

*Steven D. Grierson*

1. Case No. A-21-835827

Dept No. 30

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
STATE OF NEVADA IN AND FOR THE COUNTY OF CLATSOP

Electronically Filed  
Oct 26 2021 09:13 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Luis CASTRO,

PETITIONER,

vs

NOTICE OF APPEAL

STATE OF NEVADA,

RESPONDENT,

NOTICE IS HEREBY GIVEN LUIS CASTRO, PETITIONER,  
ABOVE NAMED, HEREBY APPEAL TO THE COURT OF  
APPEALS FOR THE STATE OF NEVADA FROM THE  
FINAL JUDGMENT - ORDER RE: PETITION FOR WRIT OF  
HABEAS CORPUS, AND RE: PETITION FOR APPOINTMENT  
OF COUNSEL AND EVIDENTIARY HEARING.

ENTERED IN THIS ACTION ON THE 21<sup>ST</sup> DAY OF SEPTEMBER, 2021

DATED THIS 8<sup>TH</sup> DAY OCTOBER, 2021

*Luis A. Castro*  
\_\_\_\_\_  
NDOC - # 1214547

APPELLANT - PRO SE  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV, 89301

RECEIVED

OCT 19 2021

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein

and that on this 8<sup>TH</sup> day of October, 2021, I mailed a true and correct copy of this

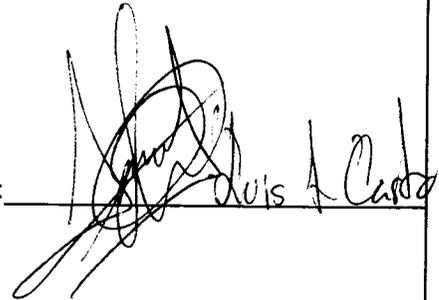
foregoing Notice of Appeal to the following:

NV. M.C.  
100 No. CARSON ST  
CARSON CITY, NV  
89701-4717

Clark Co. D.A.  
200 LEWIS AVE, 3<sup>RD</sup> FL  
LAS VEGAS, NV  
89155-2212

CLERK OF THE COURT  
200 LEWIS AVE, 3<sup>RD</sup> FL  
LAS VEGAS, NV  
89155-1160

BY: \_\_\_\_\_



**AFFIRMATION PURSUANT TO NRS 239B.030**

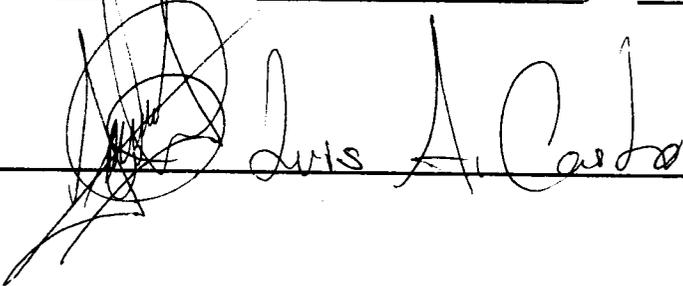
I, Luis Castro, NDOC# 1214547,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Notice of Appeal

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 8<sup>TH</sup> DAY OF October, 2021.

SIGNATURE:

  
Luis A. Castro

INMATE PRINTED NAME: Luis Castro

INMATE NDOC# 1214547

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301

CERTIFICATE OF SERVICE BY MAIL

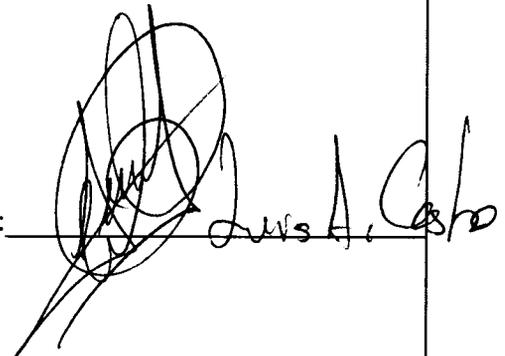
Pursuant to NRCF Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein and that on this 8<sup>th</sup> day of October, 2021, I mailed a true and correct copy of this foregoing Notice of Appeal to the following:

NV. A. G.  
100 No. CARSON ST  
CARSON CITY, NV.  
89701-4717

Clark Co. Dist. Atty  
200 Lewis Ave., 3rd Fl.  
Las Vegas, NV.  
89155-2212

CLK. OF THE CT.  
200 LEWIS AVE., 3RD FL.  
LAS VEGAS, NV  
89155-1160

BY: \_\_\_\_\_



**AFFIRMATION PURSUANT TO NRS 239B.030**

I, Luis Castro, NDOC# 1214547,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Notice of Appeal

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 8<sup>TH</sup> DAY OF October, 2021.

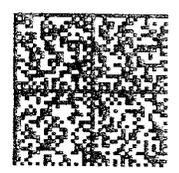
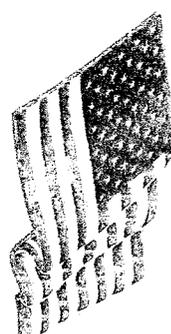
SIGNATURE: Luis A Castro

INMATE PRINTED NAME: Luis Castro

INMATE NDOC # 1214547

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301

Re: Mr. Luis Castro  
ESP-#12-14547  
P.O. Box 1989  
Eliz, NJ, 089301



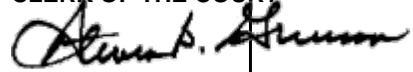
U.S. POST  
ZIP 893  
02 4W  
000034

To: CLERK OF THE COURT  
8th JUD. DISTRICT CT.  
200 Lewis Ave., 3rd FL.  
Las Vegas, NV.  
89155-1160

ATTN: Notice of Appeal  
DIVISION

LEGAL MAIL

LEGAL MAIL



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

10 LUIS ANGEL CASTRO,

11 Plaintiff(s),

12 vs.

13 THE STATE OF NEVADA,

14 Defendant(s),  
15

Case No: A-21-835827-W

Dept No: XXX

16  
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Luis A. Castro

19 2. Judge: Jerry A. Wiese

20 3. Appellant(s): Luis A. Castro

21 Counsel:

22 Luis A. Castro #1214547  
23 P.O. Box 1989  
24 Ely, NV 89301

25 4. Respondent (s): The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney  
28 200 Lewis Ave.  
Las Vegas, NV 89155-2212

- 1  
2 5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A  
3  
4 Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A  
5  
6 6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No  
7  
8 7. Appellant Represented by Appointed Counsel On Appeal: N/A  
9  
10 8. Appellant Granted Leave to Proceed in Forma Pauperis\*\*: N/A  
\*\*Expires 1 year from date filed  
11 Appellant Filed Application to Proceed in Forma Pauperis: No  
12 Date Application(s) filed: N/A  
13  
14 9. Date Commenced in District Court: June 7, 2021  
15  
16 10. Brief Description of the Nature of the Action: Civil Writ  
17  
18 Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus  
19  
20 11. Previous Appeal: No  
21  
22 Supreme Court Docket Number(s): N/A  
23  
24 12. Child Custody or Visitation: N/A  
25  
26 13. Possibility of Settlement: Unknown  
27  
28

Dated This 20 day of October 2021.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: Luis A. Castro

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**  
**CASE NO. A-21-835827-W**

**Luis Castro, Plaintiff(s)**  
**vs.**  
**State of Nevada, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 30**  
 Judicial Officer: **Wiese, Jerry A.**  
 Filed on: **06/07/2021**  
 Cross-Reference Case Number: **A835827**

CASE INFORMATION

**Related Cases**

C-16-314092-1 (Writ Related Case)

Case Type: **Writ of Habeas Corpus**

**Statistical Closures**

09/21/2021 Summary Judgment

Case Status: **09/21/2021 Closed**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number A-21-835827-W  
 Court Department 30  
 Date Assigned 06/07/2021  
 Judicial Officer Wiese, Jerry A.

PARTY INFORMATION

**Plaintiff**

**Castro, Luis Angel**

*Lead Attorneys*

**Pro Se**

**Defendant**

**State of Nevada**

**Wolfson, Steven B**  
*Retained*  
 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

**EVENTS**

- 06/07/2021  Inmate Filed - Petition for Writ of Habeas Corpus  
 Party: Plaintiff Castro, Luis Angel  
*[1] Post Conviction*
- 06/07/2021  Request  
 Filed by: Plaintiff Castro, Luis Angel  
*[2] Request for Submission*
- 06/07/2021  Motion for Appointment of Attorney  
 Filed By: Plaintiff Castro, Luis Angel  
*[3] Motion for Appointment of Attorney and Request for Evidentiary Hearing*
- 06/07/2021  Application to Proceed in Forma Pauperis  
 Filed By: Plaintiff Castro, Luis Angel  
*[4]*
- 06/07/2021  Affidavit in Support of Application Proceed Forma Pauperis  
 Filed By: Plaintiff Castro, Luis Angel  
*[5] Affidavit in Support of Application to Proceed in Forma Pauperis*
- 06/10/2021  Order for Petition for Writ of Habeas Corpus

**CASE SUMMARY**  
**CASE NO. A-21-835827-W**

*[6] Order for Petition for Writ of Habeas Corpus*

06/16/2021

 Clerk's Notice of Hearing  
*[7] Notice of Hearing*

07/06/2021

 Request  
*[8] Request for Submission of Pleading*

07/06/2021

 Supplement  
*[9] Petitioner's Supplement to Petition for Writ of Habeas Corpus*

07/14/2021

 Memorandum  
*[10] Memorandum of Facts and Law Support of Petitioner's Motion for Appointment of Counsel*

07/14/2021

 Request  
*[11] Request for Submission of Pleadings*

07/14/2021

 Notice  
*[12] Judicial Notice*

07/22/2021

 Addendum  
Filed By: Plaintiff Castro, Luis Angel  
*[13] Addendum to Petitioner's Ex parte Motion for Appointment of Counsel and Request for an Evidentiary hearing*

07/22/2021

 Declaration  
Filed By: Plaintiff Castro, Luis Angel  
*[14] Declaration in Support of Petitioner's Ex Parte Motion for Appointment of Counsel and Request for an Evidentiary Hearing*

07/27/2021

 Response  
Filed by: Defendant State of Nevada  
*[15] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post Conviction - NRS 34.740) and to Withdraw Guilty Plea (Pursuant to NRS 176.165), and Supplemental Brief in Support of Petitioners Petition for Writ of Habeas Corpus*

08/26/2021

 Reply  
*[16] Reply to State's Response to Petitioner's Petition for Writ of Habeas Corpus and to Withdraw of Guilty plea and Supplement to Petitioner's Petition for Writ of Habeas Corpus*

08/26/2021

 Request  
*[17] Request for Submission*

09/21/2021

 Order  
*[18] Order RE: Petition for Writ of Habeas Corpus and RE: Plaintiff's Motion for Appointment of Counsel and For Evidentiary Hearing*

09/23/2021

 Notice of Entry of Order  
Filed By: Defendant State of Nevada  
*[19] Notice of Entry of Order*

10/19/2021

 Notice of Appeal  
*[20] Notice of Appeal*

**CASE SUMMARY**  
**CASE NO. A-21-835827-W**

10/19/2021

 Notice of Appeal  
*[21] Notice of Appeal*

10/20/2021

 Case Appeal Statement  
Filed By: Plaintiff Castro, Luis Angel  
*Case Appeal Statement*

10/20/2021

 Case Appeal Statement  
Filed By: Plaintiff Castro, Luis Angel  
*Case Appeal Statement*

**HEARINGS**

08/23/2021

 **Minute Order** (3:00 AM) (Judicial Officer: Wiese, Jerry A.)  
Minute Order - No Hearing Held;  
Journal Entry Details:  
*At the request of Court, for judicial economy, the Petition for Writ of Habeas Corpus and Motion of Appointment of Counsel currently scheduled for August 26, 2021 is RESCHEDULED to September, 23 2021 at 8:30 a.m. CLERK'S NOTE: A copy of the above minute order was distributed to Luis Angel Castro, ESP#1214547, P.O. Box 1989, Ely, NV 89301.;*

09/23/2021

**CANCELED Petition for Writ of Habeas Corpus** (8:30 AM) (Judicial Officer: Wiese, Jerry A.)  
*Vacated*

09/23/2021

**CANCELED Motion for Appointment of Attorney** (8:30 AM) (Judicial Officer: Wiese, Jerry A.)  
*Vacated*  
*Plaintiff's Motion for Appointment of Attorney and Request for Evidentiary Hearing*

DISTRICT COURT CIVIL COVER SHEET

A-21-835827-W  
Dept. 30

County, Nevada

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <p style="text-align: center;">Luis Castro</p>	Defendant(s) (name/address/phone): <p style="text-align: center;">State of Nevada</p>
Attorney (name/address/phone):	Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)

<b>Civil Case Filing Types</b>		
<p style="text-align: center;"><b>Real Property</b></p> <p><b>Landlord/Tenant</b></p> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <p><b>Title to Property</b></p> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <p><b>Other Real Property</b></p> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<p style="text-align: center;"><b>Negligence</b></p> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <p style="text-align: center;"><b>Malpractice</b></p> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<p style="text-align: center;"><b>Torts</b></p> <p><b>Other Torts</b></p> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<p style="text-align: center;"><b>Probate</b></p> <p><b>Probate</b> (select case type and estate value)</p> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <p><b>Estate Value</b></p> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<p style="text-align: center;"><b>Construction Defect &amp; Contract</b></p> <p><b>Construction Defect</b></p> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <p><b>Contract Case</b></p> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<p style="text-align: center;"><b>Judicial Review/Appeal</b></p> <p><b>Judicial Review</b></p> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <p><b>Nevada State Agency Appeal</b></p> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <p><b>Appeal Other</b></p> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b>		<b>Other Civil Filing</b>
<p><b>Civil Writ</b></p> <input checked="" type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrantum		<p><b>Other Civil Filing</b></p> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

*Business Court filings should be filed using the Business Court civil coversheet.*

June 7, 2021

Date

**PREPARED BY CLERK**

Signature of initiating party or representative

*See other side for family-related case filings.*



1 sentenced. All Parties agreed that the State would have the right to argue for Life  
2 without the possibility of Parole, and the Defense will argue for Life with the possibility  
3 of Parole after fifteen (15) years. All Parties agreed that no one would seek a term of  
4 years. (See GPA).

5 On March 22, 2019, the State filed a Sentencing Memorandum. On March 24,  
6 2019, Petitioner filed a Sentencing Memorandum on Behalf of Defendant Luis Castro  
7 ("Petitioner's Sentencing Memo"). On March 26, 2019, Petitioner was sentenced to life  
8 without the possibility of Parole in the Nevada Department of Corrections.

9 On November 24, 2020, the Nevada Supreme Court affirmed Petitioner's  
10 Judgment of Conviction. Remittitur issued on November 17, 2020.

