

# IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,  
Appellant(s),

vs.

THE STATE OF NEVADA; AND JERRY  
HOWELL, WARDEN,  
Respondent(s),

Electronically Filed  
Oct 01 2021 10:34 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: A-19-793315-W  
*Consolidated with A-21-831979-W*  
Docket No: 83151

# RECORD ON APPEAL VOLUME 1

**ATTORNEY FOR APPELLANT**  
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PROPER PERSON  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

**ATTORNEY FOR RESPONDENT**  
STEVEN B. WOLFSON,  
DISTRICT ATTORNEY  
200 LEWIS AVE.  
LAS VEGAS, NV 89155-2212

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27  
**FILED**

**APR 15 2019**

*John H. Clark*  
**CLERK OF COURT**

1 Case No. C-16-315718-1  
2 Dept. No. XIX

3 IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE  
4 STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

5 James H. Hayes  
6 Petitioner,

7 v.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POSTCONVICTION)

A-19-793315-W  
Dept: XIX

8 State of Nevada, Warden  
9 Respondent: Brian Williams

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.  
(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.  
(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.  
(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.  
(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.  
(6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.  
(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison; Nevada Williams  
2. Name and location of court which entered the judgment of conviction under attack: Clark County Nevada District Court XIX  
3. Date of judgment of conviction: 3-12-2019  
4. Case number: C-16-315718-1  
5. (a) Length of sentence: 60-174 months

RECEIVED

APR 15 2019

CLERK OF THE COURT

A-19-793315-W  
IPWHC  
Inmate Filed - Petition for Writ of Habeas  
4830706



(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes ☒ No .....

If "yes," list crime, case number and sentence being served at this time: Burglary C-16-315125-1  
21 to 22 months that expires May 3, 2019

7. Nature of offense involved in conviction being challenged: Attempt Grand Larceny  
less than \$3500

8. What was your plea? (check one)

(a) Not guilty .....

(b) Guilty ☒ Alford Plea

(c) Guilty but mentally ill .....

(d) Nolo contendere .....

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: Not guilty to the Burglary charge and guilty  
to the negotiated charge of Attempt Grand Larceny < \$3500

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury .....

(b) Judge without a jury ☒

11. Did you testify at the trial? Yes ..... No .....

12. Did you appeal from the judgment of conviction? Yes ..... No ☒

13. If you did appeal, answer the following:

(a) Name of court: .....

(b) Case number or citation: .....

(c) Result: .....

(d) Date of result: .....

(Attach copy of order or decision, if available.)



1 14. If you did not appeal, explain briefly why you did not:

2 "Waiver of Rights"

Guilty Plea Agreement

3  
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any  
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: Clark County District Court, Nevada

8 (2) Nature of proceeding: Motion to correct illegal sentence

9  
10 (3) Grounds raised: Double Jeopardy 5<sup>th</sup> Amendment Violation;  
11 INCORRECT PSI; 6<sup>th</sup> 14<sup>th</sup> Amendment Violation "Due Process"  
12 for illegal sentence

13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

14 (5) Result: ☐

15 (6) Date of result: ☐

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:  
17 ☐

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: ☐

20 (2) Nature of proceeding: ☐

21 (3) Grounds raised: ☐

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

23 (5) Result: ☐

24 (6) Date of result: ☐

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:  
26 ☐

27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list  
28 them on a separate sheet and attach.

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any  
2 petition, application or motion?

3 (1) First petition, application or motion? Yes ..... No ☒ .....

4 Citation or date of decision: .....

5 (2) Second petition, application or motion? Yes ..... No .....

6 Citation or date of decision: .....

7 (3) Third or subsequent petitions, applications or motions? Yes ..... No .....

8 Citation or date of decision: .....

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you  
10 did not. (You must relate specific facts in response to this question. Your response may be included on paper which  
11 is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
12 length.).....

13 .....  
14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of  
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

16 (a) Which of the grounds is the same: Double Jeopardy; Incorrect P.S.E.;  
17 Illegal Sentence

18 (b) The proceedings in which these grounds were raised: Motion to correct an  
19 illegal sentence

20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this  
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your  
22 response may not exceed five handwritten or typewritten pages in length.)

23 NO RESPONSE FOR  
Submitted motion as of date not even a date stamp filed copy.

24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached,  
25 were not previously presented in any other court, state or federal, list briefly what grounds were not so presented,  
26 and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your  
27 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not  
28 exceed five handwritten or typewritten pages in length.) DUE PROCESS Violations "No

1 Probable Cause to bound over to District Court"

2 19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing  
3 of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in  
4 response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the  
5 petition. Your response may not exceed five handwritten or typewritten pages in length.) .....

6  
7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment  
8 under attack? Yes ..... No ☒ .....

9 If yes, state what court and the case number: .....

10  
11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on  
12 direct appeal: Conviction; Michael Janft .....

13  
14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under  
15 attack? Yes ..... No ☒ .....

16 If yes, specify where and when it is to be served, if you know: .....

17  
18 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the  
19 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts  
20 supporting same.  
21  
22  
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28

1 (a) Ground ONE: U.S Constitution 5<sup>th</sup> Amendment and Nebraska  
2 Constitution Article 1 Violations: Double Jeopardy  
3  
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.): Appellant was  
6 prosecuted and/or punish twice for the same offense.

7 Whereas, the appellant was arrested on April 2,  
8 2016 for the alleged event that occurred on April 9,  
9 2013 and charged with the crime(s) of Burglary and  
10 Attempt Grand Larceny less than \$3500 by the way  
11 of a Criminal Complaint in Justice Court. In which,  
12 the appellant posted BOND on both charges and  
13 released.

14 Whereas, the state proceeded to preliminary hearing  
15 in Justice Court for the crime(s) of Burglary and Attempt  
16 Grand Larceny less than \$3500 and ~~and~~ at the completion  
17 of the hearing only the charge of Burglary was bound  
18 over to District Court leaving the charge of Attempt  
19 Grand Larceny less than \$3500 dismissed/dropped for  
20 No Corpus Delicti, slight or marginal evidence to bound  
21 over to District Court for the 1<sup>st</sup> time appellant was  
22 subjected to jeopardy and appellants bond for Attempt  
23 Grand Larceny less than \$3500 exonerated.

24 Whereas, the appellant was subjected to jeopardy  
25 for the 2<sup>nd</sup> time when the state by the way of amended  
26 information in District Court drop the charge of Burglary  
27 and once again charge appellant with Attempt Grand  
28 Larceny less than \$3500 that was filed in open court

## "Double Jeopardy"

GROUND ONE CONTINUE:

1. ON November 7, 2018
2. INTEREST, the state for the 3<sup>rd</sup> TIME subjected
3. APPPELLANT to FACE jeopardy ON February 4, 2019 by a
4. REBOOK ON the charge of Attempt Grand Larceny LESS THAN
5. \$3500 AND ISSUED A NO BOND.
6. FINALLY, the state CONVICTED the APPPELLANT ON the
7. charge of Attempt Grand Larceny LESS THAN \$3500 ON
8. March 6, 2019 to ONCE AGAIN for the 4<sup>th</sup> TIME subject
9. the APPPELLANT to jeopardy for the SAME OFFENSE through
10. PROSECUTION AND/OR PUNISHMENT without a GRAND
11. Jury Indictment.

(b) Ground TWO: U.S. Constitution 6 and 14<sup>th</sup> Amendment  
Violations "Right to Due Process"

Supporting FACTS (Tell your story briefly without citing cases or law.): Appellant contends that it was "Lack of Probable Cause" to bound over to District Court.

Whereas, the State did not produce sufficient evidence to show that a crime was committed and the appellant committed it by slight or marginal evidence.

Whereas, the State did not have the 3 (three) female occupants of said room testify or give written statements that appellant did not have their permission or consent to be in said room. When in fact, one of the female occupants perform fellatio on appellant in bathroom of said room on the night in question. Furthermore, none of the female occupants made statements that any of their belongings were missing or tampered with, so no loss or injury occurred.

Whereas, the victim Joshua Jarvis testified at preliminary hearing that he had no valuables or property in said room only his iPhone that he had on his person.

Whereas, when the appellant was on the charge of Attempt Grand Larceny at prelim for No Corpus Delicti, slight or marginal evidence that the State predicted the intent on for the Burglary charge that the burglary charge should have been dismissed for No corpus delicti, slight or marginal evidence.

## "DUE PROCESS"

## GRAND TWO CONTINUE:

- 1.
2. WHEREAS, THERE IS NO CORPUS DELICTI, CRIME IS A BREACH
3. OF LAWS OR GOVERNING AUTHORITY. WHILE THIS ALLEGED OFFENSE
4. WAS A VIOLATION OF THE LAW IT WAS NOT A CRIME. NOTWITH-
5. STANDING, PROOF OF THE CORPUS DELICTI IS REQUIRED IN ALL
6. CRIMINAL MATTERS. PROOF OF THE CORPUS DELICTI IS REQUIRED
7. IN ALL CRIMINAL CASES AND THERE ARE THREE BASIC ELEMENTS
8. IN THE PROOF OF A CRIME: (1) THE OCCURRENCE OF LOSS OR INJURY,
9. (2) CRIMINAL CAUSATION OF THAT LOSS OR INJURY AND (3) THE
10. IDENTITY OF THE DEFENDANT AS THE PERPETRATOR OF THE CRIME.
11. WHEREAS, LACK OF EVIDENCE A CHARGE FILED <sup>INFORMATION</sup> ~~CHARGE~~
12. WITH NO BOND ISSUE, OR CONVICTION ISSUE IS HEARSAY, AND
13. THEREFORE IRRELEVANT, AND IN LEGAL CONTEMPLATION AS INOPERATIVE,
14. AS THOUGH IT HAD NEVER BEEN ISSUED. FOR A CRIME TO EXIST,
15. THERE MUST BE AN INJURED PARTY. "THERE CAN BE NO SANCTION
16. OR PENALTY IMPOSED ON ONE BECAUSE OF THE EXERCISE
17. OF CONSTITUTIONAL RIGHT." WHERE RIGHTS ARE SECURED BY THE
18. CONSTITUTION ARE INVOLVED THERE CAN BE NO RULEMAKING OR
19. LEGISLATION WHICH WOULD ABROGATE THEM. THE CLAIM AND
20. EXERCISE OF A CONSTITUTIONAL RIGHT CANNOT BE CONVERTED
21. INTO A CRIME.
22. WHEREAS, IF APPELLANT IS TO BE SUBJECT TO THE ALLEGED
23. CRIMINAL ACTS IT IS CONCLUDED THAT NO ACT WAS IN FACT
24. BROKEN. BECAUSE THERE IS NO RETIFICATION OF COMMENCEMENT,
25. THE COURTS LACK OF PERSONAM JURISDICTION AND NO CORPUS
26. DELICTI THUS NO JUSTIFIABLE CONTROVERSY OR CAUSE OF

"DUE PROCESS"

Ground Two CONTINUE:

27.

28. action before the court. I motion the court to dismiss/

29. vacate the conviction against me and release me

30. forthwith and posthaste for I am being unlawfully

31. detained.

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1 (c) Ground THREE: U.S. Constitution 8<sup>th</sup> Amendment Violation  
2 "Cruel and Unusual Punishment" Illegal  
3 Sentence  
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.): Appellant contends that  
6 being adjudicated as a habitual criminal is cruel  
7 and unusual punishment that shock the conscience  
8 as being disproportionate to the crime charged Attempt  
9 Grand Larceny less than \$3500 which is a miscarriage  
10 of Justice.

11 WHEREAS, appellants criminal history at the time  
12 was Credit Card Abuse and Fraudulent Use/Poss.  
13 of Identifying Information that's a State Jail Crime  
14 in Texas that does not carry a prison term, mandatory  
15 supervision, nor parole and is NOT a category A,  
16 B, C, D, E felony it's a State Jail Crime that carries  
17 only jail time equal to what Nevada considers  
18 a Gross Misdemeanor that appellant was convicted  
19 of in March 2007. In August 2011 appellant was  
20 convicted of a category E felony Attempt poss. of  
21 credit or debit card without cardholders consent  
22 here in Nevada.

23 WHEREAS, at the date the adjudicated charge  
24 of Attempt Grand Larceny less than \$3500 occurred  
25 the appellant had never been to prison or ever had  
26 a violent ~~crime~~ or serious crime charged against  
27 him.

28 WHEREAS, the state deemed the conviction in Texas

## "Illegal Sentence"

## Ground Three Continue:

1.  
2. as a felony. Is there any felony in the USA that does  
3. not carry a prison term, mandatory supervision or  
4. parole? So at the very least you would have to decide  
5. that its ambiguous as being a felony conviction so as  
6. the light most favorable to the appellant it would not  
7. be a felony conviction for enhancement to adjudicate.  
8. Wherefore, appellant contends that the state breach  
9. the Guilty Plea Agreement on impeachable and highly suspect  
10. evidence that allegedly occurred in January 2019 that  
11. greatly prejudice the appellant case number 19701534X in  
12. Dept NO. 14. Whereby, the victim testified at preliminary  
13. hearing under oath facing the penalty of perjury that the  
14. appellant was NOT the perpetrator of the alleged event  
15. and 100% sure not 80%. So there was no corpus delicti,  
16. slight, or marginal evidence leaving no causation for the  
17. state to breach the terms and spirit of agreement that does  
18. not serve the interests of Justice.

19. Wherefore, appellant never violated a provision of a statute  
20. that would have allowed the District Court to not stand  
21. by the sentence agreed upon by the parties set forth  
22. in the Guilty Plea Agreement. Furthermore, the appellant was  
23. never given notice that the District Court would seek  
24. habitual treatment if appellant violated a provision of a  
25. statute making this an illegal sentence.

26. Wherefore, consecutive sentences violates the legislative

"Illegal Sentence"

Ground Three Continue:

27. instant of NRS 176.035 and does not serve the interests  
28. of Justice

29. Whereby, the instant offense took place on or about  
30. April 9, 2013 and was not subsequent to the Burglary  
31. conviction that occurred April 2, 2010 but prior. So the  
32. District Court erred by sentencing the appellant to consecutive  
33. sentence rather than concurrent.

34. Whereby, the appellants bond for the instant offense  
35. was exonerated at the conclusion of the preliminary  
36. hearing for lack of probable cause [No Corpus Delicti, slight  
37. or marginal evidence]. So the appellant should receive  
38. time credit from that point to the present towards the  
39. instant offense Attempt Grand Larceny.

40.

41.

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## INCORRECT PSI

## GROUND FOUR: DUE PROCESS VIOLATION

1. Appellants Pre-Sentence Investigation report did have several material
2. facts in error that was objected to and untrue assumptions made by
3. state prosecutor M. Dickerson which work to the extreme detriment
4. of the appellant

5. Whereas, M. Dickerson's profile was assumptions that was NOT
6. based on any facts or evidence as he stated appellant was a career
7. "DOOR PUSHER" and NOT ONE of appellants crimes had any evidence
8. of "DOOR PUSHING"

9. Whereas, the appellants PSI had several material facts in error
10. as follows: Convictions should read Felony 2(ONE) NOT 4(FOUR);
11. Misdemeanors 2(two) NOT 3(three)... Intercerctions should read
12. Prison 0(zero) NOT 1(ONE) Jail 3(three) NOT 5(five)... Supervisor
13. History should read Current 0(zero) NOT 1(ONE)... Instant offense
14. C-16-315718-1 WA 1. Burglary 1<sup>st</sup>(7) 2. Attempt Grand Larceny < \$7500(7)
15. should be dated 04-09-2013 NOT 04-02-2016... Texas convictions
16. 1083785 and 1083786 is 1(ONE) EVENT NOT 2(two) and NOT
17. Felonies but state jail crimes)... Case Number C-16-315125-1
18. should NOT be anywhere on appellants PSI for the instant
19. offense as it occurred sum 3(three) years to the latter.

20. Wherefore, based on the foregoing facts and constitutional
21. violations this Honorable Court is respectfully urged to
22. dismiss/vacate the appellants judgement against him.
- 23.

24. Dated this 10<sup>th</sup> day of April, 2019 I, James H. Hayes, do solemnly swear
25. under penalty of perjury that the above writ of Habeas Corpus is accurate
26. correct and true to the best of my knowledge

James H. Hayes #1175077

MAILED 1175642  
U.S. 8  
P.O. BOX 650  
TANDLER SPRING, NV.  
89020

INTAKE  
NSF 3763

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"Clerk of the Courts"

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FILED

MAY 02 2019

*[Signature]*  
CLERK OF COURT

1 PPOW

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5 James H Hayes,

6 Petitioner,

7 vs.

8 Nevada State of,

9 Respondent,

Case No: A-19-793315-W  
Department 19

ORDER FOR PETITION FOR  
WRIT OF HABEAS CORPUS

10  
11 Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on  
12 April 15, 2019. The Court has reviewed the Petition and has determined that a response would assist the  
13 Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good  
14 cause appearing therefore,

15 IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order,  
16 answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS  
17 34.360 to 34.830, inclusive.

18 IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

19 Calendar on the 12<sup>th</sup> day of August, 20 19, at the hour of

20 8:30 A.M.  
21 o'clock for further proceedings.

22  
23  
24  
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26  
27  
28  
RECEIVED  
MAY 02 2019  
CLERK OF THE COURT

*Will Kph*  
District Court Judge

A - 19 - 793315 - W  
OPWH  
Order for Petition for Writ of Habeas Corpus  
4833646



87  
**FILED**

MAY 07 2019

**CLERK OF COURT**

1 Case No. A-19-793315  
2 Dept. No. XIX

3 IN THE 8th JUDICIAL DISTRICT COURT OF THE  
4 STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

5 James H. Hayes  
6 Petitioner,

7 v.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POSTCONVICTION)

8 State of Nevada Warden  
9 Respondent. Brian Williams

"ADDENDUM"

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert Prison, Clark County Nevada

2. Name and location of court which entered the judgment of conviction under attack: Clark County District Court, Dept XIX

3. Date of judgment of conviction: March 12, 2019

4. Case number: C-315718

Length of sentence: 60-174 months

CLERK OF THE COURT

RECEIVED  
MAY 07 2019

A-19-793315-W  
ADDM  
Addendum  
4835243



(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes ☒ No .....

If "yes," list crime, case number and sentence being served at this time: Burglary C-315125  
21-22 months

7. Nature of offense involved in conviction being challenged: Attempt Grand Larceny

8. What was your plea? (check one)

(a) Not guilty .....

(b) Guilty ☒ Alford Plea

(c) Guilty but mentally ill .....

(d) Nolo contendere .....

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was

negotiated, give details: NOT GUILTY TO Burglary; Alford Plea to Attempt Grand Larceny

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury .....

(b) Judge without a jury ☒

11. Did you testify at the trial? Yes ..... No .....

12. Did you appeal from the judgment of conviction? Yes ..... No ☒

13. If you did appeal, answer the following:

(a) Name of court: .....

(b) Case number or citation: .....

(c) Result: .....

(d) Date of result: .....

(Attach copy of order or decision, if available.)



1 14. If you did not appeal, explain briefly why you did not:

2 Waiver of Rights which  
3 is a Equal Protection and Due Process Violation

4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any  
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: Clark County District Court

8 (2) Nature of proceeding: Motions to correct ILLEGAL SENTENCE /  
9 Modify

10 (3) Grounds raised: DOUBLE JEOPARDY; DUE PROCESS VIOLATION;  
11 ILLEGAL SENTENCE; INCORRECT PSI

12  
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

14 (5) Result: ☐

15 (6) Date of result: ☐

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

17  
18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: ☐

20 (2) Nature of proceeding: ☐

21 (3) Grounds raised: ☐

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

23 (5) Result: ☐

24 (6) Date of result: ☐

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

26  
27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list  
28 them on a separate sheet and attach.

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any  
2 petition, application or motion?

3 (1) First petition, application or motion? Yes ..... No ☒ .....

4 Citation or date of decision: .....

5 (2) Second petition, application or motion? Yes ..... No .....

6 Citation or date of decision: .....

7 (3) Third or subsequent petitions, applications or motions? Yes ..... No .....

8 Citation or date of decision: .....

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you  
10 did not. (You must relate specific facts in response to this question. Your response may be included on paper which  
11 is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
12 length.).....

13 .....  
14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of  
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

16 (a) Which of the grounds is the same: .....

17 .....  
18 (b) The proceedings in which these grounds were raised: .....

19 .....  
20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this  
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your  
22 response may not exceed five handwritten or typewritten pages in length.)

23 *Motion to correct  
Illegal sentence was sent back unfilled.*

24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached,  
25 were not previously presented in any other court, state or federal, list briefly what grounds were not so presented,  
26 and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your  
27 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not  
28 exceed five handwritten or typewritten pages in length.) *Lack of Probable Cause;*

1 District Court Did Not Divest Jurisdiction; Ineffective Asst. of Counsel

2 19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing  
3 of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in  
4 response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the  
5 petition. Your response may not exceed five handwritten or typewritten pages in length.) .....

6  
7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment  
8 under attack? Yes ..... No ☒

9 If yes, state what court and the case number: .....

10  
11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on  
12 direct appeal: Conviction - Michael J. Swift .....

13  
14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under  
15 attack? Yes ..... No ☒

16 If yes, specify where and when it is to be served, if you know: .....

17  
18 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the  
19 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts  
20 supporting same.  
21  
22  
23  
24  
25  
26  
27  
28

(a) Ground ONE: U.S. Constitution Violation 6 and 14<sup>th</sup>  
Amendments "Ineffective Assistance of Counsel"

Supporting FACTS (Tell your story briefly without citing cases or law.): COUNSEL failed to provide zealous and quality representation.

WHEREAS, COUNSEL failed to investigate the facts of the case; failed to identify defects in the prosecution i.e. Double Jeopardy, Equal Protection, as counsel failed to fully explain to petitioner the rights waived by entering into and signing the Guilty Plea Agreement. When in fact, counsel told petitioner that the agreement was for a gross misdemeanor not felony. Counsel failed to file motions challenging the defects in the charging document and Guilty Plea Agreement. Counsel failed to protect petitioner's rights by waiver or procedural default. Counsel failed to protect the record for collateral review. Counsel failed to investigate and study the case before petitioner's acceptance of the plea agreement. Counsel failed to meet with petitioner in a confidential setting to make sure that petitioner understands the rights he would waive by entering the plea agreement and that it was knowing, voluntary, and intelligent. Counsel failed to completely inform petitioner of the maximum punishment and consequences that he would be exposed to as petitioner was surprised when sentence to habitual offender.

1 (b) Ground TWO: DUE PROCESS VIOLATION

2  
3  
4  
5 Supporting FACTS (Tell your story briefly without citing cases or law.): NO NOTICE TO  
6 SEEK HABITUAL TREATMENT

7 WHEREAS, THE STATE DID NOT GIVE WRITTEN  
8 NOTICE AND NO AGREEMENT BY BOTH PARTIES THAT  
9 THEY WOULD SEEK HABITUAL TREATMENT FOR THE CHARGE  
10 OF ATTEMPT GRAND LARCENY LESS THAN \$3500. WHEN  
11 IN FACT THE PETITIONER WAS SURPRISED AT SENTENCING  
12 WHEN ADJUDICATED HABITUAL AS COUNSEL HAD INFORM  
13 PETITIONER THAT THE CHARGE WAS NEGOTIATED TO  
14 A GROSS MISDEMEANOR. AS PETITIONER HAS NEVER  
15 HAD A SERIOUS OR VIOLENT CHARGE HELD AGAINST  
16 HIM AND THE INSTANT CASE THERE WAS NO  
17 LOSS OR INJURY, NO CORPUS DELICTI, NO PROBABLE  
18 CAUSE AS THE CHARGE WAS DISMISSED IN JUSTICE  
19 COURT AT THE CONCLUSION OF THE PRELIMINARY  
20 HEARING FOR NO PROBABLE CAUSE AND LACK OF  
21 EVIDENCE. NO CLEAR AND CONVINCING EVIDENCE.

22 WHEREAS, ALLEGED VICTIM JOSHUA JARVIS  
23 TESTIFIED THAT HE DID NOT HAVE ANY VALUABLES IN  
24 THE SAID ROOM ONLY HIS IPHONE THAT WAS ON HIS  
25 PERSON AND THE STATE FAILED TO PRESENT THE THREE  
26 FEMALE OCCUPANTS OF ROOM AT PRELIM HEARING OR  
27 ENTER ANY WRITTEN STATEMENTS FROM ANY OF THE  
28 SAID FEMALE OCCUPANTS OF SAID ROOM.

(c) Ground THREE: U.S. Constitution 5th Amendment  
Violation and Due Process Violation

Supporting FACTS (Tell your story briefly without citing cases or law.): Double Jeopardy  
applies to jeopardy or risk stemming from the  
same offense.

Whereas, the petitioner may not lawfully  
be subjected to the risk of twice being tried  
for the same offense or face multiple punishments  
for the same offense (NRS 174.085) in the instant  
case the charge for Attempt Grand Larceny less than  
\$3500 was dismissed at the conclusion of the  
preliminary hearing after the state presented all  
their evidence and only the charge of Burglary  
was bound over to District Court that was in  
error by Justice Court Judge. When in fact as  
the state used the the Att. Grand Larceny charge  
for the instant for the Burglary charge so when  
the Att. Grand Larceny charge was dismissed it  
made the Burglary charge fatal and it should  
have been dismissed leaving no causation and  
no jurisdiction for District Court to proceed.  
No substantial evidence and no clear and  
convincing evidence for the charge of Burglary  
to be bound over to District Court that was  
dismissed by the state for the way of Amended  
Information to once again charge petitioner with  
Attempt Grand Larceny less than \$3500.

BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 17 day of the month of April, 2019.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

#### VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

#### AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number 315718 Does not contain the social security number of any person.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

#### CERTIFICATE OF SERVICE BY MAIL

I, James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 17 day of the month of April, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070

Attorney General of Nevada  
100 North Carson Street  
Carson City, Nevada 89701

Clark County District Attorney's Office  
200 Lewis Avenue  
Las Vegas, Nevada 89155

James H. Hayes #1175077

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

\* Print your name and NDOC back number and sign

-9-

Header # 1175011  
H. 1.5.2  
P.D. 300 650  
MADISON, NEV  
89080

INTAKE  
NSF 3763

Clerk County District Courts  
Attn: Clerk of the Courts  
200 Lewis Ave, 3rd Floor  
Las Vegas, Nevada  
89155

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MAY 09 2019

CLERK OF COURT

Case No. A-19-793315  
Dept. No. XIX

IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

James H. Hayes  
Petitioner,

v.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POSTCONVICTION)

ADDENDUM II (Two)

State of Nevada Warden  
Respondent. Brian Williams

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

- 1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison, Nevada
- 2. Name and location of court which entered the judgment of conviction under attack: Clark County Nevada District Court XIX
- 3. Date of judgment of conviction: March 12, 2019
- 4. Case number: C-16-315718-1
- 5. (a) Length of sentence: 60 to 174 months

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MAY 09 2019

CLERK OF THE COURT

A-19-793315-W  
ADDM  
Addendum  
4835244



(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes ☒ No .....

If "yes," list crime, case number and sentence being served at this time: C-16-315125  
21 to 22 months

7. Nature of offense involved in conviction being challenged: Attempt Grand Larceny  
less than \$13500

8. What was your plea? (check one)

(a) Not guilty .....

(b) Guilty ☒ Alford Plea

(c) Guilty but mentally ill .....

(d) Nolo contendere .....

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: Not Guilty to Burglary; Alford Plea to Attempt  
Grand Larceny less than \$13500

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury .....

(b) Judge without a jury ☒

11. Did you testify at the trial? Yes ..... No .....

12. Did you appeal from the judgment of conviction? Yes ..... No .....

13. If you did appeal, answer the following:

(a) Name of court: .....

(b) Case number or citation: .....

(c) Result: .....

(d) Date of result: .....

(Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not: Waiver of Rights

2  
3  
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any  
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No .....

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: Clark County District Court, Nevada

8 (2) Nature of proceeding: Motion to correct Illegal Sentence /  
9 Modification

10 (3) Grounds raised: Double Jeopardy, Illegal Sentence, Incomplete  
11 P.S.I., Due Process Violations

12  
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No ☒

14 (5) Result: .....

15 (6) Date of result: .....

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:  
17 .....

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: .....

20 (2) Nature of proceeding: .....

21 (3) Grounds raised: .....

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No .....

23 (5) Result: .....

24 (6) Date of result: .....

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:  
26 .....

27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list  
28 them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ..... No ☒

Citation or date of decision: .....

(2) Second petition, application or motion? Yes ..... No .....

Citation or date of decision: .....

(3) Third or subsequent petitions, applications or motions? Yes ..... No .....

Citation or date of decision: .....

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.).....

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same:

DOUBLE JEOPARDY, ILLEGAL SENTENCE  
INCORRECT PSI, DUE PROCESS VIOLATIONS

(b) The proceedings in which these grounds were raised:

MOTION TO CORRECT ILLEGAL  
SENTENCE / MODIFICATION

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

MOTIONS TO CORRECT  
ILLEGAL SENTENCE / MODIFICATION WAS RETURN UNFILED

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

lack of probable cause; DUE PROCESS;

1 INEFFECTIVE ASSISTANCE OF COUNSEL? Equal protection

2 19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing  
3 of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in  
4 response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the  
5 petition. Your response may not exceed five handwritten or typewritten pages in length.)  
6

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment  
8 under attack? Yes ..... No ☒ .....

9 If yes, state what court and the case number: .....  
10

11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on  
12 direct appeal: CONVICTION MICHAEL JANIT  
13

14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under  
15 attack? Yes ..... No ☒ .....

16 If yes, specify where and when it is to be served, if you know: .....  
17

18 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the  
19 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts  
20 supporting same.  
21  
22  
23  
24  
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28

1 (a) Ground ONE: United States and Nevada Constitution violation  
2 Ineffective Assistance of Counsel that prejudice the petitioner  
3 and is a Miscarriage of Justice that does not serve  
4 the interests of Justice

5 Supporting FACTS (Tell your story briefly without citing cases or law.): Wherefore, there is  
6 a reasonable probability that, but for counsel's  
7 failures and unprofessional errors, the result would  
8 have been different. As this was surely inadequate  
9 legal representation, when in fact, petitioner has  
10 always maintain actual innocence  
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1 (b) Ground TWO: U.S. and Nevada Constitution Violations  
2 Double Jeopardy that prejudice the petitioner and is a  
3 miscarriage of justice that does not serve the interests  
4 of Justice.

5 Supporting FACTS (Tell your story briefly without citing cases or law.): WHEREAS the  
6 petitioner suffered irreparable injury through  
7 prosecutions unprofessional and grossly unethical  
8 conduct as they maliciously failed to proceed on  
9 the facts and the law.  
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1 (c) Ground THREE: U.S. Constitution violations Equal Protection  
2 AND DUE PROCESS. Inappropriate Personal attack  
3 AND a Judicial Violation.  
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.): WHEREAS, at sentencing  
6 hearing for the instant offense District Court Judge William  
7 Kephart made prejudicial comments about petitioner as  
8 he stated that petitioner is smart but will you be able  
9 to overcome prior bad acts" referring to a criminal  
10 case that is pending in said Judge's court room that  
11 due to go to trial May 13, 2019, that petitioner made  
12 reference to because the state use this is perjured case  
13 to breach the Guilty Plea Agreement entered into by both  
14 parties for the instant offense. When in fact this is  
15 impalpable and highly suspect evidence as the victim  
16 in-court identification was not of the petitioner and  
17 he stated he's 100% sure that petitioner was not the  
18 perpetrator of said alleged event and this shows Judge  
19 William Kephart's Bias and Prejudice towards the petitioner  
20 and this is a Miscarriage of Justice that does not serve  
21 the interests of Justice.

22 WHEREAS, the court transcripts and in camera review  
23 of said day in question March 6, 2019 would show clear  
24 and convincing evidence of Judge Kephart's prejudice and  
25 bias displayed towards petitioner throughout the proceedings  
26 as he predetermine a Petrocelli hearing ruling instead  
27 of proceeding on the facts and the law that hasn't been  
28 presented before this Judge for such a ruling at this time  
and this is egregious.



BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 26 day of the month of April, 2019.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

#### VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

#### AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-16-315218-1 Does not contain the social security number of any person.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

#### CERTIFICATE OF SERVICE BY MAIL

James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 26 day of the month of April, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070

Attorney General of Nevada  
100 North Carson Street  
Carson City, Nevada 89701

Clark County District Attorney's Office  
200 Lewis Avenue  
Las Vegas, Nevada 89155

James H. Hayes #1175077

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

\* Print your name and NDOC back number and sign

-B-  
-9-

HE45 1125082  
H050  
P.O. Box 650  
Tadousa Springs, WV  
87020

**INTAKE**  
**NSF 3763**

Clerk County District Courts

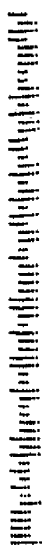
2nd Clerk of the Courts

200 Lewis Ave, 3rd Floor

123 Veggies, Nevada

89155

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FILED

MAY 20 2019

CLERK OF COURT

District Court  
Clark County, Nevada

JAMES H. HAYES  
Petitioner

CASE NO: A-19-793315-W  
Department: 19

vs.

STATE OF NEVADA  
Respondent

Motion of Notice  
"Peremptory Challenge of Judge"

A-19-793315-W  
MOT  
Motion  
4837646



Comes now, James H. Hayes, in proper person requests that Clark County District Court Judge William "Bill" Kephart be disqualified and transfer the above titled action to ~~another~~ another District Court Judge due to inappropriate personal attack and a judicial violation that occurred on March 6, 2019 that showed Judge's bias and prejudice.

Whereas, the petitioner is concerned that the Judge may be biased or unfair for some reason as he has shown in the past that would not serve the interests of Justice.

Wherefore, petitioner requests that the court grant such relief to which petitioner may be entitled.

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MAY 20 2019

James H. Hayes  
James H. Hayes #1175077

CLERK OF THE COURT

4

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES N. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 15  
day of May, 2019, I mailed a true and correct copy of the foregoing, "Motion  
of Notice "Peremptory Challenge of Judge""  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Clerk of the Court  
200 LEWIS AVE. #2041  
LAS VEGAS, NV  
89155-1160

CC:FILE

DATED: this 15 day of March, 2019.

James N. Hayes  
JAMES N. HAYES # 1175077  
/In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion of  
Notice "Peremptory Challenge of Judge"  
(Title of Document)

filed in District Court Case number A-19-793315-W

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

James H. Hayes  
Signature

5-15-19  
Date

JAMES H. HAYES  
Print Name

DEFT/OWNER / PROPER PERSON  
Title

J. Hayes # 1125022  
A.D. 5.9  
P.O. Box 650  
Tulles, Oregon, NV  
89226

5000.45

Clark County District Court  
Office of the Clerk

200 Lewis Ave; 3rd Floor

Las Vegas, Nevada

89155-1160

INTAKE  
NSF 3763

33 ORDENMP 99155

10/10/10 10:10:10

10/10/10

UNIT 2 C/D 172

HIGH DESERT STATE PRISON

10/15/2019



1 RSPN  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 CHARLES W. THOMAN  
6 Chief Deputy District Attorney  
7 Nevada Bar #012649  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES,  
13 #2796708

14 Defendant.

CASE NO: A-19-793315-W

DEPT NO: XIX

15 STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS  
16 CORPUS (POST-CONVICTION)

17 DATE OF HEARING: AUGUST 12, 2019  
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through CHARLES W. THOMAN, Chief Deputy District Attorney, and  
21 hereby submits the attached Points and Authorities in Response to Defendant's Petition For  
22 Writ Of Habeas Corpus (Post-Conviction).

23 This response is made and based upon all the papers and pleadings on file herein, the  
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
25 deemed necessary by this Honorable Court.

26 ///

27 ///

28 ///

///

W:\2013\2013F\107\23\13F10723-RSPN-(HAYES\_\_JAMES)-001.DOCX

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 The relevant procedural history is as follows. In a June 17, 2016 Information, the State  
4 charged Petitioner with Burglary (Category B Felony). It filed a Notice of Intent to Seek  
5 Punishment as a Habitual Criminal on November 21, 2016. It filed an Amended Notice on  
6 August 29, 2017.

7 On November 7, 2018, Petitioner pleaded guilty pursuant to North Carolina v. Alford,  
8 400 U.S. 25 (1970) to Attempt Grand Larceny (Category D Felony/Gross Misdemeanor). The  
9 State agreed to make no recommendation at the time of sentencing. GPA at 1. It did, however,  
10 reserve the right to argue for habitual treatment if “an independent magistrate, by affidavit  
11 review, confirms probable cause against [Petitioner] for new criminal charges.” Id. at 2.

12 On January 29, 2019, Justice of the Peace De La Garza found probable cause existed  
13 that Petitioner had committed another count of Burglary in what eventually became Case No.  
14 C-19-338412-1, which is currently before this Court.

15 Based on that finding of probable cause, the State filed a Motion to Revoke Bail on  
16 January 31, 2019. Further, as contemplated in the Guilty Plea Agreement, it argued for habitual  
17 treatment in a March 6, 2019 sentencing. This Court found that the State met the statutory  
18 requirements of NRS 207.010 and accordingly sentenced Petitioner to between sixty and one  
19 hundred seventy-four months in the Nevada Department of Corrections.

20 The Judgment of Conviction was filed on March 12, 2019. On March 28, 2019,  
21 Petitioner filed a Notice of Appeal. That appeal is currently pending before the Supreme Court.

22 Petitioner filed the instant post-conviction habeas petition on April 15, 2019. The State  
23 herein responds.

24 **ARGUMENT**

25 **I. PETITIONER’S SUBSTANTIVE CLAIMS ARE PROCEDURALLY**  
26 **BARRED.**

27 NRS 34.810(1)(a) reads:

28 The court shall dismiss a petition if the court determines that:



1 (a) The petitioner's conviction was upon a plea of guilty or guilty  
2 but mentally ill and the petition is not based upon an allegation  
that the plea was involuntarily or unknowingly entered or that the  
plea was entered without effective assistance of counsel.

3 The Nevada Supreme Court has held that "challenges to the validity of a guilty plea and claims  
4 of ineffective assistance of trial and appellate counsel must first be pursued in post-conviction  
5 proceedings...[A]ll other claims that are appropriate for a direct appeal must be pursued on  
6 direct appeal, or they will be *considered waived in subsequent proceedings*." Franklin v. State,  
7 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (emphasis added) (disapproved on other  
8 grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)). "A court must dismiss a  
9 habeas petition if it presents claims that either were or could have been presented in an earlier  
10 proceeding, unless the court finds both cause for failing to present the claims earlier or for  
11 raising them again and actual prejudice to the petitioner." Evans v. State, 117 Nev. 609, 646-  
12 47, 29 P.3d 498, 523 (2001).

13 Here, Petitioner does not challenge the effectiveness of his counsel or the validity of  
14 his guilty plea. Instead, Petitioner raises four claims which are suitable only for direct appeal.  
15 His failure to raise them at that juncture waives them for purposes of this petition. Moreover,  
16 each claim is meritless. It is well established that jeopardy does not attach until either the jury  
17 is sworn or, in a bench trial, the first witness is called. Downum v. United States, 372 U.S.  
18 734, 83 S.Ct. 1033 (1963); Wheeler v. District Court, 82 Nev. 225, 415 P.2d 63 (1966); Hylton  
19 v. Eighth Judicial Dist. Court of State of Nev., Dep't IV, 103 Nev. 418, 421 n.1, 743 P.2d 622,  
20 624 n.1 (1987); Crist v. Bretz, 437 U.S. 28, 37 n.15, 98 S. Ct. 2156, 2162 n.15 (1978) ("In  
21 nonjury trials jeopardy does not attach until the first witness is sworn."). Here, no jury was  
22 ever sworn and no witness was ever called in a non-jury trial. Ground 1, which alleges a  
23 Double Jeopardy violation, necessarily fails because jeopardy never attached. Pet. 6-7.

24 Ground 2, the probable cause claim similarly fails. Although Petitioner's motion to  
25 dismiss was originally granted in Justice Court regarding that ground, the Amended  
26 Information which reintroduced the count was only filed after Petitioner agreed to plead guilty  
27 to the charge. In similar circumstances, the Nevada Supreme Court has declined to find error  
28 when a fair trial resulted in a conviction for a crime after inadequacies in the grand-jury

1 proceedings. Hill v. State, 124 Nev. 546, 552, 188 P.3d 51, 54–55 (2008). Here, Petitioner  
2 pleaded guilty to Attempt Grand Larceny, thereby nullifying any potential probable-cause  
3 related issue at the preliminary hearing. Even if the State lacked probable cause at the time of  
4 the hearing, there is no colorable argument that it lacks it now. Petitioner admitted that he  
5 committed the crime. GPA at 1.

6 In Ground 3, Petitioner claims that the Cruel and Unusual Punishment Clause of the  
7 Eighth Amendment was violated when he was sentenced as a habitual criminal, but his  
8 sentence is appropriate considering his criminal history. The Eighth Amendment to the United  
9 States Constitution, as well as Article 1, Section 6 of the Nevada Constitution, prohibits the  
10 imposition of cruel and unusual punishment. The Nevada Supreme Court has stated that “[a]  
11 sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute  
12 fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to  
13 the offense as to shock the conscience.’” Allred v. State, 120 Nev. 410, 420, 92 P.2d 1246,  
14 1253 (2004) (quoting Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting  
15 Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

16 Additionally, the Nevada Supreme Court has granted district courts “wide discretion”  
17 in sentencing decisions, and these are not to be disturbed “[s]o long as the record does not  
18 demonstrate prejudice resulting from consideration of information or accusations founded on  
19 facts supported only by impalpable or highly suspect evidence.” Allred, 120 Nev. at 410, 92  
20 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A  
21 sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of  
22 discretion, the district court’s determination will not be disturbed on appeal. Randell v. State,  
23 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)).  
24 As long as the sentence is within the limits set by the legislature, a sentence will normally not  
25 be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950 (1994).

26 Here, NRS 207.010(1)(a) governs the sentencing of habitual criminals:

27 1. Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a  
28 person convicted in this State of:

1 (a) Any felony, who has previously been two times convicted, whether in this  
2 State or elsewhere, of any crime which under the laws of the situs of the  
3 crime or of this State would amount to a felony is a habitual criminal and  
4 shall be punished for a category B felony by imprisonment in the state prison  
5 for a minimum term of not less than 5 years and a maximum term of not more  
6 than 20 years.

6 In its Notice of Intent to Seek Punishment as a Habitual Criminal,<sup>1</sup> the State alleged that  
7 Petitioner had been previously convicted of two counts of Fraudulent Use/Possession of  
8 Personal Identification Information, two counts of Credit Card Abuse, and one count of  
9 Attempt Possession of Credit or Debit Card Without Cardholder's Consent. Notice (Nov. 21,  
10 2016) at 2. Each of those counts is a felony in the State where the crime was committed.

11 Then, in an Amended Notice of Intent to Seek Punishment as a Habitual Criminal, the  
12 State alleged that Petitioner had been convicted of Credit Card Abuse, a Texas felony, Attempt  
13 Possession of Credit or Debit Card Without Cardholder's Consent (Category E Felony), and  
14 Burglary (Category B Felony). At sentencing, this Court found that the State carried its burden  
15 of proving each. Accordingly, the State was free to argue for habitual treatment under NRS  
16 207.010(1)(a).

17 Petitioner argues that the State breached the guilty plea agreement, but the agreement  
18 itself contemplated that the State would be free to argue for habitual treatment if a magistrate  
19 found probable cause that he committed another crime. Pet. 12; GPA at 1-2. Justice of the  
20 Peace De La Garza found probable cause<sup>2</sup> that he committed another Burglary on January 29,

21  
22 <sup>1</sup> Because the State filed its Notice, Petitioner's claim that his sentence was illegal because he  
23 was never given notice is belied by the record. Pet. 12. "Bare" and "naked" allegations are not  
24 sufficient to warrant post-conviction relief, nor are those belied and repelled by the record.  
25 Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it  
is contradicted or proven to be false by the record as it existed at the time the claim was made."  
Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

26 <sup>2</sup> Petitioner argues that this was based on impalpable and highly suspect evidence, but this  
27 ignores the full reason why probable cause was ultimately found, as not only was Petitioner  
28 identified with 80% certainty initially, but he also had a hotel key that did not belong to him  
in his pocket when he was detained. See State's Notice of Motion and Motion to Revoke  
Bail (Jan. 31, 2019) at Exhibit 3; Tr. Preliminary Hearing, 19F01534X (Feb. 26, 2019) at 25,  
31 (filed on Odyssey as case C-19-338412-1).

1 2019. Accordingly, the State was free to argue for habitual treatment. That case, C-19-338412-  
2 1, is currently pending before this Court. Once probable cause was found, the State was free  
3 to argue for habitual treatment under the plain terms of the GPA. Because Petitioner's ultimate  
4 sentence fell within the parameters of the small habitual statute, the Eighth Amendment was  
5 not violated.

6 Finally, in Ground 4, Petitioner's claim that his Presentence Investigation Report  
7 contained errors is nothing more than a bare and naked allegation. Hargrove, 100 Nev. at 502,  
8 686 P.2d at 225. Further, challenges to the Presentence Investigation Report are not cognizable  
9 after sentencing. NRS 176.135(1) requires the Division of Parole and Probation to prepare a  
10 Presentence Investigation Report for any defendant who pleads guilty of a felony. This Court  
11 has previously addressed the importance of a factually accurate PSI at sentencing:

12 A PSI contains information about the defendant's prior criminal record, the  
13 circumstances affecting the defendant's behavior and the offense, and the impact  
14 of the offense on the victim. NRS 176.145(1). Because the sentencing court will  
15 rely on a defendant's PSI, the PSI must not include information based on  
16 "impalpable or highly suspect evidence." *Goodson v. State*, 98 Nev. 493, 495-  
96, 654 P.2d 1006, 1007 (1982).

17 Stockmeier v. Bd. of Parole Comm'rs, 127 Nev. 243, 248, 255 P.3d 209, 212-13 (2011).

18 If a PSI does have errors, a defendant can object. He cannot, however, object in  
19 perpetuity. Instead, this Court has limited the time in which a defendant can object to factual  
20 or methodological errors in a presentence investigation report. A defendant can only object to  
21 errors "so long as he or she objects before sentencing." Sasser v. State, 130 Nev. 387, 394, 324  
22 P.3d 1221, 1226 (2014). Once sentencing has occurred, neither the "Division of Parole and  
23 Probation nor the district court" have the "authority to amend ... [a] PSI." Stockmeier, 127  
24 Nev. at 245, 255 P.3d at 211 (2011).

25 Petitioner claims that an objection was raised about the alleged errors in his PSI, and  
26 he enumerates those errors without any attempt to support his bare and naked claims. Pet. 14.  
27 Accordingly, this claim lacks merit.

28 ///

1 In sum, each of Petitioner's claims has been waived for purposes of the instant petition  
2 under NRS 34.810 and is otherwise meritless. The petition should be denied.

3 **II. BY ENTERING A GUILTY PLEA AGREEMENT, PETITIONER**  
4 **WAIVED ANY PRIOR CONSTITUTIONAL DEFECTS.**

5 In this case, Petitioner entered a guilty plea. By doing this, he "waived all constitutional  
6 claims based on events occurring prior to the entry of the pleas, except those involving the  
7 voluntariness of the pleas themselves." Warden, Nevada State Prison v. Lyons, 100 Nev. 430,  
8 432, 683 P.2d 504, 505 (1984); Kirksey v. State, 112 Nev. 980, 1002, 923 P.2d 1102, 1116  
9 (1996).

10 Petitioner raises two claims which occurred prior to the entry of his guilty plea in the  
11 instant petition. First, he claims that the State violated the Double Jeopardy Clause by adding  
12 a charge of Attempt Grand Larceny at district court after it had been dismissed in justice court.  
13 Second, he claims that there was no probable cause to bind his case over. Petitioner's guilty  
14 plea waived both of those claims.

15 For these reasons, Petitioner waived Grounds 1 and 2 when he entered his guilty plea,  
16 and they are barred by the plea in addition to NRS 34.810.

17 **III. THIS COURT SHOULD STRIKE PETITIONER'S ADDENDA.**

18 After filing his first Petition for Writ of Habeas Corpus on April 15, 2019, Petitioner  
19 filed two addenda to his petition without first requesting leave of this Court. Each should be  
20 stricken.

21 NRS 34.750(3) allows appointed counsel to file a supplemental petition after  
22 appointment. "No further pleadings may be filed except as ordered by the court." Id. (5). The  
23 Nevada Supreme Court has addressed when the district courts can allow a litigant to file a  
24 supplemental petition, holding that leave can be granted only if the petitioner shows good  
25 cause to explain the delay in raising a claim. Barnhart v. State, 122 Nev. 301, 303-04, 130 P.3d  
26 650, 652 (2006). Any finding of good cause must be made "explicitly on the record" and  
27 enumerate "the additional issues which are to be considered." Id. at 303, 130 P.3d at 652.  
28 Barnhart affirmed a district court's decision to deny leave to expand the issues because

1 “[c]ounsel for petitioner provided no reason why that claim *could* not have been pleaded in the  
2 supplemental petition. Id. at 304, 130 P.3d at 652 (emphasis added).

3 This Court should strike each of the addenda filed by Petitioner in proper person.  
4 Petitioner never sought leave from this court to file supplements to his timely first petition.  
5 Although counsel would be entitled to file a supplement by NRS 34.750(3), that entitlement  
6 to file a supplement is explicitly a right of appointed counsel.

7 Furthermore, none of Petitioner’s pro-per addenda make any attempt to show good  
8 cause for failing to raise the issue in the initial petition. Barnhart precludes Petitioner from  
9 filing supplemental petitions in perpetuity without good cause for neglecting to include the  
10 new claims in the initial petition, and the record is void of any explicit findings of this court  
11 to allow for the rogue filings.

12 Because Petitioner was not entitled to supplement his initial petition and never sought  
13 this Court’s leave, his two addenda should each be stricken.<sup>3</sup>


14  
15 CONCLUSION

16 For these reasons, the instant petition should be denied.

17 DATED this 26<sup>th</sup> day of June, 2019.

18 Respectfully submitted,

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

21 BY   
22 CHARLES W. THOMAN  
23 Chief Deputy District Attorney  
24 Nevada Bar #012649

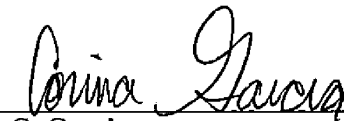
25  
26  
27  
28 <sup>3</sup> To the extent that this Court decides to address the issues raised in the addenda, the State  
reserves the right to respond to each on the merits.

1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing was made this 26<sup>th</sup> day of  
3 June, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4 JAMES HOWARD HAYES, BAC #1175077  
5 HIGH DESERT STATE PRISON  
6 P.O. BOX 650  
7 INDIAN SPRINGS, NV, 89070

8  
9 BY



10 C. Garcia  
11 Secretary for the District Attorney's Office  
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28 CWT/jp/cg/L-2

Hayes, James H ID NO. 1175072

HIGH DESERT STATE PRISON  
22010 COLD CREEK ROAD  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89018

FILED

JUL 05 2019

*Alvin L. Williams*  
CLERK OF COURT

8th Judicial District Court  
Clark County, Nevada

James H. Hayes

petitioner

v.

State of Nevada, Warden B. Williams  
respondent

CASE NO.: A-19-793315-W

DEPT. NO.: XIX

DOCKET:

Motion for "Judgement of Default" Against the  
Respondents and Enforce Procedural Default.

COMES NOW, ~~petitioner~~, James H. Hayes, herein above respectfully  
moves this Honorable Court for an Judgement of Default and/or Enforce  
procedural Default

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities.

DATED: this 1 day of July, 2019

BY: *James H. Hayes*

James H. Hayes

# 1175072

Defendant/In Proper Personam

A-19-793315-W  
MOFJ  
Motion for Default Judgment  
4847097



CLERK OF THE COURT

RECEIVED  
JUL 05 2019



1 Procedural Background ON CASE: Petitioner filed a writ of Habeas  
2 Corpus on April 15, 2019 under case NO C-16-315718-1. And  
3 subsequently, this court ordered that the respondent "SHALL"  
4 have 45 days to reply to the writ of Habeas Corpus. The  
5 court has set a date of August 12, 2019 for the parties to  
6 appear in court for a hearing on this matter. However;  
7 the allowed 45 day deadline has passed, and petitioner  
8 Hayes has not received a response to the Habeas Corpus,  
9 and one hasn't been filed as of June 21, 2019 at 10:45AM

### 10 Points and Authorities

11 U.S. Constitution 5<sup>th</sup> Amend - Due Process of Law  
12 U.S. Constitution 14<sup>th</sup> Amend - Equal protection of Law  
13 U.S. Constitution 1<sup>st</sup> Amend - Right to Petition  
14 U.S. Constitution Article 1 Section 9 - Anti-Suspension Clause  
15 STATE, EMP. SEC. DEPT. VS. INEBER, 100 NEV. 121 (1984)  
16 E.D.C.R # 3.40 (C)  
17 E.D.C.R # 3.80  
18 Hillis vs. State  
19 DEZENI VS. KERN ASSOC (2018) LEV11 14  
20 BATES VS CHRONISTER, 100 NEV. 625  
21 NRS 34.270  
22 NRS. 34.390  
23 NRS 34.380  
24 Polk vs State 233 P.3d 357 (2010)  
25

### 26 LEGAL Argument(s)

1 Failure to respond to an argument within the  
2 litigation will be taken as "Confession of Error."

3 Failure to reply to any litigation within a case  
4 is a Procedural Bar to that Issue. Also known as  
5 "Default" or "Procedural Default"

6 Failure to comply with a Court order is "Contempt  
7 of Court" and Disobedience of Order (Writ)

8 "SHALL" the word shall means Mandatory!! It is a  
9 must, and is not a discretionary word.

10  
11 Failure for any party to respond to an argument within the  
12 litigation of a case will be taken as a "Confession of Error";  
13 The Nevada Supreme Court ruled that, "We elect to treat  
14 the chronister failure to respond to this argument in the  
15 3pgs of Arguments in their Answering brief as Confession  
16 of Error."

17 Also, under N.R.A.P # 31 - The Court shall not grant  
18 additional extensions of time except upon a showing  
19 of Extra-ordinary circumstances and extreme need and  
20 Respondent has not shown any extreme need.

21  
22 Failure of any party to Reply to any litigation within a  
23 case is a Procedural Bar to that Issue, also known as  
24 "Default" or "Procedural Default". A writ of habeas corpus  
25 is a writ civil in nature, because it is a petition. And  
26 under U.S. Constitution Art 1 Sec 9 - The Writ of Habeas  
27 Corpus shall not be suspended, and under U.S Constitution

1 1<sup>st</sup> Amend. Hayes, has the right to petition the gov't for  
2 a redress of grievances And for the petitions to be adjudicated  
3 based on the merits. And so, since the respondent(s), didn't  
4 reply within the Court Ordered 45 day time frame then it is  
5 apparent that the State of Nevada and the N.A.S.C can't  
6 justify imprisoning Hayes, And Hayes, confinement is  
7 illegal and unconstitutional. Whereas, had it been justifiable  
8 then the respondent(s) would've justified it, instead the  
9 respondent(s) had No rebuttal to ~~the~~ <sup>Hayes</sup> meritorious claims  
10 and voluntarily chose to go into Default.

11 therefore, James H. Hayes, urges this Honorable court to  
12 grant his Petition for Writ of Habeas Corpus, and release  
13 Hayes, Immediately. Pursuant To: 34.38D and 34.39D.  
14 Also, under Hillis vs. State if a party fails to object then  
15 that party has waived any opposition. Wells vs Brewster  
16 failure to respond is treated as consent to grant motion  
17 Polk vs State 233 P.3d 357

18  
19 Failure to comply with a Court Order is considered a  
20 "Contempt of Court". Pursuant to: State Emp. Ser Dept.  
21 vs Weber. So, Now Hayes urges this Court to actually  
22 hold respondent(s) in Contempt of Court for violating the  
23 court's order to respond to Mr. Hayes, Petition for a Writ  
24 of Habeas Corpus. And so, NEVER in history has a litigant  
25 ever been rewarded or decided in their favor, when the  
26 litigant whom is the party in Default, and is in Contempt  
27 of a court order. This is Judicial principles outlined

1 in the CSC and NRS Chapter 2. And Hayes, urges that  
2 Pursuant to: Hillis vs State respondent(s) is procedurally  
3 barred to try and respond now to this Petition for writ  
4 of Habeas Corpus based on Hillis vs. State.

5 Wherein, it is well established in Anglo-Saxon Law,  
6 that the word "SHALL" means must. And it puts a  
7 mandate on the context of the subject As opposed to  
8 if the word "May" is used. And in the Court's Order it  
9 expressly states that: "It is hereby ordered that respondent  
10 "SHALL" within 45 days after the date of this order, Answer  
11 or otherwise respond to the Petition and file a return in  
12 accordance with the provisions of NRS 34.360 to 34.830  
13 INCLUSIVE."

14

15 Under Penalty of Perjury

16 I, James H. Hayes, the undersigned, certify, declare,  
17 or state that the foregoing is true and correct, to  
18 the best of my knowledge and belief, in  
19 accordance with NRS 208.165 and 28 USC  
20 § 1746.

21 Executed on the 1<sup>st</sup> day of July, 2019.

22

23 James H. Hayes # 1175077

24

James H. Hayes

25 Wherefore, petitioner requests that the court grant petitioner  
26 such relief to which petitioner may be entitled.

27

-6-

28

**CERTIFICATE OF SERVICE BY MAILING**

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 1<sup>st</sup>  
day of July, 2019, I mailed a true and correct copy of the foregoing, "Judgment  
of Default and/or Enforce Procedural Default"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Clerk of the Courts  
200 Lewis Ave. 30301  
Las Vegas, NV 89155-1160

Atty General of Nevada  
"Office of the Clerk"  
100 North Carson Street  
Carson City, NV 89201

CC:FILE

DATED: this 1<sup>st</sup> day of July, 2019.

James H. Hayes  
James H. Hayes # 1190274  
/In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Judgment  
of Default and/or Enforce Procedural Default  
(Title of Document)

filed in District Court Case number A-19-793315-W

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

James H. Hayes  
Signature

7-1-19  
Date

JAMES H HAYES  
Print Name

PETITIONER / PRO SE  
Title

July 1, 2019

DEAR CLERK OF THE COURTS,

CAN YOU PLEASE FILE THE FOLLOWING ENCLOSED  
EXHIBITS: Exhibit 1 - AMENDED INFORMATION

EXHIBIT 2 - INFORMATION

EXHIBIT 3 - CRIMINAL COMPLAINT

EXHIBIT 4 - NBS 174.085

EXHIBIT 5 - JUDGMENT OF CONVICTION

CASE NO. A-19-793315-W

COURT. DEPT. 19

Thanks...

CLERK OF THE COURT

JUL 05 2019

RECEIVED

James D. Hayes  
Defendant/ In prose #1125099

1 AINF  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MICHAEL DICKERSON  
6 Deputy District Attorney  
7 Nevada Bar #013476  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES, aka,  
13 James Howard Hayes Jr., #2796708

14 Defendant.

CASE NO. C-16-315718-1

DEPT NO. XIX

AMENDED  
INFORMATION

15 STATE OF NEVADA }  
16 COUNTY OF CLARK } ss:

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State  
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That JAMES HOWARD HAYES, aka, James Howard Hayes Jr., the Defendant(s)  
20 above named, having committed the crime of **ATTEMPT GRAND LARCENY (Category**  
21 **D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330 - NOC 56025/56026)**,  
22 on or about the 9th day of April, 2013, within the County of Clark, State of Nevada, contrary  
23 to the form, force and effect of statutes in such cases made and provided, and against the peace  
24 and dignity of the State of Nevada, did willfully, unlawfully, feloniously, and intentionally,  
25 with intent to deprive the owner permanently thereof, attempt to steal, take and carry away  
26 lawful money of the United States in an amount of \$650.00, or greater, owned by another

27 ///

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EXHIBIT "L" 39

W:\2013\2013F\107\23\13F10723-AINF-(Hayes\_James)-002.docx

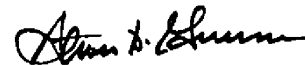


1 person, to wit: JOSHUA JARVIS, by attempting to steal lawful money of the United States,  
2 an iPhone and other personal items from the said JOSHUA JAVIS.

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

6 BY   
7 MICHAEL DICKERSON  
8 Deputy District Attorney  
9 Nevada Bar #013476  
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26 DA#13F10723X /cmj/L2  
27 LVMPD EV#1304090843  
28 (TK3)



CLERK OF THE COURT

1 INFM  
STEVEN B. WOLFSON  
2 Clark County District Attorney  
Nevada Bar #001565  
3 MICHAEL DICKERSON  
Deputy District Attorney  
4 Nevada Bar #013476  
200 Lewis Avenue  
5 Las Vegas, Nevada 89155-2212  
(702) 671-2500  
6 Attorney for Plaintiff

7 I.A. 6/23/16  
10:00 AM  
8 PD

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES,  
aka James Howard Hayes, Jr., #2796708  
13 Defendant.  
14

CASE NO: C-16-315718-1

DEPT NO: XII

INFORMATION

15 STATE OF NEVADA }  
16 COUNTY OF CLARK } ss.

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State  
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That JAMES HOWARD HAYES, aka James Howard Hayes, Jr., the Defendant(s)  
20 above named, having committed the crime of BURGLARY (Category B Felony - NRS  
21 205.060 - NOC 50424), on or about the 9th day of April, 2013, within the County of Clark,  
22 State of Nevada, contrary to the form, force and effect of statutes in such cases made and  
23 provided, and against the peace and dignity of the State of Nevada, did then and there wilfully,  
24 unlawfully, and feloniously enter, with intent to commit larceny, Room No. 17151, of the

25 ///

26 ///

27 ///

28 ///

EXHIBIT 2

W:\2013\2013F\10723\13F10723-INFM-(HAYES\_JAMES)-001.DOCX

1 EXCALIBUR HOTEL & CASINO, located at 3850 South Las Vegas Boulevard, Las Vegas,  
2 Clark County, Nevada, occupied by JOSHUA JARVIS.

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

6 BY M.A. Dickerson  
7 MICHAEL DICKERSON  
8 Deputy District Attorney  
9 Nevada Bar #013476  
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1 JUSTICE COURT, LAS VEGAS TOWNSHIP  
2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

5 -vs-

6 JAMES HOWARD HAYES, aka,  
7 James Howard Hayes, Jr. #2796708,

8 Defendant.

10 25 0 15 00  
JUSTICE COURT  
LAS VEGAS NEVADA  
JAH DEPUTY  
CASE NO: 13F10723X

DEPT NO: 3

CRIMINAL COMPLAINT

9 The Defendant above named having committed the crimes of BURGLARY (Category  
10 B Felony - NRS 205.060) and ATTEMPT GRAND LARCENY (Category D Felony/Gross  
11 Misdemeanor - NRS 205.220.1, 205.222.2, 193.330), in the manner following, to-wit: That  
12 the said Defendant, on or about the 9th day of April, 2013, at and within the County of  
13 Clark, State of Nevada,

14 COUNT 1 - BURGLARY

15 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit  
16 larceny, Room No. 17151, of the EXCALIBUR HOTEL & CASINO, located at 3850 South  
17 Las Vegas Boulevard, Las Vegas, Clark County, Nevada, occupied by JOSHUA JARVIS.

18 COUNT 2 - ATTEMPT GRAND LARCENY

19 did then and there wilfully, unlawfully, feloniously and intentionally, with intent to  
20 deprive the owner permanently thereof, attempt to steal, take and carry away, lead away or  
21 drive away personal property of a value of \$650.00 or more, lawful money of the United  
22 States, belonging to JOSHUA JARVIS, to-wit: lawful money of the United States, an iPhone  
23 and other personal items, by taking and/or moving items within the room, but was stopped  
24 before he could take all the items.

25 ///

26 ///

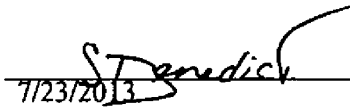
27 ///

28 ///

EXHIBIT 7

P:\WPDOCS\CO..

1 All of which is contrary to the form, force and effect of Statutes in such cases made  
2 and provided and against the peace and dignity of the State of Nevada. Said Complainant  
3 makes this declaration subject to the penalty of perjury.  
4

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6 7/23/2013

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(TK3)

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LAW LIBRARY  
RETURN AFTER 10 DAYS

**174.085. Proceedings not constituting acquittal; effect of acquittal on merits; proceedings constituting bar to another prosecution; retrial after discharge of jury; effect of voluntary dismissal.**

1. If a defendant was formerly acquitted on the ground of a variance between the indictment, information or complaint and proof, or the indictment, information, or complaint was dismissed upon an objection to its form or substance, or in order to hold a defendant for a higher offense without a judgment of acquittal, it is not an acquittal of the same offense.

