(s) of **COUNT I: POSSESSION OF A FIREARM BY A**
18 **PROHIBITED PERSON, A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1 (NOC**
19 **51460)**, which crime occurred on or about the 13th day of February, 2021. The court accepted the
20 plea as entered knowingly, intelligently and voluntarily. The court held a sentencing hearing on
21 September 27, 2021 and sentenced Defendant as follows:

22 **IT IS ORDERED** that Defendant shall pay a genetic administrative assessment
23 fee of \$3.00.

24 **IT IS FURTHER ORDERED** that Defendant pay an administrative fee of
25 \$25.00.

26 For Count 1, Defendant shall be sentenced to a maximum term of thirty (30)
months with minimum parole eligibility after twelve (12) months in the Nevada
Department of Corrections. Defendant shall receive credit for thirteen (13) days
heretofore served as computed to and including the date of this sentencing
(September 27, 2021).

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1 IT IS HEREBY ORDERED that any bail bond previously posted for said Defendant shall
2 be exonerated. Any cash bail posted for said Defendant shall be applied first to fines and/or costs
3 due pursuant to this judgment and, unless otherwise agreed to by the parties, any amount remaining
4 shall be returned by the clerk to the person who posed said cash bail.

5 At the time Defendant entered his plea of no contest, and at the time he was sentenced, he
6 was represented by Gary D. Woodbury, Esq.

7 THEREFORE, the Clerk of the Court is directed to enter this Judgment of Conviction as part
8 of the record in the above-entitled matter.

9 SO ORDERED this 15th day of October, 2021.

10
11 
12 KRISTON N. HILL
13 DISTRICT JUDGE - DEPARTMENT 1

14 **CERTIFICATE OF HAND DELIVERY**

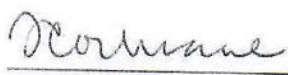
15 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,
16 Department 1, and that on this 4th day of October, 2021, I personally hand delivered a file
17 stamped copy of the foregoing **JUDGMENT OF CONVICTION** addressed to:

18 Dept. of Parole and Probation
19 3920 E. Idaho Street
20 Elko, NV 89801
[Box in Clerk's Office]

Elko County Sheriff's Office
775 W. Silver Street
Elko, NV 89801
[Box in Clerk's Office]

21 Tyler J. Ingram, Esq.
22 Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
[Box in Clerk's Office]

Gary D. Woodbury, Esq.
1053 Idaho Street
Elko, NV 89801
[Box in Clerk's Office]

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CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am employee of the Fourth Judicial District Court, Department 1, Elko, Nevada, and that on the 4th day of October, 2021, I caused to be delivered via electronic-mail, a file stamped copy of the foregoing **JUDGMENT OF CONVICTION**, along with a copy of the Defendant's Pre-Sentence Investigation Report addressed to:

Nevada Department of Corrections
Offender Management Division, Sentence Management
Attn: Michael Johnson
E-mail: micjohnson@doc.nv.gov
Attn: Mary Gourlay
E-mail: mgourlay@doc.nv.gov

McGourlay

Case No.: DC-CR-21-90

Dept. No.: 1

FILED

2021 OCT 12 PM 2:45

ELKO CO DISTRICT COURT

CLERK: _____ DEPUTY: 18

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

BO DWIGHT HEGGE,

Appellant,

NOTICE OF APPEAL

THE STATE OF NEVADA,

Respondent.

NOTICE is hereby given that BO DWIGHT HEGGE, Appellant above named, hereby appeals to the Supreme Court of Nevada from the final judgment entered in this action on the 4th day of OCTOBER 2021.

Dated this 12 day of OCTOBER 2021.

Gary D. Woodbury
GARY D. WOODBURY
Attorney for Defendant
1053 Idaho St.
Elko, NV 89801

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I, KIMBERLY DAWSON, on the 12 day of October 2021 served the foregoing NOTICE OF APPEAL by delivering, mailing or by facsimile transmission or causing to be delivered, mailed, or transmitted by facsimile transmission, a copy of said document to the following:

By Delivering to:

THE HONORABLE KRISTON HILL
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

AND

ELKO COUNTY DEPUTY DISTRICT ATTORNEY
540 COURT ST, 2ND FLOOR
ELKO, NV 89801


KIMBERLY DAWSON


FILED

Case No.: DC-CR-21-90

2021 OCT 12 PM 2:45

Dept. No.: 1

ELKO CO DISTRICT COURT

CLERK: _____ DEPUTY: 

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

STATE OF NEVADA,

Plaintiff,

v.