11 Petitioner Luis A. Castro sent his pro per Petition for Writ of Habeas Corpus and  
12 to Withdraw Guilty Plea and a separate Ex Parte Motion for Appointment of Counsel  
13 and Request for Evidentiary Hearing on May 12, 2021. Thereafter, both were received  
14 by the Clerk of Court and e-filed on June 7, 2021. On June 22, 2021, Petitioner sent a  
15 Supplement to Petition for Writ of Habeas Corpus, which was received by the Clerk of  
16 Court and e-filed on July 6, 2021.

### 17 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

18 Petitioner seeks to withdraw his guilty plea entered on 2/4/19 on the basis he  
19 was denied his right to effective assistance of counsel during the plea-bargain process,  
20 and that his plea was not given voluntarily or intelligently. Petitioner states he was not  
21 competent to enter the plea because of his seventh-grade education, and his psychiatric  
22 and medical conditions at the time of his plea.

23 First, Petitioner asserts that at the time he entered his guilty plea, "he was  
24 heavily medicated and not competent, nor able to fully appreciate, understand, and  
25 waive his fundamental Constitutional rights." He further states that "the Court  
26 remained oblivious to the most vital aspect of the plea colloquy, which centered on his  
27 perception and mental health state at the time the plea was induced." (See Petition at  
28 pg. 3 of 14). Moreover, an evidentiary hearing will clearly establish that the mental  
health "crisis and a newly prescribed and substantially powerful daily antipsychotic  
medication had adversely affected and impacted his competency during the plea." *Id.*

1           Petitioner argues that a review of the transcripts of the plea hearing will not  
2 clearly establish he fully understood his rights. Only an evidentiary hearing will  
3 definitely establish his psychotic condition at the time of his plea, which precluded his  
4 ability to voluntarily and intelligently plea guilty. Petitioner cites to *Wilkins v.*  
5 *Bowersox*, 145 F.3d 1006 (8th Cir. 1998), as support for his argument. Petitioner  
6 argues that he is an unsophisticated person who was able to correctly answer simple  
7 questions during the plea canvas at defense counsel’s direction, but that is not enough  
8 to establish that he fully understood what rights he gave up or what duties his attorney  
9 failed to perform.

10           Given his seventh-grade education, history of drug abuse, and inherited bipolar  
11 disorder, Petitioner asserts that his attorney, Mr. Warren Geller, was able to easily  
12 instruct and/or manipulate him to answer every question of the Court by simply  
13 responding “yes” to every question. He suggests that on page 7 of the plea canvass,  
14 there is evidence that he was poorly advised by counsel. Petitioner argues that Mr.  
15 Geller did not discuss any of the immigration consequences of a guilty plea with  
16 Petitioner, and consequently, the plea must be found involuntary.

17           Petitioner argues his guilty plea must be withdrawn because it was  
18 fundamentally unfair and manifested injustice, because Mr. Geller “talk[ed] him into  
19 accepting a ‘blind plea’ that did not benefit him at all.” Petitioner suggests that he was  
20 on suicide crisis placement and then discharged with newly prescribed anti-psychotic  
21 medication, shortly before the plea, and Mr. Geller should have alerted the Court that  
22 these changes had a substantive cognitive impact on him. Further, Petitioner argues  
23 that the State will not be prejudiced by his withdrawal of plea because the case is “not  
24 so old” and the totality of the circumstance’s manifest injustice.

25           According to Petitioner, Mr. Geller intimidated and misinformed Petitioner’s  
26 mother, in order to force Petitioner into accepting a plea, because otherwise she would  
27 withdraw her support from him. Petitioner alleges that Mr. Geller assured his mother  
28 that he would receive a sentence of 15 years to life with the possibility of parole.  
Because he did not receive a benefit from the plea agreement, Petitioner’s Sixth  
Amendment rights were violated.

1           Petitioner takes issue with the District Court’s decision to sentence him to life  
2 without the possibility of parole. While he understands the Court had wide discretion to  
3 impose a sentence and that the sentence imposed on him was within the statutory limit,  
4 Petitioner argues his sentence is not in the best interest of judicial proceedings.

5           Petitioner argues that it doesn’t make sense for him to take a plea for a sentence that  
6 would have been the same had he gone to trial. Had this case gone to trial, the evidence  
7 would have revealed that he played a minimal role in the crime, that he tried to stop his  
8 co-defendants, the only reason he did not call the police was out of fear for his family,  
and that there was no DNA evidence.

9           He argues that the ultimate sentence imposed shocks the conscience given his  
10 lack of prior convictions for violent offenses, the fact he left the scene, and that he was  
11 not aware the crime would become violent. Petitioner states that his sentence of life  
12 without the possibility of parole “is so unreasonably disproportionate to the offense and  
13 [his] role in the offense as to shock the conscience and amounts to cruel and unusual  
14 punishment in violation of the Eighth Amendment of the United States Constitution  
and Article I, Section VI of the Nevada Constitution.” (See Petition at pg. 11 of 14.)

15           In his “Supplemental Petition,” Petitioner focuses on Mr. Geller’s alleged  
16 ineffective assistance of counsel. Petitioner argues that Mr. Geller was ineffective by  
17 failing “to object and/or argue the Court’s unreasonable demand. The demand that the  
18 acceptance of the plea was contingent upon all four (4) Defendants accepting their  
19 respective negotiations.” (See Supplemental Petition at pg. 6 of 15).

20           Petitioner again states that the plea agreement resulted in the same, or a worse  
21 outcome than if the case had gone to trial, because the State would not have been able  
22 to prove its case. Had the case gone to trial, the “facts” would have been revealed,  
23 including that the prosecution coached the victim into identifying Petitioner as one of  
24 the people who harmed him. And trial could have shown Petitioner lacked the mental  
capacity to orchestrate the ordeal.

25           According to Petitioner, Mr. Geller’s counsel constituted “as a ‘Trump Con’-  
26 fraudulent legal representation,” because he told Petitioner’s parents that the sentence  
27 would range between 15 to 25 years in prison if he accepted. Petitioner stated that his  
28 parents then threatened him with loss of support if he did not accept the offer, which  
left him no alternative but to take the guilty plea. Mr. Geller was paid \$85,000.00 to

1 defend and/or negotiate a fair sentence on behalf of petitioner. Petitioner stated Mr.  
2 Geller failed to sever Petitioner's case from the co-defendants, and provided a "lack of  
3 legal representation" which "was a disgrace and amounted to beguilement." (See  
4 Supplemental Petition at pg. 6 of 15).

5 Petitioner argues that it is "very unlikely [Mr. Geller] spen[t] more than ten  
6 hours working on this case, averaging \$8,500.00 an hour. For this hourly rate he could  
7 have tried to be an effective attorney or at the very, very minimum, negotiated the plea-  
8 sentence." (See Supplemental Petition at pg. 8 of 15.)

9 In his Supplement, Petitioner again argues that the Court's sentence was  
10 disproportionate, and constituted cruel and unusual punishment in violation of the  
11 Eighth Amendment.

12 Finally, Petitioner also argues that an evidentiary hearing is necessary so that his  
13 parents can testify about Mr. Geller's alleged promise to induce Petitioner to accept the  
14 plea offer. The evidence is necessary in order for the Court to determine if Petitioner  
15 was afforded constitutionally sufficient advice so that he could intelligently and  
16 knowingly waive his important constitutional trial.

17 The Court notes that the Petitioner attached as an exhibit to his Supplement, a  
18 letter allegedly from his parents supporting his arguments regarding Mr. Geller.

19 With regard to the Petitioner's request for appointment of counsel, Petitioner  
20 argues that the Court should consider that his Writ of Habeas Corpus has real merit.  
21 Further, the Court should consider the factual complexity of this case, the ability of the  
22 indigent to investigate the facts, the existence of conflicting testimony, the ability of the  
23 indigent to present his claim(s) and the complexity of the legal issues.

24 In Return, the State first notes the procedural and factual background of this  
25 matter and the underlying criminal case. Because Petitioner's Supplemental Petition  
26 and Memo in Support were filed after he filed this Petition and filed without leave of  
27 Court, the State argues those pleading should be stricken and/or any new claims or  
28 allegations contained therein should be summarily denied, pursuant to NRS 34.750 (5).  
Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a  
petitioner from filing any additional pleadings or supplements, except for those  
specifically provided for in subsections (2)-(4), unless ordered by the Court.

1 With regard to Petitioner's argument that his guilty plea was involuntary  
2 because he was mentally incompetent during the plea canvass and "did not have the  
3 mental capacity or fully understand his rights and did not know what he was facing  
4 when he pled guilty," the State contends this claim is belied by the record.

5 To determine whether a guilty plea was voluntarily entered, the Court will review the  
6 totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at 271,  
7 721 P.2d at 367. A proper plea canvass should reflect that:

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

14 *Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86  
15 Nev. 774, 476 P.2d 950 (1970)).

16 As an initial matter, Petitioner attempts to draw similarities between this case  
17 and *Wilkins v. Bowersox*, 145 P.3d 1006 (8th Cir. 1998), but the State argues that  
18 Eighth Circuit case law is irrelevant and inapplicable here, particularly in light of the  
19 fact that the totality of the circumstances establish that Petitioner's plea was  
20 voluntarily, knowingly, and intelligently entered. First, Petitioner signed his GPA and  
21 affirmed that he was "signing this agreement voluntarily, after consultation with [his]  
22 attorney, and [was] not acting under duress or 'coercion[.]'" (GPA, at pg. 5.) Petitioner  
23 further affirmed that he was not "under the influence of any intoxicating liquor-, a  
24 controlled substance or other drug which would in any manner impair [his] ability to  
25 comprehend or understand [the] agreement or the proceedings surrounding [the] entry  
26 of [the] plea." (GPA, at pg. 5).

27 Next, despite Petitioner's claim to the contrary, his answers during his plea  
28 colloquy were not perfunctory affirmations. Petitioner's answers during the plea  
29 canvass further bely any claim that Petitioner was not competent to plead guilty or did  
30 not understand what he was pleading guilty to. See Recorder's Transcript of Hearing-  
31 Entry of Plea ("RT: EOP"), at 45-6 (February 4, 2019).

32 Additionally, Petitioner's allegation that his plea was invalid because he was on  
33 suicide watch in the days preceding his guilty plea is nothing but a bare and naked  
34 allegation that his unsupported by the record. According to the sentencing

1 memorandum filed by counsel prior to sentencing, Petitioner received three  
2 neuropsychological evaluations on February 21, March 5, and March 7, 2019, after he  
3 entered his plea. (Petitioner's Sentencing Memo at pg. 11). However, the only suicide  
4 attempt mentioned in those evaluations is an incident from years prior to Petitioner's  
5 incarceration. *Id.* at 15. Therefore, the claim that Petitioner was on suicide watch is  
6 unfounded and belied by the reports provided by the defense in preparation for  
7 sentencing. Accordingly, Petitioner's claim that he was not competent to plead guilty  
8 fails.

9 In response to Petitioner's argument that the guilty plea was entered into with  
10 effective assistance of counsel, the State argues that this also fails. Petitioner  
11 acknowledges that his sentence is legal but believes that his sentence is disproportion  
12 and shocks the conscience because he did not have any prior criminal history, there was  
13 no evidence of his DNA at the crime scene, and Petitioner suffers from various mental  
14 conditions, and this also fails. The State argues that Petitioner's signature on his GPA  
15 and answers during his plea canvass belie any claim of ineffective assistance of counsel.  
16 Petitioner claims that his counsel did not discuss the consequences of the plea on  
17 Petitioner's immigration status, but this is completely unfounded and belied by the  
18 record. By signing the GPA, Petitioner affirmed that he did understand the  
19 immigration consequences. (See GPA, at pgs. 3-4). Moreover, during the plea canvass,  
20 Petitioner and his attorney discussed the immigration consequence. (See RT: EOP, at  
21 7-8). Additionally, this claim is belied by the record at sentencing. In the Sentencing  
22 Memo, counsel stated, "the parole board may deem it appropriate to release him to  
23 Immigration and Customs Enforcement for removal from the United States." (See  
24 Petitioner's Sentencing Memo at 7-8). During sentencing, Petitioner's counsel  
25 referenced the possibility of Petitioner's deportation to Mexico multiple times and even  
26 used that fact to argue in favor of possible parole. Recorder's Transcript of Proceedings  
27 Sentencing ("Sentencing Proceedings"), at 7,10 (March 26, 2019). Specifically, counsel  
28 stated, "There is an ICE hold. If...the Court...granted the defense's request for parole  
eligibility at 15 years...the parole board would have the option to say, you know what  
federal government, now you can take Mr. Castro and deport him to Mexico...if the  
Court sentences him to life without, no matter what the circumstances are, we're always  
going to be paying for his incarceration." *Id.* at 7-8. Additionally, Petitioner addressed

1 the court and made no mention that he was never informed of or advised about  
2 potential immigration consequences. (*Id.* at 10- 11). Therefore, Petitioner's claim that  
3 he was not aware of the consequences of immigration fails as it is belied by the record.

4 With regard to Petitioner's argument that counsel intimidated and lied to  
5 Petitioner's parents, in order to induce Petitioner into pleading guilty, this is a bare and  
6 naked allegation suitable only for summary denial. In signing the GPA, Petitioner  
7 confirmed that counsel "answered all of [Petitioner's] questions regarding [the] guilty  
8 plea agreement and its consequences to [Petitioner's] satisfaction and [Petitioner was]  
9 satisfied by the services provided by [his] attorney." Additionally, when Petitioner  
10 signed the GPA, he acknowledged that he understood that he was waiving his right to a  
11 jury trial. (GPA at 4). Moreover, during the plea canvass, Petitioner confirmed that he  
12 was waiving his right to challenge the evidence at trial. (RT: EOP, at 5-6). Further,  
13 Petitioner has failed to articulate what other investigation or challenge to the evidence  
14 counsel should have engaged in, prior to Petitioner's guilty plea that would have  
15 resulted in Petitioner asserting his right to a jury trial in lieu of a guilty plea. This  
16 failure is fatal. *Hill*. 474 U.S. at 59, 106 S.Ct. at 370 (1985). Accordingly, counsel cannot  
17 be deemed ineffective. Specifically, Petitioner further confirmed that he was satisfied  
18 with counsel during his plea canvass and affirmed that he had not been threatened into  
19 pleading guilty RT: EOP, at 4-7.

20 Petitioner's claim that counsel promised him a sentence of fifteen (15) years to  
21 life, or any other sentence, is a bare and naked claim that is entirely belied by the  
22 record. Petitioner's signed GPA first states that pursuant to the negotiations, while  
23 counsel could argue for a sentence of fifteen (15) years to life, Petitioner understood he  
24 was not guaranteed that sentence. GPA at 3. Petitioner's answers during the plea  
25 canvass further confirms that Petitioner understood the terms of the negotiations and  
26 belie any claim that he believed he would receive a particular sentence RT: EOP, at 6.  
27 While counsel indeed argued during sentencing that Petitioner should receive a  
28 sentence of fifteen (15) years to life (Sentencing Proceedings, at 10,) that the Court did  
not honor that request does not render counsel deficient.