2. If a defendant is acquitted on the merits, the defendant is acquitted of the same offense, notwithstanding a defect in the form or substance in the indictment, information, or complaint on which the trial was had.

3. When a defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment, information or complaint, except as otherwise provided in subsections 5 and 6, the conviction, acquittal or jeopardy is a bar to another indictment, information or complaint for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which the defendant might have been convicted under that indictment, information or complaint.

4. In all cases where a jury is discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress of the trial or after the cause is submitted to them, the cause may be again tried.

5. The prosecuting attorney, in a case that the prosecuting attorney has initiated, may voluntarily dismiss a complaint:

(a) Before a preliminary hearing if the crime with which the defendant is charged is a felony or gross misdemeanor; or

(b) Before trial if the crime with which the defendant is charged is a misdemeanor,

without prejudice to the right to file another complaint, unless the State of Nevada has previously filed a complaint against the defendant which was dismissed at the request of the prosecuting attorney. After the dismissal, the court shall order the defendant released from custody or, if the defendant is released on bail, exonerate the obligors and release any bail.

6. If a prosecuting attorney files a subsequent complaint after a complaint concerning the same matter has been filed and dismissed against the defendant:

NV CODE

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EXHIBIT 8

(a) The case must be assigned to the same judge to whom the initial complaint was assigned; and

(b) A court shall not issue a warrant for the arrest of a defendant who was released from custody pursuant to subsection 5 or require a defendant whose bail has been exonerated pursuant to subsection 5 to give bail unless the defendant does not appear in court in response to a properly issued summons in connection with the complaint.

7. The prosecuting attorney, in a case that the prosecuting attorney has initiated, may voluntarily dismiss an indictment or information before the actual arrest or incarceration of the defendant without prejudice to the right to bring another indictment or information. After the arrest or incarceration of the defendant, the prosecuting attorney may voluntarily dismiss an indictment or information without prejudice to the right to bring another indictment or information only upon good cause shown to the court and upon written findings and a court order to that effect.

#### **HISTORY:**

1967, p. 1416; 1971, p. 596; 1997, ch. 504, § 1, p. 2391.

#### **NOTES TO DECISIONS**

**Robbery convictions of defendants who entered guilty pleas did not bar subsequent prosecution for murder** committed during the robbery when victim died from his injuries on double jeopardy grounds; robbery and murder are separate and distinct offenses. *Carmody v. Seventh Judicial Dist. Court*, 81 Nev. 83, 398 P.2d 706, 1965 Nev. LEXIS 205 (Nev. 1965) (decision under former similar statute).

#### **A void conviction is not a bar to a second conviction.**

Where the initial complaint was fatally defective, the municipal court never acquired jurisdiction over the defendant, since the court was without jurisdiction, the defendant's conviction was void; therefore, the prior conviction is not a bar to the present proceedings, and double jeopardy has not attached. *Williams v. Municipal Judge of Las Vegas*, 85 Nev. 425, 456 P.2d 440, 1969 Nev. LEXIS 391 (Nev. 1969).

**The beating administered to a robbery victim with an empty firearm** after all the elements of the crime of robbery were complete, constituted a separate offense from the offense of robbery, and trying defendant for assault with intent to kill by virtue of said beating did not constitute double jeopardy. *State v. Feinzelber*, 76 Nev. 142, 350 P.2d 399, 1960 Nev. LEXIS 91 (Nev. 1960) (decision under former similar statute).

**Where a defendant has been placed in jeopardy in a trial which is terminated** prior to an acquittal or a conviction, retrial is not automatically barred; retrial is not prohibited by the double jeopardy bar if a prosecutor demonstrates "manifest necessity" for the mistrial. There was a manifest necessity for the mistrial, where the record established that the witness' own conduct was the sole reason for her failure to appear and the witness' absence would have effectively prevented the state from presenting its case.

NVCODE

2

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*Steven D. Grierson*

JOCP

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

*Plaintiff,*

-VS-

JAMES HOWARD HAYES aka  
James Howard Hayes, Jr.  
#2796708

*Defendant.*

CASE NO: C-16-315718-1

DEPT NO: XIX

**JUDGMENT OF CONVICTION  
(PLEA OF GUILTY-ALFORD)**

The Defendant previously appeared before the Court with counsel and entered a plea of guilty pursuant to Alford Decision to the crime of ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor) in violation of NRS 205.220.1, 205.222.2 193.330; thereafter, on the 6<sup>th</sup> day of March, 2019, the Defendant was present in court for sentencing with counsel MICHAEL W. SANFT, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense under the felony statute and SMALL HABITUAL Criminal Statute and, in addition to \$25.00 Administrative Assessment Fee plus the \$3.00 DNA Collection Fee, the Defendant is sentenced to - a MAXIMUM of ONE HUNDRED SEVENTY-FOUR (174) MONTHS and a MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to C315125; with TEN (10) DAYS credit for time served. As the \$150.00 DNA Analysis Fee and Genetic Testing have been previously imposed, the Fee and Testing in the current case are WAIVED.

DATED this 12<sup>th</sup> day of March, 2019.

*William D. Kephart*  
WILLIAM D. KEPHART  
DISTRICT COURT JUDGE

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent (before trial)	<input type="checkbox"/> Guilty Plea with Sent, (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

EXHIBIT 5



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"Office of the Clerk"

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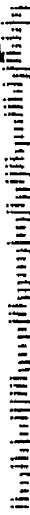
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HIGH DESERT STATE PRISON  
JUN 30 2019  
UNIT 6 C/D

FILED

JUL 05 2019

*Ann L. Blum*  
CLERK OF COURT

1 HALES, James H 1175077

2 / In Propria Personam  
3 Post Office Box 650 [HDSP]  
4 Indian Springs, Nevada 89018

5 8th Judicial District Court  
6 Clerk County, Nevada

7  
8 JAMES H. HALES

9 PETITIONER

10 vs.

11 STATE OF NEVADA; WALDEN B. WILLIAMS

12 RESPONDENT

Case No. A-19-793315-W

Dept No. XIX

Docket \_\_\_\_\_

14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE, that** \_\_\_\_\_

17 will come on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
18 at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M. In Department \_\_\_\_\_ of said Court.

20 CC:FILE

22 DATED: this 1 day of July, 2019.

24 BY: James H. Hales  
25 JAMES H. HALES # 1175077  
/In Propria Personam

A-19-793315-W  
NOTM  
Notice of Motion  
4847098



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CLERK OF THE COURT

JUL 05 2019

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FILED

JUL 05 2019

Case No. A-19-793315-W  
Dept. No. XIX

IN THE 84th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

John J. Williams  
CLERK OF COURT

James H. Hayes  
Petitioner,

v.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POSTCONVICTION)

State of Nevada; Warden B. Williams  
Respondent.

"Reply to  
STATE'S RESPONSE"

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison
2. Name and location of court which entered the judgment of conviction under attack: Clark County District Court Dept 19; Clark County, Nevada
3. Date of judgment of conviction: March 12, 2019
4. Case number: C-16-315718-1
5. (a) Length of sentence: 60 - 124 months

A-19-793315-W  
RPLY  
Reply  
4847109



CLERK OF THE COURT  
JUL - 5 2019  
RECEIVED

1 (a) Ground ONE: Violation of United States and Nevada  
2 Constitution & Federal and State Constitutional  
3 Violations & NRS Violations...

4  
5 Supporting FACTS (Tell your story briefly without citing cases or law.): THE STATE'S ENTIRE  
6 RESPONSE filed 6-26-19 is MERITLESS and each claim fails because  
7 the charge of Attempt Grand Larceny was dismissed at the conclusion  
8 of the preliminary hearing in Justice Court for lack of evidence,  
9 NO corpus delicti, NO slight or marginal evidence for the charge  
10 to be bound over to District Court. Leaving the District Court  
11 to never have jurisdiction for the charge of Attempt Grand  
12 Larceny or the ground(s) to proceed on the said charge against  
13 petitioner and all the state's claims are belied by the ~~fact~~ RECORD,  
14 the law, and the facts.

15 WHEREAS, it is black letter law in the State of Nevada as  
16 stated in NRS 174.085 that ONCE the petitioner was placed  
17 in jeopardy upon the filed criminal complaint in Justice Court  
18 and proceeded to preliminary hearing on the said charge and charge  
19 dismissed at the conclusion of the hearing that said charge  
20 is barred from any subsequent proceedings and the law  
21 is clear and unambiguous.

22 WHEREAS, the state's own admissions that the charge  
23 Attempt Grand Larceny was dismissed in Justice Court at  
24 the conclusion of the preliminary hearing (Page 3 at 24-25).  
25 So without a doubt it is clear and uncontradicted that  
26 petitioner was placed in jeopardy at the preliminary hearing  
27 under the charge's criminal complaint for the charge of  
28 Attempt grand larceny. Leaving the charge of Attempt Grand

1 CONTINUE: Violation of United States and Nevada  
2 (b) ~~§ 200.01~~ Constitution & Federal and State Constitutional  
3 Violations & NRS Violations...

4  
5 Supporting FACTS (Tell your story briefly without citing cases or law.): Larceny barred from any  
6 subsequent proceedings. Moreover, from the Amended information  
7 filed in open court November 2, 2018 making the Guilty Plea  
8 invalid, involuntary, unknowingly, and unintelligently  
9 that was actual prejudice to petitioner.

10 Whereas, the state knowingly and voluntarily filed  
11 a fraudulent UNCONSTITUTIONAL amended information in  
12 open court to deprive and mislead petitioner to his prejudice,  
13 that was malicious, unprofessional, and grossly unethical.  
14 As to deprive the petitioner of the protections that the  
15 Constitution was designed to protect him of and denied  
16 him due process of law. The amended information left the  
17 petitioner without knowledge as to the nature of the charge  
18 upon which he pleaded that he could not plead the crime  
19 with certainty as the said charge attempt grand larceny  
20 was dismissed at the conclusion of preliminary hearing  
21 in Justice Court leaving no causation or jurisdiction for  
22 District Court to proceed. When in fact, the character of  
23 the material evidence in the Amended information is false,  
24 due process inevitably been denied the petitioner and the  
25 proceedings was constitutionally inadequate.

26 Whereas, when the charge of Attempted Grand Larceny  
27 was dismissed that the state predicated its intent on for the  
28 charge of Burglary in the filed criminal complaint in Justice Court,

1 CONTINUE: Violation of United States and Nevada  
2 Constitution & Federal and State Constitutional  
3 Violations & NRS Violations...

4  
5 Supporting FACTS (Tell your story briefly without citing cases or law.): That the Burglary charge was  
6 set aside and it must be dismissed leaving no charge and no  
7 jurisdiction for the District Court to proceed at all Making  
8 the Guilty Plea invalid, involuntary, unknowingly, and un-  
9 intelligently that was actual prejudice to the petitioner.

10 WHEREAS, petitioner is not schooled in the law of the law  
11 that's why counsel is a must and had counsel not been ineffective  
12 by failing to investigate the facts of the case he would have  
13 known that the charge of attempted grand larceny was barred  
14 from all proceedings in District Court per NRS 174.085 and  
15 inform petitioner of such. But due to the fact, counsel failed to  
16 adequately investigate the law and the facts relevant to the  
17 case it left petitioner ignorant and with no plausible options  
18 that has greatly prejudice the petitioner and left him with  
19 irreparable injury. What in fact, a adequate investigation  
20 would have lead to a more favorable outcome and petitioner  
21 would not have entered a Alford Plea to attempt grand larceny  
22 as it would have lead to information for a better outcome as  
23 there was no evidence slight or marginal that petitioner committed  
24 the crime of attempted grand larceny and no more evident than  
25 the charge being dismissed at the conclusion of the preliminary  
26 hearing in Justice Court. So it's without question that counsel  
27 failed to inform petitioner regarding the details of the GPA.  
28 As petitioner still maintains Actual Innocence as he had permission

1 CONTINUE: Violation of United States and Nevada  
2 Constitution & Federal and State Constitutional  
3 Violations & NRS Violations...

4  
5 Supporting FACTS (Tell your story briefly without citing cases or law.): to be in said room on night  
6 in question and there was no loss or injury, no causation  
7 of that loss or injury and no reasonable jury would have  
8 convicted petitioner of attempt grand larceny nor the charge  
9 of Burglary. So this is a clear and convincing showing that  
10 petitioner's plea was involuntarily and unknowingly that  
11 was actual prejudice to petitioner and a miscarriage of justice.

12 Whereas, the sentence imposed was unreasonably disproportionate  
13 to the charge crime All grand larceny that easily shock the  
14 conscience as it was based on impetible and highly suspect  
15 evidence. As the state's amended notice to seek punishment  
16 as a habitual criminal was for the charge of burglary (2<sup>nd</sup> offense)  
17 not 24 grand larceny a wobbler. In addition, the credit card  
18 abuse in Texas was one count not ~~two~~ and a state jail crime  
19 that doesn't carry any prison time, mandatory supervision, nor  
20 parole not a category A, B, C, D, or E felony, but a state jail crime  
21 that is only punishable by jail time as a gross misdemeanor  
22 here in Nevada so its trivial and shall not have been used in  
23 adjudication and the Burglary conviction used was not  
24 a prior felony as it occurred in 2016 and the instant  
25 offense All grand larceny occurred in 2013. Furthermore, petitioner  
26 did object to validity of felony convictions used to adjudicate.  
27 So this is a clear and convincing showing that the guilty plea  
28 was involuntarily and unknowingly that was actual prejudice.

CONTINUE:

Whereas, petitioner and his counsel objected to errors in the PSI prior to sentencing. When in fact, petitioner's counsel made oral motion to the court to continue sentencing hearing until corrections were made to petitioner's PSI to no avail.

Whereas, the petitioner must understand the consequences of a guilty plea and the record must affirmatively show that the petitioner understands that a habitual criminal determination may be a consequence of his plea. In the instant case petitioner was never conversed on the possibility of a habitual sentence and was surprised by the habitual treatment as there was no written notice for the negotiated charge of 1st. grand larceny that the state would seek habitual treatment and the judge inform petitioner that the maximum punishment would be 19 to 48 months. And petitioner's counsel inform petitioner that he had it negotiated to gross-misdemeanor with time credit served.

Wherefore, petitioner requests that due to the invalid Guilty plea and the Guilty Plea being involuntarily and unknowingly entered and counsel ineffective assistance that this Honorable court grant petitioner's writ of Habeas Corpus and allow such relief to which petitioner is entitled. As a writ must issue; when the jurisdiction of the court has been exceeded and when the process is defective in some matter of substance required by law NRS 34.500



BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 2<sup>nd</sup> day of the month of July, 2019.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

#### VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

#### AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number A-19-793315-W Does not contain the social security number of any person.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

#### CERTIFICATE OF SERVICE BY MAIL

I, James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 2<sup>nd</sup> day of the month of July, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070

Attorney General of Nevada  
100 North Carson Street  
Carson City, Nevada 89701

Clark County District Attorney's Office  
200 Lewis Avenue  
Las Vegas, Nevada 89155

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

\* Print your name and NDOC back number and sign

Check # 1125822  
H.O.S.P.  
P.O. Box 602  
Roaders Group, NY  
89020

UNIT 6 C/D  
JUL 02 2019

HIGH DESERT STATE PRISON

LAS VEGAS  
NV 890  
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PM 5 L

Master FIRST-CLASS MAIL  
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US POSTAGE \$000.65



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Clerk County District Courts  
"Office of the Clerk"

200 Lewis Ave, 3rd Floor

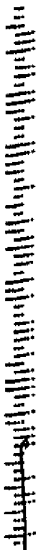
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Las Vegas, Nevada

89155-1160

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FILED

JUL 12 2019

27

AFFIDAVIT OF ISSUANCE of writ of Habeas Corpus

STATE OF NEVADA )  
COUNTY OF CLARK )

ss: District Court Case No: A-19-793315-W

Dept: 19

TO WHOM IT MAY CONCERN:

I, James M. Hayes, the undersigned, do hereby swear that all the following statements and description of events, are true and correct, of my own knowledge, information, and belief, and to those I believe to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT, James M. Hayes is the Affiant in this affidavit and is currently incarcerated at H.O.S.P brings cause that this Honorable court issue writ of habeas corpus for affiant James Hayes (petitioner).

WHEREAS, the Clark County District Courts did not have subject matter jurisdiction for the offense charged Attempt Grand Larceny.

WHEREAS, neither NRS 173.095, NRS 174.145, NRS 174.085(3) nor this section permits the court the amendment of an information to restate a charge that has been dismissed by the magistrate at the preliminary examination. Once a judicial officer has determined that probable cause does not exist it would be the most naked deprivation of due process and an intolerable interference with the privilege of the writ to retain petitioner in custody.

WHEREAS, the state knowingly and intelligently filed a fraudulent unconstitutional GPA and Amended Info. and it is unconscionable for the state to attempt to insulate a conviction from collateral constitutional review by conditioning its willingness to enter into

A-19-793315-W

AFFI

Affidavit

4860669



RECEIVED

JUL 12 2019

CLERK OF THE COURT

1 plea negotiations on a defendant's "waiver of the rights"

2 where, the GPA was violative of constitutional  
3 safeguards and NRS 174.085 violation when the charge of  
4 Attempt Grand Larceny was dismissed at the conclusion  
5 of preliminary hearing in Justice Court for lack of evidence,  
6 no corpus delicti, slight or marginal evidence to proceed to  
7 District Court. Thus, District Court had no power to pronounce  
8 the sentence and its judgment was void for lack of subject  
9 matter jurisdiction. So this court required no jurisdiction  
10 of the petitioner or the cause and on its own motion  
11 should search the record and take notice that this  
12 jurisdictional defect is apparent, and vacate because  
13 it is a nullity.

14 where, there was no expectation to support the Att.  
15 grand larceny charge and this mistake of fact worked to the  
16 extreme detriment of the petitioner. As the guilty plea was the  
17 product of ignorance that was discovered after judgment  
18 and now the petitioner stands convicted of a crime he  
19 did not commit and a conviction upon a charge not  
20 made and the judgment shall be collaterally impeached.

21  
22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT High Desert State Prison this 8<sup>th</sup> day of July 2019

24 IN FRONT OF: Penalty of Perjury

BY James H. Hayes

NDOC # 1175078

25 I, James H. Hayes, certify, declare, or state  
26 that the foregoing is true and correct, to  
27 the best of my knowledge and belief,  
28 in accordance with NRS 208.165 and 28  
USCA § 1764

Executed on the 8th day of July, 2019

44443 "11950844  
H.B.S.P  
P.O. Box 652  
Tahoe Springs, NV  
89042

3762

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Clark County District Courts  
"Office of the Clerk"

200 Lewis Ave, 3rd Floor  
Las Vegas, Nevada

8910136300 COSTS  
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UNIT 9 CID  
JUL 09 2019  
HIGH DESERT STATE PRISON

27

FILED

JUL 24 2019

*John L. Williams*  
CLERK OF COURT

1 JAMES H. HAYES # 1175077  
2 /In Propria Personam  
3 Post Office ~~Box 650 (HDSF)~~ P.O. Box 509 (PCC)  
4 Indian Springs, Nevada ~~89018~~  
5 Picoche 89043  
6  
7

8 State of Nevada )  
9 Respondent )  
10 vs. )  
11 JAMES H. HAYES )  
12 Petitioner )  
13

Case No. A-19-793315-W  
Dept. No. 19  
Docket \_\_\_\_\_

14 NOTICE OF CHANGE OF ADDRESS

15 COMES NOW, Petitioner, James H. Hayes, in Proper Person,  
16 hereby gives notice to the above-entitled court, that due to Nevada Department  
17 of Corrections action, Mr. Hayes has been transferred from  
18 H.D.S.P TO: Picoche Conservation Camp (PCC).  
19 Therefore, Petitioner, James H. Hayes, prays that this  
20 Honorable Court will henceforth, send all documents/paperwork concerning the  
21 above-cited case number to the new address.

22 CC: FILE

23 DATED: this 10 day of July, 2019.

24 Respectfully submitted,

25 RECEIVED

JUL 24 2019

CLERK OF THE COURT

26 BY: James H. Hayes  
27 JAMES H. HAYES # 1175077  
28 /In Propria Personam



5

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice of

CHANGE of Address

(Title of Document)

filed in District Court Case number A-19-793315-W

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

James H. Hayes  
Signature

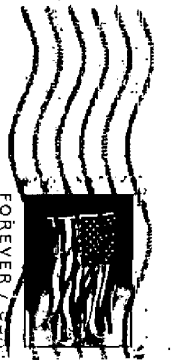
2-10-19  
Date

JAMES H. HAYES  
Print Name

PETITIONER  
Title

Pages #1195079  
Pec  
P.O. Box 509  
Rochester, NY 14604-3 -

LAS VEGAS NV 890  
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Clerk County District Courts  
Office of the Clerk

200 LEWIS AVE; 3rd Floor

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1 NOH

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

4 James Hayes, Plaintiff(s)

5 vs.

6 Nevada State of, Defendant(s)

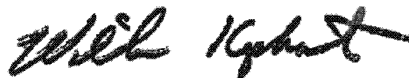
Case No.: A-19-793315-W

Dept: Department 19

7 **AMENDED**  
8 **NOTICE OF HEARING FOR**  
9 **PETITION OF WRIT OF HABEAS CORPUS**

10 PLEASE TAKE NOTICE that this matter is set for Review on **August 19,**  
11 **2019**, at the hour of **8:30 a.m.**, in District Court Department 19 in the Regional Justice  
12 Center, 200 Lewis Avenue, 16th Floor Floor, Courtroom 16B, Las Vegas, Nevada. Your  
13 presence is required.

14  
15 DATED: July 29, 2019



16  
17  
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20 William D. Kephart  
21 District Court Judge  
22 Department 19  
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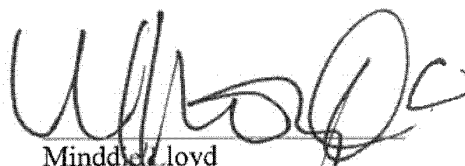
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**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date e-filed, this document was copied through e-mail, placed in the attorney's folder in the Regional Justice Center or mailed to the proper person as follows:

James H Hayes  
#1175077  
P.O.Box 650  
Indian Springs, NV 89070

Steven B Wolfson  
Juvenile Division - District Attorney's Office  
601 N Pecos Road  
Las Vegas, NV 89101

  
Mindy Lloyd  
Judicial Executive Assistant  
Department 19

FILED

AUG 09 2019

CLERK OF COURT

AFFIDAVIT OF

factual Legality

STATE OF NEVADA )

SS:

8th Judicial District Court

COUNTY OF CLARK )

Case # A-19-793315-IN

TO WHOM IT MAY CONCERN:

I, James H. Hayes, the undersigned, do hereby swear that all the following statements and description of events, are true and correct, of my own knowledge, information, and belief, and to those I believe to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT James H. Hayes, PETITIONER, is currently incarcerated at Pioche Correctional Camp (PCC) allege the following facts supporting a Miscarriage of Justice.

WHEREAS, the state knowingly and voluntarily filed a fraudulent unconstitutional amended information in open court Clark County District Court XIX, to deprive and mislead petitioner to his prejudice that was malicious, unprofessional, and in BAD FAITH.

WHEREAS, a criminal complaint was filed in Justice Court, Las Vegas Township case #13F10723X on 7-23-2013, charging petitioner having committed the crime(s) Burglary and Attempt Grand Larceny on or about the 9th day of April 2013.

WHEREAS, on or about the 14th day of June 2016 the petitioner face jeopardy on the charge(s) of Burglary and Attempt Grand Larceny by the way of preliminary hearing in Justice Court Dept #3 and at the conclusion of the prelin examination the Burglary charge was bound over to District Court and the charge of Attempt Grand Larceny was dismissed for lack of evidence, no corpus delicti, slight or marginal evidence to proceed to district court and petitioner's bond for Attempt Grand Larceny

A-19-793315-W

AFF

Affidavit

4856244



CLERK OF THE COURT

AUG 09 2019

RECEIVED

1 was executed.

2       Whereas, it is Black Letter Law in the State of Nevada as  
3 stated in NRS 174.085 that once the appellant was placed in  
4 jeopardy upon the filed criminal complaint in Justice Court  
5 and proceeded to preliminary hearing on the said charge  
6 and charge dismissed by Justice Court Judge at the conclusion  
7 of the hearing that said charge is barred from any subsequent  
8 proceedings and the law is clear and unambiguous.

9       Whereas, neither NRS 173.095 or NRS 174.145 permits the  
10 court the amendment of an information to restate a charge  
11 that has been dismissed by the Justice Court Magistrate  
12 at the preliminary examination.

13       Whereas, when the charge of attempted Grand larceny  
14 was dismissed that the state predicated its intent on for  
15 the charge of Burglary in the filed criminal complaint in  
16 Justice Court, then the Burglary charge was fatal and it  
17 to must have been dismissed leaving no charge(s) and  
18 no jurisdiction for the District court to proceed at all.

19       Whereas, it is unconscionable for the state to  
20 attempt to insulate a conviction from collateral constitutional  
21 review by conditioning its willingness to enter into

22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT PCC

this 26<sup>th</sup> day of July 2019

24 IN FRONT OF:

BY James H. Jones  
NDOC # 1175077

1 plea negotiations on appellant's waiver of the rights to  
2 pursue post-conviction remedies.

3       Whereas, the state's amended notice to seek punishment  
4 as a habitual criminal was for the charge of Burglary not the  
5 negotiated charge attempt grand larceny a wobbler. In addition  
6 the credit card Abuse conviction in Texas is a state jail crime  
7 that doesn't carry any prison term, mandatory supervision  
8 nor parole and is not a category A, B, C, D, or E felony but a  
9 state jail crime that is only punishable by jail time so at  
10 best its trivial and shall not been used in adjudication  
11 and the Burglary conviction used was not a prior  
12 felony as it occurred in 2016 just three years after the  
13 said attempt grand larceny that occurred in 2013. Leaving  
14 appellant deemed a habitual criminal on his first time  
15 being sentence to prison with one prior felony conviction.

16       Whereas, consecutive sentence imposed by the district court  
17 violates the legislative intent of NRS 126.035 and does not  
18 serve the interests of justice, as the instant offense attempt  
19 grand larceny took place on or about April 9, 2013 and was not  
20 subsequent to Burglary conviction that occurred April 2, 2016  
21 but prior. In addition, appellant should have been given  
22 credit for time served from the date the attempted grand  
23 larceny charge was dismissed and bond exonerated at  
24 the conclusion of the preliminary hearing June 14, 2016 to  
25 the present towards his sentence.

UNDER PENALTY OF PERJURY

I, the undersigned, certify, declare, or state that the foregoing is true and correct, to the best of my knowledge and belief, in accordance with NRS 208.165 and 28 USCA § 1746.

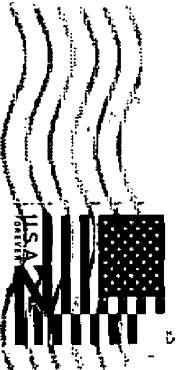
Excuted on the 26<sup>th</sup> day of July, 2019

James N. Hayes James N. Hayes # 1175077

Name and Prison BAC#, printed

Stamps # 1125072  
P.C.C  
P.O. Box 569  
Rochester, NY 891313

LES VEGAS NV 890  
07 AUG 2019 PM 4 L



Clark County District Courts  
"Office of the clerk"

200 LEWIS AVE, 3RD FLOOR  
LAS VEGAS, NEVADA

89155-1160

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OF FILE PLEASE

27

**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> Floor.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Acting Court Division Administrator

October 4, 2019

Case #: A-19-793315-W

James H. Hayes

Vs.

State of Nevada

Mr. Hayes,

The Clerk's Office is in receipt of your "Preemptory Challenge of Judge." The Clerk's office is unable to process your document(s) due to the following:

There is a required Court a filing fee of \$450.00 for Preemptory Challenge in this civil matter, this fee needs to be collected upon this filing. All originals documents are being returned and request that you please resubmit with payment of the required filing fee, (in a form of a money order or Cashier's check, made out to the Clerk of the Court), or *If you are needing to request fee waiver then submit / mail an Application and Order to Proceed in Forma Pauperis Packet, these documents can be located on the District Court website at [www.clarkcountycourts.us](http://www.clarkcountycourts.us)- forms - under civil /criminal /probate forms.*

Pursuant to Nevada Statute we are not able to provide legal advice or assistance filling out your forms. For help with your pleadings, please consult local law library for information.

**TO ENSURE THAT THE DOCUMENTS ARE PROPERLY PROCESSED, PLEASE RETURN THIS LETTER WITH THE REQUESTED CORRECTIONS OR ADDITIONAL DOCUMENTS/FORMS.**

Thank you,  
Deputy Clerk #27

A-19-793315-W  
LSF  
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3



IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK

JAMES H. HAYES  
Petitioner/Plaintiff,

v.

STATE OF NEVADA  
Respondent/Defendant

Case No. A-19-793315-1N; C-16-315718-1

Dept. No. 19

Docket No. \_\_\_\_\_

PREEMPTORY CHALLENGE OF JUDGE

COMES NOW, Petitioner/Plaintiff, JAMES H. HAYES, pro per,  
and in Forma Pauperis, pursuant to Supreme Court Rule 48.1, wishes to exercise the right to change Judge.

The current Judge in the above-entitled action is William D. Kephart.

DATED this 26 day of September, 20019

Respectfully submitted,

James H. Hayes  
Petitioner/Plaintiff

RECEIVED  
OCT - 2 2019  
CLERK OF THE COURT

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

I, JAMES H. HAYES, NDOC# 1175077,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED PREEMPTORY challenge  
of Judge

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

DATED THIS 26 DAY OF September, 2019.

SIGNATURE: James H. Hayes

INMATE PRINTED NAME: JAMES H. HAYES

INMATE NDOC # 1175077

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

PCC  
P.O. Box 509  
Pioche, NV 89043



1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 TALEEN PANDUKHT  
6 Chief Deputy District Attorney  
7 Nevada Bar #05734  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES,  
13 aka James Howard Hayes Jr.,  
14 #2796708

Defendant.

CASE NO: A-19-793315-W

DEPT NO: XIX

15 **STATE'S RESPONSE TO DEFENDANT'S**  
16 **FIRST AND SECOND ADDENDUM TO PETITION FOR WRIT OF HABEAS**  
17 **CORPUS (POST-CONVICTION)**

18 DATE OF HEARING: NOVEMBER 18, 2019  
19 TIME OF HEARING: 8:30 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
21 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and  
22 hereby submits the attached Points and Authorities in Response to Defendant's First and  
23 Second Addendum to Petition for Writ of Habeas Corpus.

24 This Response is made and based upon all the papers and pleadings on file herein, the  
25 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
26 deemed necessary by this Honorable Court.

27 ///

28 ///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On or about July 23, 2013, James H. Hayes (hereinafter, "Defendant") was charged by  
4 way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS  
5 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross  
6 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in  
7 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound  
8 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

9 On June 17, 2016, the State filed an Information with the District Court, charging  
10 Defendant with one count of BURGLARY. On August 29, 2017, the State filed an Amended  
11 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant  
12 to a Guilty Plea Agreement ("GPA"), Defendant entered a plea of Guilty pursuant to North  
13 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY. The  
14 terms of the GPA are as follows:

15 The State has agreed to make no recommendation at the time of sentencing. The  
16 State has no opposition to probation with the only condition being thirty (30)  
17 days in the Clark County Detention Center (CCDC), with thirty (30) days credit  
for time served.

18 GPA at 1:22-24. The GPA further includes, in pertinent part, the following acknowledgement:

19 I understand and agree that, if...an independent magistrate, by affidavit review,  
20 confirms probable cause against me for new criminal charges including reckless  
21 driving or DUI, but excluding minor traffic violations, the State will have the  
22 unqualified right to argue for any legal sentence and term of confinement  
23 allowable for the crime(s) to which I am pleading guilty, including the use of  
24 any prior convictions I may have to increase my sentence as a habitual criminal  
to five (5) to twenty (20) years, Life without the possibility of parole, Life with  
the possibility of parole after ten (10) years, or a definite twenty-five (25) year  
term with the possibility of parole after ten (10) years.

25 GPA at 2: 1-9. An Amended Information reflecting the new charge of ATTEMPT GRAND  
26 LARCENY was filed in conjunction with the GPA. Defendant was adjudged Guilty pursuant  
27 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

28 ///

1 On January 31, 2019, the State filed a State's Notice of Motion and Motion to Revoke  
2 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace  
3 had found probable cause to charge Defendant with Burglary for acts committed on or around  
4 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February  
5 4, 2019.