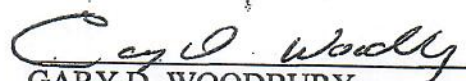
BO DWIGHT HEGGE,

Defendant.

WITHDRAWAL OF ATTORNEY

COMES NOW, GARY D. WOODBURY, and pursuant to Nevada Supreme Court Rule 46, moves to withdraw as attorney of record for BO DWIGHT HEGGE. The Defendant's last known address is 440 Grant St. Lot 30, Elko, NV 89801. This withdrawal is made after final determination in the above captioned case.

RESPECTFULLY SUBMITTED this 12 day of OCTOBER 20.


GARY D. WOODBURY
Nevada Bar No. 1915




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2
3 CERTIFICATE OF SERVICE

4 Pursuant to NRCP 5(b), I certify that I am an employee of GARY D. WOODBURY, and
5 that on the 12 day of OCTOBER 2021, served the foregoing WITHDRAWAL OF
6 ATTORNEY by delivering, mailing, or by facsimile transmission or causing to be delivered,
7 mailed, or transmitted by facsimile transmission, a copy of said document to the following:

8 By delivering to:

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11 Elko County District Attorney's Office
12 540 Court Street, Second Floor
13 Elko, NV 89801
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17 Kimberly Dawson
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1 Case No.: DC-CR-21-90

2 Dept. No.: 1

FILED

2021 OCT 12 PM 2:46

ELKO CO DISTRICT COURT

CLERK: _____ DEPUTY: 

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7 IN THE FOURTH JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
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11 BO DWIGHT HEGGE,
12 Appellant,

13 Vs.

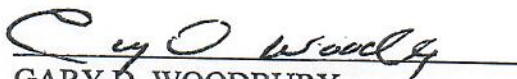
REQUEST FOR ROUGH
DRAFT TRANSCRIPT

14
15 THE STATE OF NEVADA,
16 Respondent

17 CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED

18
19 Notice is hereby given that appellant Bo Dwight Hegge is not requesting
20 the preparation of transcripts for this appeal.
21

22
23 Dated this 12 day of OCTOBER, 2021.

24
25 
26 GARY D. WOODBURY
27 Attorney for Defendant
28 1053 Idaho St.



1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to NRCP 5(b), I certify that I, KIMBERLY DAWSON, on the 12 day of
4 OCTOBER 2021 served the foregoing REQUEST FOR ROUGH DRAFT TRANSCRIPT by
5 delivering, mailing or by facsimile transmission or causing to be delivered, mailed, or
6 transmitted by facsimile transmission, a copy of said document to the following:

7 By mailing to:

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9 Elko County District Attorney
10 540 Court Street, 2nd Floor
11 Elko, NV 89801
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13
14

15 Dated this 12th day of October 2021.

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17 Kimberly Dawson
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Gaumond

FILED

2021 OCT 18 PM 3:45

4th JUDICIAL DISTRICT COURT
CLERK _____ DEPUTY B

Case No. DC-CR-21-90
Dept. No. 1

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

THE STATE OF NEVADA,

Plaintiff,

V.

BO DWIGHT HEGGE,

Defendant.

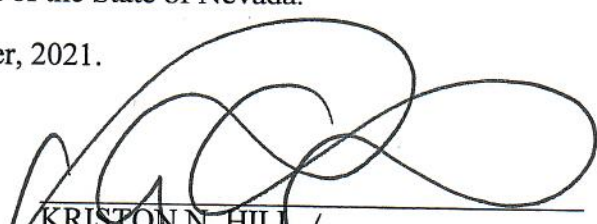
**ORDER GRANTING MOTION
TO WITHDRAW AND ORDER
APPOINTING COUNSEL**

Before the Court is the Motion to Withdraw Motion filed on the 12th day of October, 2021.
Good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion to Withdraw is granted.

IT IS FURTHER ORDERED that Benjamin Gaumond, Esq. is hereby appointed to represent
the Defendant in his appeal to the Supreme Court of the State of Nevada.

SO ORDERED this 15th day of October, 2021.


KRISTON N. HILL
DISTRICT JUDGE - DEPT. 1

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