Petitioner's claim that his sentence of life without the possibility of parole  
suggests that counsel was ineffective during the plea negotiations fails. Counsel filed a  
sixty-eight (68) page sentencing memo, which included a detailed history of

1 Petitioner's upbringing, a neuropsychological evaluation that was completed at  
2 Attorney Geller's request, and multiple letters of support for Petitioner. In this  
3 sentencing memo, Attorney Geller made a passionate argument for the possibility of  
4 parole based on all of the applicable mitigating factors. Petitioner's Sentencing Memo  
5 at 6-8.

6 Counsel then made a similarly passionate argument during the sentencing  
7 hearing highlighting (1) Petitioner's lack of criminal history; (2) childhood trauma that  
8 led to self-medicating with drugs; (3) the support Petitioner had from his family; (4)  
9 Parole and Probation's recommended sentence of fifteen (15) years to life; (5)  
10 Petitioner's consistent claim that he was not one of the people who handled the weapon  
11 or touched the victim; (6) DNA results showing that Petitioner's DNA was not on the  
12 weapon; (7) Petitioner's offer to take a polygraph test; and (8) surveillance camera  
13 footage that Petitioner left the convenience store. Sentencing Proceedings at 6-10.  
14 Indeed, the record is clear that the district court acknowledged that while a defendant's  
15 lack of criminal history and obvious substance abuse problems tend to incline the court  
16 to be merciful at sentence, neither factor negated the "horrific crimes" committed. *Id.*  
17 at 23-24.

18 Further, the State also notes that Petitioner was sentenced with his three co-  
19 defendants, all of whom entered into the same plea negotiations, and all of whom  
20 received the same sentence of life without the possibility of parole. Of the other co-  
21 defendants, only co-defendant Edward Honabach filed a Post-Conviction Writ of  
22 Habeas Corpus ("Honabach's Petition"). See *Honabach v. William Gittere*, A-20-  
23 812948-W, Petition Post-Conviction Writ of Habeas Corpus filed March 27, 2020). In  
24 Honabach's Petition, Honabach made similar claims to those contained in this instant  
25 Petition, in that he claimed his plea was involuntarily entered and his counsel was  
26 ineffective because he was not advised that he could receive life without the possibility  
27 of parole. *Id.* The Court summarily denied Honabach's Petition, finding that the Guilty  
28 Plea Agreement and the record of plea canvass proceedings demonstrate that  
Honabach's "guilty plea was made freely and voluntarily, and that he understood the  
nature of the offense and the consequences of his plea." *Honabach v. William Gittere*,  
A-20-812948-W, Findings of Fact, Conclusion of Law and Order, at 2-3 (filed July 23,  
2020). Because Petitioner raises factually similar claims, signed the same Guilty Plea

1 Agreement, and was canvassed during the same proceeding as Honabach, the Court's  
2 reasoning and denial of Honabach's petition suggests that Petitioner's instant petition  
3 should be summarily denied.

4 With regard to Petitioner's claim that his sentence is cruel and unusual, this is  
5 not a claim of ineffective assistance of counsel, nor is it a challenge to the validity of  
6 Petitioner's guilty plea. Accordingly, it should have been raised on direct appeal, and is  
7 beyond the scope of habeas proceedings and therefore waived. *Franklin*, 110 Nev. at  
8 752, 877 P.2d at 1059. Further, Petitioner already raised this claim which was rejected  
9 by the Nevada Court of Appeals.

10 The Court of Appeals already ruled that although Castro claimed his sentence  
11 constitutes cruel and unusual punishment, the sentence falls within the parameters of  
12 the relevant statute. See NRS 200.320(1)(a). He did not allege that the statute is  
13 unconstitutional, and the Court concluded that the sentence imposed was not grossly  
14 disproportionate to his crime and did not constitute cruel and unusual punishment.  
15 Order of Affirmance, *State v. Castro*, Docket No: 78643-COA, at 3-4 (filed August 12,  
16 2020).

17 Based on this ruling by the Court of Appeals, the State argues that this claim is  
18 barred by the doctrine of law of the case. "The law of a first appeal is law of the case on  
19 all subsequent appeals in which the facts are substantially the same." *Hall v. State*, 91  
20 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343. 455  
21 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more  
22 detailed and precisely focused argument subsequently made after reflection upon the  
23 previous proceedings." *Id.* at 316, 535 P.2d at 799. Under the law of the case doctrine,  
24 issues previously decided on direct appeal may not be reargued in a habeas petition.  
25 *Pellegrini v. State*, 117 Nev. 860, 879, 34P.3d519, 532 (2001) (citing *McNelton v. State*,  
26 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot  
27 overrule the Nevada Supreme Court. NEV. CONST. Art. VI§ 6. Accordingly, by simply  
28 continuing to file petitions with the same arguments, Petitioner's claim is barred by the  
29 doctrine of the law of the case. *Id.*; *Hall v. State*, 91Nev.314, 316, 535 P.2d 797, 799  
30 (1975).

31 The Eighth Amendment to the United States Constitution as well as Article I,  
32 Section 6 of the Nevada Constitution prohibit the imposition of cruel and unusual

1 punishment. The Nevada Supreme Court has stated that "[a] sentence within the  
2 statutory limits is not 'cruel and unusual punishment unless the statute fixing  
3 punishment is unconstitutional or the sentence is so unreasonably disproportionate to  
4 the offense as to shock the conscience.'" *Allred v. State*, 120 Nev. 410, 92 P.2d 1246,  
5 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996)  
6 (quoting *Culverson v. State*, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).  
7 As long as the sentence is within the limits set by the legislature, a sentence will  
8 normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev. 344, 871 P.2d  
9 950 (1994).

10 The Nevada Supreme Court has consistently echoed its standard of review for  
11 claims of excessive criminal sentences: "[r]egardless of its severity, a sentence that is  
12 'within the statutory limits is not 'cruel and unusual punishment unless the statute  
13 fixing punishment is unconstitutional or the sentence is so unreasonably  
14 disproportionate to the offense as to shock the conscience.'" *Harte v. State*, 132 Nev.  
15 410, 373 P.3d 98 (2016) (internal quotations omitted). The *Harte* Court also expressly  
16 held that it will "not review nondeath sentences for excessiveness." *Id.* In this case,  
17 Petitioner acknowledged as part of his guilty plea that the State would have the right to  
18 argue for a sentence of life without the possibility of parole. While Petitioner views that  
19 sentence as harsh, he was involved in the kidnapping, torturing, and mutilation of the  
20 victim and an attempt to burn down the location of the crime after the defendants  
21 believed the victim had died. In fact, the sentencing judge stated, "if you had been  
22 successful in this, this would have been a capital murder case and you all would be  
23 looking at potentially a capital sentence." Therefore, the harshness of the penalty  
24 imposed is not disproportionate to the crime. Further, in sentencing, the Court did  
25 consider all of the mitigating factors Petitioner raises again here.

26 As for Petitioner's request for appointment of counsel, the State argues that  
27 Petitioner has not demonstrated that counsel should be appointed pursuant to NRS  
28 34.750. Additionally, Petitioner's request should be summarily denied because all of his  
claims are belied and repelled by the record. *Hargrove v. State*, 100 Nev. 498, 502, 686  
P.2d 222, 225 (1984). Petitioner has failed to include any factual allegations in the  
initial Petition that demonstrate counsel should be appointed. Although the  
consequences Petitioner faces are severe as he is serving life without the possibility of

1 parole, that fact alone does not require the appointment of counsel. The issues are not  
2 difficult because Petitioner's claims are meritless and belied by the record as discussed  
3 supra. Despite the claims' futility, Petitioner does not and cannot demonstrate that he  
4 had any trouble raising the issue

5 Additionally, there has been no indication that Petitioner is unable to  
6 comprehend the proceedings here. He managed to file a Motion to Withdraw Counsel,  
7 this instant Petition, and two supplemental pleadings without the assistance of counsel.  
8 Finally, counsel is not necessary to proceed with further discovery in this case.

9 Petitioner himself indicates that he has provided the Court with the information  
10 needed to grant him relief. Due to habeas relief not being warranted, there is no need  
11 for additional discovery, let alone counsel's assistance to conduct such investigation

12 Lastly, the State argues that Petitioner is not entitled to an evidentiary hearing.  
13 All of the Petitioner's factual assertions are belied by the record in this case. Every  
14 claim is nothing but a bare and naked assertion that is repelled by the record. As all of  
15 Petitioner's claims fail, he has likewise failed to demonstrate that the record needs to be  
16 expanded through an evidentiary hearing. Therefore, the Petition can be resolved on  
17 the pleadings and an evidentiary hearing is not required, nor is Petitioner entitled to  
18 one.

19 In Reply, Petitioner argues that it is perplexing and doubtful that an appellate  
20 counsel would address his own ineffectiveness while he/she prepare[s] [a] brief on  
21 direct appeal, on behalf of his/her client. He states that he is entitled to appointment of  
22 counsel under the Sixth Amendment of the United States Constitution. Petitioner  
23 summarizes the same arguments he made in his other briefing, and adds that the  
24 appointment of counsel is "the only humanly fair solution."

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

25 As the "plea canvass" is at issue here, the Court herein reviews the entire plea  
26 canvass pertaining to this Petitioner, as follows:

27 THE COURT: Okay. I've got to do a plea canvas with each of you individually.  
28 I'm just going to do them in the order that they're in the pleadings. So We'll do  
Luis Angel Castro first. The rest of you can sit down if you want.

Mr. Castro, give me your full legal [name].

THE DEFENDANT: Luis Angel Castro Morales.

THE COURT: How old are you, sir?

THE DEFENDANT: 32.

THE COURT: How far did you go in school.

1 THE DEFENDANT: Tenth grade.

2 THE COURT: Do you read, write, and understand the English language?

3 THE DEFENDANT: The best I can.

4 THE COURT: What does that mean?

5 THE WITNESS: Yes.

6 THE COURT: Have you seen a copy of the amended information in this case  
7 charging you with first degree kidnapping resulting in substantial bodily harm,  
8 which is a category A. Have you seen that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you have a chance to read that and discuss it with your  
11 attorney?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: With regard to that charge, first degree kidnapping resulting in  
14 substantial bodily harm, how do you plead, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Before I can accept your plea of guilty, I have to be convinced that  
17 your plea is freely and voluntarily made. Are you making your plea freely and  
18 voluntarily?

19 THE DEFENDANT: Yes, I am, sir.

20 THE COURT: Has anybody forced you or coerced you to enter that plea?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you making that plea because you're, in fact, guilty of that  
23 charge?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has anybody made any promises or guarantees to you other than  
26 what's been stated in open court and what's contained in the guilty plea  
27 agreement?

28 THE DEFENDANT: No, sir.

THE COURT: In looking at the guilty plea agreement, it looks like you signed  
this on page 5. It's dated February 4. Did you read and sign that today?

THE DEFENDANT: Yes, sir.

THE COURT: Did you understand it before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: You had a chance to discuss it with your attorney, and he  
answered any questions you might have had about it?

THE DEFENDANT: Yes, I have.

THE COURT: You understand that by signing it, you're agreeing that you read  
and understood it; correct?

THE DEFENDANT: That is correct.

THE COURT: Also by signing that document, you're agreeing to waive certain  
important constitutional rights like the right to be able to confront your accuser,  
go to trial and put on evidence on your own behalf. You understand that?

THE DEFENDANT: I understand, sir.

THE COURT: Are you currently suffering from any emotional or physical  
distress that's caused you to enter this plea?

THE DEFENDANT: No, sir.

1 THE COURT: Are you currently under the influence on any alcohol, medication,  
2 narcotics or any substance that might affect your ability to understand these  
documents or the process that we're going through?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you understand that in the guilty plea agreement it says that  
the possibility of sentence is 15 to 40 years or for minimum of 15 years and a  
5 maximum of life or life without parole? Do you understand that those are the  
options?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that sentencing is strictly up to the Court, and  
nobody can promise you probation, leniency, or any kind of special treatment;  
8 correct?

9 THE DEFENDANT: That's correct.

10 THE COURT: Do you have any questions that you want to ask of myself or the  
State or your counsel before we proceed?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has your attorney made any promises to you that are not  
contained in the guilty plea agreement?

13 THE DEFENDANT: No, sir.

14 THE COURT: Based on all the facts and circumstances, are you satisfied with the  
services of your attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you a U.S. citizen?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you understand that there are some charges that have adverse  
immigration consequences and may result in deportation?

19 THE DEFENDANT: That is correct.

20 THE COURT: Have you had the chance to discuss any immigration issues with  
your attorney, and he's answered any questions you have?

21 THE DEFENDANT: To this point, yes and no, but I'll just say yes.

22 MR. GELLER: Judge, I can represent to the Court, I've been in touch with his  
immigration attorney, and we've been in communication. I did let my client  
23 know today, as well as previously, that there's a substantial probability he'll be  
deported after he serves a period of incarceration.

24 THE COURT: Do you understand that?

25 THE DEFENDANT: Yes, sir.

26 THE COURT: You still agree with the terms as set forth in the guilty plea  
agreement?

27 THE DEFENDANT: Yes.

28 THE COURT: So I have to go through the amended information with you to  
make sure that there's a factual basis for your plea. According to the  
information, it says that,

"On or about the 7th day of March 2016 in Clark County, Nevada, contrary to the  
laws of the State of Nevada, you did willfully, unlawfully, feloniously seize,  
confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away Jose Ortiz  
Salazar, a human

being, with the intent to hold or detain Jose Ortiz Salazar against his will and  
without his consent for the purpose of committing murder and/or robbery with

1 substantial bodily harm. The defendants being criminally liable under one or  
2 more of the following princip[les] of criminal liability, to wit: One, by directly  
3 committing the crime or by; two, aiding or abetting in the commission of the  
4 crime with the intent that the crime be committed by counseling, encouraging,  
5 hiring, commanding, inducing or otherwise procuring the other to commit the  
6 crime; and/or, three, pursuant to conspiracy to commit the crime with the intent  
7 that the crime be committed, the defendants aiding or abetting or conspiring,  
8 defendants acting in concert throughout." Is that what you did?

9 THE DEFENDANT: According to this, yes.

10 THE COURT: The question is, is that what you did?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Because, I mean, if you don't think that's what you did, then  
13 you can't be freely and voluntarily accepting the plea.

14 THE DEFENDANT: Yes.

15 THE COURT: You agree that's what you did; correct?

16 THE WITNESS: Yes.

17 THE COURT: All right. The Court hereby finds the defendant's plea of guilty is  
18 freely and voluntarily made. He appears to understand the nature of the offense  
19 and the consequences of the plea. I'll therefore accept your plea of guilty. We'll  
20 refer this to the Division of Parole and Probation for preparation of the PSI.

21 We'll set for sentencing hearing for --

22 THE CLERK: March 26th, 8:30.

23 Transcript of Plea Canvass, 2/4/19.

24 In determining whether a guilty plea was voluntarily entered, the Court reviews  
25 the totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at  
26 271, 721 P.2d at 367. A proper plea canvass should reflect that:

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

*Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86  
Nev. 774, 476 P.2d 950 (1970)).

The requirements of a proper plea canvass were met in the canvass conducted by  
the Court on February 4, 2019.