6 At the sentencing hearing on March 6, 2019, the State argued that it had regained the  
7 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that  
8 Defendant should be punished under NRS 207.010 (the "Small Habitual Statute"). The Court  
9 agreed, and Defendant was sentenced to sixty (60) to one hundred seventy-four (174) months  
10 in the Nevada Department of Corrections (NDOC), consecutive to Defendant's sentence in  
11 another case (C315125). The Court also awarded Defendant ten (10) days credit for time  
12 served. The Judgment of Conviction in this case was filed on March 12, 2019.

13 Defendant filed a Notice of Appeal on March 28, 2019. Defendant's Case Appeal  
14 Statement was filed on August 9, 2019. Defendant's Appeal of the instant case is still pending  
15 before the Nevada Supreme Court (Case Number 78590).

16 On April 15, 2019, Defendant filed a Petition for Writ of Habeas Corpus ("Petition").  
17 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the  
18 Petition on August 19, 2019, the Court noted that Defendant filed two Addenda to his original  
19 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court's  
20 order, the State responds to the Addenda as follows:

### 21 ARGUMENT

22 The Nevada Supreme Court has explained:

23 "[A] guilty plea represents a break in the chain of events which has preceded it  
24 in the criminal process. When a criminal defendant has solemnly admitted in  
25 open court that he is in fact guilty of the offense with which he is charged, he  
26 may not thereafter raise independent claims relating to the deprivation of  
constitutional rights that occurred prior to the entry of the guilty plea."

27 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411  
28 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea "waive[s] all

1 constitutional claims based on events occurring prior to the entry of the plea[], except those  
2 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100  
3 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d  
4 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be  
5 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness  
6 of counsel.”). Under NRS 34.810,

7 1. The court *shall* dismiss a petition if the court determines that:

8 (a) The petitioner’s conviction was upon a plea of guilty or guilty but  
9 mentally ill and the petition is not based upon an allegation that the plea was  
10 involuntarily or unknowingly entered or that the plea was entered without  
effective assistance of counsel.

11 ...  
12 unless the court finds both cause for the failure to present the grounds and actual  
prejudice to the petitioner.

13 (emphasis added). Furthermore, the Nevada Supreme Court has held that “challenges to the  
14 validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must  
15 first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a  
16 direct appeal must be pursued on direct appeal, or they will be *considered waived in*  
17 *subsequent proceedings*.” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)  
18 (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979  
19 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were  
20 or could have been presented in an earlier proceeding, unless the court finds both cause for  
21 failing to present the claims earlier or for raising them again and actual prejudice to the  
22 petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other  
23 grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims  
24 are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at  
25 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

26 A proper petition for post-conviction relief must set forth specific factual allegations  
27 that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part, “[Petitioner]  
28 must allege specific facts supporting the claims in the petition [he] file[s] seeking relief from

1 any conviction or sentence. Failure to raise specific facts rather than just conclusions may  
2 cause the petition to be dismissed.” “Bare” and “naked” allegations are not sufficient to  
3 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.  
4 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted  
5 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,  
6 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

7 **I. DEFENDANT’S FIRST ADDENDUM DOES NOT PROVIDE GROUNDS FOR**  
8 **RELIEF**

9 **A. Defendant’s Claims of Ineffective Assistance of Counsel are Belied by the**  
10 **Record**

11 Defendant’s first claim alleges that his counsel, Michael Sanft, Esq. (“Mr. Sanft”) failed  
12 to provide “zealous and quality representation.” First Addendum to Petition for Writ of Habeas  
13 Corpus (“1 Add.”) at 6. However, this claim is belied by both the GPA and the record of  
14 Defendant’s entry of plea.

15 The text of the GPA includes the following (labeled “VOLUNTARINESS OF PLEA”),  
16 in pertinent part:

17 I have discussed the elements of all of the original charge(s) against me with  
18 my attorney and I understand the nature of the charge(s) against me.

19 ...

20 I have discussed with my attorney any possible defenses, defense strategies  
21 and circumstances which might be in my favor.

22 All of the foregoing elements, consequences, rights, and waiver of rights  
23 have been thoroughly explained to me by my attorney.

24 ...

25 I am signing this agreement voluntarily, after consultation with my  
26 attorney...

27 ...

28 My attorney has answered all my questions regarding this guilty plea  
agreement and its consequences to my satisfaction and I am satisfied with the  
services provided by my attorney.

///

///

1 GPA at 5-6. Defendant affirmed that he had read the GPA. Recorder's Transcript of Hearing:  
2 November 7, 2018 ("Transcript") at 2:24-25, 3:21-22. Defendant affirmed that Mr. Sanft  
3 answered any questions regarding the GPA. Transcript at 3:1-3, 3:23-4:6. Defendant affirmed  
4 that he understood the charge in the Amended Information. Id. at 3:4-6, 4:7-9. Defendant  
5 affirmed that he signed the GPA. Id. at 3:16-20. Contrary to Defendant's assertion that he was  
6 told he was agreeing to a gross misdemeanor, when asked by the Court about his  
7 understanding, Defendant acknowledged two possible sentencing outcomes:

8 THE COURT: Okay. Can you tell me what your understanding is that you're  
9 facing as a form of punishment for the charge of attempt grand larceny here in  
10 the State of Nevada?

11 THE DEFENDANT: One to four in the Nevada Department of Corrections.

12 THE COURT: Okay.

13 THE DEFENDANT: Or a gross misdemeanor of 364 days.

14 THE COURT: Okay. You can also be fined up to \$5,000 if I treat it as a felony.  
15 And you could be fined up to \$2,000 if I treat it as a gross misdemeanor?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that?

18 THE DEFENDANT: Yes, sir.

19 Id. at 4:16-5:3. Defendant affirmed, both verbally to the court and by signing the GPA, that he  
20 knew the terms of the GPA, the potential outcomes of his plea, and that Mr. Sanft answered  
21 all the questions Defendant had to Defendant's satisfaction. Therefore, pursuant to Hargrove  
22 and Mann, Defendant is not entitled to relief on these claims.

23 Because Defendant's first allegation is belied by the record, this Court should deny  
24 Defendant's Petition, and the Addenda thereto.

25 **B. Defendant's Claim Regarding Notice of Intent to Seek Habitual Treatment**  
26 **was Waived and is Belied by the Record**

27 Defendant's second claim is that the State failed to properly notice its intent to seek  
28 habitual treatment at sentencing. 1 Add. at 7. This claim is not cognizable in a Petition for Writ  
of Habeas Corpus and was waived by Defendant's failure to raise it on direct appeal.

Defendant's second claim does not relate to the voluntariness of Defendant's plea, or  
the effectiveness of Defendant's counsel. This claim was more appropriate for a direct appeal,



1 and Defendant should have pursued it thus. NRS 34.810(1); Franklin, 110 Nev. at 752, 977  
2 P.2d at 1059. In the instant Petition and the Addenda thereto, Defendant fails to show any  
3 instance of good cause or prejudice for not bringing these claims on a direct appeal and raising  
4 them for the first time only in these habeas proceedings. Indeed, Defendant cannot establish  
5 good cause, because Defendant unconditionally waived his right to a direct appeal, “including  
6 any challenge based upon reasonable constitutional, jurisdictional or other grounds that  
7 challenge the legality of the proceedings.” GPA at 5:3-7. This claim has been affirmatively  
8 waived and, therefore, must be summarily denied.

9 Furthermore, Defendant’s allegation is belied by the record. A review of the District  
10 Court record reveals that the State filed a Notice of Intent to Seek Punishment as a Habitual  
11 Criminal on November 21, 2016. The State further filed an Amended Notice of Intent to Seek  
12 Punishment as a Habitual Criminal on August 29, 2017. At the sentencing hearing, the Court  
13 found that the State had not only properly noticed but had met its burden to seek punishment  
14 as a habitual criminal. See Court Minutes – March 6, 2019 (“Sentencing Minutes”). Pursuant  
15 to Hargrove and Mann, Defendant is not entitled to relief on this claim.

16 Because Defendant affirmatively waived this claim, and furthermore because this claim  
17 is belied by the record, this Court should Deny Defendant’s Petition and the Addenda thereto.

18 **C. Defendant’s Claim Regarding Double Jeopardy Does Not Entitle Defendant**  
19 **to Relief**

20 Defendant’s final claim is that his conviction is invalid because the charge of Attempt  
21 Grand Larceny, as alleged in the original Criminal Complaint, was not bound over to the  
22 District Court. 1 App. at 8. Like Defendant’s second claim, this claim is not cognizable in a  
23 Petition for Writ of Habeas Corpus and was waived by Defendant’s failure to raise it on direct  
24 appeal.

25 This claim does not challenge the voluntariness of Defendant’s guilty plea, nor does it  
26 allege ineffective assistance of counsel. Therefore, this claim should have been pursued on  
27 direct appeal, rather than for the first time in a petition. NRS 34.810(1); Franklin, 110 Nev. at  
28 752, 977 P.2d at 1059. Defendant does not attempt to argue good cause or prejudice for raising

1 this claim for the first time in the instant proceedings. Such an argument would be meritless,  
2 as Defendant specifically and unconditionally waived his right to a direct appeal on this issue,  
3 as discussed in Section I(B), *supra*. GPA at 5:9-13. Therefore, this claim has been  
4 affirmatively waived and must be summarily denied.

5 **II. DEFENDANT'S SECOND ADDENDUM DOES NOT PROVIDE GROUNDS**  
6 **FOR RELIEF**

7 **A. Defendant Does Not Adequately Claim Ineffective Assistance of Counsel**

8 In Defendant's Petition for Writ of Habeas Corpus, Addendum Two ("2 Add."),  
9 Defendant first claims that he received ineffective assistance of counsel. 2 Add. at 6. However,  
10 Defendant makes only a bare and naked allegation, which, pursuant to Hargrove does not  
11 entitle Defendant to relief.

12 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
13 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
14 Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64. See also State v.  
15 Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323. Under Strickland, a defendant must show first  
16 that his counsel's representation fell below an objective standard of reasonableness, and  
17 second, that but for counsel's errors, there is a reasonable probability that the result of the  
18 proceedings would have been different. 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068;  
19 see also Lyons, 100 Nev. at 432, 683 P.2d at 505 (adopting the Strickland two-part test).  
20 "[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
21 inquiry in the same order or even to address both components of the inquiry if the defendant  
22 makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

23 The Court begins with the presumption of effectiveness and then must determine  
24 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
25 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). The role of a court  
26 in considering allegations of ineffective assistance of counsel is "not to pass upon the merits  
27 of the action not taken but to determine whether, under the particular facts and circumstances  
28 of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State,

1 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). In essence, the court must “judge the  
2 reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as  
3 of the time of counsel's conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

4 Even if a defendant can demonstrate that his counsel’s representation fell below an  
5 objective standard of reasonableness, he must still demonstrate prejudice and show a  
6 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
7 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
8 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
9 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-  
10 89, 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the  
11 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.  
12 State, 112 Nev. 980, 988 (1996). For a guilty plea, a defendant “must show that there is a  
13 reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
14 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).

15 Defendant simply states, “there is a reasonable probability that, but for counsel’s  
16 failures and unprofessional errors, the result would have been different.” 2 Add. at 6:5-8.  
17 Defendant fails to provide any specific instance of Mr. Sanft’s perceived ineffectiveness, and  
18 Defendant does not attempt to show how, exactly, the results would have been different had  
19 Mr. Sanft acted differently. Therefore, Defendant’s allegation amounts to a bare and naked  
20 conclusory statement that does not entitle Defendant to relief under Hargrove and does not  
21 meet Defendant’s burden under Strickland.

22 Because Defendant does not meet his burden, this Court should deny Defendant’s  
23 Petition and the Addenda thereto.

24 **B. Defendant’s Second and Third Claims Do Not Entitle Defendant to Relief**

25 Defendant claims that his conviction is a violation of the prohibition against double  
26 jeopardy. 2 Add. at 7. Defendant also claims that he was the subject of an “inappropriate  
27 personal attack and a judicial violation.” 2 Add. at 8:2-3. Like the claims in Defendant’s first

28 ///

1 Addendum, these claims are not properly raised for the first time in a Petition for Writ  
2 of Habeas Corpus and were waived by Defendant's failure to raise them on direct appeal.

3 Neither of these two claims challenge the validity of Defendant's guilty plea or allege  
4 ineffective assistance of counsel. These claims were appropriate for a direct appeal, and  
5 Defendant should have pursued them thus. NRS 34.810(1); Franklin, 110 Nev. at 752, 977  
6 P.2d at 1059. In the instant Petition, Defendant fails to show any instance of good cause or  
7 prejudice for not bringing these claims on a direct appeal and raising them for the first time  
8 only in these habeas proceedings. Indeed, he cannot establish good cause, because in his Guilty  
9 Plea Agreement, Defendant specifically agreed that he understood he was "unconditionally  
10 waiving [his] right to a direct appeal of this conviction, including any challenges based upon  
11 reasonable constitutional, jurisdictional or other grounds that challenge the legality of the  
12 proceedings as stated in NRS 177.015(4)." GPA at 5:4-7. These claims have been  
13 affirmatively waived and, therefore, must be summarily denied.

14 **CONCLUSION**


15 For the foregoing reasons, the State respectfully requests that this Court DENY  
16 Defendant's Petition for Writ of Habeas Corpus, and the First and Second Addendum thereto,  
17 in their entirety.

18 DATED this 10 day of October, 2019.

19 Respectfully submitted,

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

23 BY

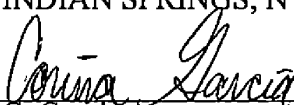
  
24 TALEEN PANDUKHT  
25 Deputy District Attorney  
26 Nevada Bar #05734  
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**CERTIFICATE OF MAILING**

I hereby certify that service of the above and foregoing was made this 10<sup>th</sup> day of  
October, 2019, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JAMES H. HAYES, BAC #1175077  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV, 89070

BY   
C. Garcia  
Secretary for the District Attorney's Office

TP/jj/cg/L2

James H. Hayes # 1175077  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

27  
FILED  
NOV 04 2019  
CLERK OF COURT

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

James H. Hayes

Petitioner,

vs.

State of Nevada

Respondent(s).

Case No. A-19-793315-W

Dept. No. 19

Docket

"PETITIONER'S REPLY"

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

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NOV 04 2019  
CLERK OF THE COURT

A-19-793315-W  
RPLY  
Reply  
4874161



1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating  
2 additional grounds and facts supporting same.

3 23. -- (a) GROUND ONE: "PETITIONER'S REPLY" AND ITS WORTHWHILE  
4 NOTING THAT PETITIONER HAS NOT RECEIVED THE  
5 STATE'S RESPONSE AS OF THE DATE OF THIS REPLY.  
6 THE 1<sup>ST</sup> DAY OF NOVEMBER 2019...

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

8 I HAVE EXPLICITLY RESERVED MY RIGHT NOT TO BE  
9 COMPELLED TO PERFORM UNDER ANY CONTRACT OR  
10 AGREEMENT THAT I HAVE NOT ENTERED INTO KNOWINGLY,  
11 VOLUNTARILY, AND INTENTIONALLY AND THAT MY VALID  
12 RESERVATION OF RIGHTS HAS PRESERVED ALL MY RIGHTS  
13 AND PREVENTED THE LOSS OF ANY SUCH RIGHTS BY  
14 APPLICATION OF THE CONCEPTS OF WAIVER OR ESTOPPEL.

15 WHEREAS, IT IS UNCONSCIONABLE FOR THE STATE TO  
16 ATTEMPT TO INSULATE A CONVICTION FROM COLLATERAL  
17 CONSTITUTIONAL REVIEW BY CONDITIONING ITS WILLINGNESS  
18 TO ENTER INTO PLEA NEGOTIATIONS ON PETITIONER'S "WAIVER  
19 OF THE RIGHTS" TO PURSUE POST-CONVICTION REMEDIES.

20 WHEREAS, THE PETITIONER IS ENTITLED TO HABEAS  
21 CORPUS IF THERE IS NO MATERIAL DISPUTE AS TO A  
22 MISTAKE OF FACT RELATING TO HIS CONVICTION (7 R.C.P. 32d)  
23 AND SET ASIDE THE JUDGMENT OF CONVICTION AFTER  
24 SENTENCE IN ORDER TO CORRECT MANIFEST INJUSTICE.  
25 WHERE, AS HERE, BOTH PARTIES AGREE TO THE FACT THAT  
26 THE CHARGE OF ATTEMPT GRAND LARCENY WAS DISMISSED  
27 AT THE CONCLUSION OF THE PRELIMINARY EXAMINATION

1 23. (b) ~~GROUND TWO~~ PETITIONER'S REPLY "CONTINUE"  
2  
3  
4

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): by  
6 magistrate for lack of evidence, no corpus delicti,  
7 slight or marginal evidence, and this is clear and  
8 convincing dismissal of an action.

9 Whereas, the state did violate NRS 178.562(1)  
10 by bringing another prosecution following dismissal  
11 of an action to constitute "another prosecution"  
12 without another pending vehicle for the prosecution  
13 of the charge of Attempt Grand Larceny that runs  
14 afoul of the provisions of NRS 178.562(1) and BARS  
15 further prosecution of the petitioner on that charge.  
16 Where, as here, the state's guilty plea agreement filed  
17 in open court November 7, 2018 was a subsequent  
18 prosecution for the same offense "Attempt Grand  
19 Larceny" that was dismissed at the conclusion  
20 of preliminary examination by magistrate without  
21 another pending vehicle for prosecution, leaving  
22 the charge barred from all district court proceedings,  
23 and this jurisprudence set forth is perfectly clear  
24 and unambiguous.

25 Whereas the state did violate NRS 174.085(3)  
26 when the petitioner was once placed in jeopardy  
27 upon the criminal complaint and proceeded  
28



23. (c) ~~CONCLUSION~~ PETITIONER'S REPLY CONTINUE

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): to  
the preliminary examination and at the conclusion  
of the examination the charge of "Attempt Grand  
Larceny" was dismissed by magistrate for lack of  
evidence. No corpus delicti, slight or marginal  
evidence that is a bar to another indictment,  
information or complaint for the offense charged  
in the former. Thus the state triggered the protection  
of NRS 174.085(3)(5) to bar the subsequent prosecution  
of the charge of "Attempt Grand Larceny" against the  
petitioner in all district court proceedings when the  
dismissal occurred before the subsequent form of  
prosecution was obtained and no good cause  
shown to the court or court order. Where as here,  
there is no material dispute of fact that the  
charge of Attempt Grand Larceny was dismissed  
against petitioner at the conclusion of preliminary  
examination and barred from any subsequent  
proceedings leaving the district court with no  
subject matter jurisdiction against petitioner  
for the charge of "Attempt Grand Larceny"

Whereas, the fact remains that courts, ~~and~~  
~~which~~ which make a mistake in rendering

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23. (d) ~~GROUND FOR~~

PETITIONER'S REPLY CONTINUE

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): 2

judgment which works to the extreme detriment  
of the petitioner will not allow it to stand un-  
corrected as justice requires that when a court  
errs in its adjudication of petitioner the vacation  
of that judgment of conviction must occur.

-5-

108

1 WHEREFORE, JAMES H. HAYES, prays that the court grant Writ of Habeas Corpus  
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at SDCC  
4 on the 2 day of November 2019.

6 James H. Hayes  
7 Signature of Petitioner

8 VERIFICATION

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is  
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is  
11 true and correct of his own personal knowledge, except as to those matters based on information and  
12 belief, and to those matters, he believes them to be true.

14 James H. Hayes  
15 Signature of Petitioner

17 PRO PER  
18 Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. NOYES, hereby certify, pursuant to NRCP 5(b), that on this 2  
day of November, 20 19, I mailed a true and correct copy of the foregoing, "Petitioner's  
Reply"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clerk of the Court  
200 LEWIS AVE. 3RD FL  
LAS VEGAS, NV 89133-4160

Attorney General of Nevada  
100 N. CARSON STREET  
CARSON CITY, NV 89401

CC:FILE

DATED: this 2 day of November, 20 19.

James H. Noyes  
JAMES H. NOYES # 1175074  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding DEFENDANT'S

Replies

(Title of Document)

filed in District Court Case number A-19-793315-W

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

James H. Hayes  
Signature

11-1-19  
Date

JAMES H. HAYES  
Print Name

PRO PER  
Title

-8-

41126022  
DCE  
P.O. Box 208  
Indian Springs, NV  
89620

1362753  
3763

Clark County District Courts  
"Office of the Clerk"  
200 Lewis Ave, 3rd Floor  
Las Vegas, Nevada

89155-1160

1362753  
Mail



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011E12650757

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11/01/2019  
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US POSTAGE \$000.94

*Heather L. Lamin*  
CLERK OF THE COURT

COA

DISTRICT COURT

CLARK COUNTY, NEVADA

*State of Nevada*

Plaintiff(s),

-vs-

*James D. Hayes*

Defendant(s).

CASE NO. C-16-315218-1; A-19-78315-K

DEPT. NO. 19

NOTICE OF CHANGE OF ADDRESS

To: Clerk of Court; and

To: Opposing Counsel or Litigant

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE THAT:

☒ Plaintiff or ☒ Defendant has a new mailing address.

New address: SDCC, P.O. Box 208, Indian Springs, NV 89070

Telephone number: N/A

DATED this 26 day of Nov., 20 19.

*James D. Hayes #1125072*  
Name

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DEC 04 2019

CLERK OF THE COURT

SDCC Law Library  
Southern Desert Correctional Center  
P.O.Box 208  
Indian Springs, Nevada 89070 - 0208

Date: Nov. 26, 2019.

To: Clerk, 8<sup>th</sup> Judicial District Court  
200 LAWS AVE. 3RD FL  
LAS VEGAS, NV 89101  
89155-1160

From: JAMES H. HAYES # 1175077  
Southern Desert Correctional Ctr.  
P.O. Box 208  
Indian Springs, Nevada 89070 - 0208

Subject: REQUEST FOR RECORDS/COURT CASE DOCUMENTS

Case No. C-16-315718-1

Dept. No. 19

The above named Inmate has requested the assistance of the SDCC Law Library while he is incarcerated here. But in order to better assist him, we are in need of the following Court Case Documents.

1). ~~JUDGMENT OF CONVICTION~~

2). CRIMINAL COURT MINUTES

James H. Hayes  
Inmate

Special Instructions: Transcript for Nov. 7, 2017 court  
proceedings

Please send a correspondence directly to Inmate



Letters #1123029  
58cc  
P.O. Box 208  
FREDERICKSBURG NV  
89070

Legal  
Mail

~~ATTORNEY GENERAL OF THE STATE OF NEVADA~~  
~~200 LAUREL AVE. 3RD FLOOR~~  
~~LAS VEGAS, NEVADA 89101~~  
~~89101~~

LAS VEGAS NV 890  
02 DEC 2019 PM 4 L



Clerk County District Courts  
"Office of the Clerk"  
200 LAUREL AVE. 3RD FLOOR  
LAS VEGAS, NEVADA  
89105-1160

James H. Hayes 1175022  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

**FILED**  
DEC 20 2019  
*John L. Williams*  
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

James H. Hayes

Petitioner,

vs.

State of Nevada

Respondent(s).

Case No. A-19-793315-W

Dept. No. 19

Docket

Petitioner's Reply "ADDENDUM"

**PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

**INSTRUCTIONS:**

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

CLERK OF THE COURT

DEC 20 2019

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Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND ONE: Violations of United States and Nevada Constitution & Federal and State Constitutional violations & NRS violations... and its worthless noting petitioner still have not received a copy of state's response filed 10-10-19...

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): On or about the 7<sup>th</sup> day of November 2018 the state knowingly, intelligently, and voluntarily filed in open court a fraudulent amended information and guilty plea Agreement, and the very initiation of the proceedings against MR. Hayes (petitioner) operated to deprive petitioner of Due Process of Law (94 S.C. 2018). IN this Due Process violation "No Real party in Interest" as the state has not been harm by petitioner's alleged actions and there is neither an injured party nor trespass. When in fact, the charge crime of Attempt Grand Larceny was dismissed at the conclusion of the preliminary examination Not prior for lack of evidence, no corpus delicti, slight nor marginal evidence (lack of admissible evidence). The state has committed fraud upon the court by prosecuting its case without first establishing that jurisdiction personam or subject-matter exists. The law blatantly shows the state's lack of jurisdiction over petitioner as NRS 124.085(a) and NRS 178.562(1), Rule 11 FRCP provides the authority by which petitioner is immune from prosecution of this case and the charge Attempt

CONTINUING:

23. (b) ~~CRIMINAL~~ \_\_\_\_\_

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): GRAND  
JURY. THE STATE MAY NOT CONVICT PETITIONER NO MATTER  
HOW VALIDLY HIS FACTUAL GUILT IS ESTABLISHED WITHOUT  
SUBJECT MATTER JURISDICTION AND THE COURT THAT RENDERED  
THE JUDGMENT LACKED JURISDICTION AND HAD NO POWER  
TO ENTER THE CONVICTION OR IMPOSE THE SENTENCE. HERE  
SUBJECT MATTER JURISDICTION IS NOT WAIVABLE AS THE STATE  
CONTENDS AS JURISDICTION OF THE SUBJECT MATTER IS  
DERIVED FROM THE LAW AND IT NEITHER CAN BE WAIVED  
NOR CONFERRED BY CONSENT OF ACCUSED. LEAVING THE  
STATE WITH NO CREDIBLE ARGUMENT TO OVERCOME THE  
LACK OF PERSONAM AND SUBJECT MATTER JURISDICTION.

WHEREAS, THIS MANIFEST INJUSTICE AND MISCARriage  
OF JUSTICE IS A DIRECT RESULT OF INEFFECTIVE ASSISTANCE  
OF COUNSEL E.K. SANTER; T. ABBATEANGELO; MS. MURPHY; M. SANTI;  
THAT HAS GREATLY PREJUDICE PETITIONER AND LEFT HIM WITH  
IRREPARABLE INJURY AS A RESULT. HERE THE PETITIONER WILL  
SATISFY THE TWO PRONG TEST OF STRICKLAND THAT REQUIRES  
THE PETITIONER TO SHOW THAT 1) COUNSEL'S PERFORMANCE  
WAS DEFICIENT WHERE, AS HERE, COUNSEL'S REPRESENTATION  
FELL BELOW THE OBJECTIVE STANDARD OF REASONABLENESS  
AS COUNSEL FAILED TO INVESTIGATE THE LAW AND FACTS  
WHEN IN FACT, COUNSEL NEVER CHALLENGE THE LACK

23. (c) <sup>Continue</sup> ~~CHARGE~~

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): of PERSONAL OR SUBJECT MATTER JURISDICTION that was ~~that~~ blatantly shown on the face of the record as the charge of Attempt Grand Larceny was dismissed by Justice Court magistrate for lack of evidence, NO CORPUS DELICTI, SLIGHT NOR MARGINAL EVIDENCE TO PROCEED TO DISTRICT COURT. That had COUNSEL USE ANY DUE DILIGENCE this egregious mistake would have BEEN KNOWN and would have let PETITIONER KNOW that said charge was BARRIED from District Court and the state's proffered information and GUILTY PLEA AGREEMENT for lack of jurisdiction. Furthermore had COUNSEL challenge probable cause the charge of Burglary would have BEEN dismissed. When in fact the state had used larceny as its intent for the Burglary charge as stated in the filed information dated 6-17-2016. so when the Attempt Grand Larceny was dismissed it left the Burglary charge fatal and it to must have BEEN dismissed once again leaving NO jurisdiction for the District Court to proceed against PETITIONER.

2) Counsel's deficient performance prejudiced PETITIONER to his extreme detriment and if for not counsel's

1 23. <sup>CONTINUE:</sup> (d) ~~GROUND FOUR~~: \_\_\_\_\_

2  
3  
4  
5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): \_\_\_\_\_

6 UNPROFESSIONAL ERRORS AND LACK OF DUE DILIGENCE  
7 TO INVESTIGATE THE FACTS AND THE LAW, THE RESULT  
8 OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT.  
9 WHERE, AS HERE, PETITIONER WOULD NOT HAVE ENTERED  
10 A "ALFORD PLEA" AS THE CHARGE OF ATTEMPT GRAND  
11 LARCENY WAS BARRED FROM DISTRICT COURT FOR LACK  
12 OF JURISDICTION AND LACK OF ADMISSIBLE EVIDENCE.  
13 WHEN IN FACT, NO REASONABLE JURY WOULD HAVE CONVICTED  
14 PETITIONER OF ATTEMPT GRAND LARCENY NOR THE CHARGE  
15 OF BURGLARY AS THE STATES INSTANT FOR THE BURGLARY  
16 CHARGE OF LARCENY HAD BEEN DISMISSED AT PRELIMINARY  
17 EXAMINATION FOR NO SLIGHT NOR MARGINAL EVIDENCE  
18 AND NO CORPUS DELICTI. AS COUNSEL'S FAILURES ARE  
19 SHOWN BY A PREPONDERANCE OF THE EVIDENCE THE  
20 RECORD, AND THE LAW. IN ADDITION COUNSEL FAILED  
21 TO FILE A NOTICE OF APPEAL AND PERFECT THE APPEAL  
22 FAILED TO INFORM PETITIONER OF THE RIGHT TO APPEAL,  
23 FAILED TO COMMUNICATE WITH PETITIONER ON MERITORIOUS  
24 GROUNDS TO PROCEED ON AND THERE'S NO COTABLE  
25 ARGUMENT THAT WOULD ALLOW COUNSEL TO OVERCOME  
26 HIS BLATANT FAILURES THAT HAVE LEFT PETITIONER WITH  
27 IRREPARABLE INJURY. MOREOVER, PETITIONER STANDS CONVICTED  
28 OF A CRIME HE DID NOT COMMIT DUE TO COUNSEL FAILURES!!

1 WHEREFORE, JAMES H. HAYES, prays that the court grant "Writ of habeas corpus"  
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at SDCC  
4 on the 12 day of December, 2019.

6 James H. Hayes  
7 Signature of Petitioner

8 **VERIFICATION**

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is  
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is  
11 true and correct of his own personal knowledge, except as to those matters based on information and  
12 belief, and to those matters, he believes them to be true.

14 James H. Hayes  
15 Signature of Petitioner

17 PRO PER  
18 Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 12<sup>th</sup>  
day of DECEMBER, 2019, I mailed a true and correct copy of the foregoing, "NOT of  
HOBBS CORPUS"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

CLERK OF THE COURT  
200 LOUIS AVE. 3RD FLOOR  
LAS VEGAS, NEVADA  
89135-1160

NEVADA ATT. GENERAL  
100 NORTH WAGON ST  
CARSON CITY, NEVADA  
89401

CC:FILE

DATED: this 12 day of DECEMBER, 2019.

James H. Hayes

# 1195079

/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:



AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Writ of

Habeas Corpus  
(Title of Document)

filed in District Court Case number A-19-293315-W

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or for an application  
for a federal or state grant.

James H. Hayes  
Signature

12-12-19  
Date

JAMES H. HAYES  
Print Name

Pro per  
Title

-8-

4pages #1195092  
P.O. Box 208  
Indian Springs, NV  
89020

LAS VEGAS NV 890  
18 DEC 2019 PM 5



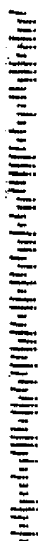
FOREVER / USA

Clerk County District Courts  
"Office of the Clerk"

200 Lewis Ave, 3rd Floor  
Las Vegas, Nevada  
89155-1100

LEGO  
Mail

0011000000



01131122N4012

000000

HAYES James H 1125022

Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

FILED

FEB 12 2020

CLERK OF COURT

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF Clark

JAMES H. HAYES

Petitioner,

VS.

STATE OF NEVADA  
WARDEN, JEFF HANSELL

Respondent(s).

"HEARING REQUESTED"

Case No.

A-19-793315-W

Dept. No.

Dept. XIX

Docket

"AMENDED PETITION"

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

RECEIVED

FEB 12 2020

CLERK OF THE COURT

A-19-793315-W  
PWHC  
Petition for Writ of Habeas Corpus  
4895674



1 Failure to raise all grounds in this petition may preclude you from filing future petitions  
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief  
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may  
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of  
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which  
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one  
9 copy must be filed with the clerk of the district court for the county in which the conviction  
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the  
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the  
12 attorney general's office, and one copy to the district attorney of the county in which you were  
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.  
14 Copies must conform in all particulars to the original submitted for filing.