Pursuant to NRS 34.810, "The court shall dismiss a petition if the court  
determines that: (a) the petitioner's conviction was upon a plea of guilty . . . and the  
petition is not based upon an allegation that the plea was involuntarily or unknowingly

1 entered or that the plea was entered without effective assistance of counsel.” NRS  
2 34.810(1)(a).

3 Although the Defendant pled guilty, he is alleging that his plea was involuntary  
4 or unknowingly entered, and he further is arguing ineffective assistance of counsel.

5 In considering a challenge relating to “ineffective assistance of counsel,” the U.S.  
6 Supreme Court has stated the following:

7 Judicial scrutiny of counsel's performance must be highly deferential. It is all too  
8 tempting for a defendant to second-guess counsel's assistance after conviction or  
9 adverse sentence, and it is all too easy for a court, examining counsel's defense  
10 after it has proved unsuccessful, to conclude that a particular act or omission of  
11 counsel was unreasonable. *Cf. Engle v. Isaac*, 456 U.S. 107, 133–134, 102 S.Ct.  
12 1558, 1574–1575, 71 L.Ed.2d 783 (1982). A fair assessment of attorney  
13 performance requires that every effort be made to eliminate the distorting  
14 effects of hindsight, to reconstruct the circumstances of counsel's challenged  
15 conduct, and to evaluate the conduct from counsel's perspective at the time.  
16 Because of the difficulties inherent in making the evaluation, a court must  
17 indulge a strong presumption that counsel's conduct falls within the wide range  
18 of reasonable professional assistance; that is, the defendant must overcome the  
19 presumption that, under the circumstances, the challenged action “might be  
20 considered sound trial strategy.” See *Michel v. Louisiana*, supra, 350 U.S., at  
21 101, 76 S.Ct., at 164. There are countless ways to provide effective assistance in  
22 any given case. Even the best criminal defense attorneys would not defend a  
23 particular client in the same way. See Goodpaster, *The Trial for Life: Effective  
24 Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U.L.Rev. 299, 343 (1983).

18 *Strickland v. Washington*, 466 U.S. 668, 689-690, 104 S.Ct. 2052, 2066 (1984).

19 The Court indicated that there is a two-prong test: The first prong is “whether,  
20 in light of all the circumstances, the identified acts or omissions were outside the wide  
21 range of professionally competent assistance,” recognizing that “counsel is strongly  
22 presumed to have rendered adequate assistance and made all significant decisions in  
23 the exercise of reasonable professional judgment.” *Strickland* at 690. The second  
24 prong is that “The defendant must show that there is a reasonable probability that, but  
25 for counsel’s unprofessional errors, the result of the proceeding would have been  
26 different. A reasonable probability is a probability sufficient to undermine confidence  
27 in the outcome.” *Strickland* at 694.

27 Performance of counsel is judged against an objective standard for  
28 reasonableness and is deficient when it falls below that standard. *State v. Powell*, 122  
Nev. 751, 759, 138 P.3d 453, 458 (2006); *Means v. State*, 120 Nev. 1001, 103 P.3d 25  
(2004); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102 (1996).

1 The Nevada Supreme Court has stated the following relating to the “prejudice”  
2 requirement:

3 In meeting the “prejudice” requirement, the defendant must show a reasonable  
4 probability that, but for counsel's errors, the result of the trial would have been  
5 different. *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068. When a conviction is  
6 the result of a guilty plea, [t]he second, or “prejudice,” requirement ... focuses on  
7 whether counsel's constitutionally ineffective performance affected the outcome  
8 of the plea process. In other words, in order to satisfy the “prejudice”  
9 requirement, the defendant must show that there is a reasonable probability  
10 that, but for counsel's errors, he would not have pleaded guilty and would have  
11 insisted on going to trial.

12 *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985)  
13 (emphasis added); see also *State v. Langarica*, 107 Nev. 932, 933, 822 P.2d  
14 1110, 1111 (1991), cert. denied, 506 U.S. 924, 113 S.Ct. 346, 121 L.Ed.2d 261  
15 (1992). “A reasonable probability is a probability sufficient to undermine  
16 confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068.

17 *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102 (1996).

18 In a very recent case, the Nevada Supreme Court summarized the analysis which  
19 the Court should undertake when considering an ineffective assistance claim. The  
20 Court stated the following:

21 To prove ineffective assistance of counsel, a petitioner must show “(1) that  
22 counsel's performance was deficient, and (2) that the deficient performance  
23 prejudiced the defense.” *Kirksey*, 112 Nev. at 987, 923 P.2d at 1107 (internal  
24 quotation marks omitted) (citing *Strickland v. Washington*, 466 U.S. 668, 687,  
25 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). The first prong of this test asks whether  
26 counsel's representation fell “below an objective standard of reasonableness” as  
27 evaluated from counsel's perspective at the time. *Id.* at 987-88, 923 P.2d at 1107.  
28 The second prong asks whether there is “a reasonable probability that, but for  
counsel's errors, the result of the [proceeding] would have been different.” *Id.* at  
988, 923 P.2d at 1107. We give deference to the district court's factual findings if  
supported by substantial evidence and not clearly erroneous, but we review the  
court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev.  
682, 686, 120 P.3d 1164, 1166 (2005). Both components of the inquiry must be  
shown. *Strickland*, 466 U.S. at 697, 104 S.Ct. 2052.

29 *Gonzales v. State*, 137 Nev.Adv.Op. 40 (7/29/21).

30 With regard to the Petitioner’s argument that the Court’s sentence constitutes  
31 “cruel and unusual punishment,” the Court of Appeals has already addressed that  
32 argument, and their decision is the Law of the Case. The Court of Appeals stated the  
33 following:

34 . . . Castro claims his sentence constitutes cruel and unusual punishment for the  
35 following reasons. He did not have a history of violent offenses and was under

1 the influence of drugs when he committed the crime. He was not aware that the  
2 crime would become so violent and left when it became violent. His DNA was  
3 not found on the weapon. He did not call the police because he was afraid that  
4 his codefendants would harm his family. He has PTSD symptoms; bipolar  
5 symptoms; and suffers from depression, anxiety, and drug addiction. And he  
6 once attempted suicide.

7 Regardless of its severity, a sentence that is within the statutory limits is  
8 not “cruel and unusual punishment unless the statute fixing punishment is  
9 unconstitutional or the sentence is so unreasonably disproportionate to the  
10 offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d  
11 282, 284 (1996)(quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220,  
12 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01  
13 (1991)(plurality opinion)(explaining the Eighth Amendment does not require  
14 strict proportionality between crime and sentence; it forbids only an extreme  
15 sentence that is grossly disproportionate to the crime).

16 Here, Castro’s life-without-the-possibility-of-parole sentence falls within  
17 the parameters of the relevant statute. See NRS 200.320(1)(a). He does not  
18 allege that the statute is unconstitutional. And we conclude the sentence  
19 imposed is not grossly disproportionate to his crime and does not constitute  
20 cruel and unusual punishment.

21 (*Castro v. Nevada*, Court of Appeals, Order of Affirmance dated 12/12/20, Case 78643-  
22 COA).

23 As indicated above, the Eighth Amendment to the United States Constitution as  
24 well as Article I, Section 6 of the Nevada Constitution prohibit the imposition of cruel  
25 and unusual punishment. The Nevada Supreme Court has stated that “[a] sentence  
26 within the statutory limits is not ‘cruel and unusual punishment unless the statute  
27 fixing punishment is unconstitutional or the sentence is so unreasonably  
28 disproportionate to the offense as to shock the conscience.’” *Allred v. State*, 120 Nev.  
410, 92 P.2d 1246, 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d  
282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220,  
221-22 (1979)). And, as long as the sentence is within the limits set by the legislature, a  
sentence will normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev.  
344, 871 P.2d 950 (1994). Petitioner argues now that his sentence is disproportionate  
and shocks the conscience. While he may not have used the “buzz words,” of “shocks  
the conscience” in his appeal, the Court of Appeals previously held that the sentence  
was “not grossly disproportionate to his crime and does not constitute cruel and  
unusual punishment.” *Castro v. Nevada*, Court of Appeals, Order of Affirmance dated  
12/12/20, Case 78643-COA. The Court of Appeals already analyzed the Eighth

1 Amendment argument of “cruel and unusual punishment,” and found against the  
2 Petitioner on that issue. That ruling is the law of the case. *Hall v. State*, 91 Nev. 314,  
3 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343. 455 P.2d 34,  
4 38 (1969)).

5 Although the Petitioner is now unhappy with his sentence, the Guilty Plea  
6 Agreement (GPA) that he entered into specifically indicated the following:

7 This offer is conditional upon all four (4) Defendants accepting their  
8 respective negotiations and being sentenced. All Parties agree the State will  
9 have the right to argue for Life without the possibility of Parole, and the Defense  
10 will argue for Life with the possibility of Parole after fifteen (15) years. All  
11 parties agree that no one will seek the term of years.

12 GPA filed 2/4/19, at pg. 1.

13 At the Sentencing Hearing, defense counsel argued for Life “with” the possibility  
14 of parole, and the State argued for Life “without” the possibility of parole. The  
15 arguments were exactly what the Defendant agreed the arguments would be. When the  
16 Court sentenced each of the Defendants, the Court stated the following:

17 I want to be merciful, but at the same time, I know that justice has to be  
18 done. And we have a victim who, but for the fact that he lived against what you  
19 all thought -- my understanding is not only was he tortured and mutilated in this  
20 room for a period of time, for a period of hours, but that everybody thought he  
21 was dead, tried to burn the house down around him. And if you had been  
22 successful in this, this would have been a capital murder case and you all would  
23 be looking at potentially a capital sentence.

24 I have a hard time with the pictures that I've seen and the horrible  
25 injuries that were inflicted upon this poor victim. I understand that he is not the  
26 pillar of our community either, but that doesn't justify the things that were done  
27 to him over \$50. And that almost makes it worse because that was the basis for  
28 this, is him not being able to come up with \$50.

So . . . . I'm going to go ahead and sentence each of you to life in the  
Nevada Department of Corrections without the possibility of parole. I  
understand that that is a difficult sentence for you to have to deal with. It's a  
difficult sentence for me to have to give, but I don't see any redeeming qualities.  
I would like to be merciful, but I don't think that this is a crime that -- I don't  
think the community wants you back out on the streets. So that will be the  
sentence. I don't think credit time served matters.

. . . .

(Transcript of Sentencing Hearing 3/26/19, pgs. 23-24).

The Petitioner argues that his plea was not entered freely and voluntarily, but his  
claim is belied by the record, as set forth above. He acknowledged, both in his GPA and

1 orally before the Court, what the possibilities would be, and he acknowledged that  
2 sentencing was strictly up to the Court. Further he acknowledged that he had discussed  
3 immigration issues with his attorney, and that he still wanted to enter into the GPA,  
4 and accept the terms thereof. Based on the GPA and the plea canvass, and the totality  
5 of the circumstances in the case, the Court finds that the Defendant's guilty plea was  
6 made freely and voluntarily, and that he understood the nature of the offense and the  
7 consequences of his plea.

8 The Petitioner's argument that counsel promised the Petitioner and Petitioner's  
9 family that he would receive fifteen (15) years to life, is a bare and naked allegation that  
10 is unsupported in the record, and is actually belied by the record. Both the GPA signed  
11 by the Petitioner, as well as the oral plea canvass, specifically informed the Petitioner  
12 that the State would be arguing for life without the possibility of parole, and that  
13 sentencing was at the discretion of the Judge.<sup>1</sup> Petitioner argues, and submitted a letter  
14 from his parents, suggesting that counsel made misrepresentations to Petitioner's  
15 parents, but his parents did not accept the plea – Defendant did. And there is no  
16 evidence that Defendant's plea was anything but knowing, willing, and voluntary.

17 Further, Petitioner's argument that counsel was ineffective for failing to inform  
18 him of the immigration consequences of his plea, is equally belied by the record. <sup>2</sup>

---

19 <sup>1</sup> The GPA specifically states, "I have not been promised or guaranteed any particular sentence by anyone. I know that  
20 my sentence is to be determined by the Court within the limits prescribed by statute. I understand that if my attorney or the  
21 State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the  
22 recommendation." (See GPA at pg. 3). Additionally, in the oral plea canvass, the following interaction occurred:

23 THE COURT: Do you understand that in the guilty plea agreement it says that the possibility of sentence is 15 to 40  
24 years or for minimum of 15 years and a maximum of life or life without parole? Do you understand that those are the  
25 options?

26 THE DEFENDANT: Yes, sir.

27 THE COURT: Do you understand that sentencing is strictly up to the Court, and nobody can promise you probation,  
28 leniency, or any kind of special treatment; correct?

THE DEFENDANT: That's correct.

(See Plea Canvass of 2/4/19.)

<sup>2</sup> In the GPA, signed by the Defendant, he agreed to the following:

I understand that if I am not a United States citizen, any criminal conviction will likely result in serious  
negative immigration consequences including but not limited to:

1. The removal from the United States through deportation; . . .

. . . .

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not  
result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a  
legal resident.

. . . .

(See GPA at pg. 3)

Additionally, during the oral plea canvass, the following took place:

THE COURT: Are you a U.S. citizen?

THE DEFENDANT: No, sir.

1 In reviewing the Petitioner’s arguments regarding ineffective assistance of  
2 counsel, in totality, the Court finds and concludes that the Petitioner has failed to meet  
3 the standard set forth in *Strickland*. The Court finds that there is insufficient evidence  
4 to support the conclusion that counsel’s actions were objectively unreasonable.  
5 Further, there is insufficient evidence suggesting that the result of the proceeding  
6 would have been different if counsel had said or done things differently. Consequently,  
7 there is no prejudice to the Defendant.

8 Inasmuch as the Petition requested a “withdrawal of plea,” such request is  
9 improper for a Writ of Habeas Corpus, but insofar as the issues have been addressed  
10 herein, the request is denied.

11 Petitioner argues that at the time he entered his guilty plea he was heavily  
12 medicated, not competent, and not able to understand the Constitutional rights he was  
13 waiving. Such allegations are bare and naked allegations, and are belied by the record.<sup>3</sup>

---

14 THE COURT: Do you understand that there are some charges that have adverse immigration consequences  
15 and may result in deportation?

16 THE DEFENDANT: That is correct.

17 THE COURT: Have you had the chance to discuss any immigration issues with your attorney, and he's  
18 answered any questions you have?

19 THE DEFENDANT: To this point, yes and no, but I'll just say yes.

20 MR. GELLER: Judge, I can represent to the Court, I've been in touch with his immigration attorney, and  
21 we've been in communication. I did let my client know today, as well as previously, that there's a substantial  
22 probability he'll be deported after he serves a period of incarceration.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You still agree with the terms as set forth in the guilty plea agreement?

26 THE DEFENDANT: Yes.

(See transcript of plea canvass 2/4/19).

<sup>3</sup> The Petitioner was asked about his “understanding,” and whether he was under the “influence” of anything at the time  
of the plea canvass, and he stated as follows:

27 THE COURT: In looking at the guilty plea agreement, it looks like you signed this on page 5. It's dated  
28 February 4. Did you read and sign that today?