### 10 PETITION

11 1. Name of institution and county in which you are presently imprisoned or where and who you  
12 are presently restrained of your liberty: Southern DESERT Correctional Center

13 2. Name the location of court which entered the judgment of conviction under attack: \_\_\_\_\_

14 Clark County, Nevada 8th Jud. District

15 3. Date of judgment of conviction: March 12, 2019

16 4. Case number: C-16-315718-1

17 5. (a) Length of sentence: 60 months to 174 months

18 (b) If sentence is death, state any date upon which execution is scheduled: \_\_\_\_\_

19 6. Are you presently serving a sentence for a conviction other than the conviction under attack in  
20 this motion:

21 Yes \_\_\_\_\_ No ☒ If "Yes", list crime, case number and sentence being served at this time: \_\_\_\_\_

22  
23 7. Nature of offense involved in conviction being challenged: Attempt Grand

24 LARCENY 3 Category D Felony

- 1 8. What was your plea? (Check one)
- 2 (a) Not guilty \_\_\_\_\_
- 3 (b) Guilty \_\_\_\_\_
- 4 (c) Nolo contendere ☒ Alford Plea
- 5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
- 6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: \_\_\_\_\_
- 7 NEGOTIATED pursuant to North Carolina v Alford
- 8 \_\_\_\_\_
- 9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)
- 10 (a) Jury \_\_\_\_\_
- 11 (b) Judge without a jury \_\_\_\_\_
- 12 11. Did you testify at trial? Yes \_\_\_\_\_ No \_\_\_\_\_
- 13 12. Did you appeal from the judgment of conviction?
- 14 Yes ☒ No \_\_\_\_\_
- 15 13. If you did appeal, answer the following:
- 16 (a) Name of court: Supreme Court of Nevada
- 17 (b) Case number or citation: 28590
- 18 (c) Result: Affirm
- 19 (d) Date of appeal: Notice of Appeal filed March 28, 2019
- 20 (Attach copy of order or decision, if available).
- 21 14.) If you did not appeal, explain briefly why you did not: \_\_\_\_\_
- 22 \_\_\_\_\_
- 23 \_\_\_\_\_
- 24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
- 25 filed any petitions, applications or motions with respect to this judgment in any court, state or
- 26 federal? Yes ☒ No \_\_\_\_\_
- 27
- 28

16. If your answer to No 15 was "Yes", give the following information:

(a) (1) Name of court: 8<sup>th</sup> Judicial District Court: Clark County

(2) Nature of proceedings: Petition for writ of Habeas Corpus

(3) Grounds raised: Double Jeopardy (NRS 174.085(1) violation);

Lack of probable cause; Cruel and Unusual punishment;

Errors in PSI

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes \_\_\_ No ☒

(5) Result: Taken off calendar for lack of Jurisdiction

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: N/A

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court: \_\_\_\_\_

(2) Nature of proceeding: \_\_\_\_\_

(3) Grounds raised: \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes \_\_\_ No \_\_\_

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

(7) If known, citations or any written opinion or date of orders entered pursuant to each result: \_\_\_\_\_

(c) As to any third or subsequent additional application or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion?

Yes ☒ No ☒

Citation or date of decision: \_\_\_\_\_

(2) Second petition, application or motion?

Yes \_\_\_\_\_ No \_\_\_\_\_

Citation or date of decision: \_\_\_\_\_

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You may relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion or application or any other post-conviction proceeding? If so, identify:

(a) Which of the grounds is the same: Ineffective Ass't. of Counsel, cruel and unusual punishment, Mistakes in PSI

(b) The proceedings in which these grounds were raised: Petition for writ of Habeas corpus

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length).

grounds were never ruled on the petition was taken off calendar for lack of jurisdiction

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages  
2 you have attached, were not previously presented in any other court, state or federal, list briefly what  
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate  
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x  
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten  
6 pages in length). Ineffective assistance of Appellate Counsel order

7 of affirmances handed down on January 14, 2020

8 19. Are you filing this petition more than one (1) year following the filing of the judgment of  
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.  
10 (You must relate specific facts in response to this question. Your response may be included on  
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five  
12 handwritten or typewritten pages in length). \_\_\_\_\_

13  
14  
15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the  
16 judgment under attack?

17 Yes ☒ No \_\_\_\_\_

18 If "Yes", state what court and the case number: Supreme Court of Nevada

19  
20 21. Give the name of each attorney who represented you in the proceeding resulting in your  
21 conviction and on direct appeal: Michael Janitz for both but was

22 dismissed prior to completion of appellate process leaving  
23 petitioner with no counsel throughout direct appeal proceedings

24 22. Do you have any future sentences to serve after you complete the sentence imposed by the  
25 judgment under attack?

26 Yes \_\_\_\_\_ No ☒ If "Yes", specify where and when it is to be served, if you know: \_\_\_\_\_



1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating  
2 additional grounds and facts supporting same.

3 23. (a) GROUND ONE: MR. HAYES (petitioner) was denied his  
4 Constitutionally guaranteed "right to effective  
5 assistance of counsel" (Federal and State Constitutional  
6 rights 3<sup>rd</sup> and 14<sup>th</sup> Amendment Violations:

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): \_\_\_\_\_

8 WHEREAS, trial counsel failed to provide zealous and  
9 quality representation at all stages of the criminal  
10 process. Counsel's performance was deficient and representation  
11 fell below the objective standard of reasonableness as  
12 counsel failed to do appropriate investigation and study  
13 of the case, including an analysis of controlling law  
14 (NRS 174.085(3); NRS 178.562) and had counsel use due  
15 diligence and investigated the facts and the law he  
16 would have known that the charge of Attempt Grand  
17 Larceny was Perred from District Court against the  
18 petitioner as NRS 174.085(3) and NRS 178.562 provides  
19 the authority that made petitioner immune from  
20 prosecution on charge of Attempt Grand Larceny in  
21 District Court. Counsel failed to make certain that the  
22 petitioner fully and completely understood the conditions  
23 and limits of the plea agreement and the maximum  
24 punishment and other consequences the petitioner  
25 would be exposed to by entering his "Alford plea"  
26 as petitioner was surprised by the habitual criminal  
27 sentence. When in fact, even though petitioner signed

1 the guilty plea agreement he was ignorant to the potential  
2 outcome as counsel had informed petitioner that he was  
3 agreeing to a gross-misdemeanor with time served credit  
4 and concurrent to case NO C-16-315125-1. Counsel failed  
5 to file a motion to withdraw guilty plea pre-sentencing  
6 and post-sentencing when sentencing was not in  
7 accordance with the negotiated agreement and a  
8 determination of habitual criminal was adjudicated.  
9 When in fact, when alleged Attempt Grand Larceny occurred  
10 on or about April 2, 2013 petitioner had never served a  
11 prison term or been to prison and had only one prior  
12 felony conviction for a Class E felony "Attempt possession  
13 of credit or debit card without cardholder's consent" as  
14 Texas crime was one event for credit card abuse and  
15 fraudulent use/possession of identifying information that  
16 did not and does not carry a prison term mandatory  
17 supervision, nor parole. Counsel failed to challenge alleged  
18 breach that was founded on impalpable and highly  
19 suspect evidence as the Burglary charge used was  
20 dismissed and the finding of probable cause was  
21 misplaced as alleged victim testified under oath that  
22 petitioner was not the perpetrator of alleged event and  
23 he was 100% sure and further testified that alleged  
24 perpetrator did not enter said room only stood in doorway  
25 said "Sorry" and closed door without incident so this is  
26 a clear and convincing showing that no probable cause  
27 existed against petitioner. Counsel failed to challenge  
28 probable cause and subject matter jurisdiction for

1 the Burglary charge in case NO C-16-315718-1 that had  
2 counsel challenge the Burglary charge was fatal as the  
3 state's intent for the charge of Burglary of Attempt  
4 Grand Larceny was dismissed following a preliminary  
5 hearing in Justice Court, Las Vegas Township on June 14,  
6 2016 and the Burglary charge also must have been  
7 dismissed leaving no jurisdiction for the district court  
8 to proceed with the filed information dated June 17, 2016.  
9 Nor the amended information of Attempt Grand Larceny  
10 filed November 7, 2018. Where, as here, counsel failures  
11 are a clear and convincing showing of prong one  
12 of the two prong test of Strickland that has greatly  
13 prejudice petitioner and that petitioner's Alford plea  
14 was not knowingly, intelligently, or voluntarily entered.

15 WHEREAS, counsel's deficient performance prejudiced  
16 petitioner to his extreme detriment causing irreparable  
17 injury, and if not for counsel's unprofessional errors  
18 and lack of due diligence of failure to investigate  
19 the facts and the law the results of the proceedings  
20 would have been different. Where as here petitioner  
21 would not have entered an "Alford Plea" as the charge(s)  
22 of Attempt Grand Larceny was barred from District Court  
23 for lack of jurisdiction, lack of admissible evidence,  
24 and violation of state law pursuant to NRS 174.085(3)  
25 and NRS 178.562 and the Burglary charge case NO.  
26 C-16-315718-1 was fatal as the state had no intent.

27 When in fact, no reasonable jury would have convicted  
28 petitioner of Attempt Grand Larceny nor the charge

1 of Burglary as the state's intent for the Burglary charge  
2 of Larceny in the filed information on June 17, 2016.  
3 was dismissed following preliminary hearing for NO  
4 slight or marginal evidence, NO corpus delicti, and  
5 lack of admissible evidence. As counsel's failures are  
6 shown by a preponderance of the evidence, the record,  
7 and state law. In addition, counsel failed to file a  
8 Notice of appeal and failed to inform petitioner of the  
9 right to appeal. Wherefore, this is a clear and convincing  
10 showing of prong two of the two prong test of Strickland  
11 that has greatly prejudiced petitioner and a valid  
12 showing that petitioner's Afford plea to the charge  
13 of Attempt Grand Larceny was not knowingly,  
14 intelligently, or voluntarily entered. What is fact, the  
15 petitioner stands convicted of a crime he did not commit!!  
16 due to counsel failures. Furthermore this is an affront  
17 to justice and due process to hold petitioner to his  
18 Afford plea when the conduct upon which the plea  
19 was entered did not occur. Finally, for the above  
20 reasons, but for counsel's errors and failures petitioner  
21 would not have not entered an Afford plea and went  
22 to trial on the charge of Burglary and been ~~convicted~~ acquitted.

23 Wherefore, appellate counsel failed to provide zealous and  
24 quality representation at all stages of appeal process.  
25 Counsel's performance was deficient and representation  
26 fell below the objective standard of reasonableness as  
27 appellate counsel failed to do appropriate investigation  
28 of potentially meritorious claims of error and assert

1 claims of error that are supported by facts and the  
2 law and failed to assert claims that were complex,  
3 unique, and issues of first impression. Counsel did  
4 not thoroughly research the issues in the case and  
5 set forth all viable issues in his prepared and  
6 sanctioned "fast track" statement. Appellate counsel failed  
7 to raise meritorious claims of failure of the state  
8 to properly notice its intent to seek habitual treatment  
9 at sentencing for the wobbler charge of Attempt  
10 Grand Larceny. When in fact, State's Amended Notice  
11 of intent to seek punishment as a habitual criminal  
12 was for the charge of Burglary. Counsel failed to  
13 raise the claim that District Court lacked jurisdiction  
14 for the charge of Attempt Grand Larceny, when in fact,  
15 jurisdiction is derived by the law and Nevada  
16 State law NRS 174.085(3) and NRS 178.562 is the  
17 authority that State's amended information for the  
18 charge of Attempt Grand Larceny was without subject  
19 matter jurisdiction and was BARRED from district  
20 court proceedings against petitioner. Counsel did not  
21 challenge the habitual criminal adjudication pursuant  
22 to NRS 207.010. When in fact, petitioner is not a  
23 habitual criminal and his prior criminal <sup>history</sup> proves it  
24 as petitioner had only the Texas state jail crime(s)  
25 that was one event and not felonies as they did  
26 not carry any prison term and not any category  
27 of felony and only carries jail time and the

1 Revokery conviction was not a prior, so in essence  
2 petitioner ~~was~~ first time in prison and <sup>and</sup> one prior  
3 felony has been treated as a habitual criminal that  
4 is easily deemed cruel and unusual punishment  
5 and violates the legislative intent of NRS 207.010.  
6 In addition, petitioner was deprived of effective  
7 assistance of counsel on direct appeal when district  
8 court Judge William Kephart dismissed petitioner's  
9 appellate counsel on July 15, 2019 pursuant to  
10 motion to withdraw counsel that was granted as  
11 District court Judge William Kephart stated his reason  
12 for granting and dismissing counsel was that  
13 the Supreme Court of Nevada had issued a remittitur  
14 where, as here, counsel failures are a clear and  
15 convincing showing of the prejudice prong of  
16 Strickland.  
17 Whereby petitioner requested many times over  
18 that counsel file appeal and express to counsel on  
19 several occasions his dissatisfaction with the  
20 conviction and sentence and counsel failed to do  
21 so that easily satisfies the deficient performance  
22 of Strickland and shows the prejudice against  
23 petitioner cause had counsel use ~~the~~ diligence  
24 and raised the meritorious claims and not been  
25 withdrawn as counsel prior to the perfection of  
26 the appeal petitioner appeal (direct) would have  
27 been successful.

23. (b) GROUND TWO: The state violated Mr. Hayes right to Due Process as guaranteed by both the Due Process Clause of the United States Constitution and the Nevada Constitution. "Breach of guilty plea agreement on impeachable evidence"

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Whereas, the breach of issue was not material nor volitional, when in fact, the court was required to hold an evidentiary hearing on the alleged breach which has resulted in dire consequences to petitioner and an additional five(5) to fourteen and a half (14½) years in prison in violation of the bargained for stipulations. That the state entered in BAD FAITH with petitioner as the agreement was unconstitutional, malicious, and a manifest injustice. Indeed, in retelling the factual and procedural history of the case, the state has taken great liberties to continue the sort of narrative that has likely fueled inconsistent and unfair mass incarceration in Nevada.

Whereas, the petitioner knows the record and has tried to contextualize this actual record to reveal that an manifest injustice was done in his specific case. Although his counsel's presented a very unconvincing argument worthy of sanctions and a Bar complaint and is blatant ineffective assistance of counsel that has greatly prejudice petitioner to his extreme detriment causing petitioner irreparable injury.

Whereas, in other words, the state's claim of breach that petitioner was found to have probable cause for.

1 a New Burglary charge is absurd when the alleged victim  
2 of alleged Burglary testified under oath facing the penalty  
3 of perjury that he was 100% sure petitioner was not the  
4 perpetrator of the ispe divit crime and that this alleged  
5 charge crime was without probable cause against petitioner  
6 as the Justice court Judge ruling of probable cause was  
7 misplaced and eventually the charge was dismissed in the  
8 first district court appearance. Furthermore the guilty plea  
9 agreement in this case did not explicitly provide for the  
10 abdication of stipulation for a more run into the law  
11 for a allege crime he had no part of, let alone for a  
12 charge that was dismissed to further solidify his non-  
13 participation in the ispe divit Burglary charge lodged  
14 against him without due process considerations.

15 Whereas, petitioner's case of "Attempt Grand Larceny"  
16 is the one ostensibly before us in this petition which  
17 allegedly occurred on April 18, 2013 and was formally  
18 charged by way of Criminal complaint on July 23, 2013  
19 that was dismissed following a preliminary hearing in  
20 Justice court, Las Vegas township on June 14, 2016 for  
21 lack of admissible evidence, no corpus delicti, no slight  
22 or marginal evidence to proceed to district court  
23 leaving the District court 8th Judicial District with no  
24 subject matter jurisdiction for the charge of Attempt  
25 Grand Larceny as it was BARRED from subsequent  
26 prosecution against petitioner as mandated by state  
27 law pursuant to NRS 174.085(3) and NRS 178.562



1 Making the state's amended information for Attempt Grand  
2 Larceny unconstitutional, in BAD FAITH, and fraud upon  
3 the court by not first establishing jurisdiction before  
4 prosecution that has prejudice petitioner to his extreme  
5 detriment causing petitioner irreparable injury.

6 WHEREAS the UNCONSTITUTIONAL guilty plea agreement  
7 at issue here for the "Mobbler" charge of Attempt Grand  
8 Larceny indicated that there was a stipulated sentence  
9 of probation with the only condition to be 30 days in  
10 the Clark County Detention Center with 30 days credit  
11 for time served with no suspended prison term and  
12 no time period of probation to be served that solidifies  
13 petitioner's position that the agreement was for gross  
14 misdemeanor treatment and further stipulated that  
15 it was to run CONCURRENTLY to CASE NO C-116-315125-1.  
16 This stipulation is UNIQUE to this case and do not contain  
17 any boilerplate language and do not explicitly rely upon  
18 or even reference the loss of stipulation in their language.

19 WHEREAS here, indeed, the boilerplate language  
20 regarding "Magistrate to find probable cause" does not  
21 explicitly refer to loss of stipulation, but only that "the  
22 state will have the unqualified right to argue for any  
23 legal sentence and term of confinement allowable  
24 for the crime to which I am pleading guilty, including  
25 the use of any prior convictions I may have to  
26 INCREASE my sentence as an habitual criminal to five(5)  
27 to twenty(20) years. which in fact, there could not

1 be a legal sentence in the instant offense as the charge  
2 of Attempt Grand Larceny was BARRED from subsequent  
3 prosecution against petitioner and the District Court had  
4 no subject matter jurisdiction for instant offense Attempt  
5 Grand Larceny. In addition, the 2016 Burglary charge used  
6 in adjudication was not a prior conviction as the instant  
7 offense occurred in 2013.

8 Where, as here, it is also undisputed that the boilerplate  
9 language does not explicitly refer to a right to argue for  
10 consecutive sentence. It should also be noted that the  
11 boilerplate language of the guilty plea agreement does not  
12 refer in any way to what would constitute (or not constitute)  
13 an excludable ruling of probable cause by magistrate or  
14 make any reference to any ability for a "due process" to  
15 challenge an overment of a material breach. Furthermore,  
16 petition received no consideration whatsoever in exchange  
17 for his "Alford plea" to a crime that petitioner did not commit.  
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23. (c) GROUND THREE: State violated Mr. Hayes Right to "Due Process" when it failed to adhere to State law (NRS 174.085(3) and NRS 178.522) making conviction invalid and unconstitutional

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Whereby, petitioner has explicitly reserved his right not to be compelled to perform under any contract or agreement that I have not entered into knowingly, voluntarily, and intelligently and that my valid reservation of Rights has preserved all my Rights and prevented the loss of any such Rights by application of the concepts of waiver or estoppel as in the instant case.

Whereby, it is unconscionable for the state to attempt to insulate a conviction from collateral constitutional review by conditioning its willingness to enter into plea negotiations on petitioners "waiver of the Rights" to pursue post-conviction remedies.

Where as here, petitioner is entitled to habeas corpus if there is no material dispute as to a mistake of fact relating to his conviction (7.R.C.P 32(d)) and this court must set aside the judgment of conviction after sentence in order to correct this manifest injustice. As here, both parties agree to the mistake of fact that the charge of Attempt Grand Larceny was dismissed following preliminary

1 hearing by Justice Court Magistrate for lack of admissible  
2 evidence, No corpus delicti, No slight or marginal evidence  
3 to be further prosecuted in district court, and this is  
4 clear and convincing showing of dismissal of an  
5 action.

6 Whereas, the state did violate NRS 178.562(4) by bringing  
7 another prosecution following dismissal of an action to  
8 constitute "another prosecution" without another pending  
9 vehicle for the prosecution of the charge of Attempt Grand  
10 Larceny that runs afoul of the provisions of NRS 178.562(4)  
11 and BARS further prosecution of the petitioner on that  
12 charge. When in fact the state held the preliminary hearing  
13 June 14, 2016 pursuant to the filed criminal complaint  
14 as the vehicle for prosecution of the instant offense  
15 and no other vehicle was filed for the instant offense  
16 Attempt Grand Larceny until November 7, 2018 by the  
17 way of an amended information ~~that~~ and there is  
18 no colorable argument that would allow them to over-  
19 come the violation of state law NRS 178.562.

20 Where, as here, the state's amended information  
21 filed in open court November 7, 2018 was a subsequent  
22 prosecution for the same offense in the former "Attempt  
23 Grand Larceny" that was dismissed following preliminary  
24 hearing by magistrate without another pending vehicle  
25 for prosecution leaving the instant offense barred  
26 from all district court proceedings against petitioner  
27 and this jurisprudence set forth is perfectly clear

1 and unambiguous.

2 WHEREAS the state did violate NRS 174.085(3) when the petitioner  
3 was once placed in jeopardy upon the criminal complaint and  
4 proceeded to the preliminary hearing and following the preliminary  
5 hearing the charge of Attempt grand larceny was dismissed by  
6 magistrate, that is a BAR to another indictment, information or  
7 complaint for the offense charged in the former. Thus the state  
8 triggered the prohibitions of NRS 174.085(3) to bar the subsequent  
9 prosecution of the instant offense Attempt grand larceny against  
10 the petitioner in all district court proceedings ~~and the district~~  
11 ~~court and the subsequent trial of prosecution~~

12 Where, as here, there is no material dispute of fact that  
13 the charge in the instant offense Attempt grand larceny was  
14 dismissed following the preliminary examination and BARRED  
15 from any subsequent prosecution against petitioner in  
16 district court leaving no subject matter jurisdiction for  
17 prosecution in district court. In addition, the state may not  
18 convict petitioner no matter how validly his factual guilt  
19 is establish without subject matter jurisdiction and the  
20 court that rendered the judgment had no subject matter  
21 jurisdiction and left the court with no power to enter  
22 the conviction or impose the sentence.

23 WHEREAS, subject matter jurisdiction is not waivable  
24 as the state has contended as jurisdiction is derived from  
25 the law and it neither can be waived nor conferred  
26 by consent of the petitioner. As there is no colorable argu-  
27 ment to overcome the lack of subject matter jurisdiction.

23. (d) GROUND FOUR: Violation of Mr. Hayes right to "Due Process" Material mistakes of fact regarding criminal record in PSI that work to his extreme detriment.

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

Whereas, the court made material mistakes of fact about petitioner's criminal record, as the petitioner's PSI had several material facts in error that work to his extreme detriment.

Where, as here, petitioner and his counsel objected to the mistakes at sentencing hearing and sentencing judge continued the proceedings without allowing the corrections to be made. When, in fact, if the judge would have allowed the corrections to be completed in the instant case upon petitioner's objections petitioner's raw score, social score, and the Department of Public Safety Division of Parole and Probation recommendation would have been astronomically different and would have showed that petitioner had never been to prison so there would not have been any habitual offender recommendation for the instant offense of Attempt Grand Larceny. As the instant offense occurred in the year 2013 and at that time petitioner had one felony conviction not four as the PSI read, no prison incarcerations not one as the PSI read; no current supervisor history not one

1 as the PSI read; the instant offense should be dated  
2 April 9, 2013 NOT April 2, 2016 as the PSI reads;  
3 Burglary conviction case NO C-16-315125-1 should NOT  
4 be included anywhere on petitioner's PSI for the instant  
5 offense as it occurred sum three years later on April  
6 2, 2016; Finally the Taxes conviction(s) case NO(s)  
7 1083285 and 1083286 was ONE event NOT two as it  
8 reads on PSI, NOT two felony convictions but ONE  
9 state jail conviction for Credit Card Abuse and Fraudulent  
10 use/possession of Identifying information. Whereas the  
11 numerous material mistakes of facts about petitioner's  
12 criminal record that have worked to his extreme detriment  
13 has rise to a manifest injustice and Due Process  
14 violation that cannot stand uncorrected.

1 23. (d) GROUND ~~FOUR~~ <sup>FIVE</sup>: State Violated Mr. Hughes Right to "Due Process"  
2 as guaranteed by both the "Due Process Clause of the United  
3 State's Constitution and the Nevada Constitution: "Due  
4 Process violation guilty plea was NOT equally voluntary, knowing  
5 and intelligent."  
6 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): ~~Whereas~~,  
7 waivers of constitutional rights not only must be voluntary  
8 but must be knowing, intelligent acts done with sufficient  
9 awareness of the relevant circumstances and likely  
10 consequences. As here, petitioner's "waiver of his fund-  
11 mental rights" was not knowingly and intelligently  
12 made as the court failed to adequately inform petitioner  
13 of the full consequences of his Alford plea that has  
14 created a manifest injustice, because the trial court  
15 did not straightforwardly explain consequences of  
16 petitioner's breach of the agreement while awaiting  
17 sentencing that the state would unilaterally impose  
18 an enhanced sentence as the boilerplate language was  
19 ambiguous and had imprecisions that did not explicitly  
20 state loss of stipulation. Most significantly, petitioner did  
21 not intelligently and knowingly waive his constitutional  
22 rights with full knowledge of the consequences. Nor was  
23 he told that his Alford plea would stand regardless of whether  
24 he was rearrested for a Burglary charge that was dismissed,  
25 after alleged victim testified at preliminary hearing under  
26 oath facing the penalty of perjury that petitioner was not  
27 the perpetrator of alleged event and 100% sure of it.  
28 So petitioner has raised sufficient doubt as whether his



1 Afford plea was ever accepted, and even if it was, whether  
2 he was fully and fairly apprised of its consequences.

3 Whereas, the state interpret the court's statement to  
4 mean "do you understand that if you breach any of  
5 the conditions in guilty plea agreement, this court will  
6 sentence you". Yet, that is not what the trial court said.  
7 What it is surely equally plausible explanation of the  
8 plea colloquy that petitioner would -- were here to breach  
9 the agreement -- face trial on the Burglary charge. In  
10 particular, it is impossible to conclude that petitioner  
11 truly understood that he was waiving his right to be  
12 tried on the original charge of Burglary, and agreed  
13 instead that were he arrested the state trial court could  
14 unilaterally impose a habitual criminal sentence upon him.  
15 So it is without question that whatever waiver petitioner  
16 agreed to was without adequate knowledge of the  
17 consequences flowing from his breach of the plea agreement

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WHEREFORE, James Hayes, prays that the court grant petition  
relief to which he may be entitled in this proceeding.

EXECUTED at Southern Desert Correctional Center  
on the 10 day of February, 2020

James Hayes  
Signature of Petitioner

**VERIFICATION**

Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is  
the Petitioner named in the foregoing petition and knows the contents thereof, that the pleading is  
true and correct of his own personal knowledge, except as to those matters based on information and  
belief, and to those matters, he believes them to be true.

James Hayes  
Signature of Petitioner

PROPER PERSON  
Attorney for Petitioner

**CERTIFICATE OF SERVICE BY MAILING**

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 10  
day of February, 2020, I mailed a true and correct copy of the foregoing, "AMENDED  
petition for writ of habeas corpus"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clark County Dist Court  
Office of the Clerk  
205 Lewis Ave, 3rd Floor  
Las Vegas, NV  
89155-1160

Office of the District Atty  
205 Lewis Ave  
P.O. Box 552212  
Las Vegas, NV  
89155-2212

Attorney General of Nevada  
105 North Carson St  
Carson City, NV  
89401

**NOTE: Electronic service also  
requested...**

CC:FILE

**DATED:** this 10 day of February, 2020.

James H. Hayes  
James H. Hayes # 1175049  
/s/ Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Amended

Petition for writ of habeas corpus  
(Title of Document)

filed in District Court Case number C-16-315718-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

James H. Hayes  
Signature

2-10-20  
Date

James H. Hayes  
Print Name

PROPR PERSON  
Title

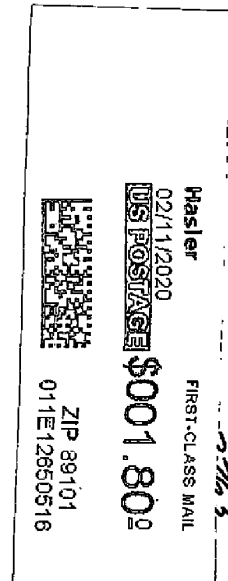
Hajes #11750 PE  
JWC  
P.O. Box 208  
Tubers Springs, NV  
89270

**CONFIDENTIAL**

Clark County District Courts  
"Office of the Clerk"

200 Lewis Ave., 3rd Floor  
Las Vegas, Nevada  
89155-1160

LESLIE  
MAIL



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FILED

MAR 04 2020

*Cheryl L. Williams*  
CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

James H Hayes,  
Petitioner,  
vs.  
Nevada State of,  
Respondent,

Case No: A-19-793315-W  
Department 19

ORDER FOR PETITION FOR  
WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on February 12, 2020. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 4<sup>th</sup> day of May, 2020, at the hour of

8:30 <sup>A.M.</sup> o'clock for further proceedings.

*Will Kyrst*  
District Court Judge

*B*

A-19-793315-W  
OPWH  
Order for Petition for Writ of Habeas Corpus  
4901080



1 Hayes, James H #1175077

2 Defendant In Pro Persona  
3 Post Office Box 208 S.D.C.C.  
4 Indian Springs, Nevada 89018

27  
**FILED**

MAR 06 2020

**CLERK OF COURT**

5 IN THE 8th JUDICIAL DISTRICT COURT OF  
6 THE STATE OF NEVADA IN AND FOR THE  
7 COUNTY OF Clark

8 Case No. A-19-793315-W

9 Dept. No. 19

Docket \_\_\_\_\_

10 JAMES H. HAYES

11 Petitioner,

12 vs.

13  
14 State of Nevada;  
15 JERRY HOWELL (WARDEN)

16 Respondent

17 ("Hearing Requested")

18 **PETITION : EXPEDITIOUS JUDICIAL EXAMINATION**  
19 **(NRS 34.360 - 34.830)**

20 Date of Hearing: \_\_\_\_\_

21 Time of Hearing: \_\_\_\_\_

22 "ORAL ARGUMENT REQUESTED, Yes ☒ No \_\_\_\_\_"

23 **Comes Now**, defendant, JAMES H. HAYES, proceeding in proper  
24 person, hereby moves this Honorable Court for its **ORDER** granting petitioner an  
25 Expeditious Judicial Examination of petitioner's Writ of Habeas Corpus. In addition,  
26 to hold an **Evidentiary Hearing** for meaningful Habeas Corpus Judicial Review.

27 **RECEIVED**

28 **MAR - 6 2020**

**CLERK OF THE COURT**

A-19-793315-W  
PET  
Petition  
4903258



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**POINTS AND AUTHORITIES**

The Nevada Revised Statute 34.740, **Petition : Expeditious Judicial Examination** states : "The original petition must be presented promptly to a District Judge or a Justice of the Supreme Court by the Clerk of the Court. The Petition must be examined expeditiously by the Judge or Justice to whom it is assigned."

In the **United States Constitution, Article 1, Section 9**. It states: "The Privilege of the Writ of Habeas Corpus **shall not be suspended**, unless when in Cases of Rebellion or Invasion the public safety may require it."

In the **Nevada Constitution, Article 1, Section 5**. It states: "The privilege of the Writ of Habeas Corpus, **shall not be suspended** unless when in cases of rebellion or invasion the public safety may require its suspension."

In accordance with the provisions of **NRS 34.360 - 34.830**, Denial of Due Process which violates the **United States Constitution**, which violates the **5<sup>th</sup> and 14<sup>th</sup> Amendment(s)**.

The District Court has essentially **suspended** the petitioner's **Writ of Habeas Corpus**, without rendering a decision in a reasonable time frame, or showing just cause to do so. This is causing the petitioner prejudice, by unreasonable delay and preventing him access to the Judicial Appeals process. Also, this is hindering or delaying justice, and preventing adjudication. The improper suspension of a Writ of Habeas Corpus, would constitute a Due Process violation. By doing so, would be a violation to the United States Constitution. (5<sup>th</sup> and 14<sup>th</sup> Amendment)

"The basic purpose of the Writ of Habeas Corpus is to enable those unlawfully incarcerated to obtain their freedom." "Access of prisoners to courts for purpose of presenting petitions for Habeas Corpus may not be **denied** or **obstructed**." (89 S.Ct. 747, Johnson v. Avery)

"This Court has constantly emphasized the fundamental importance of the Writ of Habeas Corpus in our constitutional scheme, and the Congress has demonstrated its solicitude for the vigor of the Great Writ. The Court has steadfastly insisted that there is no higher duty than to maintain it unimpaired. (59 S.Ct. 442, Bowen v. Johnston)



1 "The plight of a man in prison may in these respects be even more acute than  
2 the plight of a person on the outside. He may need collateral proceedings to test the  
3 legality of his detention or relief against management of the parole system or against  
4 defective detainers lodge against him which create burdens in the nature of his  
5 incarcerated status." (89 S.Ct. 747, Johnson v. Avery)

6 "Reasonable access to the courts is a right (secured by the Constitution and  
7 laws of the United States), being guaranteed as against state action by the Due  
8 Process Clause of the 14<sup>th</sup> Amendment. (65 S.Ct. 978, Write v. Ragen)

9 "The constitutional Writ of Habeas Corpus heretofore used, within defined limits,  
10 as a post-conviction procedure to challenge the validity of a conviction, may not be  
11 abolished as a post-conviction remedy by legislative fiat." (434 P.2d 437, Marshall v.  
12 Warden)

13 This Petition is made and based upon all papers and pleadings on file with the  
14 Clerk of the Court which are hereby incorporated by this reference, the Points and  
15 Authorities Herein, and attached Affidavit of Defendant.

16 DATED: This 1<sup>st</sup> day of March, 20 20  
17 By: James H. Hayes James H. Hayes # 1175072  
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FACTS OF THE CASE:

The Petitioner has filed a timely Writ of Habeas Corpus on, April  
15<sup>th</sup> 2019. The Petitioner, still has not received a decision on his Writ of  
Habeas Corpus. It has been exactly, TEN (10) months and  
sixteen (16) days without a decision.

The Petitioner has shown good cause, to request the **NEVADA SUPREME**  
**COURT**. To **expedite** and **review** the petitioner's Writ of Habeas Corpus for **Judicial**  
**Review**. SEE PAGES FIVE (5) THROUGH TWENTY-TWO (22) OF ADDITIONAL  
FACTS:

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3 (a) GROUND ONE: MR. HAYES (petitioner) was denied his  
4 Constitutionally guaranteed right to effective  
5 assistance of counsel (Federal and State Constitutional  
6 rights 3<sup>rd</sup> 6<sup>th</sup> and 14<sup>th</sup> Amendment Violation:

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

8 Whereas, trial counsel failed to provide zealous and  
9 quality representation at all stages of the criminal  
10 process. Counsel's performance was deficient and representation  
11 fell below the objective standard of reasonableness as  
12 counsel failed to do appropriate investigation and study  
13 of the case, including an analysis of controlling law  
14 (NRS 174.085(3); NRS 178.562) and had counsel use due  
15 diligence and investigated the facts and the law he  
16 would have known that the charge of Attempt Grand  
17 Larceny was Perred from District Court against the  
18 petitioner as NRS 174.085(3) and NRS 178.562 provides  
19 the authority that made petitioner immune from  
20 prosecution on charge of Attempt Grand Larceny in  
21 District Court. Counsel failed to make certain that the  
22 petitioner fully and completely understood the conditions  
23 and limits of the plea agreement and the maximum  
24 punishment and other consequences the petitioner  
25 would be exposed to by entering his "Alford plea"  
26 as petitioner was surprised by the habitual criminal  
27 sentence. Whereas in fact, even though petitioner signed

1 the guilty plea agreement he was ignorant to the potential  
2 outcome as counsel had informed petitioner that he was  
3 agreeing to a gross-misdemeanor with time served credit  
4 and concurrent to case NO C-16-315125-1. Counsel failed  
5 to file a motion to withdraw guilty plea pre-sentencing  
6 and post-sentencing when sentencing was not in  
7 accordance with the negotiated agreement and a  
8 determination of habitual criminal was adjudicated.  
9 When in fact, when alleged Attempt Grand Larceny occurred  
10 on or about April 12, 2013 petitioner had never served a  
11 prison term or been to prison and had only one prior  
12 felony conviction for a Class E Felony "Attempt possession  
13 of credit or debit card without cardholder's consent" as  
14 Texas crime was one event for credit card abuse and  
15 fraudulent use/possession of identifying information that  
16 did not and does not carry a prison term, mandatory  
17 supervision, nor parole. Counsel failed to challenge alleged  
18 breach that was founded on implausible and highly  
19 suspect evidence as the Burglary charge used was  
20 dismissed and the finding of probable cause was  
21 misplaced as alleged victim testified under oath that  
22 petitioner was not the perpetrator of alleged event and  
23 he was 100% sure and further testified that alleged  
24 perpetrator did not enter said room only stood in doorway  
25 said "Sorry" and closed door without incident so this is  
26 a clear and convincing showing that no probable cause  
27 existed against petitioner. Counsel failed to challenge  
28 probable cause and subject matter jurisdiction for

1 the Burglary charge in case NO C-116-315718-1 that had  
2 counsel challenge the Burglary charge was fatal as the  
3 state's intent for the charge of Burglary of Attempt  
4 Grand Larceny was dismissed following a preliminary  
5 hearing in Justice Court Las Vegas Township on June 14,  
6 2016 and the Burglary charge also must have been  
7 dismissed leaving no jurisdiction for the district court  
8 to proceed with the filed information dated June 17, 2016.  
9 Nor the amended information of Attempt Grand Larceny  
10 filed November 7, 2018. Where, as here, counsel failures  
11 are a clear and convincing showing of prong one  
12 of the two prong test of Strickland that has greatly  
13 prejudice petitioner and that petitioner's Affidavit  
14 was not knowingly, intelligently, or voluntarily entered.

15 Where, counsel's deficient performance prejudiced  
16 petitioner to his extreme detriment causing irreparable  
17 injury, and if not for counsel's unprofessional errors  
18 and lack of due diligence of failure to investigate  
19 the facts and the law the results of the proceedings  
20 would have been different. Where as here petitioner  
21 would not have entered an "Affidavit" as the charges  
22 of Attempt Grand Larceny was barred from District Court  
23 for lack of jurisdiction, lack of admissible evidence,  
24 and violation of state law pursuant to NRS 174.085(3)  
25 and NRS 178.562 and the Burglary charge case NO.  
26 C-116-315718-1 was fatal as the state had no intent.

27 What in fact no reasonable jury would have convicted  
28 petitioner of Attempt Grand Larceny nor the charge

1 of Burglary as the state's intent for the Burglary charge  
2 of larceny in the filed information on June 12, 2016  
3 was dismissed following preliminary hearing for NO  
4 slight or marginal evidence, NO corpus delicti, and  
5 lack of admissible evidence. As counsel's failures are  
6 shown by a preponderance of the evidence, the record,  
7 and state law. In addition, counsel failed to file a  
8 notice of appeal and failed to inform petitioner of the  
9 right to appeal. Wherein, this is a clear and convincing  
10 showing of prong two of the two prong test of Strickland  
11 that has greatly prejudiced petitioner and a valid  
12 showing that petitioner's Afford plea to the charge  
13 of Attempt Grand Larceny was not knowingly,  
14 intelligently, or voluntarily entered. What is fact, the  
15 petitioner stands convicted of a crime he did not commit!!  
16 due to counsel failures. Furthermore this is an affront  
17 to justice and due process to hold petitioner to his  
18 Afford plea when the conduct upon which the plea  
19 was entered did not occur. Finally, for the above  
20 reasons, but for counsel's errors and failures petitioner  
21 would not have not entered an Afford plea and went  
22 to trial on the charge of Burglary and been ~~convicted~~ acquitted.

23 Wherein, appellate counsel failed to provide zealous and  
24 quality representation at all stages of appeal process.  
25 Counsel's performance was deficient and representation  
26 fell below the objective standard of reasonableness as  
27 appellate counsel failed to do appropriate investigation  
28 of potentially meritorious claims of error and assert

1 claims of error that are supported by facts and the  
2 law and failed to assert claims that were complex,  
3 unique, and issues of first impression. Counsel did  
4 not thoroughly research the issues in the case and  
5 set forth all viable issues in his prepared and  
6 sanctioned "fast track" statement. Appellate counsel failed  
7 to raise meritorious claims of failure of the state  
8 to properly notice its intent to seek habitual treatment  
9 at sentencing for the underlying charge of Attempt  
10 Grand Larceny. When in fact, State's Amended Notice  
11 of intent to seek punishment as a habitual criminal  
12 was for the charge of Burglary. Counsel failed to  
13 raise the claim that District Court lacked jurisdiction  
14 for the charge of Attempt Grand Larceny, when in fact,  
15 jurisdiction is derived by the law and Nevada  
16 State law NRS 174.085(3) and NRS 178.562 is the  
17 authority that State's amended information for the  
18 charge of Attempt Grand Larceny was without subject  
19 matter jurisdiction and was BARRED from district  
20 court proceedings against petitioner. Counsel did not  
21 challenge the habitual criminal adjudication pursuant  
22 to NRS 207.010. When in fact, petitioner is not a  
23 habitual criminal and his prior criminal <sup>history</sup> proves it  
24 as petitioner had only the Texas state jail crime(s)  
25 that was one event and not felonies as they did  
26 not carry any prison term and not any category  
27 of felony and only carries jail time and the

1 Burglary conviction was not a prior, so in essence  
2 petitioner ~~was~~ first time in prison and <sup>with</sup> one prior  
3 felony has been treated as a habitual criminal that  
4 is easily deemed cruel and unusual punishment  
5 and violates the legislative intent of NRS 207.010.  
6 In addition, petitioner was deprived of effective  
7 assistance of counsel on direct appeal when district  
8 court Judge William Keckert dismissed petitioner's  
9 appellate counsel on July 15, 2019. Pursuant to  
10 motion to withdraw counsel that was granted as  
11 District court Judge William Keckert stated his reason  
12 for granting and dismissing counsel was that  
13 the Supreme Court of Nevada had issued a remittitur.

14 Where, as here, counsel failures are a clear and  
15 convincing showing of the prejudice prong of  
16 Strickland.

17 Whereas, petitioner requested many times over  
18 that counsel file appeal and express to counsel on  
19 several occasions his dissatisfaction with the  
20 conviction and sentence and counsel failed to do  
21 so that easily satisfies the deficient performance  
22 of Strickland and shows the prejudice against  
23 petitioner cause had counsel use <sup>due</sup> diligence  
24 and raised the meritorious claims and not been  
25 withdrawn as counsel prior to the perfection of  
26 the appeal, petitioner appeal (direct) would have  
27 been successful.



1 23. (b) GROUND TWO: The state violated Mr. Hayes right to Due  
2 Process as guaranteed by both the Due Process Clause of  
3 the United States Constitution and the Nevada  
4 Constitution. "Breach of guilty plea agreement on impeachable evidence"

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Whereas,  
6 the breach of issue was not material nor volitional, when  
7 in fact, the court was required to hold an evidentiary  
8 hearing on the alleged breach which has resulted in dire  
9 consequences to petitioner and an additional five(5) to  
10 fourteen (and a half (14 1/2)) years in prison in violation of the  
11 terms of the plea agreement. That the state entered in BAD  
12 FAITH with petitioner as the agreement was unconstitutional,  
13 malicious, and a manifest injustice. Indeed, in relating  
14 the factual and procedural history of the case, the state  
15 has taken great liberties to construct the sort of narrative  
16 that has likely fueled inconsistent and unfair mass  
17 incarceration in Nevada.

18 Whereas, the petitioner knows the record and has tried  
19 to contextualize this actual record to reveal that an  
20 manifest injustice was done in his specific case.

21 Although his counsel's presented a very unconvincing  
22 argument worthy of sanctions and a bar complaint  
23 and is blatant ineffective assistance of counsel that  
24 has greatly prejudiced petitioner to his extreme detriment  
25 causing petitioner irreparable injury.

26 Whereas, in other words, the state's claim of breach  
27 that petitioner was found to have probable cause for.

1 a new Burglary charge is absurd when the alleged victim  
2 of alleged Burglary testified under oath facing the penalty  
3 of perjury that he was 100% sure petitioner was not the  
4 perpetrator of the rape drive crime and that this alleged  
5 charge crime was without probable cause against petitioner  
6 as the Justice Court Judge ruling of probable cause was  
7 misplaced and essentially the charge was dismissed in the  
8 first district court appearance. Furthermore, the guilty plea  
9 agreement in this case did not explicitly provide for the  
10 abdication of stipulation for a mere run into the law  
11 for a allege crime he had no part of, let alone for a  
12 charge that was dismissed to further solidify his non-  
13 participation in the rape drive Burglary charge lodged  
14 against him without due process considerations.

15 WHEREAS, petitioner's case of "Attempt Grand Larceny"  
16 is the one ostensibly before us in this petition which  
17 allegedly occurred on April 18, 2013 and was formally  
18 charged by way of criminal complaint on July 23, 2013  
19 that was dismissed following a preliminary hearing in  
20 Justice Court, Las Vegas Township on June 14, 2016 for  
21 lack of admissible evidence, no corpus delicti, no slight  
22 or marginal evidence to proceed to district court  
23 leaving the District Court 8th Judicial District with no  
24 subject matter jurisdiction for the charge of Attempt  
25 Grand Larceny as it was BARRED from subsequent  
26 prosecution against petitioner as mandated by state  
27 law pursuant to NRS 174.085(3) and NRS 178.562

1 Making the state's amended information for Attempt Grand  
2 Larceny unconstitutional, in BAD FAITH and fraud upon  
3 the court by not first establishing jurisdiction before  
4 prosecution that has prejudice petitioner to his extreme  
5 detriment causing petitioner irreparable injury.

6 WHEREAS the UNCONSTITUTIONAL guilty plea agreement  
7 at issue here for the "Mobbler" charge of Attempt Grand  
8 Larceny indicated that there was a stipulated sentence  
9 of probation with the only condition to be 30 days in  
10 the Clark County Detention Center with 30 days credit  
11 for time served with no suspended prison term and  
12 no time period of probation to be served that solidifies  
13 petitioner's position that the agreement was for gross  
14 misdemeanor treatment and further stipulated that  
15 it was to run CONCURRENTLY to case NO C-16-315125-1.  
16 This stipulation is UNIQUE to this case and do not contain  
17 any boilerplate language and do not explicitly rely upon  
18 or even reference the loss of stipulation in their language.

19 WHEREAS here, indeed, the boilerplate language  
20 regarding "Magistrate to find probable cause" does not  
21 explicitly refer to loss of stipulation, but only that "the  
22 state will have the UNQUALIFIED right to argue for any  
23 legal sentence and term of confinement allowable  
24 for the crime to which I am pleading guilty, including  
25 the use of any prior convictions I may have to  
26 INCREASE my sentence as an habitual criminal to twenty  
27 to twenty (20) years. Which in fact, there could not

1 be a legal sentence in the instant offense as the charge  
2 of Attempt Grand Larceny was BARRED from subsequent  
3 prosecution against petitioner and the District Court had  
4 no subject matter jurisdiction for instant offense Attempt  
5 Grand Larceny. In addition, the 2016 Burglary charge used  
6 in adjudication was not a prior conviction as the instant  
7 offense occurred in 2013.

8 Where, as here, it is also undisputed that the boilerplate  
9 language does not explicitly refer to a right to argue for  
10 consecutive sentence. It should also be noted that the  
11 boilerplate language of the guilty plea agreement does not  
12 refer in any way to what would constitute (or not constitute)  
13 an exculpatory ruling of probable cause by magistrate or  
14 make any reference to any ability for a "due process" to  
15 challenge an enforcement of a material breach. Furthermore,  
16 petitioner received no consideration whatsoever in exchange  
17 for his "Alford plea" to a crime that petitioner did not commit.

23. (c) GROUND THREE: State violated Mr. Hayes Right to "Due Process", when it failed to adhere to State law (NRS 174.085(a) and NRS 178.522) making conviction invalid and unconstitutional

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Whereas, petitioner has explicitly reserved his right not to be compelled to perform under any contract or agreement that I have not entered into knowingly, voluntarily, and intelligently and that my valid reservation of Rights has preserved all my Rights and prevented the loss of any such Rights by application of the concepts of waiver or estoppel as in the instant case.

Whereas, it is unconscionable for the state to attempt to insulate a conviction from collateral constitutional review by conditioning its willingness to enter into plea negotiations on petitioners "Waiver of the Rights" to pursue post-conviction remedies.

Where, as here, petitioner is entitled to habeas corpus if there is no material dispute as to a mistake of fact relating to his conviction (7.R.C.P 32(d)) and this court must set aside the judgment of conviction after sentence in order to correct this manifest injustice. As here, both parties agree to the mistake of fact that the charge of Attempt Grand Larceny was dismissed following preliminary

1 hearing by Justice Court Magistrate for lack of admissible  
2 evidence, no corpus delicti, no slight or marginal evidence  
3 to be further prosecuted in district court, and this is  
4 clear and convincing showing of dismissal of an  
5 action.

6 whereas, the state did violate NRS 178.562 by bringing  
7 another prosecution following dismissal of an action to  
8 constitute "another prosecution" without another pending  
9 vehicle for the prosecution of the charge of Attempt Grand  
10 Larceny that runs afoul of the provisions of NRS 178.562,  
11 and BARS further prosecution of the petitioner on that  
12 charge. When in fact the state held the preliminary hearing  
13 June 14, 2016 pursuant to the filed criminal complaint  
14 as the vehicle for prosecution of the instant offense  
15 and no other vehicle was filed for the instant offense  
16 Attempt Grand Larceny until November 7, 2018 by the  
17 way of an amended information that and there is  
18 no colorable argument that would allow them to over-  
19 come the violation of state law NRS 178.562.

20 where, as here, the state's amended information  
21 filed in open court November 7, 2018 was a subsequent  
22 prosecution for the same offense in the former "Attempt  
23 Grand Larceny" that was dismissed following preliminary  
24 hearing by magistrate without another pending vehicle  
25 for prosecution leaving the instant offense barred  
26 from all district court proceedings against petitioner  
27 and this jurisprudence set forth is perfectly clear.

1 and unambiguous.

2 WHEREAS, the state did violate NRS 174.085(3) when the petitioner  
3 was once placed in jeopardy upon the criminal complaint and  
4 proceeded to the preliminary hearing and following the preliminary  
5 hearing the charge of Attempt grand larceny was dismissed by  
6 magistrate, that is a BAR to another indictment, information or  
7 complaint for the offense charged in the former. Thus the state  
8 triggered the protections of NRS 174.085(3) to bar the subsequent  
9 prosecution of the instant offense Attempt grand larceny against  
10 the petitioner in all district court proceedings ~~and the district~~  
11 ~~court in the subsequent time of prosecution~~

12 WHERE, as here, there is no material dispute of fact that  
13 the charge in the instant offense Attempt grand larceny was  
14 dismissed following the preliminary examination and ~~BARRED~~  
15 from any subsequent prosecution against petitioner in  
16 district court leaving no subject matter jurisdiction for  
17 prosecution in district court. In addition, the state may not  
18 convict petitioner no matter how validly his factual guilt  
19 is establish without subject matter jurisdiction and the  
20 court that rendered the judgment had no subject matter  
21 jurisdiction and left the court with no power to enter  
22 the conviction or impose the sentence.

23 WHEREAS, subject matter jurisdiction is not waivable  
24 as the state has control as jurisdiction is derived from  
25 the law and it neither can be waived nor conferred  
26 by consent of the petitioner. As there is no colorable argu-  
27 ment to overcome the lack of subject matter jurisdiction.

23. (d) GROUND FOUR: Violation of MA. Hoyer's right to Due Process Material mistakes of fact regarding criminal record in PSI that work to his extreme detriment.

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

Inheres, the court made material mistakes of fact about petitioner's criminal record, as the petitioner's PSI had several material facts in error that work to his extreme detriment.

Where, as here, petitioner and his counsel objected to the mistakes at sentencing hearing and sentencing judge continued the proceedings without allowing the corrections to be made. When, in fact, if the judge would have allowed the corrections to be completed in the instant case upon petitioner's objections petitioner's raw score, social score, and the Department of Public Safety Division of Probation and Parole recommendation would have been astronomically different and would have showed that petitioner had never been to prison so there would not have been any habitual offender recommendation for the instant offense of ~~Attempt~~ Grand Larceny. As the instant offense occurred in the year 2013 and at that time petitioner had one felony conviction not four as the PSI read; no prison incarcerations not one as the PSI read; no current supervisor history not one



1 as the PSI read; the instant offense should be dated  
2 April 9, 2013 NOT April 2, 2016 as the PSI reads;  
3 Burglary conviction case NO C-16-315125-1 should NOT  
4 be included anywhere on petitioner's PSI for the instant  
5 offense as it occurred sum three years later on April  
6 2, 2016; Finally the TEXAS CONVICTIONS case NO(s)  
7 1083785 and 1083786 was ONE AVEAT NOT TWO as it  
8 reads on PSI NOT two felony convictions but ONE  
9 state jail conviction for Credit Card Abuse and Fraudulent  
10 USE/POSSESSION of Identifying information. Whereas the  
11 numerous material mistakes of facts about petitioners  
12 criminal record that have worked to his extreme detriment  
13 has rise to a manifest injustice and DUE PROCESS  
14 violation that cannot stand uncorrected. Furthermore,  
15 the Texas crime(s) would not constitute a felony under  
16 Nevada law.

23. (d) GROUND ~~ONE~~ <sup>ONE</sup>: State Violated Mr. Hayes Right to "Due Process" as guaranteed by both the "DUE PROCESS CLAUSE of the United States Constitution and the Nevada Constitution: "DUE PROCESS VIOLATION guilty plea was NOT equally voluntary, knowing and intelligent."  
28

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): ~~whereas~~,  
waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences. As here, petitioner's "waiver of his fundamental rights" was not knowingly and intelligently made as the court failed to adequately inform petitioner of the full consequences of his Afford plea that has created a manifest injustice, because the trial court did not straightforwardly explain consequences of petitioner's breach of the agreement while awaiting sentencing that the state would unilaterally impose an enhanced sentence as the boilerplate language was ambiguous and had imprecisions that did not explicitly state loss of stipulation. Most significantly, petitioner did not intelligently and knowingly waive his constitutional rights with full knowledge of the consequences. Nor was he told that his Afford plea would stand regardless of whether he was re-arrested for a Burglary charge that was dismissed after alleged victim testified at preliminary hearing under oath facing the penalty of perjury that petitioner was not the perpetrator of alleged event and 100% sure of it. So petitioner has raised sufficient doubt as whether his

1 Afford plea was ever accepted, and even if it was, whether  
2 he was fully and fairly apprised of its consequences.

3 Whereas, the state interpret the court's statement to  
4 mean "do you understand that if you breach any of  
5 the conditions in guilty plea agreement, this court will  
6 sentence you". Yet, that is not what the trial court said.  
7 When it is surely equally plausible explanation of this  
8 plea colloquy that petitioner would -- were here to breach  
9 the agreement -- face trial on the Burglary charge. In  
10 particular, it is impossible to conclude that petitioner  
11 truly understood that he was waiving his right to be  
12 tried on the original charge of Burglary and agreed  
13 instead that were he re-arrested the state trial court could  
14 unilaterally impose a habitual criminal sentence upon him.  
15 So it is without question that whatever waiver petitioner  
16 regard to was without adequate knowledge of the  
17 consequences flowing from his breach of the plea agreement.  
18 If in fact there was a material breach that in the  
19 instant case was in question as the facts of the alleged  
20 breach was based on impeachable and highly suspect  
21 evidence of an alleged Burglary charge that was  
22 dismissed after alleged victim testified that petitioner  
23 was not the perpetrator of alleged event.

"No factual statements on the record which  
AFFIDAVIT OF: would constitute an admission of "Guilt"

STATE OF NEVADA )

COUNTY OF CLARK )

ss: CASE No: A-19-793315

Dept: 19

TO WHOM IT MAY CONCERN:

I, James N. Hayes the undersigned, do hereby swear that

all statements, facts and events within my foregoing Affidavit are

true and correct of my own knowledge, information and belief, and

as to those, I believe them to be True and Correct. Signed under the

penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state

the following: Whereas, In Alford, the court held a plea containing

a protestation of innocence was constitutionally acceptable

when "a defendant intelligently concludes that his interests

require entry of guilty plea and the record before the judge

contains strong evidence of guilt" (400 U.S. at 37). In the instant

case, there was, of course, no evidence of actual guilt of the crime

of Attempted Grand Larceny, as the sentencing judge and the state knew

Mr. Hayes had no involvement in such a crime. Moreover, when prior

examination showed no criminal act of Attempted Grand Larceny,

it is clear that no evidence of actual guilt existed on the under-

lying criminal conduct that may have justified accepting Mr. Hayes

plea, therefore Mr. Hayes did not waive his right to complain of the

acceptance of an unconstitutional plea. Mr. Hayes neither made factual

statements regarding an admission to the attempted grand larceny

charge nor admitted facts constituting the elements of attempted grand

larceny. Mr. Hayes did not understand the elements of the crime that he

pleaded to.

EXECUTED At: Indian Springs, Nevada, this 1<sup>st</sup> Day of March

2020.

BY:

James N. Hayes #1173649

Post Office 38x-203 (SDCC)

Indian Springs, Nevada, 89070

Affiant, In Propria Personam:

**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition:

Expedition's Judicial Examination  
(Title of Document)

filed in District Court Case number C-16-315718-1

☒ Does not contain the social security number of any person.

**-OR-**

☐ Contains the social security number of a person as required by:

**A. A specific state or federal law, to wit:**

**(State specific law)**

**-OF-**

**B. For the administration of a public program or for an application for a federal or state grant.**

James H. Hayes  
Signature

3-1-20  
Date

James H. Hayes  
Print Name

PRO PER  
Title

**CERTIFICATE OF SERVICE BY MAILING**

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 1<sup>st</sup>  
day of March, 2020, I mailed a true and correct copy of the foregoing, "Petition:  
Expeditions Judicial Examination"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clark County Dist Ct.  
Office of the Clerk  
200 Lewis Ave. 3rd Floor  
Las Vegas, Nevada  
89155-1160

Attorney General of Nevada  
100 North Carson Street  
Carson City, Nevada  
89401

Clark County Dist Atty  
200 Lewis Ave  
Las Vegas, Nevada  
89155

CC:FILE

DATED: this 1<sup>st</sup> day of March, 2020.

James H. Hayes  
James H. Hayes # 1143097  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

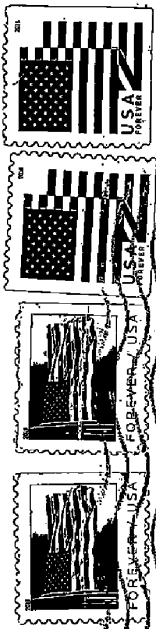
Vegas, J# 1125072

9000

P.O. Box 208

Indian Springs, Nevada

89070



Las Vegas P&DC 89199

WED 04 MAR 2020 PM

Clark County District Courts  
"Office of the Clerk"

200 Lewis Ave, 3rd Floor

Las Vegas, Nevada

89155-1160

Legal  
Mail

Case No. A-19-0793315-W  
Dept. No. 19

IN THE 8th JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF Clark

JAMES H. HAYES  
Petitioner,

v.

STATE OF NEVADA;  
TERRY HOWELL (WARDEN)  
Respondent.

**ORDER**

Petitioner filed a petition for a Writ of Habeas Corpus on April (month)  
15th (day), 2019 (year). The court has reviewed the petition  
and has determined that a response would assist the court in determining whether  
petitioner is illegally imprisoned and restrained of petitioner's liberty. Respondent  
shall, within 45 days after the date of this order, answer or respond to the petition  
and file a return in accordance with provisions of NRS 34.360 to 34.830, inclusive.

Dated \_\_\_\_\_ (month) \_\_\_\_\_ (day), \_\_\_\_\_ (year)

\_\_\_\_\_  
Court Judge



Hayes, James H #1175077

Defendant In Pro Persona  
Post Office Box 208 S.D.C.C.  
Indian Springs, Nevada 89018

FILED

MAR 06 2020

CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF Clark

Case No. A-19-793315-W

Dept. No. 19

Docket

JAMES H. HAYES

Petitioner,

vs.

State of Nevada;  
JERRY HOWELL (WARDEN)

Respondent

("HERRING REQUEST")

PETITION : EXPEDITIOUS JUDICIAL EXAMINATION  
(NRS 34.360 - 34.830)

Date of Hearing: \_\_\_\_\_

Time of Hearing: \_\_\_\_\_

"ORAL ARGUMENT REQUESTED, Yes ☒ No ☐

Comes Now, defendant, JAMES H. HAYES, proceeding in proper person, hereby moves this Honorable Court for its **ORDER** granting petitioner an Expeditious Judicial Examination of petitioner's Writ of Habeas Corpus. In addition, to hold an **Evidentiary Hearing** for meaningful Habeas Corpus Judicial Review.

RECEIVED

MAR 6 2020

A-19-793315-W  
PET  
Petition  
4903256



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1 "The plight of a man in prison may in these respects be even more acute than  
2 the plight of a person on the outside. He may need collateral proceedings to test the  
3 legality of his detention or relief against management of the parole system or against  
4 defective detainers lodge against him which create burdens in the nature of his  
5 incarcerated status." (89 S.Ct. 747, Johnson v. Avery)

6 "Reasonable access to the courts is a right (secured by the Constitution and  
7 laws of the United States), being guaranteed as against state action by the Due  
8 Process Clause of the 14<sup>th</sup> Amendment. (65 S.Ct. 978, Write v. Ragen)

9 "The constitutional Writ of Habeas Corpus heretofore used, within defined limits,  
10 as a post-conviction procedure to challenge the validity of a conviction, may not be  
11 abolished as a post-conviction remedy by legislative fiat." (434 P.2d 437, Marshall v.  
12 Warden)

13 This Petition is made and based upon all papers and pleadings on file with the  
14 Clerk of the Court which are hereby incorporated by this reference, the Points and  
15 Authorities Herein, and attached Affidavit of Defendant.

16 DATED: This 1<sup>st</sup> day of March, 20 20  
17 By: James H. Hayes James H. Hayes # 1175078  
18  
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FACTS OF THE CASE:

The Petitioner has filed a timely Writ of Habeas Corpus on, April  
15<sup>th</sup> 2019. The Petitioner, still has not received a decision on his Writ of  
Habeas Corpus. It has been exactly, TEN (10) months and  
SIXTEEN (16) days without a decision.

The Petitioner has shown good cause, to request the **NEVADA SUPREME**  
**COURT**. To **expedite** and **review** the petitioner's Writ of Habeas Corpus for **Judicial**  
**Review**. SEE PAGES FIVE (5) THROUGH TWENTY-TWO (22) OF ADDITIONAL  
FACTS:

1  
2  
3 (a) GROUND ONE: MR. HAYES (petitioner) was denied his  
4 Constitutionally guaranteed "right to effective  
5 assistance of counsel" 2 federal and state constitutional  
6 rights 3 6<sup>th</sup> and 14<sup>th</sup> Amendment Violation:

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

8 WHEREAS, trial counsel failed to provide zealous and  
9 quality representation at all stages of the criminal  
10 process. Counsel's performance was deficient and representation  
11 fell below the objective standard of reasonableness as  
12 counsel failed to do appropriate investigation and study  
13 of the case, including an analysis of controlling law  
14 2 NRS 174.085(3); NRS 178.562 3 and had counsel use due  
15 diligence and investigated the facts and the law he  
16 would have known that the charge of Attempt Grand  
17 Larceny was Perce'd from District Court against the  
18 petitioner as NRS 174.085(3) and NRS 178.562 provides  
19 the authority that made petitioner immune from  
20 prosecution on charge of Attempt Grand Larceny in  
21 District Court. Counsel failed to make certain that the  
22 petitioner fully and completely understood the conditions  
23 and limits of the plea agreement and the maximum  
24 punishment and other consequences the petitioner  
25 would be exposed to by entering his "Alford plea"  
26 as petitioner was surprised by the habitual criminal  
27 sentence. When in fact, even though petitioner signed

1 the guilty plea agreement he was ignorant to the potential  
2 outcome as counsel had informed petitioner that he was  
3 agreeing to a gross-misdemeanor with time served credit  
4 and concurrent to case NO C-16-315125-1. Counsel failed  
5 to file a motion to withdraw guilty plea pre-sentencing  
6 and post-sentencing when sentencing was not in  
7 accordance with the negotiated agreement and a  
8 determination of habitual criminal was adjudicated  
9 when in fact, when alleged Attempt Grand Larceny occurred  
10 on or about April 2, 2013 petitioner had never served a  
11 prison term or been to prison and had only one prior  
12 felony conviction for a Class E Felony "Attempt possession  
13 of Credit or Debit Card without Cardholder's consent" as  
14 Texas crime was one event for Credit Card Abuse and  
15 fraudulent use/possession of identifying information that  
16 did not and does not carry a prison term, mandatory  
17 supervision, nor parole. Counsel failed to challenge alleged  
18 breach that was founded on impalpable and highly  
19 suspect evidence as the Burglary charge used was  
20 dismissed and the finding of probable cause was  
21 misplaced as alleged victim testified under oath that  
22 petitioner was not the perpetrator of alleged event and  
23 he was 100% sure and further testified that alleged  
24 perpetrator did not enter said room only stood in doorway  
25 said "sorry" and closed door without incident so this is  
26 a clear and convincing showing that no probable cause  
27 existed against petitioner. Counsel failed to challenge  
28 probable cause and subject matter jurisdiction for

1 the Burglary charge in case NO C-16-315718-1 that had  
2 counsel challenge the Burglary charge was fatal as the  
3 state's intent for the charge of Burglary of Attempt  
4 Grand Larceny was dismissed following a preliminary  
5 hearing in Justice Court Las Vegas Township on June 14,  
6 2016 and the Burglary charge also must have been  
7 dismissed leaving no jurisdiction for the district court  
8 to proceed with the filed information dated June 17, 2016,  
9 nor the amended information of Attempt Grand Larceny  
10 filed November 7, 2018. Where, as here, counsel failures  
11 are a clear and convincing showing of prong one  
12 of the two prong test of Strickland that has greatly  
13 prejudice petitioner and that petitioner's Affidavit  
14 was not knowingly, intelligently, or voluntarily entered.