THE DEFENDANT: Yes, sir.

THE COURT: Did you understand it before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: You had a chance to discuss it with your attorney, and he answered any questions you might  
have had about it?

THE DEFENDANT: Yes, I have.

THE COURT: You understand that by signing it, you're agreeing that you read and understood it; correct?

THE DEFENDANT: That is correct.

THE COURT: Also by signing that document, you're agreeing to waive certain important constitutional  
rights like the right to be able to confront your accuser, go to trial and put on evidence on your own behalf.  
You understand that?

THE DEFENDANT: I understand, sir.

THE COURT: Are you currently suffering from any emotional or physical distress that's caused you to enter  
this plea?

THE DEFENDANT: No, sir.

1           Petitioner requests an Evidentiary Hearing, but the issues he believes require an  
2 evidentiary hearing have already been addressed by the Court, and the Petitioner’s  
3 arguments are belied by the record. Consequently, the Court does not believe that an  
4 Evidentiary Hearing would be necessary, and instead it would be a waste of judicial  
5 resources.

6           With regard to the Petitioner’s request for appointment of counsel, NRS 171.188  
7 provides that an indigent defendant may request appointment of counsel, and pursuant  
8 to NRS 178.397, an indigent defendant accused of a felony or gross misdemeanor is  
9 entitled to counsel at every stage of the proceedings, from the initial appearance  
10 through appeal, unless he waives such appointment. But pursuant to *Coleman v.*  
11 *Thompson*, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991), there is no Sixth Amendment  
12 right to post-conviction counsel. See also *McKague v. Warden*, 112 Nev. 159, 163, 912  
13 P.2d 255, 258 (1996). NRS 34.750 provides the Court with discretion to appoint post-  
14 conviction counsel, after considering whether 1) the issues presented are difficult; 2)  
15 the petitioner is unable to comprehend the proceedings; or 3) counsel is needed to  
16 proceed with discovery. In analyzing these factors, this Court finds and concludes that  
17 while many issues have been raised in the Petition, they do not appear to be “complex”  
18 issues. The Petition is comprehensive and somewhat organized, especially for a pro-se  
19 Petitioner, and consequently, the Court cannot find that Petitioner would be “unable to  
20 comprehend the proceedings,” or need assistance in filing any documents, as he  
21 appears to be very capable of doing so on his own. Finally, there is not even a

20 . . . .  
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24 . . . .  
25 . . . .  
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27 . . . .

---

28           THE COURT: Are you currently under the influence on any alcohol, medication, narcotics or any substance  
          that might affect your ability to understand these documents or the process that we're going through?  
          THE DEFENDANT: No, sir.  
          (See transcript of plea canvass 2/4/19).

1 suggestion that discovery is necessary. Consequently, the Petitioner's request for  
2 appointment of counsel must be denied.

3 **ORDER/CONCLUSION**

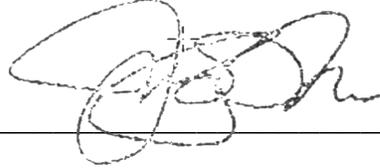
4 Based upon the foregoing, and good cause appearing,

5 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is hereby  
6 DENIED. Petitioner's request for an Evidentiary Hearing is also DENIED. And finally,  
7 Petitioner's request for appointment of counsel is also DENIED.

8 The Court requests that the State process the Notice of Entry relative to this  
9 Order.

10 Because this matter has been decided on the pleadings, the hearing scheduled  
11 for 9/23/21 will be taken off calendar, and consequently, there is no need for any  
12 parties or attorneys to appear.

13 Dated this 21st day of September, 2021

14 

15  
16  
17 **4F9 B1F 0283 78E0**  
18 **Jerry A. Wiese**  
19 **District Court Judge**

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Luis Castro, Plaintiff(s)

CASE NO: A-21-835827-W

7 vs.

DEPT. NO. Department 30

8 State of Nevada, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
12 electronic filing system, but there were no registered users on the case.

13  
14 If indicated below, a copy of the above mentioned filings were also served by mail  
15 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 9/22/2021

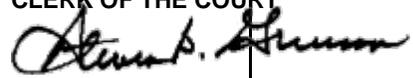
16 Luis Castro

#1214547  
ESP  
P.O. Box 1989  
Ely, NV, 89301

17  
18  
19 Steven Wolfson

Clark County District Attorney  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV, 89155

21  
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28



1 NEOJ

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4  
5 LUIS CASTRO,

6 Petitioner,

Case No: A-21-835827-W

Dept. No: XXX

7 vs.

8 STATE OF NEVADA,

9 Respondent,

10 **NOTICE OF ENTRY OF ORDER**

11 **PLEASE TAKE NOTICE** that on September 21, 2021, the court entered a decision or order in this matter,  
12 a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed  
15 to you. This notice was mailed on September 23, 2021.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Amanda Hampton

18 Amanda Hampton, Deputy Clerk

19 CERTIFICATE OF E-SERVICE / MAILING

20 I hereby certify that on this 23 day of September 2021, I served a copy of this Notice of Entry on the  
21 following:

22  By e-mail:  
Clark County District Attorney's Office  
23 Attorney General's Office – Appellate Division-

24  The United States mail addressed as follows:  
25 Luis Castro # 1214547  
26 P.O. Box 1989  
Ely, NV 89301

27 /s/ Amanda Hampton

28 Amanda Hampton, Deputy Clerk

**DISTRICT COURT  
CLARK COUNTY, NEVADA  
-oOo-**

4	LUIS ANGEL CASTRO,	)	
5		)	
6	Petitioner,	)	CASE NO.:  A-21-835827-W
7		)	DEPT. NO.:  XXX
8	vs.	)	
9		)	ORDER RE:  PETITION FOR WRIT
10	STATE OF NEVADA,	)	OF HABEAS CORPUS AND RE:
11		)	PLAINTIFF'S MOTION FOR
12	Defendant.	)	APPOINTMENT OF COUNSEL AND
13	_____	)	FOR EVIDENTIARY HEARING

**INTRODUCTION**

The above-referenced matter is scheduled for a hearing on September 23, 2021, with regard to Petitioner Luis Castro's Petition for Writ of Habeas Corpus. Pursuant to the Administrative Orders of this Court, and N.R.Cr.P. 8(2), this matter may be decided with or without oral argument. This Court has determined that it would be appropriate to decide this matter on the pleadings, and consequently, this Order issues.

**FACTUAL AND PROCEDURAL HISTORY**

On March 10, 2016, Luis Angel Castro (hereinafter "Petitioner") was charged by way of Criminal Complaint as follows: Count 1- Conspiracy to Commit Murder (Category B Felony); Count 2 - Attempted Murder with Use of a Deadly Weapon (Category B Felony) ; Count 3 - Mayhem (Category B Felony); Count 4 - Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony); Count 5 - First Degree Kidnapping with Use of a Deadly Weapon (Category B Felony); Count 6 - Extortion with Use of a Deadly Weapon (Category B Felony); Count 7 - Robbery with Use of a Deadly Weapon (Category B Felony); Count 8 - First Degree Arson (Category B Felony). He was one (1) of four (4) co-defendants.

On April 12, 2019, Petitioner was bound up to the District Court on all charges following a preliminary hearing. After four (4) continued trial dates, Petitioner and his co-defendants ultimately pled guilty on the first day of trial. Petitioner pled guilty to one count of First-Degree Kidnapping Resulting in Substantial Bodily Harm (Category A Felony). Pursuant to the Guilty Plea Agreement ("GPA"), the offer was contingent upon all four (4) Defendants accepting their respective negotiations and being

1 sentenced. All Parties agreed that the State would have the right to argue for Life  
2 without the possibility of Parole, and the Defense will argue for Life with the possibility  
3 of Parole after fifteen (15) years. All Parties agreed that no one would seek a term of  
4 years. (See GPA).

5 On March 22, 2019, the State filed a Sentencing Memorandum. On March 24,  
6 2019, Petitioner filed a Sentencing Memorandum on Behalf of Defendant Luis Castro  
7 ("Petitioner's Sentencing Memo"). On March 26, 2019, Petitioner was sentenced to life  
8 without the possibility of Parole in the Nevada Department of Corrections.

9 On November 24, 2020, the Nevada Supreme Court affirmed Petitioner's  
10 Judgment of Conviction. Remittitur issued on November 17, 2020.

11 Petitioner Luis A. Castro sent his pro per Petition for Writ of Habeas Corpus and  
12 to Withdraw Guilty Plea and a separate Ex Parte Motion for Appointment of Counsel  
13 and Request for Evidentiary Hearing on May 12, 2021. Thereafter, both were received  
14 by the Clerk of Court and e-filed on June 7, 2021. On June 22, 2021, Petitioner sent a  
15 Supplement to Petition for Writ of Habeas Corpus, which was received by the Clerk of  
16 Court and e-filed on July 6, 2021.

### 17 **SUMMARY OF LEGAL AND FACTUAL ARGUMENTS**

18 Petitioner seeks to withdraw his guilty plea entered on 2/4/19 on the basis he  
19 was denied his right to effective assistance of counsel during the plea-bargain process,  
20 and that his plea was not given voluntarily or intelligently. Petitioner states he was not  
21 competent to enter the plea because of his seventh-grade education, and his psychiatric  
22 and medical conditions at the time of his plea.

23 First, Petitioner asserts that at the time he entered his guilty plea, "he was  
24 heavily medicated and not competent, nor able to fully appreciate, understand, and  
25 waive his fundamental Constitutional rights." He further states that "the Court  
26 remained oblivious to the most vital aspect of the plea colloquy, which centered on his  
27 perception and mental health state at the time the plea was induced." (See Petition at  
28 pg. 3 of 14). Moreover, an evidentiary hearing will clearly establish that the mental  
health "crisis and a newly prescribed and substantially powerful daily antipsychotic  
medication had adversely affected and impacted his competency during the plea." *Id.*

1           Petitioner argues that a review of the transcripts of the plea hearing will not  
2 clearly establish he fully understood his rights. Only an evidentiary hearing will  
3 definitely establish his psychotic condition at the time of his plea, which precluded his  
4 ability to voluntarily and intelligently plea guilty. Petitioner cites to *Wilkins v.*  
5 *Bowersox*, 145 F.3d 1006 (8th Cir. 1998), as support for his argument. Petitioner  
6 argues that he is an unsophisticated person who was able to correctly answer simple  
7 questions during the plea canvas at defense counsel’s direction, but that is not enough  
8 to establish that he fully understood what rights he gave up or what duties his attorney  
9 failed to perform.

10           Given his seventh-grade education, history of drug abuse, and inherited bipolar  
11 disorder, Petitioner asserts that his attorney, Mr. Warren Geller, was able to easily  
12 instruct and/or manipulate him to answer every question of the Court by simply  
13 responding “yes” to every question. He suggests that on page 7 of the plea canvass,  
14 there is evidence that he was poorly advised by counsel. Petitioner argues that Mr.  
15 Geller did not discuss any of the immigration consequences of a guilty plea with  
16 Petitioner, and consequently, the plea must be found involuntary.

17           Petitioner argues his guilty plea must be withdrawn because it was  
18 fundamentally unfair and manifested injustice, because Mr. Geller “talk[ed] him into  
19 accepting a ‘blind plea’ that did not benefit him at all.” Petitioner suggests that he was  
20 on suicide crisis placement and then discharged with newly prescribed anti-psychotic  
21 medication, shortly before the plea, and Mr. Geller should have alerted the Court that  
22 these changes had a substantive cognitive impact on him. Further, Petitioner argues  
23 that the State will not be prejudiced by his withdrawal of plea because the case is “not  
24 so old” and the totality of the circumstance’s manifest injustice.

25           According to Petitioner, Mr. Geller intimidated and misinformed Petitioner’s  
26 mother, in order to force Petitioner into accepting a plea, because otherwise she would  
27 withdraw her support from him. Petitioner alleges that Mr. Geller assured his mother  
28 that he would receive a sentence of 15 years to life with the possibility of parole.  
Because he did not receive a benefit from the plea agreement, Petitioner’s Sixth  
Amendment rights were violated.

1           Petitioner takes issue with the District Court’s decision to sentence him to life  
2 without the possibility of parole. While he understands the Court had wide discretion to  
3 impose a sentence and that the sentence imposed on him was within the statutory limit,  
4 Petitioner argues his sentence is not in the best interest of judicial proceedings.

5           Petitioner argues that it doesn’t make sense for him to take a plea for a sentence that  
6 would have been the same had he gone to trial. Had this case gone to trial, the evidence  
7 would have revealed that he played a minimal role in the crime, that he tried to stop his  
8 co-defendants, the only reason he did not call the police was out of fear for his family,  
and that there was no DNA evidence.

9           He argues that the ultimate sentence imposed shocks the conscience given his  
10 lack of prior convictions for violent offenses, the fact he left the scene, and that he was  
11 not aware the crime would become violent. Petitioner states that his sentence of life  
12 without the possibility of parole “is so unreasonably disproportionate to the offense and  
13 [his] role in the offense as to shock the conscience and amounts to cruel and unusual  
14 punishment in violation of the Eighth Amendment of the United States Constitution  
and Article I, Section VI of the Nevada Constitution.” (See Petition at pg. 11 of 14.)

15           In his “Supplemental Petition,” Petitioner focuses on Mr. Geller’s alleged  
16 ineffective assistance of counsel. Petitioner argues that Mr. Geller was ineffective by  
17 failing “to object and/or argue the Court’s unreasonable demand. The demand that the  
18 acceptance of the plea was contingent upon all four (4) Defendants accepting their  
19 respective negotiations.” (See Supplemental Petition at pg. 6 of 15).

20           Petitioner again states that the plea agreement resulted in the same, or a worse  
21 outcome than if the case had gone to trial, because the State would not have been able  
22 to prove its case. Had the case gone to trial, the “facts” would have been revealed,  
23 including that the prosecution coached the victim into identifying Petitioner as one of  
24 the people who harmed him. And trial could have shown Petitioner lacked the mental  
capacity to orchestrate the ordeal.

25           According to Petitioner, Mr. Geller’s counsel constituted “as a ‘Trump Con’-  
26 fraudulent legal representation,” because he told Petitioner’s parents that the sentence  
27 would range between 15 to 25 years in prison if he accepted. Petitioner stated that his  
28 parents then threatened him with loss of support if he did not accept the offer, which  
left him no alternative but to take the guilty plea. Mr. Geller was paid \$85,000.00 to

1 defend and/or negotiate a fair sentence on behalf of petitioner. Petitioner stated Mr.  
2 Geller failed to sever Petitioner's case from the co-defendants, and provided a "lack of  
3 legal representation" which "was a disgrace and amounted to beguilement." (See  
4 Supplemental Petition at pg. 6 of 15).

5 Petitioner argues that it is "very unlikely [Mr. Geller] spen[t] more than ten  
6 hours working on this case, averaging \$8,500.00 an hour. For this hourly rate he could  
7 have tried to be an effective attorney or at the very, very minimum, negotiated the plea-  
8 sentence." (See Supplemental Petition at pg. 8 of 15.)

9 In his Supplement, Petitioner again argues that the Court's sentence was  
10 disproportionate, and constituted cruel and unusual punishment in violation of the  
11 Eighth Amendment.

12 Finally, Petitioner also argues that an evidentiary hearing is necessary so that his  
13 parents can testify about Mr. Geller's alleged promise to induce Petitioner to accept the  
14 plea offer. The evidence is necessary in order for the Court to determine if Petitioner  
15 was afforded constitutionally sufficient advice so that he could intelligently and  
16 knowingly waive his important constitutional trial.

17 The Court notes that the Petitioner attached as an exhibit to his Supplement, a  
18 letter allegedly from his parents supporting his arguments regarding Mr. Geller.

19 With regard to the Petitioner's request for appointment of counsel, Petitioner  
20 argues that the Court should consider that his Writ of Habeas Corpus has real merit.  
21 Further, the Court should consider the factual complexity of this case, the ability of the  
22 indigent to investigate the facts, the existence of conflicting testimony, the ability of the  
23 indigent to present his claim(s) and the complexity of the legal issues.

24 In Return, the State first notes the procedural and factual background of this  
25 matter and the underlying criminal case. Because Petitioner's Supplemental Petition  
26 and Memo in Support were filed after he filed this Petition and filed without leave of  
27 Court, the State argues those pleading should be stricken and/or any new claims or  
28 allegations contained therein should be summarily denied, pursuant to NRS 34.750 (5).  
Upon filing a Petition for a Writ of Habeas Corpus, NRS 34.750(5) prohibits a  
petitioner from filing any additional pleadings or supplements, except for those  
specifically provided for in subsections (2)-(4), unless ordered by the Court.

1 With regard to Petitioner's argument that his guilty plea was involuntary  
2 because he was mentally incompetent during the plea canvass and "did not have the  
3 mental capacity or fully understand his rights and did not know what he was facing  
4 when he pled guilty," the State contends this claim is belied by the record.

5 To determine whether a guilty plea was voluntarily entered, the Court will review the  
6 totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at 271,  
7 721 P.2d at 367. A proper plea canvass should reflect that:

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

14 *Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86  
15 Nev. 774, 476 P.2d 950 (1970)).

16 As an initial matter, Petitioner attempts to draw similarities between this case  
17 and *Wilkins v. Bowersox*, 145 P.3d 1006 (8th Cir. 1998), but the State argues that  
18 Eighth Circuit case law is irrelevant and inapplicable here, particularly in light of the  
19 fact that the totality of the circumstances establish that Petitioner's plea was  
20 voluntarily, knowingly, and intelligently entered. First, Petitioner signed his GPA and  
21 affirmed that he was "signing this agreement voluntarily, after consultation with [his]  
22 attorney, and [was] not acting under duress or 'coercion[.]'" (GPA, at pg. 5.) Petitioner  
23 further affirmed that he was not "under the influence of any intoxicating liquor-, a  
24 controlled substance or other drug which would in any manner impair [his] ability to  
25 comprehend or understand [the] agreement or the proceedings surrounding [the] entry  
26 of [the] plea." (GPA, at pg. 5).

27 Next, despite Petitioner's claim to the contrary, his answers during his plea  
28 colloquy were not perfunctory affirmations. Petitioner's answers during the plea  
29 canvass further bely any claim that Petitioner was not competent to plead guilty or did  
30 not understand what he was pleading guilty to. See Recorder's Transcript of Hearing-  
31 Entry of Plea ("RT: EOP"), at 45-6 (February 4, 2019).

32 Additionally, Petitioner's allegation that his plea was invalid because he was on  
33 suicide watch in the days preceding his guilty plea is nothing but a bare and naked  
34 allegation that his unsupported by the record. According to the sentencing

1 memorandum filed by counsel prior to sentencing, Petitioner received three  
2 neuropsychological evaluations on February 21, March 5, and March 7, 2019, after he  
3 entered his plea. (Petitioner's Sentencing Memo at pg. 11). However, the only suicide  
4 attempt mentioned in those evaluations is an incident from years prior to Petitioner's  
5 incarceration. *Id.* at 15. Therefore, the claim that Petitioner was on suicide watch is  
6 unfounded and belied by the reports provided by the defense in preparation for  
7 sentencing. Accordingly, Petitioner's claim that he was not competent to plead guilty  
8 fails.

9 In response to Petitioner's argument that the guilty plea was entered into with  
10 effective assistance of counsel, the State argues that this also fails. Petitioner  
11 acknowledges that his sentence is legal but believes that his sentence is disproportion  
12 and shocks the conscience because he did not have any prior criminal history, there was  
13 no evidence of his DNA at the crime scene, and Petitioner suffers from various mental  
14 conditions, and this also fails. The State argues that Petitioner's signature on his GPA  
15 and answers during his plea canvass belie any claim of ineffective assistance of counsel.  
16 Petitioner claims that his counsel did not discuss the consequences of the plea on  
17 Petitioner's immigration status, but this is completely unfounded and belied by the  
18 record. By signing the GPA, Petitioner affirmed that he did understand the  
19 immigration consequences. (See GPA, at pgs. 3-4). Moreover, during the plea canvass,  
20 Petitioner and his attorney discussed the immigration consequence. (See RT: EOP, at  
21 7-8). Additionally, this claim is belied by the record at sentencing. In the Sentencing  
22 Memo, counsel stated, "the parole board may deem it appropriate to release him to  
23 Immigration and Customs Enforcement for removal from the United States." (See  
24 Petitioner's Sentencing Memo at 7-8). During sentencing, Petitioner's counsel  
25 referenced the possibility of Petitioner's deportation to Mexico multiple times and even  
26 used that fact to argue in favor of possible parole. Recorder's Transcript of Proceedings  
27 Sentencing ("Sentencing Proceedings"), at 7,10 (March 26, 2019). Specifically, counsel  
28 stated, "There is an ICE hold. If...the Court...granted the defense's request for parole  
eligibility at 15 years...the parole board would have the option to say, you know what  
federal government, now you can take Mr. Castro and deport him to Mexico...if the  
Court sentences him to life without, no matter what the circumstances are, we're always  
going to be paying for his incarceration." *Id.* at 7-8. Additionally, Petitioner addressed

1 the court and made no mention that he was never informed of or advised about  
2 potential immigration consequences. (*Id.* at 10- 11). Therefore, Petitioner's claim that  
3 he was not aware of the consequences of immigration fails as it is belied by the record.

4 With regard to Petitioner's argument that counsel intimidated and lied to  
5 Petitioner's parents, in order to induce Petitioner into pleading guilty, this is a bare and  
6 naked allegation suitable only for summary denial. In signing the GPA, Petitioner  
7 confirmed that counsel "answered all of [Petitioner's] questions regarding [the] guilty  
8 plea agreement and its consequences to [Petitioner's] satisfaction and [Petitioner was]  
9 satisfied by the services provided by [his] attorney." Additionally, when Petitioner  
10 signed the GPA, he acknowledged that he understood that he was waiving his right to a  
11 jury trial. (GPA at 4). Moreover, during the plea canvass, Petitioner confirmed that he  
12 was waiving his right to challenge the evidence at trial. (RT: EOP, at 5-6). Further,  
13 Petitioner has failed to articulate what other investigation or challenge to the evidence  
14 counsel should have engaged in, prior to Petitioner's guilty plea that would have  
15 resulted in Petitioner asserting his right to a jury trial in lieu of a guilty plea. This  
16 failure is fatal. *Hill*. 474 U.S. at 59, 106 S.Ct. at 370 (1985). Accordingly, counsel cannot  
17 be deemed ineffective. Specifically, Petitioner further confirmed that he was satisfied  
18 with counsel during his plea canvass and affirmed that he had not been threatened into  
19 pleading guilty RT: EOP, at 4-7.

20 Petitioner's claim that counsel promised him a sentence of fifteen (15) years to  
21 life, or any other sentence, is a bare and naked claim that is entirely belied by the  
22 record. Petitioner's signed GPA first states that pursuant to the negotiations, while  
23 counsel could argue for a sentence of fifteen (15) years to life, Petitioner understood he  
24 was not guaranteed that sentence. GPA at 3. Petitioner's answers during the plea  
25 canvass further confirms that Petitioner understood the terms of the negotiations and  
26 belie any claim that he believed he would receive a particular sentence RT: EOP, at 6.  
27 While counsel indeed argued during sentencing that Petitioner should receive a  
28 sentence of fifteen (15) years to life (Sentencing Proceedings, at 10,) that the Court did  
not honor that request does not render counsel deficient.

Petitioner's claim that his sentence of life without the possibility of parole  
suggests that counsel was ineffective during the plea negotiations fails. Counsel filed a  
sixty-eight (68) page sentencing memo, which included a detailed history of

1 Petitioner's upbringing, a neuropsychological evaluation that was completed at  
2 Attorney Geller's request, and multiple letters of support for Petitioner. In this  
3 sentencing memo, Attorney Geller made a passionate argument for the possibility of  
4 parole based on all of the applicable mitigating factors. Petitioner's Sentencing Memo  
5 at 6-8.

6 Counsel then made a similarly passionate argument during the sentencing  
7 hearing highlighting (1) Petitioner's lack of criminal history; (2) childhood trauma that  
8 led to self-medicating with drugs; (3) the support Petitioner had from his family; (4)  
9 Parole and Probation's recommended sentence of fifteen (15) years to life; (5)  
10 Petitioner's consistent claim that he was not one of the people who handled the weapon  
11 or touched the victim; (6) DNA results showing that Petitioner's DNA was not on the  
12 weapon; (7) Petitioner's offer to take a polygraph test; and (8) surveillance camera  
13 footage that Petitioner left the convenience store. Sentencing Proceedings at 6-10.  
14 Indeed, the record is clear that the district court acknowledged that while a defendant's  
15 lack of criminal history and obvious substance abuse problems tend to incline the court  
16 to be merciful at sentence, neither factor negated the "horrific crimes" committed. *Id.*  
17 at 23-24.

18 Further, the State also notes that Petitioner was sentenced with his three co-  
19 defendants, all of whom entered into the same plea negotiations, and all of whom  
20 received the same sentence of life without the possibility of parole. Of the other co-  
21 defendants, only co-defendant Edward Honabach filed a Post-Conviction Writ of  
22 Habeas Corpus ("Honabach's Petition"). See *Honabach v. William Gittere*, A-20-  
23 812948-W, Petition Post-Conviction Writ of Habeas Corpus filed March 27, 2020). In  
24 Honabach's Petition, Honabach made similar claims to those contained in this instant  
25 Petition, in that he claimed his plea was involuntarily entered and his counsel was  
26 ineffective because he was not advised that he could receive life without the possibility  
27 of parole. *Id.* The Court summarily denied Honabach's Petition, finding that the Guilty  
28 Plea Agreement and the record of plea canvass proceedings demonstrate that  
Honabach's "guilty plea was made freely and voluntarily, and that he understood the  
nature of the offense and the consequences of his plea." *Honabach v. William Gittere*,  
A-20-812948-W, Findings of Fact, Conclusion of Law and Order, at 2-3 (filed July 23,  
2020). Because Petitioner raises factually similar claims, signed the same Guilty Plea

1 Agreement, and was canvassed during the same proceeding as Honabach, the Court's  
2 reasoning and denial of Honabach's petition suggests that Petitioner's instant petition  
3 should be summarily denied.

4 With regard to Petitioner's claim that his sentence is cruel and unusual, this is  
5 not a claim of ineffective assistance of counsel, nor is it a challenge to the validity of  
6 Petitioner's guilty plea. Accordingly, it should have been raised on direct appeal, and is  
7 beyond the scope of habeas proceedings and therefore waived. *Franklin*, 110 Nev. at  
8 752, 877 P.2d at 1059. Further, Petitioner already raised this claim which was rejected  
9 by the Nevada Court of Appeals.

10 The Court of Appeals already ruled that although Castro claimed his sentence  
11 constitutes cruel and unusual punishment, the sentence falls within the parameters of  
12 the relevant statute. See NRS 200.320(1)(a). He did not allege that the statute is  
13 unconstitutional, and the Court concluded that the sentence imposed was not grossly  
14 disproportionate to his crime and did not constitute cruel and unusual punishment.  
15 Order of Affirmance, *State v. Castro*, Docket No: 78643-COA, at 3-4 (filed August 12,  
16 2020).

17 Based on this ruling by the Court of Appeals, the State argues that this claim is  
18 barred by the doctrine of law of the case. "The law of a first appeal is law of the case on  
19 all subsequent appeals in which the facts are substantially the same." *Hall v. State*, 91  
20 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343. 455  
21 P.2d 34, 38 (1969)). "The doctrine of the law of the case cannot be avoided by a more  
22 detailed and precisely focused argument subsequently made after reflection upon the  
23 previous proceedings." *Id.* at 316, 535 P.2d at 799. Under the law of the case doctrine,  
24 issues previously decided on direct appeal may not be reargued in a habeas petition.  
25 *Pellegrini v. State*, 117 Nev. 860, 879, 34P.3d519, 532 (2001) (citing *McNelton v. State*,  
26 115 Nev. 396, 414-15, 990 P.2d 1263, 1275 (1999)). Furthermore, this Court cannot  
27 overrule the Nevada Supreme Court. NEV. CONST. Art. VI§ 6. Accordingly, by simply  
28 continuing to file petitions with the same arguments, Petitioner's claim is barred by the  
29 doctrine of the law of the case. *Id.*; *Hall v. State*, 91Nev.314, 316, 535 P.2d 797, 799  
30 (1975).

31 The Eighth Amendment to the United States Constitution as well as Article I,  
32 Section 6 of the Nevada Constitution prohibit the imposition of cruel and unusual

1 punishment. The Nevada Supreme Court has stated that "[a] sentence within the  
2 statutory limits is not 'cruel and unusual punishment unless the statute fixing  
3 punishment is unconstitutional or the sentence is so unreasonably disproportionate to  
4 the offense as to shock the conscience.'" *Allred v. State*, 120 Nev. 410, 92 P.2d 1246,  
5 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996)  
6 (quoting *Culverson v. State*, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).  
7 As long as the sentence is within the limits set by the legislature, a sentence will  
8 normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev. 344, 871 P.2d  
9 950 (1994).

10 The Nevada Supreme Court has consistently echoed its standard of review for  
11 claims of excessive criminal sentences: "[r]egardless of its severity, a sentence that is  
12 'within the statutory limits is not 'cruel and unusual punishment unless the statute  
13 fixing punishment is unconstitutional or the sentence is so unreasonably  
14 disproportionate to the offense as to shock the conscience.'" *Harte v. State*, 132 Nev.  
15 410, 373 P.3d 98 (2016) (internal quotations omitted). The *Harte* Court also expressly  
16 held that it will "not review nondeath sentences for excessiveness." *Id.* In this case,  
17 Petitioner acknowledged as part of his guilty plea that the State would have the right to  
18 argue for a sentence of life without the possibility of parole. While Petitioner views that  
19 sentence as harsh, he was involved in the kidnapping, torturing, and mutilation of the  
20 victim and an attempt to burn down the location of the crime after the defendants  
21 believed the victim had died. In fact, the sentencing judge stated, "if you had been  
22 successful in this, this would have been a capital murder case and you all would be  
23 looking at potentially a capital sentence." Therefore, the harshness of the penalty  
24 imposed is not disproportionate to the crime. Further, in sentencing, the Court did  
25 consider all of the mitigating factors Petitioner raises again here.