15 Where, counsel's deficient performance prejudiced  
16 petitioner to his extreme detriment causing irreparable  
17 injury, and if not for counsel's unprofessional errors  
18 and lack of due diligence of failure to investigate  
19 the facts and the law, the results of the proceedings  
20 would have been different. Where as here, petitioner  
21 would not have entered an "Affidavit" as the charges  
22 of Attempt Grand Larceny was barred from District Court  
23 for lack of jurisdiction, lack of Admissible Evidence,  
24 and violation of state law pursuant to NRS 174.085(3)  
25 and NRS 178.562 and the Burglary charge case NO.  
26 C-16-315718-1 was fatal as the state had no intent.

27 What in fact, no reasonable jury would have convicted  
28 petitioner of Attempt Grand Larceny nor the charge

1 of Burglary as the state's intent for the Burglary charge  
2 of larceny in the filed information on June 17, 2016  
3 was dismissed following preliminary hearing for no  
4 slight or marginal evidence, no corpus delicti, and  
5 lack of admissible evidence. As counsel's failures are  
6 shown by a preponderance of the evidence, the record,  
7 and state law. In addition, counsel failed to file a  
8 notice of appeal and failed to inform petitioner of the  
9 right to appeal. Inherens, this is a clear and convincing  
10 showing of prong two of the two prong test of Strickland  
11 that has greatly prejudiced petitioner and a valid  
12 showing that petitioner's Alford plea to the charge  
13 of Attempt Grand Larceny was not knowingly,  
14 intelligently, or voluntarily entered. When in fact, the  
15 petitioner stands convicted of a crime he did not commit  
16 due to counsel failures. Furthermore, this is an affront  
17 to justice and due process to hold petitioner to his  
18 Alford plea when the conduct upon which the plea  
19 was entered did not occur. Finally, for the above  
20 reasons, but for counsel's errors and failures petitioner  
21 would not have not entered an Alford plea and went  
22 to trial on the charge of Burglary and been ~~convicted~~ acquitted.  
23 Inherens, appellate counsel failed to provide zealous and  
24 quality representation at all stages of appeal process.  
25 Counsel's performance was deficient and representation  
26 fell below the objective standard of reasonableness as  
27 appellate counsel failed to do appropriate investigation  
28 of potentially meritorious claims of error and assert



1 claims of error that are supported by facts and the  
2 law and failed to assert claims that were complex,  
3 unique, and issues of first impression. Counsel did  
4 not thoroughly research the issues in the case and  
5 set forth all viable issues in his prepared and  
6 sanctioned "fast track" statement. Appellate counsel failed  
7 to raise meritorious claims of failure of the state  
8 to properly notice its intent to seek habitual treatment  
9 at sentencing for the wobbler charge of Attempt  
10 Grand Larceny. When in fact, State's Amended Notice  
11 of intent to seek punishment as a habitual criminal  
12 was for the charge of Burglary. Counsel failed to  
13 raise the claim that District Court lacked jurisdiction  
14 for the charge of Attempt Grand Larceny, when in fact,  
15 jurisdiction is derived by the law and NACLS  
16 State Law NRS 174.085(a) and NRS 178.562 is the  
17 authority that State's amended information for the  
18 charge of Attempt Grand Larceny was without subject  
19 matter jurisdiction and was BARRED from district  
20 court proceedings against petitioner. Counsel did not  
21 challenge the habitual criminal adjudication pursuant  
22 to NRS 207.010. When in fact, petitioner is <sup>not</sup> a  
23 habitual criminal and his prior criminal <sup>history</sup> proves it.  
24 As petitioner had only the Texas state jail crime(s)  
25 that was one event and not felonies as they did  
26 not carry any prison term and not any category  
27 of felony and only carries jail time and the

1 Burglary conviction was not a prior, so in essence  
2 petitioners ~~was~~ first time in prison and <sup>with</sup> one prior  
3 felony has been treated as a habitual criminal. ~~the~~  
4 is easily deemed cruel and unusual punishment,  
5 and violates the legislative intent of NRS 207.010.  
6 In addition, petitioner was deprived of effective  
7 assistance of counsel on direct appeal when district  
8 court Judge William Kephart dismissed petitioners  
9 appellate counsel on July 15, 2019. Pursuant to  
10 motion to withdraw counsel that was granted as  
11 District court Judge William Kephart stated his reason  
12 for granting and dismissing counsel was that  
13 the Supreme Court of Nevada had issued a remittitur  
14 where, as here, counsel failures are a clear and  
15 convincing showing of the prejudice prong of  
16 Strickland.

17 Whereas, petitioners requested many times over  
18 that counsel file appeal and express to counsel on  
19 several occasions his dissatisfaction with the  
20 conviction and sentence and counsel failed to do  
21 so that easily satisfies the deficient performance  
22 of Strickland and shows the prejudice against  
23 petitioner cause had counsel use ~~the~~ <sup>due</sup> diligence  
24 and raised the meritorious claims and not been  
25 withdrawn as counsel prior to the perfection of  
26 the appeal, petitioners appeal (direct) would have  
27 been successful.

23. (b) GROUND TWO: The state violated Mr. Hayes right to Due Process as guaranteed by both the Due Process Clause of the United States Constitution and the Nevada Constitution. Breach of guilty plea agreement on impeachable evidence

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Whereas, the breach of issue was not material nor volitional, when in fact, the court was required to hold an evidentiary hearing on the alleged breach which has resulted in dire consequences to petitioner and an additional five(5) to fourteen and a half (14 1/2) years in prison in violation of the bargained for stipulations. That the state entered in BAD FAITH with petitioner as the agreement was unconstitutional, malicious, and a manifest injustice. Indeed, in relating the factual and procedural history of the case, the state has taken great liberties to continue the sort of narrative that has likely fueled inconsistent and unfair mass incarceration in Nevada.

Whereas, the petitioner knows the record and has tried to contextualize this actual record to reveal that a manifest injustice was done in his specific case. Although his counsel's presented a very unconvincing argument worthy of sanctions and a bar complaint and is blatant ineffective assistance of counsel that has greatly prejudice petitioner to his extreme detriment causing petitioner irreparable injury.

Whereas, in other words, the state's claim of breach that petitioner was found to have probable cause for

• II

1 a new Burglary charge is absurd when the alleged victim  
2 of alleged Burglary testified under oath facing the penalty  
3 of perjury that he was 100% sure petitioner was not the  
4 perpetrator of the indecent crime and that this alleged  
5 charge crime was without probable cause against petitioner  
6 as the Justice Court Judge ruling of probable cause was  
7 misplaced and essentially the charge was dismissed in the  
8 first district court appearance. Furthermore, the guilty plea  
9 agreement in this case did not explicitly provide for the  
10 abdication of stipulation for a mere run into the law  
11 for a allege crime he had no part of, let alone for a  
12 charge that was dismissed to further solidify his non-  
13 participation in the indecent Burglary charge lodged  
14 against him without due process considerations.

15 Whereas, petitioner's case of "Attempt Grand Larceny"  
16 is the one ostensibly before us in this petition which  
17 allegedly occurred on April 1, 2013 and was formally  
18 charged by way of Criminal Complaint on July 23, 2013  
19 that was dismissed following a preliminary hearing in  
20 Justice Court, Las Vegas Township on June 14, 2016 for  
21 lack of admissible evidence, no corpus delicti, no slight  
22 or marginal evidence to proceed to district court  
23 leaving the District Court 8<sup>th</sup> Judicial District with no  
24 subject matter jurisdiction for the charge of Attempt  
25 Grand Larceny as it was BARRED from subsequent  
26 prosecution against petitioner as mandated by state  
27 law pursuant to NRS 174.085(3) and NRS 178.562

1 Making the state's emailed information for Attempt Grand  
2 Larceny unconstitutional, in BAD FAITH, and fraud upon  
3 the court by not first establishing jurisdiction before  
4 prosecution that has prejudice petitioner to his extreme  
5 detriment causing additional irreparable injury.

6 WHEREAS the unconstitutional guilty plea agreement  
7 at issue here for the "Mobbler" charge of Attempt Grand  
8 Larceny indicated that there was a stipulated sentence  
9 of probation with the only condition to be 30 days in  
10 the Clark County Detention Center with 30 days credit  
11 for time served with no suspended prison term and  
12 no time period of probation to be served that solidifies  
13 petitioner's position that the agreement was for gross  
14 misdemeanor treatment and further stipulated that  
15 it was to run concurrently to case NO C-16-315125-1.  
16 This stipulation is unique to this case and do not contain  
17 any boilerplate language and do not explicitly rely upon  
18 or even reference the loss of stipulation in their language

19 WHEREAS here, indeed, the boilerplate language  
20 regarding "Magistrate to find probable cause" does not  
21 explicitly refer to loss of stipulation, but only that "the  
22 state will have the unqualified right to argue for any  
23 legal sentence and term of confinement allowable  
24 for the crime to which I am pleading guilty, including  
25 the use of any prior convictions I may have to  
26 increase my sentence as an habitual criminal to levels  
27 to twenty (20) years. which in fact, there could not

1 be a legal sentence in the instant offense as the charge  
2 of Attempt Grand Larceny was BARRED from subsequent  
3 prosecution against petitioner and the District Court had  
4 no subject matter jurisdiction for instant offense Attempt  
5 Grand Larceny. In addition, the 2016 Burglary charge used  
6 in adjudication was not a prior conviction as the instant  
7 offense occurred in 2013.

8 Where, as here, it is also undisputed that the boilerplate  
9 language does not explicitly refer to a right to argue for  
10 consecutive sentence. It should also be noted that the  
11 boilerplate language of the guilty plea agreement does not  
12 refer in any way to what would constitute (or not constitute)  
13 an exculpatory ruling of probable cause by magistrate or  
14 make any reference to any ability for a "due process" to  
15 challenge an overruling of a material breach. Furthermore,  
16 petitioner received no consideration whatsoever in exchange  
17 for his "Alford plea" to a crime that petitioner did not commit.



23. (c) GROUND THREE: State violated Mr. Hayes Right to "Due Process" when it failed to adhere to State law (NRS 174.085(3) and NRS 178.522) making conviction invalid and unconstitutional

23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law) Whereas petitioner has explicitly reserved his right not to be compelled to perform under any contract or agreement that I have not entered into knowingly, voluntarily, and intelligently and that my valid reservation of Rights has preserved all my Rights and prevented the loss of any such Rights by application of the concepts of waiver or estoppel as in the instant case.

Whereas it is unconscionable for the state to attempt to insulate a conviction from collateral constitutional review by conditioning its willingness to enter into plea negotiations on petitioners "Waiver of the Rights" to pursue post-conviction remedies.

Whereas here, petitioner is entitled to habeas corpus if there is no material dispute as to a mistake of fact relating to his conviction (7.R.C.P 32(d)) and this court must set aside the judgment of conviction after sentence in order to correct this manifest injustice. As here, both parties agree to the mistake of fact that the charge of Attempted Grand Larceny was dismissed following preliminary

1 hearing by Justice Court Magistrate for lack of admissible  
2 evidence, no corpus delicti, no slight or marginal evidence  
3 to be further prosecuted in district court, and this is  
4 clear and convincing showing of dismissal of an  
5 action.

6 Whereby the state did violate NRS 178.562(4) by bringing  
7 another prosecution following dismissal of an action to  
8 constitute "another prosecution" without another pending  
9 vehicle for the prosecution of the charge of Attempt Grand  
10 Larceny that runs afoul of the provisions of NRS 178.562(4),  
11 and BARS further prosecution of the petitioner on that  
12 charge. When in fact the state held the preliminary hearing  
13 June 14, 2016 pursuant to the filed criminal complaint  
14 as the vehicle for prosecution of the instant offense  
15 and no other vehicle was filed for the instant offense  
16 Attempt Grand Larceny until November 7, 2018 by the  
17 way of an amended information ~~that~~ and there is  
18 no colorable argument that would allow them to over-  
19 come the violation of state law NRS 178.562.

20 Where as here, the state's amended information  
21 filed in open court November 7, 2018 was a subsequent  
22 prosecution for the same offense in the former "Attempt  
23 Grand Larceny" that was dismissed following preliminary  
24 hearing by magistrate without another pending vehicle  
25 for prosecutions leaving the instant offense barred  
26 from all district court proceedings against petitioner  
27 and this jurisprudence set forth is perfectly clear.



1 and unambiguous.

2 WHEREAS, the state did violate NCS 174.085(2) when the petitioner  
3 was once placed in jeopardy upon the criminal complaint and  
4 proceeded to the preliminary hearing and following the preliminary  
5 hearing the charge of Attempt grand larceny was dismissed by  
6 magistrate, that is a BAR to another indictment, information or  
7 complaint for the offense charged in the former. Thus the state  
8 triggered the protections of NCS 174.085(3) to bar the subsequent  
9 prosecution of the instant offense Attempt grand larceny against  
10 the petitioner in all district court proceedings ~~where the offense~~  
11 ~~committed before the subsequent time of prosecution~~

12 WHEREAS, as here, there is no material dispute of fact that  
13 the charge in the instant offense Attempt grand larceny was  
14 dismissed following the preliminary examination and BARRED  
15 from any subsequent prosecution against petitioner in  
16 district court leaving no subject matter jurisdiction for  
17 prosecution in district court. In addition, the state may not  
18 convict petitioner no matter how validly his factual guilt  
19 is established without subject matter jurisdiction and the  
20 court that rendered the judgment had no subject matter  
21 jurisdiction and left the court with no power to enter  
22 the conviction or impose the sentence.

23 WHEREAS, subject matter jurisdiction is not waivable  
24 as the state has contended as jurisdiction is derived from  
25 the law and it neither can be waived nor conferred  
26 by consent of the petitioner. As there is no colorable argu-  
27 ment to overcome the lack of subject matter jurisdiction.

23. (d) GROUND FOUR: Violation of MA. Boyer right to Due Process Material mistakes of fact regarding criminal record in PSI that work to his extreme detriment.

23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

Whereas the court made material mistakes of fact about petitioner's criminal record, as the petitioner's PSI had several material facts in error that work to his extreme detriment.

Where, as here, petitioner and his counsel objected to the mistakes at sentencing hearing and sentencing judge continued the proceedings without allowing the corrections to be made. When, in fact, if the judge would have allowed the corrections to be completed in the instant case upon petitioner's objections petitioner's raw score, social score, and the Department of Public Safety Division of Parole and Probation recommendation would have been astronomically different and would have showed that petitioner had never been to prison so there would not have been any habitual offender recommendations for the instant offense of Attempted Grand Larceny. As the instant offense occurred in the year 2013 and at that time petitioner had one felony conviction not four as the PSI read, no prison incarcerations not one as the PSI read; no current supervisor history not one

25 the PSI read; the instant offense should be dated  
April 9, 2013. Not April 2, 2016 as the PSI reads;  
Burglary conviction case NO C-16-315125-1 should NOT  
be included anywhere on petitioner's PSI for the instant  
offense as it occurred sum three years later on April  
2, 2016; Finally the Texas conviction(s) case NO(s)  
10B3785 and 10B3786 was ONE event not two as it  
reads on PSI not two felony convictions but ONE  
state jail conviction for Credit Card Abuse and Fraudulent  
use/possession of Identifying information. Whereas the  
Numerous material mistakes of facts about petitioner's  
criminal record that have worked to his extreme detriment  
has rise to a manifest injustice and due process  
violation that cannot stand uncorrected. Furthermore,  
the Texas crime(s) would not constitute a felony under  
Nevada Law.

23. (d) GROUND ~~ONE~~ <sup>FIVE</sup>: State Violated Mr. Hayes Right to "DUE PROCESS  
as guaranteed by both the "DUE PROCESS CLAUSE of the United  
State's Constitution and the Nevada Constitution: "DUE  
PROCESS violation guilty plea was NOT Equally Voluntary, KNOWING  
AND INTELLIGENTLY MADE.  
23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Inherent,  
waivers of constitutional rights NOT only must be voluntary  
but must be knowing, intelligent acts done with sufficient  
awareness of the relevant circumstances and likely  
CONSEQUENCES. As here, petitioner's "waiver of his fund-  
amental rights" was NOT knowingly and intelligently  
made as the court failed to adequately inform petitioner  
of the full consequences of his Atford plea that has  
created a manifest injustice, because the trial court  
did not straightforwardly explain consequences of  
petitioner's breach of the agreement while awaiting  
sentencing that the state would unilaterally impose  
an enhanced sentence as the indeterminate language was  
ambiguous and had imprecisions that did not explicitly  
state loss of stipulation. Most significantly, petitioner did  
NOT intelligently and knowingly waive his constitutional  
rights with full knowledge of the consequences, nor was  
he told that his Atford plea would stand regardless of whether  
he was arrested for a Burglary charge that was dismissed,  
after alleged victim testified at preliminary hearing under  
oath facing the penalty of perjury that petitioner was NOT  
the perpetrator of alleged event and 100% sure of it.  
So petitioner has raised sufficient doubt as whether his

1 Afford plea was ever accepted, and even if it was, whether  
2 he was fully and fairly apprised of its consequences.  
3 Whereas, the state interpret the court's statement to  
4 mean "do you understand that if you breach any of  
5 the conditions in guilty plea agreement, this court will  
6 sentence you". Yet, that is not what the trial court said.  
7 When it is surely equally plausible explanation of the  
8 plea colloquy that petitioner would -- were here to breach  
9 the agreement -- face trial on the Burglary charge. In  
10 particular, it is impossible to conclude that petitioner  
11 truly understood that he was waiving his right to be  
12 tried on the original charge of Burglary, and agreed  
13 instead that were he re-arrested the state trial court could  
14 unilaterally impose a habitual criminal sentence upon him.  
15 So it is without question that whatever waiver petitioner  
16 agreed to was without adequate knowledge of the  
17 consequences flowing from his breach of the plea agreement.  
18 If in fact there was a material breach that in the  
19 instant case was in question as the facts of the alleged  
20 breach was based on impeachable and highly suspect  
21 evidence of an alleged Burglary charge that was  
22 dismissed after alleged victim testified that petitioner  
23 was not the perpetrator of alleged event.

"No factual statements on the record which  
AFFIDAVIT OF: would constitute an admission of "Guilt"

STATE OF NEVADA )

COUNTY OF CLARK )

ss: CASE No: A-19-793315  
DEPT: 19

TO WHOM IT MAY CONCERN:

I, James N. Hayes the undersigned, do hereby swear that  
all statements, facts and events within my foregoing Affidavit are  
true and correct of my own knowledge, information and belief, and  
as to those, I believe them to be True and Correct. Signed under the  
penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state  
the following: Whereas, In Alford, the court held a plea contain  
a protestation of innocence was constitutionally acceptable  
when "a defendant intelligently concludes that his interests  
require entry of guilty plea and the record before the judge  
contains strong evidence of guilt" (400 U.S. at 37). In the instant  
case, there was, of course, no evidence of actual guilt of the crime  
of Attempted Grand Larceny, as the sentencing judge and the State &  
Mr. Hayes had no involvement in such a crime. Moreover, when pre-  
examination showed no criminal act of Attempted Grand Larceny,  
it is clear that no evidence of actual guilt existed on the under-  
lying criminal conduct that may have justified accepting Mr. Hayes  
plea, therefore Mr. Hayes did not waive his right to complain of the  
acceptance of an unconstitutional plea. Mr. Hayes neither made pre-  
statements regarding an admission to the attempted grand larceny  
charge nor admitted facts constituting the elements of attempted grand  
larceny. Mr. Hayes did not understand the elements of the crime that he  
pleaded to.

EXECUTED At: Indian Springs, Nevada, this 1st Day of March

BY:

James N. Hayes  
James N. Hayes # 1185049  
Post Office Box-203 (SDCC)  
Indian Springs, Nevada 89070  
Affiant, In Propria Personam:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition:

Expedition Judicial Examination  
(Title of Document)

filed in District Court Case number C-16-315818-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

James H. Hayes  
Signature

3-1-20  
Date

JAMES H. HAYES  
Print Name

PRO PER  
Title

**CERTIFICATE OF SERVICE BY MAILING**

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 1<sup>st</sup>  
day of March, 2020, I mailed a true and correct copy of the foregoing, "Petition:  
Expeditions Judicial Examination"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clark County Dist Ct.  
Office of the Clerk  
200 LEWIS AVE. 3<sup>rd</sup> Floor  
Las Vegas, Nevada  
89133-1160

Attorney General of Nevada  
100 North Carson Street  
Carson City, Nevada  
89701

Clark County Dist Atty  
200 LEWIS AVE  
Las Vegas, Nevada  
89133

CC:FILE

DATED: this 1<sup>st</sup> day of March, 2020.

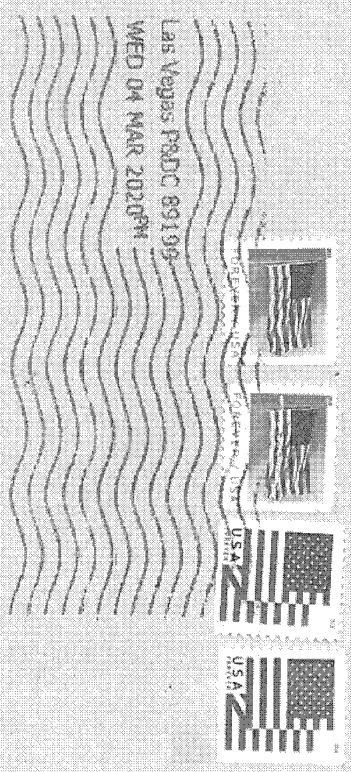
James H. Hayes  
# 1173027  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:



VEGAS, NV # 1195097  
1b ce  
P.O. Box 228  
Indian Springs, Nevada  
89070



Clark County District Courts  
"Office of the clerk"  
200 Lewis Ave; 3rd floor  
Las Vegas, Nevada  
89155-1120

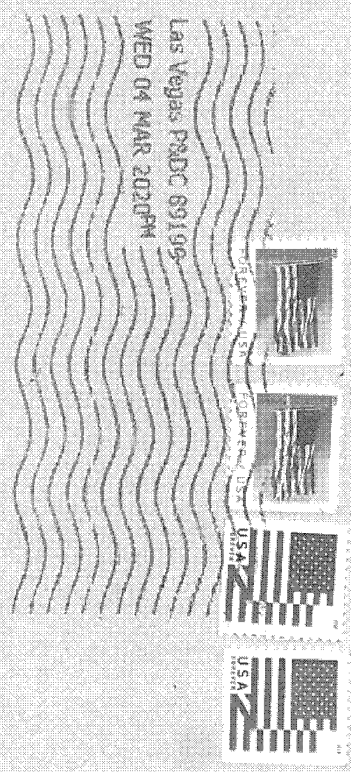


LEGAL  
MAIL

Myers, J # 1125092  
Jbce  
P.O. Box 208  
Indian Springs, Nevada  
89090



Clerk County District Courts  
"Office of the clerk"  
200 Lewis Ave; 3rd floor  
Las Vegas, Nevada  
89155-1100



Legal  
Mail



1 **RSPN**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **TALEEN PANDUKHT**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #05734**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

9 **JAMES HOWARD HAYES,**  
10 **aka James Howard Hayes Jr.,**  
11 **#2796708**

11 **Plaintiff,**

**CASE NO: A-19-793315-W**

12 **-vs-**

13 **THE STATE OF NEVADA,**

14 **Defendant.**

**DEPT NO: XIX**

15 **STATE'S RESPONSE TO PETITIONER'S**  
16 **AMENDED PETITION FOR WRIT OF HABEAS CORPUS**  
17 **AND**  
18 **PETITION: EXPEDITIOUS JUDICIAL EXAMINATION NRS 34.360-34.830**

18 **DATE OF HEARING: MAY 4, 2020**  
19 **TIME OF HEARING: 8:30 AM**

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
21 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and  
22 hereby submits the attached Points and Authorities in Response to Petitioner's Amended  
23 Petition for Writ of Habeas Corpus and "Petition: Expeditious Judicial Examination NRS  
24 34.360-34.830."

25 This Response is made and based upon all the papers and pleadings on file herein, the  
26 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
27 deemed necessary by this Honorable Court.

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On or about July 23, 2013, James H. Hayes (hereinafter, "Petitioner") was charged by  
4 way of Criminal Complaint with one count of BURGLARY (Category B Felony – NRS  
5 205.060) and one count of ATTEMPT GRAND LARCENY (Category D Felony/Gross  
6 Misdemeanor – NRS 205.220.1, 205.222.2, 193.330). Following a Preliminary Hearing in  
7 Justice Court, Las Vegas Township on June 14, 2016, the charge of BURGLARY was bound  
8 over to District Court, and the charge of ATTEMPT GRAND LARCENY was dismissed.

9 On June 17, 2016, the State filed an Information with the District Court, charging  
10 Petitioner with one count of BURGLARY. On August 29, 2017, the State filed an Amended  
11 Notice of Intent to Seek Punishment as a Habitual Criminal. On November 7, 2018, pursuant  
12 to a Guilty Plea Agreement ("GPA"), Petitioner entered a plea of Guilty pursuant to North  
13 Carolina v. Alford, 400 U.S. 25 (1970) to one count of ATTEMPT GRAND LARCENY. The  
14 terms of the GPA are as follows:

15 The State has agreed to make no recommendation at the time of sentencing. The  
16 State has no opposition to probation with the only condition being thirty (30)  
17 days in the Clark County Detention Center (CCDC), with thirty (30) days credit  
for time served.

18 GPA at 1:22-24. The GPA further includes, in pertinent part, the following acknowledgement:

19 I understand and agree that, if...an independent magistrate, by affidavit review,  
20 confirms probable cause against me for new criminal charges including reckless  
21 driving or DUI, but excluding minor traffic violations, the State will have the  
22 unqualified right to argue for any legal sentence and term of confinement  
23 allowable for the crime(s) to which I am pleading guilty, including the use of  
24 any prior convictions I may have to increase my sentence as a habitual criminal  
to five (5) to twenty (20) years, Life without the possibility of parole, Life with  
the possibility of parole after ten (10) years, or a definite twenty-five (25) year  
term with the possibility of parole after ten (10) years.

25 GPA at 2: 1-9. An Amended Information reflecting the new charge of ATTEMPT GRAND  
26 LARCENY was filed in conjunction with the GPA. Petitioner was adjudged Guilty pursuant  
27 to Alford that same day, and the sentencing hearing was scheduled for March 6, 2019.

28 //

1 On January 31, 2019, the State filed a State's Notice of Motion and Motion to Revoke  
2 Bail, asserting that in Las Vegas Justice Court case number 19F01534X, a Justice of the Peace  
3 had found probable cause to charge Petitioner with Burglary for acts committed on or around  
4 January 26, 2019. The State's Motion to Revoke Bail was granted after a hearing on February  
5 4, 2019.

6 At the sentencing hearing on March 6, 2019, the State argued that it had regained the  
7 right to argue pursuant to the terms of the GPA. The Court agreed, and the State argued that  
8 Petitioner should be punished under NRS 207.010 (the "Small Habitual Statute"). The Court  
9 agreed, and Petitioner was sentenced to sixty (60) to one hundred seventy-four (174) months  
10 in the Nevada Department of Corrections (NDOC), consecutive to Petitioner's sentence in  
11 another case (C315125). The Court also awarded Petitioner ten (10) days credit for time  
12 served. The Judgment of Conviction in this case was filed on March 12, 2019.

13 Petitioner filed a Notice of Appeal on March 28, 2019. Petitioner's Case Appeal  
14 Statement was filed on August 9, 2019 (SCN 78590).

15 On April 15, 2019, Petitioner filed a Petition for Writ of Habeas Corpus ("Petition").  
16 Pursuant to Court order, the State filed its Response on June 26, 2019. At the hearing on the  
17 Petition on August 19, 2019, the Court noted that Petitioner filed two Addenda to his original  
18 Petition (the first on May 7, 2019, and the second on May 9, 2019). Pursuant to the Court's  
19 order, the State filed a Response to the Addenda on October 10, 2019. Petitioner filed a Reply  
20 to the State's Response on November 4, 2019. On November 18, 2019, Petitioner's Petition  
21 came before the Court, at which time the Court took the matter OFF CALENDAR due to  
22 Petitioner's pending appeal.

23 On November 19, 2019, Petitioner filed another Notice of Appeal, appealing the denial  
24 of his Coram Nobis motion. His Case Appeal Statement was filed on December 11, 2019 (SCN  
25 80222). As of the date of this Response, Petitioner's appeal was still outstanding.

26 On January 14, 2020, the Nevada Supreme Court AFFIRMED Petitioner's Judgment  
27 of Conviction in SCN 78590. Remittitur issued on February 25, 2020.

28 //

1 On February 12, 2020, Petitioner filed an “Amended Petition for Writ of Habeas  
2 Corpus” (his “Amended Petition”). This Court ordered a Response to that Amended Petition  
3 on March 4, 2020. Thereafter, on March 6, 2020, Petitioner filed a “Petition: Expeditious  
4 Judicial Examination NRS 34.360-34.830” (his “Petition: EJE”). Pursuant to this Court’s  
5 order, and out of an abundance of caution, the State responds to both the Amended Petition  
6 and the Petition: EJE, as follows:

### 7 **ARGUMENT**

#### 8 **I. PETITIONER’S AMENDED PETITION IS BARRED AS SUCCESSIVE**

9 As a preliminary matter, the State respectfully submits that the instant pleadings must  
10 be stricken pursuant to statute. NRS 34.750(3) allows *appointed counsel* to file certain  
11 supplemental pleadings within 30 days. However, “[n]o further pleadings may be filed except  
12 as ordered by the court.” NRS 34.750(5). Additionally, NRS 34.810(2) reads:

13 A second or successive petition *must be dismissed* if the judge or justice  
14 determines that it fails to allege new or different grounds for relief and that the  
15 prior determination was on the merits or, if new and different grounds are  
16 alleged, the judge or justice finds that *the failure of the petitioner to assert those  
grounds in a prior petition constituted an abuse of the writ.*

17 (Emphasis added). It is strictly the petitioner’s burden to demonstrate good cause and prejudice  
18 to survive the court’s analysis. NRS 34.810(3); Lozada v. State, 110 Nev. 349, 358, 871 P.2d  
19 944, 950 (1994); see also, Hart v. State, 116 Nev. 558, 563-64, 1 P.3d 969 972 (2000) (holding,  
20 “where a defendant previously has sought relief from the judgment, the defendant’s failure to  
21 identify all grounds for relief in the first instance should weigh against consideration of the  
22 successive motion.”)

23 The Nevada Supreme Court has stated: “Without such limitations on the availability of  
24 post-conviction remedies, prisoners could petition for relief in perpetuity and thus abuse post-  
25 conviction remedies. In addition, meritless, successive and untimely petitions clog the court  
26 system and undermine the finality of convictions.” Lozada, 110 Nev. at 358, 871 P.2d at 950.  
27 The Nevada Supreme Court recognizes, “[u]nlike initial petitions which certainly require a  
28 careful review of the record, successive petitions *may be dismissed based solely on the fact of*

1 *the petition.*” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (emphasis added).  
2 In other words, if the claim or allegation was previously available with reasonable diligence,  
3 it is an abuse of the writ to wait to assert it in a later petition. McClesky v. Zant, 499 U.S. 467,  
4 497-98 (1991). Application of NRS 34.810(2) is *mandatory*. State v. Eighth Judicial Dist.  
5 Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (noting, “[h]abeas corpus  
6 petitions that are filed many years after conviction are an unreasonable burden on the criminal  
7 justice system.”) The Riker Court further determined that district courts have no discretion  
8 regarding application of statutory procedural bars, and such bars “cannot be ignored [by the  
9 district court] when properly raised by the State.” Id. at 233.