26 As for Petitioner's request for appointment of counsel, the State argues that  
27 Petitioner has not demonstrated that counsel should be appointed pursuant to NRS  
28 34.750. Additionally, Petitioner's request should be summarily denied because all of his  
claims are belied and repelled by the record. *Hargrove v. State*, 100 Nev. 498, 502, 686  
P.2d 222, 225 (1984). Petitioner has failed to include any factual allegations in the  
initial Petition that demonstrate counsel should be appointed. Although the  
consequences Petitioner faces are severe as he is serving life without the possibility of

1 parole, that fact alone does not require the appointment of counsel. The issues are not  
2 difficult because Petitioner's claims are meritless and belied by the record as discussed  
3 supra. Despite the claims' futility, Petitioner does not and cannot demonstrate that he  
4 had any trouble raising the issue

5 Additionally, there has been no indication that Petitioner is unable to  
6 comprehend the proceedings here. He managed to file a Motion to Withdraw Counsel,  
7 this instant Petition, and two supplemental pleadings without the assistance of counsel.  
8 Finally, counsel is not necessary to proceed with further discovery in this case.

9 Petitioner himself indicates that he has provided the Court with the information  
10 needed to grant him relief. Due to habeas relief not being warranted, there is no need  
11 for additional discovery, let alone counsel's assistance to conduct such investigation

12 Lastly, the State argues that Petitioner is not entitled to an evidentiary hearing.  
13 All of the Petitioner's factual assertions are belied by the record in this case. Every  
14 claim is nothing but a bare and naked assertion that is repelled by the record. As all of  
15 Petitioner's claims fail, he has likewise failed to demonstrate that the record needs to be  
16 expanded through an evidentiary hearing. Therefore, the Petition can be resolved on  
17 the pleadings and an evidentiary hearing is not required, nor is Petitioner entitled to  
18 one.

19 In Reply, Petitioner argues that it is perplexing and doubtful that an appellate  
20 counsel would address his own ineffectiveness while he/she prepare[s] [a] brief on  
21 direct appeal, on behalf of his/her client. He states that he is entitled to appointment of  
22 counsel under the Sixth Amendment of the United States Constitution. Petitioner  
23 summarizes the same arguments he made in his other briefing, and adds that the  
24 appointment of counsel is "the only humanly fair solution."

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

25 As the "plea canvass" is at issue here, the Court herein reviews the entire plea  
26 canvass pertaining to this Petitioner, as follows:

27 THE COURT: Okay. I've got to do a plea canvas with each of you individually.  
28 I'm just going to do them in the order that they're in the pleadings. So We'll do  
Luis Angel Castro first. The rest of you can sit down if you want.

Mr. Castro, give me your full legal [name].

THE DEFENDANT: Luis Angel Castro Morales.

THE COURT: How old are you, sir?

THE DEFENDANT: 32.

THE COURT: How far did you go in school.

1 THE DEFENDANT: Tenth grade.

2 THE COURT: Do you read, write, and understand the English language?

3 THE DEFENDANT: The best I can.

4 THE COURT: What does that mean?

5 THE WITNESS: Yes.

6 THE COURT: Have you seen a copy of the amended information in this case  
7 charging you with first degree kidnapping resulting in substantial bodily harm,  
8 which is a category A. Have you seen that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you have a chance to read that and discuss it with your  
11 attorney?

12 THE DEFENDANT: Yes, I have.

13 THE COURT: With regard to that charge, first degree kidnapping resulting in  
14 substantial bodily harm, how do you plead, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Before I can accept your plea of guilty, I have to be convinced that  
17 your plea is freely and voluntarily made. Are you making your plea freely and  
18 voluntarily?

19 THE DEFENDANT: Yes, I am, sir.

20 THE COURT: Has anybody forced you or coerced you to enter that plea?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you making that plea because you're, in fact, guilty of that  
23 charge?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has anybody made any promises or guarantees to you other than  
26 what's been stated in open court and what's contained in the guilty plea  
27 agreement?

28 THE DEFENDANT: No, sir.

THE COURT: In looking at the guilty plea agreement, it looks like you signed  
this on page 5. It's dated February 4. Did you read and sign that today?

THE DEFENDANT: Yes, sir.

THE COURT: Did you understand it before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: You had a chance to discuss it with your attorney, and he  
answered any questions you might have had about it?

THE DEFENDANT: Yes, I have.

THE COURT: You understand that by signing it, you're agreeing that you read  
and understood it; correct?

THE DEFENDANT: That is correct.

THE COURT: Also by signing that document, you're agreeing to waive certain  
important constitutional rights like the right to be able to confront your accuser,  
go to trial and put on evidence on your own behalf. You understand that?

THE DEFENDANT: I understand, sir.

THE COURT: Are you currently suffering from any emotional or physical  
distress that's caused you to enter this plea?

THE DEFENDANT: No, sir.

1 THE COURT: Are you currently under the influence on any alcohol, medication,  
2 narcotics or any substance that might affect your ability to understand these  
documents or the process that we're going through?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you understand that in the guilty plea agreement it says that  
5 the possibility of sentence is 15 to 40 years or for minimum of 15 years and a  
6 maximum of life or life without parole? Do you understand that those are the  
options?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that sentencing is strictly up to the Court, and  
9 nobody can promise you probation, leniency, or any kind of special treatment;  
correct?

10 THE DEFENDANT: That's correct.

11 THE COURT: Do you have any questions that you want to ask of myself or the  
State or your counsel before we proceed?

12 THE DEFENDANT: No, sir.

13 THE COURT: Has your attorney made any promises to you that are not  
contained in the guilty plea agreement?

14 THE DEFENDANT: No, sir.

15 THE COURT: Based on all the facts and circumstances, are you satisfied with the  
services of your attorney?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you a U.S. citizen?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you understand that there are some charges that have adverse  
immigration consequences and may result in deportation?

20 THE DEFENDANT: That is correct.

21 THE COURT: Have you had the chance to discuss any immigration issues with  
your attorney, and he's answered any questions you have?

22 THE DEFENDANT: To this point, yes and no, but I'll just say yes.

23 MR. GELLER: Judge, I can represent to the Court, I've been in touch with his  
immigration attorney, and we've been in communication. I did let my client  
know today, as well as previously, that there's a substantial probability he'll be  
deported after he serves a period of incarceration.

24 THE COURT: Do you understand that?

25 THE DEFENDANT: Yes, sir.

26 THE COURT: You still agree with the terms as set forth in the guilty plea  
agreement?

27 THE DEFENDANT: Yes.

28 THE COURT: So I have to go through the amended information with you to  
make sure that there's a factual basis for your plea. According to the  
information, it says that,

"On or about the 7th day of March 2016 in Clark County, Nevada, contrary to the  
laws of the State of Nevada, you did willfully, unlawfully, feloniously seize,  
confine, inveigle, entice, decoy, abduct, conceal, kidnap, or carry away Jose Ortiz  
Salazar, a human

being, with the intent to hold or detain Jose Ortiz Salazar against his will and  
without his consent for the purpose of committing murder and/or robbery with

1 substantial bodily harm. The defendants being criminally liable under one or  
2 more of the following princip[les] of criminal liability, to wit: One, by directly  
3 committing the crime or by; two, aiding or abetting in the commission of the  
4 crime with the intent that the crime be committed by counseling, encouraging,  
5 hiring, commanding, inducing or otherwise procuring the other to commit the  
6 crime; and/or, three, pursuant to conspiracy to commit the crime with the intent  
7 that the crime be committed, the defendants aiding or abetting or conspiring,  
8 defendants acting in concert throughout." Is that what you did?

9 THE DEFENDANT: According to this, yes.

10 THE COURT: The question is, is that what you did?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Because, I mean, if you don't think that's what you did, then  
13 you can't be freely and voluntarily accepting the plea.

14 THE DEFENDANT: Yes.

15 THE COURT: You agree that's what you did; correct?

16 THE WITNESS: Yes.

17 THE COURT: All right. The Court hereby finds the defendant's plea of guilty is  
18 freely and voluntarily made. He appears to understand the nature of the offense  
19 and the consequences of the plea. I'll therefore accept your plea of guilty. We'll  
20 refer this to the Division of Parole and Probation for preparation of the PSI.

21 We'll set for sentencing hearing for --

22 THE CLERK: March 26th, 8:30.

23 Transcript of Plea Canvass, 2/4/19.

24 In determining whether a guilty plea was voluntarily entered, the Court reviews  
25 the totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at  
26 271, 721 P.2d at 367. A proper plea canvass should reflect that:

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

*Wilson v. State*, 99 Nev. 362, 367, 664 P.2d 328, 331 (1983) (citing *Higby v. Sheriff*, 86  
Nev. 774, 476 P.2d 950 (1970)).

The requirements of a proper plea canvass were met in the canvass conducted by  
the Court on February 4, 2019.

Pursuant to NRS 34.810, "The court shall dismiss a petition if the court  
determines that: (a) the petitioner's conviction was upon a plea of guilty . . . and the  
petition is not based upon an allegation that the plea was involuntarily or unknowingly

1 entered or that the plea was entered without effective assistance of counsel.” NRS  
2 34.810(1)(a).

3 Although the Defendant pled guilty, he is alleging that his plea was involuntary  
4 or unknowingly entered, and he further is arguing ineffective assistance of counsel.

5 In considering a challenge relating to “ineffective assistance of counsel,” the U.S.  
6 Supreme Court has stated the following:

7 Judicial scrutiny of counsel's performance must be highly deferential. It is all too  
8 tempting for a defendant to second-guess counsel's assistance after conviction or  
9 adverse sentence, and it is all too easy for a court, examining counsel's defense  
10 after it has proved unsuccessful, to conclude that a particular act or omission of  
11 counsel was unreasonable. *Cf. Engle v. Isaac*, 456 U.S. 107, 133–134, 102 S.Ct.  
12 1558, 1574–1575, 71 L.Ed.2d 783 (1982). A fair assessment of attorney  
13 performance requires that every effort be made to eliminate the distorting  
14 effects of hindsight, to reconstruct the circumstances of counsel's challenged  
15 conduct, and to evaluate the conduct from counsel's perspective at the time.  
16 Because of the difficulties inherent in making the evaluation, a court must  
17 indulge a strong presumption that counsel's conduct falls within the wide range  
18 of reasonable professional assistance; that is, the defendant must overcome the  
19 presumption that, under the circumstances, the challenged action “might be  
20 considered sound trial strategy.” See *Michel v. Louisiana*, supra, 350 U.S., at  
21 101, 76 S.Ct., at 164. There are countless ways to provide effective assistance in  
22 any given case. Even the best criminal defense attorneys would not defend a  
23 particular client in the same way. See Goodpaster, *The Trial for Life: Effective  
24 Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U.L.Rev. 299, 343 (1983).

25 *Strickland v. Washington*, 466 U.S. 668, 689-690, 104 S.Ct. 2052, 2066 (1984).

26 The Court indicated that there is a two-prong test: The first prong is “whether,  
27 in light of all the circumstances, the identified acts or omissions were outside the wide  
28 range of professionally competent assistance,” recognizing that “counsel is strongly  
presumed to have rendered adequate assistance and made all significant decisions in  
the exercise of reasonable professional judgment.” *Strickland* at 690. The second  
prong is that “The defendant must show that there is a reasonable probability that, but  
for counsel’s unprofessional errors, the result of the proceeding would have been  
different. A reasonable probability is a probability sufficient to undermine confidence  
in the outcome.” *Strickland* at 694.

Performance of counsel is judged against an objective standard for  
reasonableness and is deficient when it falls below that standard. *State v. Powell*, 122  
Nev. 751, 759, 138 P.3d 453, 458 (2006); *Means v. State*, 120 Nev. 1001, 103 P.3d 25  
(2004); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102 (1996).

1 The Nevada Supreme Court has stated the following relating to the “prejudice”  
2 requirement:

3 In meeting the “prejudice” requirement, the defendant must show a reasonable  
4 probability that, but for counsel's errors, the result of the trial would have been  
5 different. *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068. When a conviction is  
6 the result of a guilty plea, [t]he second, or “prejudice,” requirement ... focuses on  
7 whether counsel's constitutionally ineffective performance affected the outcome  
8 of the plea process. In other words, in order to satisfy the “prejudice”  
9 requirement, the defendant must show that there is a reasonable probability  
10 that, but for counsel's errors, he would not have pleaded guilty and would have  
11 insisted on going to trial.

12 *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985)  
13 (emphasis added); see also *State v. Langarica*, 107 Nev. 932, 933, 822 P.2d  
14 1110, 1111 (1991), cert. denied, 506 U.S. 924, 113 S.Ct. 346, 121 L.Ed.2d 261  
15 (1992). “A reasonable probability is a probability sufficient to undermine  
16 confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S.Ct. at 2068.

17 *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102 (1996).

18 In a very recent case, the Nevada Supreme Court summarized the analysis which  
19 the Court should undertake when considering an ineffective assistance claim. The  
20 Court stated the following:

21 To prove ineffective assistance of counsel, a petitioner must show “(1) that  
22 counsel's performance was deficient, and (2) that the deficient performance  
23 prejudiced the defense.” *Kirksey*, 112 Nev. at 987, 923 P.2d at 1107 (internal  
24 quotation marks omitted) (citing *Strickland v. Washington*, 466 U.S. 668, 687,  
25 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). The first prong of this test asks whether  
26 counsel's representation fell “below an objective standard of reasonableness” as  
27 evaluated from counsel's perspective at the time. *Id.* at 987-88, 923 P.2d at 1107.  
28 The second prong asks whether there is “a reasonable probability that, but for  
counsel's errors, the result of the [proceeding] would have been different.” *Id.* at  
988, 923 P.2d at 1107. We give deference to the district court's factual findings if  
supported by substantial evidence and not clearly erroneous, but we review the  
court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev.  
682, 686, 120 P.3d 1164, 1166 (2005). Both components of the inquiry must be  
shown. *Strickland*, 466 U.S. at 697, 104 S.Ct. 2052.

29 *Gonzales v. State*, 137 Nev.Adv.Op. 40 (7/29/21).

30 With regard to the Petitioner’s argument that the Court’s sentence constitutes  
31 “cruel and unusual punishment,” the Court of Appeals has already addressed that  
32 argument, and their decision is the Law of the Case. The Court of Appeals stated the  
33 following:

34 . . . Castro claims his sentence constitutes cruel and unusual punishment for the  
35 following reasons. He did not have a history of violent offenses and was under

1 the influence of drugs when he committed the crime. He was not aware that the  
2 crime would become so violent and left when it became violent. His DNA was  
3 not found on the weapon. He did not call the police because he was afraid that  
4 his codefendants would harm his family. He has PTSD symptoms; bipolar  
5 symptoms; and suffers from depression, anxiety, and drug addiction. And he  
6 once attempted suicide.

7 Regardless of its severity, a sentence that is within the statutory limits is  
8 not “cruel and unusual punishment unless the statute fixing punishment is  
9 unconstitutional or the sentence is so unreasonably disproportionate to the  
10 offense as to shock the conscience.” *Blume v. State*, 112 Nev. 472, 475, 915 P.2d  
11 282, 284 (1996)(quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220,  
12 221-22 (1979)); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01  
13 (1991)(plurality opinion)(explaining the Eighth Amendment does not require  
14 strict proportionality between crime and sentence; it forbids only an extreme  
15 sentence that is grossly disproportionate to the crime).

16 Here, Castro’s life-without-the-possibility-of-parole sentence falls within  
17 the parameters of the relevant statute. See NRS 200.320(1)(a). He does not  
18 allege that the statute is unconstitutional. And we conclude the sentence  
19 imposed is not grossly disproportionate to his crime and does not constitute  
20 cruel and unusual punishment.

21 (*Castro v. Nevada*, Court of Appeals, Order of Affirmance dated 12/12/20, Case 78643-  
22 COA).

23 As indicated above, the Eighth Amendment to the United States Constitution as  
24 well as Article I, Section 6 of the Nevada Constitution prohibit the imposition of cruel  
25 and unusual punishment. The Nevada Supreme Court has stated that “[a] sentence  
26 within the statutory limits is not ‘cruel and unusual punishment unless the statute  
27 fixing punishment is unconstitutional or the sentence is so unreasonably  
28 disproportionate to the offense as to shock the conscience.’” *Allred v. State*, 120 Nev.  
410, 92 P.2d 1246, 1253 (2004) (quoting *Blume v. State*, 112 Nev. 472, 475, 915 P.2d  
282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220,  
221-22 (1979)). And, as long as the sentence is within the limits set by the legislature, a  
sentence will normally not be considered cruel and unusual. *Glegola v. State*, 110 Nev.  
344, 871 P.2d 950 (1994). Petitioner argues now that his sentence is disproportionate  
and shocks the conscience. While he may not have used the “buzz words,” of “shocks  
the conscience” in his appeal, the Court of Appeals previously held that the sentence  
was “not grossly disproportionate to his crime and does not constitute cruel and  
unusual punishment.” *Castro v. Nevada*, Court of Appeals, Order of Affirmance dated  
12/12/20, Case 78643-COA. The Court of Appeals already analyzed the Eighth

1 Amendment argument of “cruel and unusual punishment,” and found against the  
2 Petitioner on that issue. That ruling is the law of the case. *Hall v. State*, 91 Nev. 314,  
3 315, 535 P.2d 797, 798 (1975) (quoting *Walker v. State*, 85 Nev. 337, 343. 455 P.2d 34,  
4 38 (1969)).

5 Although the Petitioner is now unhappy with his sentence, the Guilty Plea  
6 Agreement (GPA) that he entered into specifically indicated the following:

7 This offer is conditional upon all four (4) Defendants accepting their  
8 respective negotiations and being sentenced. All Parties agree the State will  
9 have the right to argue for Life without the possibility of Parole, and the Defense  
10 will argue for Life with the possibility of Parole after fifteen (15) years. All  
11 parties agree that no one will seek the term of years.

12 GPA filed 2/4/19, at pg. 1.

13 At the Sentencing Hearing, defense counsel argued for Life “with” the possibility  
14 of parole, and the State argued for Life “without” the possibility of parole. The  
15 arguments were exactly what the Defendant agreed the arguments would be. When the  
16 Court sentenced each of the Defendants, the Court stated the following:

17 I want to be merciful, but at the same time, I know that justice has to be  
18 done. And we have a victim who, but for the fact that he lived against what you  
19 all thought -- my understanding is not only was he tortured and mutilated in this  
20 room for a period of time, for a period of hours, but that everybody thought he  
21 was dead, tried to burn the house down around him. And if you had been  
22 successful in this, this would have been a capital murder case and you all would  
23 be looking at potentially a capital sentence.

24 I have a hard time with the pictures that I've seen and the horrible  
25 injuries that were inflicted upon this poor victim. I understand that he is not the  
26 pillar of our community either, but that doesn't justify the things that were done  
27 to him over \$50. And that almost makes it worse because that was the basis for  
28 this, is him not being able to come up with \$50.

So . . . . I'm going to go ahead and sentence each of you to life in the  
Nevada Department of Corrections without the possibility of parole. I  
understand that that is a difficult sentence for you to have to deal with. It's a  
difficult sentence for me to have to give, but I don't see any redeeming qualities.  
I would like to be merciful, but I don't think that this is a crime that -- I don't  
think the community wants you back out on the streets. So that will be the  
sentence. I don't think credit time served matters.

. . . .

(Transcript of Sentencing Hearing 3/26/19, pgs. 23-24).

The Petitioner argues that his plea was not entered freely and voluntarily, but his  
claim is belied by the record, as set forth above. He acknowledged, both in his GPA and

1 orally before the Court, what the possibilities would be, and he acknowledged that  
2 sentencing was strictly up to the Court. Further he acknowledged that he had discussed  
3 immigration issues with his attorney, and that he still wanted to enter into the GPA,  
4 and accept the terms thereof. Based on the GPA and the plea canvass, and the totality  
5 of the circumstances in the case, the Court finds that the Defendant's guilty plea was  
6 made freely and voluntarily, and that he understood the nature of the offense and the  
7 consequences of his plea.

8 The Petitioner's argument that counsel promised the Petitioner and Petitioner's  
9 family that he would receive fifteen (15) years to life, is a bare and naked allegation that  
10 is unsupported in the record, and is actually belied by the record. Both the GPA signed  
11 by the Petitioner, as well as the oral plea canvass, specifically informed the Petitioner  
12 that the State would be arguing for life without the possibility of parole, and that  
13 sentencing was at the discretion of the Judge.<sup>1</sup> Petitioner argues, and submitted a letter  
14 from his parents, suggesting that counsel made misrepresentations to Petitioner's  
15 parents, but his parents did not accept the plea – Defendant did. And there is no  
16 evidence that Defendant's plea was anything but knowing, willing, and voluntary.

17 Further, Petitioner's argument that counsel was ineffective for failing to inform  
18 him of the immigration consequences of his plea, is equally belied by the record. <sup>2</sup>

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19 <sup>1</sup> The GPA specifically states, "I have not been promised or guaranteed any particular sentence by anyone. I know that  
20 my sentence is to be determined by the Court within the limits prescribed by statute. I understand that if my attorney or the  
21 State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the  
22 recommendation." (See GPA at pg. 3). Additionally, in the oral plea canvass, the following interaction occurred:

23 THE COURT: Do you understand that in the guilty plea agreement it says that the possibility of sentence is 15 to 40  
24 years or for minimum of 15 years and a maximum of life or life without parole? Do you understand that those are the  
25 options?

26 THE DEFENDANT: Yes, sir.

27 THE COURT: Do you understand that sentencing is strictly up to the Court, and nobody can promise you probation,  
28 leniency, or any kind of special treatment; correct?

THE DEFENDANT: That's correct.

(See Plea Canvass of 2/4/19.)

<sup>2</sup> In the GPA, signed by the Defendant, he agreed to the following:

I understand that if I am not a United States citizen, any criminal conviction will likely result in serious  
negative immigration consequences including but not limited to:

1. The removal from the United States through deportation; . . .

. . . .

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not  
result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a  
legal resident.

. . . .

(See GPA at pg. 3)

Additionally, during the oral plea canvass, the following took place:

THE COURT: Are you a U.S. citizen?

THE DEFENDANT: No, sir.

1 In reviewing the Petitioner's arguments regarding ineffective assistance of  
2 counsel, in totality, the Court finds and concludes that the Petitioner has failed to meet  
3 the standard set forth in *Strickland*. The Court finds that there is insufficient evidence  
4 to support the conclusion that counsel's actions were objectively unreasonable.  
5 Further, there is insufficient evidence suggesting that the result of the proceeding  
6 would have been different if counsel had said or done things differently. Consequently,  
7 there is no prejudice to the Defendant.

8 Inasmuch as the Petition requested a "withdrawal of plea," such request is  
9 improper for a Writ of Habeas Corpus, but insofar as the issues have been addressed  
10 herein, the request is denied.

11 Petitioner argues that at the time he entered his guilty plea he was heavily  
12 medicated, not competent, and not able to understand the Constitutional rights he was  
13 waiving. Such allegations are bare and naked allegations, and are belied by the record.<sup>3</sup>

---

14 THE COURT: Do you understand that there are some charges that have adverse immigration consequences  
15 and may result in deportation?

16 THE DEFENDANT: That is correct.

17 THE COURT: Have you had the chance to discuss any immigration issues with your attorney, and he's  
18 answered any questions you have?

19 THE DEFENDANT: To this point, yes and no, but I'll just say yes.

20 MR. GELLER: Judge, I can represent to the Court, I've been in touch with his immigration attorney, and  
21 we've been in communication. I did let my client know today, as well as previously, that there's a substantial  
22 probability he'll be deported after he serves a period of incarceration.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You still agree with the terms as set forth in the guilty plea agreement?

26 THE DEFENDANT: Yes.

(See transcript of plea canvass 2/4/19).

<sup>3</sup> The Petitioner was asked about his "understanding," and whether he was under the "influence" of anything at the time  
of the plea canvass, and he stated as follows:

27 THE COURT: In looking at the guilty plea agreement, it looks like you signed this on page 5. It's dated  
28 February 4. Did you read and sign that today?

THE DEFENDANT: Yes, sir.

THE COURT: Did you understand it before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: You had a chance to discuss it with your attorney, and he answered any questions you might  
have had about it?

THE DEFENDANT: Yes, I have.

THE COURT: You understand that by signing it, you're agreeing that you read and understood it; correct?

THE DEFENDANT: That is correct.

THE COURT: Also by signing that document, you're agreeing to waive certain important constitutional  
rights like the right to be able to confront your accuser, go to trial and put on evidence on your own behalf.  
You understand that?

THE DEFENDANT: I understand, sir.

THE COURT: Are you currently suffering from any emotional or physical distress that's caused you to enter  
this plea?

THE DEFENDANT: No, sir.

1           Petitioner requests an Evidentiary Hearing, but the issues he believes require an  
2 evidentiary hearing have already been addressed by the Court, and the Petitioner’s  
3 arguments are belied by the record. Consequently, the Court does not believe that an  
4 Evidentiary Hearing would be necessary, and instead it would be a waste of judicial  
5 resources.

6           With regard to the Petitioner’s request for appointment of counsel, NRS 171.188  
7 provides that an indigent defendant may request appointment of counsel, and pursuant  
8 to NRS 178.397, an indigent defendant accused of a felony or gross misdemeanor is  
9 entitled to counsel at every stage of the proceedings, from the initial appearance  
10 through appeal, unless he waives such appointment. But pursuant to *Coleman v.*  
11 *Thompson*, 501 U.S. 722, 752, 111 S.Ct. 2546, 2566 (1991), there is no Sixth Amendment  
12 right to post-conviction counsel. See also *McKague v. Warden*, 112 Nev. 159, 163, 912  
13 P.2d 255, 258 (1996). NRS 34.750 provides the Court with discretion to appoint post-  
14 conviction counsel, after considering whether 1) the issues presented are difficult; 2)  
15 the petitioner is unable to comprehend the proceedings; or 3) counsel is needed to  
16 proceed with discovery. In analyzing these factors, this Court finds and concludes that  
17 while many issues have been raised in the Petition, they do not appear to be “complex”  
18 issues. The Petition is comprehensive and somewhat organized, especially for a pro-se  
19 Petitioner, and consequently, the Court cannot find that Petitioner would be “unable to  
20 comprehend the proceedings,” or need assistance in filing any documents, as he  
21 appears to be very capable of doing so on his own. Finally, there is not even a

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28           THE COURT: Are you currently under the influence on any alcohol, medication, narcotics or any substance  
          that might affect your ability to understand these documents or the process that we're going through?  
          THE DEFENDANT: No, sir.  
          (See transcript of plea canvass 2/4/19).

1 suggestion that discovery is necessary. Consequently, the Petitioner's request for  
2 appointment of counsel must be denied.

3 **ORDER/CONCLUSION**

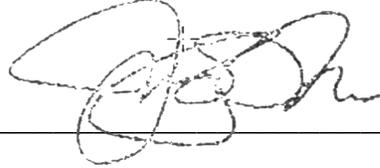
4 Based upon the foregoing, and good cause appearing,

5 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is hereby  
6 DENIED. Petitioner's request for an Evidentiary Hearing is also DENIED. And finally,  
7 Petitioner's request for appointment of counsel is also DENIED.

8 The Court requests that the State process the Notice of Entry relative to this  
9 Order.

10 Because this matter has been decided on the pleadings, the hearing scheduled  
11 for 9/23/21 will be taken off calendar, and consequently, there is no need for any  
12 parties or attorneys to appear.

13 Dated this 21st day of September, 2021

14 

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17 **4F9 B1F 0283 78E0**  
18 **Jerry A. Wiese**  
19 **District Court Judge**

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Luis Castro, Plaintiff(s)

CASE NO: A-21-835827-W

7 vs.

DEPT. NO. Department 30

8 State of Nevada, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 Electronic service was attempted through the Eighth Judicial District Court's  
12 electronic filing system, but there were no registered users on the case.

13  
14 If indicated below, a copy of the above mentioned filings were also served by mail  
15 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 9/22/2021

16 Luis Castro

#1214547  
ESP  
P.O. Box 1989  
Ely, NV, 89301

17  
18  
19 Steven Wolfson

Clark County District Attorney  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV, 89155

21  
22  
23  
24  
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28

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Habeas Corpus**

**COURT MINUTES**

**August 23, 2021**

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A-21-835827-W      Luis Castro, Plaintiff(s)  
vs.  
State of Nevada, Defendant(s)

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**August 23, 2021      3:00 AM      Minute Order**

**HEARD BY:** Wiese, Jerry A.      **COURTROOM:** Chambers

**COURT CLERK:** Lauren Kidd

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- At the request of Court, for judicial economy, the Petition for Writ of Habeas Corpus and Motion of Appointment of Counsel currently scheduled for August 26, 2021 is RESCHEDULED to September, 23 2021 at 8:30 a.m.

CLERK'S NOTE: A copy of the above minute order was distributed to Luis Angel Castro, ESP#1214547, P.O. Box 1989, Ely, NV 89301.

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS AND RE: PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL AND FOR EVIDENTIARY HEARING; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

LUIS ANGEL CASTRO,

Plaintiff(s),

vs.

THE STATE OF NEVADA,

Defendant(s),

Case No: A-21-835827-W

Dept No: XXX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 20 day of October 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