10 In the instant case, Petitioner continues to file supplemental pleadings in the form of  
11 multiple addenda as well as the instant “Amended Petition.” However, under NRS 34.750, the  
12 right to file supplements lies exclusively with appointed counsel. Furthermore, the factual  
13 bases for Petitioner’s claims existed at the time Petitioner filed his first Petition. Therefore,  
14 Petitioner’s pleadings are successive and subject to dismissal absent a showing of good cause  
15 and prejudice. NRS 34.810(2). Petitioner does not argue good cause nor prejudice. See  
16 generally, Amended Petition. Thus, pursuant to statute, Petitioner’s pleadings “*must be*  
17 *dismissed.*” NRS 34.810(2) (emphasis added).

## 18 **II. PETITIONER’S AMENDED PETITION DOES NOT ENTITLE HIM TO** 19 **RELIEF**

20 The Nevada Supreme Court has explained:

21 “[A] guilty plea represents a break in the chain of events which has preceded it  
22 in the criminal process. When a criminal defendant has solemnly admitted in  
23 open court that he is in fact guilty of the offense with which he is charged, he  
24 may not thereafter raise independent claims relating to the deprivation of  
constitutional rights that occurred prior to the entry of the guilty plea.”

25 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411  
26 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all  
27 constitutional claims based on events occurring prior to the entry of the plea[], except those  
28 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100

1 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d  
2 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be  
3 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness  
4 of counsel.”). Under NRS 34.810,

5 I. The court *shall* dismiss a petition if the court determines that:

6 (a) The petitioner’s conviction was upon a plea of guilty or guilty but  
7 mentally ill and the petition is not based upon an allegation that the plea was  
8 involuntarily or unknowingly entered or that the plea was entered without  
effective assistance of counsel.

9 ...  
10 unless the court finds both cause for the failure to present the grounds and actual  
prejudice to the petitioner.

11 (emphasis added). Furthermore, the Nevada Supreme Court has held that “challenges to the  
12 validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must  
13 first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a  
14 direct appeal must be pursued on direct appeal, or they will be *considered waived in*  
15 *subsequent proceedings.*” Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)  
16 (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979  
17 P.2d 222 (1999)). “A court must dismiss a habeas petition if it presents claims that either were  
18 or could have been presented in an earlier proceeding, unless the court finds both cause for  
19 failing to present the claims earlier or for raising them again and actual prejudice to the  
20 petitioner.” Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other  
21 grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims  
22 are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at  
23 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

24 A proper petition for post-conviction relief must set forth specific factual allegations  
25 that would entitle the petitioner to relief. NRS 34.735(6) states, in pertinent part, “[Petitioner]  
26 must allege specific facts supporting the claims in the petition [he] file[s] seeking relief from  
27 any conviction or sentence. Failure to raise specific facts rather than just conclusions may  
28 cause the petition to be dismissed.” “Bare” and “naked” allegations are not sufficient to



1 warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v.  
2 State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “A claim is ‘belied’ when it is contradicted  
3 or proven to be false by the record as it existed at the time the claim was made.” Mann v. State,  
4 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

5 **A. Petitioner’s Claims of Ineffective Assistance of Counsel are Belied by the Record**

6 Petitioner first claims that his counsel, Mr. Michael Sanft, Esq. (“Mr. Sanft”) was  
7 ineffective for 1) failing to appropriately investigate; 2) failing to ensure Petitioner fully  
8 understood the conditions of the GPA; 3) failing to file a Motion to Withdraw Guilty Plea; and  
9 4) failing to file a Notice of Appeal and/or informing Petitioner of his right to appeal. However,  
10 Petitioner’s claims are belied by the record.

11 The Sixth Amendment to the United States Constitution provides that, “[i]n all criminal  
12 prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his  
13 defense.” The United States Supreme Court has long recognized that “the right to counsel is  
14 the right to the effective assistance of counsel.” Strickland v. Washington, 466 U.S. 668, 686,  
15 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
16 (1993).

17 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
18 he was denied “reasonably effective assistance” of counsel by satisfying the two-prong test of  
19 Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
20 P.2d at 323. Under Strickland, a defendant must show first that his counsel's representation  
21 fell below an objective standard of reasonableness, and second, that but for counsel's errors,  
22 there is a reasonable probability that the result of the proceedings would have been different.  
23 466 U.S. at 687-88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100  
24 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). “[T]here is  
25 no reason for a court deciding an ineffective assistance claim to approach the inquiry in the  
26 same order or even to address both components of the inquiry if the defendant makes an  
27 insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

28 //

1       The Court begins with the presumption of effectiveness and then must determine  
2 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
3 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
4 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
5 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
6 537 P.2d 473, 474 (1975).

7       Counsel cannot be ineffective for failing to make futile objections or arguments. See  
8 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
9 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
10 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
11 (2002). Further, a defendant who contends his attorney was ineffective because he did not  
12 adequately investigate must show how a better investigation would have rendered a more  
13 favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

14       Based on the above law, the role of a court in considering allegations of ineffective  
15 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
16 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
17 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
18 (1978). This analysis does not mean that the court should “second guess reasoned choices  
19 between trial tactics nor does it mean that defense counsel, to protect himself against  
20 allegations of inadequacy, must make every conceivable motion no matter how remote the  
21 possibilities are of success.” Id. To be effective, the constitution “does not require that counsel  
22 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
23 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
24 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

25       “There are countless ways to provide effective assistance in any given case. Even the  
26 best criminal defense attorneys would not defend a particular client in the same way.”  
27 Strickland, 466 U.S. at 689, 104 S. Ct. at 689. “Strategic choices made by counsel after  
28 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,

1 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
2 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel's  
3 challenged conduct on the facts of the particular case, viewed as of the time of counsel's  
4 conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

5 Even if a defendant can demonstrate that his counsel’s representation fell below an  
6 objective standard of reasonableness, she must still demonstrate prejudice and show a  
7 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
8 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
9 Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability  
10 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-  
11 89, 694, 104 S. Ct. at 2064-65, 2068). This portion of the test is slightly modified when the  
12 convictions occurs due to a guilty plea. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v.  
13 State, 112 Nev. 980, 988 (1996). For a guilty plea, a defendant “must show that there is a  
14 reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and  
15 would have insisted on going to trial.” Kirksey, 112 Nev. at 998 (quoting Hill, 474 U.S. at 59).

16 The text of the GPA includes the following (labeled “VOLUNTARINESS OF PLEA”),  
17 in pertinent part:

18 I have discussed the elements of all of the original charge(s) against me with  
19 my attorney and I understand the nature of the charge(s) against me.

20 ...

21 I have discussed with my attorney any possible defenses, defense strategies  
22 and circumstances which might be in my favor.

23 All of the foregoing elements, consequences, rights, and waiver of rights  
24 have been thoroughly explained to me by my attorney.

25 ...

26 I am signing this agreement voluntarily, after consultation with my  
27 attorney...

28 ...

My attorney has answered all my questions regarding this guilty plea  
agreement and its consequences to my satisfaction and I am satisfied with the  
services provided by my attorney.

//

1 GPA at 5-6. Petitioner affirmed that he had read the GPA. Recorder's Transcript of Hearing:  
2 November 7, 2018 ("Transcript") at 2:24-25, 3:21-22. Petitioner affirmed that Mr. Sanft  
3 answered any questions regarding the GPA. Transcript at 3:1-3, 3:23-4:6. Petitioner affirmed  
4 that he understood the charge in the Amended Information. Id. at 3:4-6, 4:7-9. Petitioner  
5 affirmed that he signed the GPA. Id. at 3:16-20. Contrary to Petitioner's assertion that he was  
6 told he was agreeing to a gross misdemeanor, when asked by the Court about his  
7 understanding, Petitioner acknowledged two possible sentencing outcomes:

8 THE COURT: Okay. Can you tell me what your understanding is that you're  
9 facing as a form of punishment for the charge of attempt grand larceny here in  
10 the State of Nevada?

11 THE DEFENDANT: One to four in the Nevada Department of Corrections.

12 THE COURT: Okay.

13 THE DEFENDANT: Or a gross misdemeanor of 364 days.

14 THE COURT: Okay. You can also be fined up to \$5,000 if I treat it as a felony.  
15 And you could be fined up to \$2,000 if I treat it as a gross misdemeanor?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that?

18 THE DEFENDANT: Yes, sir.

19 Id. at 4:16-5:3. Petitioner affirmed, both verbally to the court and by signing the GPA, that he  
20 knew the terms of the GPA, the potential outcomes of his plea, and that Mr. Sanft answered  
21 all the questions Petitioner had to Petitioner's satisfaction.

22 A review of the record easily belies Petitioner's claim regarding his appeal. As stated  
23 *supra*, Petitioner timely filed a notice of appeal on March 12, 2019. Therefore, Petitioner  
24 cannot demonstrate prejudice sufficient to satisfy Strickland, as his appellate rights were not  
25 infringed upon.

26 Furthermore, to the extent that Petitioner argues Mr. Sanft was ineffective in his  
27 investigation, Petitioner fails to allege, much less show, what a proper investigation would  
28 have uncovered, much less how that information would have led Petitioner to reject guilty plea  
negotiations and proceed to trial. See, Amended Petition at 10-11. Instead, Petitioner merely  
relies upon the vague allegation that Mr. Sanft "failed to do appropriate investigation of  
potentially meritorious claims." Id. at 10. Such vague allegations are insufficient to warrant

1 relief under Molina. 120 Nev. at 192, 87 P.3d at 538. Furthermore, Petitioner's lack of specific  
2 factual support for his claim leaves the same bare and naked under Hargrove, and suitable only  
3 for summary dismissal. 100 Nev. at 502, 686 P.2d at 225.

4 Because each of Petitioner's arguments in support of his claim of ineffective assistance  
5 of counsel is belied by the record, pursuant to Hargrove and Mann, Petitioner is not entitled to  
6 relief on this claim. 100 Nev. at 502, 686 P.2d at 225; 118 Nev. at 354, 46 P.3d at 1230.

7  
8 **B. Petitioner's Claim Against his Breach of the Guilty Plea Agreement is Belied by**  
9 **the Record**

10 Petitioner goes on to claim that the State violated his right to Due Process in arguing  
11 that Petitioner had surrendered the stipulated sentence in the GPA. Amended Petition at 13.  
12 This claim is likewise belied by the record.

13 In the GPA, Petitioner expressly agreed to the clause:

14 I understand and agree that, if I fail to interview with the Department of Parole  
15 and Probation (P&P), fail to appear at any subsequent hearings in this case, or  
16 an independent magistrate, by affidavit review, confirms *probable cause* against  
17 me for new criminal charges including reckless driving or DUI, but excluding  
18 minor traffic violations, the State will have *the unqualified right to argue for any*  
19 *legal sentence* and term of confinement allowable for the crime(s) to which I am  
20 pleading guilty, including the use of any prior convictions I may have to increase  
21 my sentence as an habitual criminal to five (5) to twenty (20) years, Life without  
the possibility of parole, Life with the possibility of parole after ten (10) years,  
or a definite twenty-five (25) year term with the possibility of parole after ten  
(10) years.

22 GPA at 2 (emphasis added). Later in the GPA, Petitioner also expressly agreed: "the  
23 sentencing judge has the discretion to order the sentences served concurrently or  
24 consecutively." Id. at 3.

25 As stated *supra*, a Justice of the Peace found *probable cause* to charge Petitioner with  
26 Burglary in Las Vegas Justice Court case 19F01534X. Therefore, pursuant to the the express  
27 language of the GPA, the State regained the *unqualified* right to argue for any legal sentence.  
28 GPA at 2. Petitioner seeks to limit the language of the GPA, where no such language is present.

1 See, Amended Petition at 16 (“the boilerplate language does not explicitly refer to a right to  
2 argue for consecutive sentence”).

3 Furthermore, Petitioner’s representations that the probable cause in the other case had  
4 been erroneously found is also belied by the record. In District Court case C338412, in which  
5 the Information was filed after probable cause had been found, there was no dismissal or other  
6 acquittal of Petitioner. In fact, Petitioner *pled guilty* in that case to reduced charges.

7 Because Petitioner’s claim consists of arguments that are belied by the record,  
8 Petitioner is not entitled to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

9 **C. Petitioner’s Conviction Does Not Implicate Double Jeopardy**

10 Petitioner’s third ground for relief essentially alleges that his conviction is invalid  
11 because it violates statutory prohibitions against “Double Jeopardy.” See, Amended Petition  
12 at 17-19. However, this claim is not cognizable in a Petition for Writ of Habeas Corpus and  
13 was waived by Petitioner’s failure to raise it on direct appeal.

14 The Nevada Supreme Court has explained:

15 “[A] guilty plea represents a break in the chain of events which has preceded it  
16 in the criminal process. When a criminal defendant has solemnly admitted in  
17 open court that he is in fact guilty of the offense with which he is charged, he  
18 may not thereafter raise independent claims relating to the deprivation of  
constitutional rights that occurred prior to the entry of the guilty plea.”

19 Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411  
20 U.S. 258, 267, 93 S.Ct. 1602, 1608 (1973)). An entry of a guilty plea “waive[s] all  
21 constitutional claims based on events occurring prior to the entry of the plea[], except those  
22 involving voluntariness of the plea[] [itself].” Warden, Nevada State Prison v. Lyons, 100  
23 Nev. 430, 431, 683 P.2d 505 (1984); see also Kirksey v. State, 112 Nev. 980, 999, 923 P.2d  
24 1102, 1114 (1996) (“Where the defendant has pleaded guilty, the only claims that may be  
25 raised thereafter are those involving the voluntariness of the plea itself and the effectiveness  
26 of counsel.”). Under NRS 34.810,

27 //

28 //

1 I. The court *shall* dismiss a petition if the court determines that:

2 (a) The petitioner's conviction was upon a plea of guilty or guilty but  
3 mentally ill and the petition is not based upon an allegation that the plea was  
4 involuntarily or unknowingly entered or that the plea was entered without  
5 effective assistance of counsel.

6 ...

7 unless the court finds both cause for the failure to present the grounds and actual  
8 prejudice to the petitioner.

9 (emphasis added). Furthermore, the Nevada Supreme Court has held that "challenges to the  
10 validity of a guilty plea and claims of ineffective assistance of trial and appellate counsel must  
11 first be pursued in post-conviction proceedings.... [A]ll other claims that are appropriate for a  
12 direct appeal must be pursued on direct appeal, or they will be *considered waived in*  
13 *subsequent proceedings.*" Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994)  
14 (emphasis added) (disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979  
15 P.2d 222 (1999)). "A court must dismiss a habeas petition if it presents claims that either were  
16 or could have been presented in an earlier proceeding, unless the court finds both cause for  
17 failing to present the claims earlier or for raising them again and actual prejudice to the  
18 petitioner." Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001), overruled on other  
19 grounds by Lisle v. State, 131 Nev. 356, 351 P.3d 725 (2015). Additionally, substantive claims  
20 are beyond the scope of habeas and waived. NRS 34.724(2)(a); see also Evans, 117 Nev. at  
21 646-47, 29 P.3d 498 at 523; Franklin, 110 Nev. at 752, 877 P.2d 1058 at 1059.

22 This claim does not challenge the voluntariness of Petitioner's guilty plea, nor does it  
23 allege ineffective assistance of counsel. Therefore, this claim should have been pursued on  
24 direct appeal, rather than for the first time in a petition. NRS 34.810(1); Franklin, 110 Nev. at  
25 752, 977 P.2d at 1059. Petitioner does not attempt to argue good cause or prejudice for raising  
26 this claim for the first time in the instant proceedings. Such an argument would be meritless,  
27 as Petitioner specifically and unconditionally waived his right to a direct appeal on this issue.  
28 GPA at 5. Furthermore, Petitioner waived any potential constitutional defect by entering his  
guilty plea. Lyons, 100 Nev. at 431, 683 P.2d at 505.

//

1 Because Petitioner waived all constitutional issues prior to the entry of his plea, and  
2 because his claim does not challenge the voluntariness of Petitioner's plea, this claim must be  
3 summarily denied.

4 **D. Petitioner's Claim Regarding his PSI Does Not Warrant Relief**

5 Petitioner then claims that his sentence was based on multiple mistakes regarding his  
6 criminal history in his PSI. Amended Petition at 20. However, Petitioner fails to demonstrate  
7 that he properly raised this claim before the Court at sentencing. Further, Petitioner's  
8 assertions are belied by a reading of the controlling authority regarding his sentence.

9 When imposing a sentence on a defendant, the district court must base its sentence on  
10 accurate information contained in a PSI. Stockmeier v. Bd. of Parole Comm'rs, 127 Nev. 243,  
11 247, 255 P.3d 209, 212 (2011). "[I]t is important for a defendant to object to his PSI at the  
12 time of sentencing because 'Nevada law does not provide any administrative or judicial  
13 scheme for amending a PSI after the defendant is sentenced.'" Sasser v. State, 130 Nev. 387,  
14 390, 324 P.3d 1221, 1223 (2014) (quoting Stockmeier, 127 Nev. at 249, 255 P.3d at 213).  
15 Furthermore, "if not resolved in the defendant's favor, the objections [to the PSI] *must be*  
16 *raised on direct appeal*." Stockmeier, 127 Nev. at 250, 255 P.3d at 213 (emphasis added).

17 Pursuant to Stockmeier, Petitioner should have raised his claims regarding the  
18 misinformation in his PSI to the Court at sentencing, then upon direct appeal. 127 Nev. at 250,  
19 255 P.3d at 213. Petitioner did neither. Therefore, pursuant to Franklin, Petitioner waived these  
20 claims. 110 Nev. at 752, 877 P.2d at 1059. Petitioner does not argue good cause or prejudice  
21 to overcome the procedural bars, and could not successfully do so, as these alleged  
22 incorrections were available at the time Petitioner pursued his direct appeal.

23 Furthermore, to the extent Petitioner claims that the timing of his separate claims was  
24 misinterpreted by the sentencing court, his claim is belied by the statute governing treatment  
25 as a habitual criminal. Pursuant to NRS 207.010, the analysis of prior convictions occurs at  
26 the time of *conviction, not at the time the crime was alleged*. See NRS 207.010(1). At the time  
27 of sentencing, the State argued in support of habitual criminal treatment, and the Court  
28 determined that the State had met its burden pursuant to statute.



1 Because Petitioner waived this claim, and because it is further belied by the record and  
2 by applicable laws, this claim must be summarily denied.

3 **E. Petitioner's Claim Against Entry of his Guilty Plea is Belied by the Record**

4 Petitioner's final claim is that his guilty plea was not knowingly and voluntarily  
5 entered, as he alleges that he did not understand the consequences of a breach of the agreement.  
6 Amended Petition at 22. Again, Petitioner's claim is belied by the record.

7 Contrary to Petitioner's assertion that he believed he would simply go to trial if he  
8 violated the terms of the GPA (see, Amended Petition at 23), the plain language of the GPA  
9 sets forth that, upon a breach, "the State will have the unqualified right to argue for any legal  
10 sentence and term of confinement..." GPA at 2. As stated *supra*, the Court thoroughly  
11 canvassed Petitioner and determined that Petitioner understood the terms of the GPA. See,  
12 Section II(A), *supra*. Furthermore, Petitioner's claim that he was unaware that a sentence as a  
13 habitual criminal was possible is belied, as the State Noticed its Intent to Seek Habitual  
14 Criminal Treatment on August 29, 2017, and the GPA expressly included the possibility of  
15 habitual criminal treatment as a result of Petitioner's breach of the terms of the GPA. GPA at  
16 2.

17 Because Petitioner's claim is expressly belied by the record, he is not entitled to relief  
18 on the same and his claim should be summarily denied. Hargrove, 100 Nev. at 502, 686 P.2d  
19 at 225.

20 **II. PETITIONER'S PETITION: EJE DOES NOT SET FORTH ANY**  
21 **INDEPENDENT GROUNDS FOR RELIEF**

22 A review of Petitioner's Petition: EJE reveals that it is, essentially, a request for a ruling  
23 on Petitioner's various Petitions and Addenda. See, Petition: EJE at 2. However, beyond the  
24 boilerplate language of Petitioner's Petition: EJE, it appears that Petitioner has affixed mere  
25 copies of his five (5) grounds for relief, as alleged in his earlier Petitions and Addenda. See,  
26 *id.* at 4-22. As this new Petition: EJE fails to raise any new grounds for relief, for the sake of  
27 judicial economy the State hereby incorporates its arguments in its Response to Petitioner's  
28 Petition for Writ of Habeas Corpus (Post-Conviction), filed on June 16, 2019, its Response to

1 Petitioner's First and Second Addendum to Petition for Writ of Habeas Corpus (Post-  
2 Conviction), filed on October 10, 2019, and its Response to Petitioner's Amended Petition,  
3 contained *supra*.

4 Because Petitioner waived certain claims by entering his guilty plea, others by failing  
5 to raise them on direct appeal, and because his other claims are belied by the record,  
6 Petitioner's Petition and all supplemental pleadings thereto should be dismissed in their  
7 entirety and the claims thereof should be denied.

8 **CONCLUSION**

9 For the foregoing reasons, the State respectfully requests that this Court DENY  
10 Petitioner's Amended Petition for Writ of Habeas Corpus in its entirety.

11 DATED this 17<sup>th</sup> day of April, 2020.

12 Respectfully submitted,

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

15 BY

16 BB  
17 TALEEN PANDUKHT  
Deputy District Attorney  
Nevada Bar #05734

18 **CERTIFICATE OF MAILING**

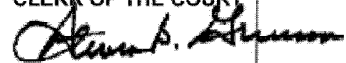
19 I hereby certify that service of the above and foregoing was made this 17<sup>th</sup> day of  
20 April, 2020, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

21 JAMES HAYES, BAC #1175077  
22 HIGH DESERT STATE PRISON  
23 P.O. BOX 650  
24 INDIAN SPRINGS, NV, 89070

25 BY

26 Carmen Garcia  
27 C. Garcia  
Secretary for the District Attorney's Office

28 TP/cg/L2



1 NOR

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3  
4  
5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7 \*\*\*\*\*

8 JAMES HAYES, PLAINTIFF(S)

CASE NO: A-19-793315-W

9 VS.

10 NEVADA STATE OF, DEFENDANT(S)

DEPARTMENT 19

11  
12  
13 NOTICE OF RESCHEDULING HEARING

14 Please be advised that the date and time of a  
15 hearing set before the **Honorable William D. Kephart**  
16 has been changed. The **Petition for Writ of Habeas**  
17 **Corpus**, presently scheduled for **May 04, 2020 at 8:30**  
18 **AM**, has been rescheduled to **June 15, 2020, at 8:30**  
19 **AM**. Please note this date change on your  
20 **calendar(s)**.  
21  
22  
23

24  
25 By: /s/ Minddie Lloyd

Minddie Lloyd

Judicial Executive Assistant

To Judge William D. Kephart

Department 19

26  
27  
28 William D. Kephart  
DISTRICT JUDGE  
Department 19  
LAS VEGAS, NV 89155

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**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date signed, a copy of this Notice was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

James H Hayes  
Bernard B. Zadrowski  
Taleen R Pandukht  
Steven B Wolfson  
Charles W. Thoman  
Melanie H. Marland

By: /s/ Minddie Lloyd  
Minddie Lloyd  
Judicial Executive Assistant  
To Judge William D. Kephart  
Department 19

HEARING

Requested!!

CASE NO: A-19-793315-W

DEPT: 19

AFFIDAVIT OF actual INNOCENCE NOT mere legal insufficiency  
but "actual INNOCENCE"

STATE OF NEVADA )

ss: Amended Petition for Writ of Habeas Corpus **FILED**

COUNTY OF CLARK )

CASE NO: A-19-793315-W

DEPT: 19

MAY 15 2020

TO WHOM IT MAY CONCERN:

I, James H. Hayes, the undersigned, do hereby swear that the following statements and description of events, are true and correct, of my own knowledge, information, and belief, and to those I believe to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT James H. Hayes is the affiant in this affidavit and is currently incarcerated at Southern District Correctional Center a victim of a fundamental miscarriage of justice trying to overcome a fundamentally unjust incarceration, and all procedural bars against the ruling on the merits of his Amended petition for Writ of Habeas Corpus. When in fact, a fundamental miscarriage of justice would continue from the failure to consider Mr. Hayes claims for relief on the merits.

Whereas, Mr. Hayes is actually innocent of the crime of Attempted Grand Larceny through clear and convincing evidence shown at preliminary examination when magistrate dismissed the charge for lack of evidence, No corpus delicti, No slight or marginal evidence. Moreover, this is a colorable showing that it is more likely than not that no reasonable juror would have convicted Mr. Hayes absent a constitutional violation. Where as here, there was, of course, no evidence of actual guilt of the crime of Attempted Grand Larceny, as the sustaining Judge and the State knew Mr. Hayes had no

1 of 2

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1 involvement in such a crime, as it is clear that no evidence  
2 of actual guilt existed on the underlying criminal conduct  
3 that may have justified accepting Mr. Hayes' ~~Alford~~ plea  
4 to a crime he did not commit, and sentence was based  
5 on speculation, not based on the acts Mr. Hayes committed.  
6 So here Mr. Hayes has made a colorable showing of cause  
7 and prejudice to overcome a procedural default and to  
8 ensure fundamental fairness that is the central concern  
9 of the writ of habeas corpus. As the instant case, is an  
10 extraordinary case, where a constitutional violation has  
11 resulted in the conviction of Mr. Hayes who is actually  
12 innocent, and it would be an affront to justice and due  
13 process to hold Mr. Hayes to his plea when the conduct upon  
14 which the plea was entered did not occur. Furthermore,  
15 Mr. Hayes received no consideration whatsoever in exchange  
16 for his ~~Alford~~ plea to a crime he did not commit as he was  
17 induced by the state to plead to a crime not committed and  
18 Mr. Hayes' agreement to this unconstitutional guilty plea was  
19 predicated on his belief of time credit served for a gross-  
20 misdemeanor sentence and did not explicitly agree to a  
21 period of imprisonment in exchange for a plea.

22 That, this court is fully aware Mr. Hayes was not properly  
23 advised or conversed as to the defects he may have waived  
24 as part of the negotiations. When in fact, Mr. Hayes never  
25 agreed to waive any and all defects in the pleadings so  
26 Mr. Hayes never waived claims to "defects" voluntarily, nor  
27 did Mr. Hayes waive right to complain of the acceptance  
28 of an unconstitutional plea. Furthermore, Mr. Hayes' guilty

1 plea agreement did not explicitly specify waiver to defects and  
2 Mr. Hayes was not well-aware of the charges against him  
3 nor the surrounding negotiations and the plea canvass is  
4 unambiguous evidence of this and confirms Mr. Hayes did  
5 not explicitly understand the plea negotiations. Moreover,  
6 there is clear and convincing evidence Mr. Hayes did not  
7 commit the crime of Attempted Grand Larceny and the  
8 charge of Burglary was fatal without the state's intent of  
9 Attempt Grand Larceny that's a colorable showing that no  
10 jury would have convicted Mr. Hayes of Attempted Grand  
11 Larceny nor the underlying crime of Burglary leaving the  
12 sentencing judge no factual basis for acceptance of Mr.  
13 Hayes Affirmative Plea as he never admitted in open court to  
14 committing the acts underlying the offense for which he  
15 entered his plea, and the prosecution knew that the evidence  
16 was false and without probable cause.

17 That, the record shows without doubt that Mr. Hayes has  
18 pleaded Affirmative to a crime that he did not commit, and this  
19 court must hesitate to apply technical rules to prevent Mr.  
20 Hayes from obtaining relief. What is fact, the cause and  
21 prejudice formula of *Weinwright v. Suker* is not dispositive  
22 when the fundamental fairness of a prisoner's conviction  
23 is at issue as in the instant case, that appellate procedural  
24 default should not foreclose habeas corpus review of a  
25 meritorious constitutional claim that will establish Mr.  
26 Hayes innocence. As this is an extraordinary case, where  
27 a constitutional violation has resulted in the conviction of  
28 one who is actually innocent and this court shall grant the

1 writ even if the absence of a showing of cause and prejudice  
2 for the procedural default, when counsel's failure to raise a  
3 particular claim on appeal is to be scrutinized under the  
4 cause and prejudice standard when that failure is treated  
5 as a procedural default would deny Mr. Hayes fundamental  
6 fairness and continue this manifest injustice. When the  
7 writ of habeas corpus is the fundamental instrument for  
8 safeguarding individual freedom against arbitrary and  
9 lawless state actions and its well-known history bears  
10 repetition. As it has been given explicit protection in our  
11 constitution, and the very nature of the writ demands  
12 that it be administered with the initiative and flexibility  
13 essential to insure that miscarriages of justice within its  
14 reach are surfaced and corrected that must occur in the  
15 instant case, as there is no rigid procedural rules that  
16 prevented the writ's fundamental mission - securing justice  
17 from being realized and must yield to the imperative of  
18 correcting a fundamentally unjust incarceration and  
19 prevent illegal imprisonments.

20 That, the state breached the guilty plea agreement on  
21 impeachable and highly suspect evidence as the evidence used  
22 was false and the state was well aware that the alleged victim  
23 at preliminary examination for the 1st degree Burglary  
24 charge (case no: 19701534X) testified under oath facing the  
25 penalty of perjury that Mr. Hayes was not the perpetrator  
26 of alleged B&E and 100% sure of it and further stated  
27 that alleged perpetrator did not enter room only stood in  
28 doorway said sorry and close door and left without



1 incident, so Mr. Hayes has showed detrimental reliance since  
2 there was no breach and no fault of Mr. Hayes as the  
3 Burglary charge was dismissed and Justice court magistrate  
4 ruling of probable cause was misplaced as alleged victim  
5 testified Mr. Hayes was not perpetrator and Mr. Hayes  
6 had a valid room hotel key issued to him from an  
7 authorized registered hotel guest, so this is a manifest  
8 impropriety in permitting the state to break the agreement  
9 when they know Mr. Hayes did not break his promise making  
10 the state estopped from asserting right to argue for a  
11 different sentence. When there was in essence no substantial  
12 breach that warrants releasing state of its promises when  
13 in fact, the agreement did not contain explicit language  
14 conditionally releasing the state from its promise for an  
15 excusable ruling of probable cause by magistrate as we  
16 have in the instant case. Whereby had the sentencing  
17 judge held an evidentiary hearing as required to determine  
18 if there was a breach per the rulings of the Nevada  
19 Supreme Court and the 9th Circuit this fundamental mis-  
20 carriage of justice would not have occurred as Mr. Hayes  
21 has clear and convincing evidence he did not break  
22 his promise and no breach occurred on his behalf.  
23 That, habitual adjudication was not just and proper for  
24 Mr. Hayes to be punished and segregated as a habitual  
25 criminal and the court abused its discretion as crimes  
26 use was nonviolent and not a felony under the state  
27 and laws of Nevada? Court Card Abuse in Texas and not  
28 prior? Burglary in Nevada 2016. As the sentencing judge

1 violated legislation intent of NRS 207.010 and failed  
2 to serve the purposes of the statute or the interests  
3 of justice. When in fact, Mr. Hayes did not warrant  
4 the harsh sanction under the habitual criminal statute  
5 though past conduct reprehensible simply does not  
6 warrant habitual treatment.

7 That, the court that rendered the judgment and  
8 sentence lack subject matter jurisdiction per NRS 174.085  
9 and NRS 178.562. Whereby jurisdiction of the subject  
10 matter is derived from the law; it neither can be  
11 waived nor conferred by consent of Mr. Hayes  
12  
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18  
19  
20  
21

22 FURTHER, AFFLIANT SAYETH NAUGHT.

23 EXECUTED AT Southern Desert Correctional Center this 27 day of April 2020

24 IN FRONT OF:

BY Amos H. Hayes  
NDOC # 1175077

25  
26  
27  
28 6 of 7

UNDER PENALTY OF PERJURY

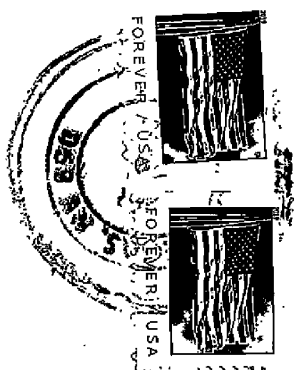
I, the undersigned, certify, declare, or state that the foregoing is true and correct, to the best of my knowledge and belief, in accordance with NRS 208.165 and 28 USCA § 1746.

Excuted on the 27 day of April, 2020

James H. Hayes # 1175072 James H. Hayes  
Name and Prison BAC#, printed

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Pages # 1195092  
50cc  
P.O. Box 2008  
Indian Springs, NV  
89030



Clark County District Courts  
"Office of the Clerk"

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